

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – I**

CP (IB) 4364/MB/2019

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Janata Sahakari Bank Limited

1444, Shukrawar Peth, Thorale Bajirao Road, Pune –
411002.

... Financial Creditor/Petitioner

Versus

Blue Cross Road Solutions Limited.

[CIN: U51101MH2013PLC241062]

Unit No. 406, B Wing, Cello Triumph, I.B. Patel Road,
Goregoan (E), Mumbai - 400063.

... Corporate Debtor/Respondent

Order Delivered on 09.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Amit Tungare, Advocate.
For the Corporate Debtor : None.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Janata Sahakari Bank Ltd, Pune** (“the Financial Creditor or FC”), seeking to initiate Corporate Insolvency Resolution Process

(CIRP) against **M/s Blue Cross Road Solutions Ltd.** ("the Corporate Debtor or CD").

2. The present Petition was filed on 03.12.2019 before this Adjudicating Authority claiming a sum of Rs. 5,49,76,638/- (Rupees Five Crore Forty-Nine Lakh Seventy-Six Thousand Six Hundred and Thirty-Eight Only) along with gross accrued interest up to 30.09.2019 at the rate of 13.5 % p.a. interest amounting to Rs. 24,83,148/- (Rupees Twenty-Four Lakh Eighty-Three Thousand One Hundred and Forty-Eight Only) and 16.5% p.a penal interest upto 30.09.2019 amounting to Rs. 51,347/- (Rupees Fifty-One Thousand Three Hundred and Forty-Seven Only) to the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same.
3. The total amount claimed to be in default by the Financial Creditors is 5,82,41,285/- (Rupees Five Crore Eighty-Two Lakh Forty-One Thousand Two Hundred and Eighty-Five Only). The date of default stated to be is 05.09.2019.
4. The Corporate Debtor is a private company limited by shares incorporated on 16.03.2013 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Unit No. 406, B Wing, Cello Triumph, I.B. Patel Road, Goregoan (E), Mumbai - 400063. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions made by the Financial Creditor:

5. The Petitioner submits that the Corporate Debtor was named M/s Torrent Petrochem Limited and changed its name to M/s Blue Cross Road Solutions Limited on 10.02.2017. In October 2014, the Corporate Debtor approached the Petitioner seeking Cash Credit Facility for an amount of Rs. 10,00,00,000/- (Rupees 10 Crores Only). After scrutiny of the application, the Petitioner disbursed an amount of Rs. 5,50,00,000/- (Rupees Five Crore Fifty Lakh Only) on 16.10.2014 through a sanction letter numbered 2796. The Cash Credit Facility was offered at an interest rate of 15% p.a. which was subject to change. The sanction letter is placed at “**Annexure 5 at pg 23-25**” of the Petition.
6. It is further submitted that Promoters of the Corporate Debtor have also executed a Mortgage Deed dated 08.01.2015. The said mortgage deed has been registered with the sub-registrar of Patan at serial no. 89 of 2015. The Petitioner has also registered the charge created on the assets with the Ministry of Corporate Affairs. Copy of the Registered Mortgage Deed is placed at “**Annexure 8 at pg 34-53**” of the Petition. Copy of Certificate of Registration of Charge is placed at “**Annexure 13 at pg 73**” of the Petition.
7. The copies of Statement of Accounts for the period of 01.03.2019 to 30.09.2019 of the Petitioner are placed at “**Annexure 11**” of the Petition.
8. The Petitioner further submits that the Cash Credit Facility offered to the Corporate Debtor was renewed from time to time at the request of the Corporate Debtor. The said Cash Credit Facility

was last renewed on 14.03.2019. Copies of the renewal of the Cash Credit Letter are placed at “**Annexure 6 at pg 26-29**” and “**Annexure 7 at pg 30-33**” respectively, of the Petition.

9. The Petitioner vide letter dated 04.05.2019 informed the Corporate Debtor that the account operations held with the Petitioner was almost nil and the said account was overdrawn by Rs. 11,30,599/- (Rupees Eleven Lakh Thirty Thousand Five Hundred and Ninety-Nine Only). There after the Petitioner addressed another letter dated 04.07.2019 calling upon the Corporate Debtor to commence operations of the Cash Credit Account and pay interest for the months of May and June 2019. Subsequently, vide letters dated 30.08.2019 and 31.08.2019, the Petitioner again called upon the Corporate Debtor to repay the amounts overdrawn in order to avoid its account being tagged as NPA. On 05.09.2019, the Petitioner issued a notice under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and declared the account of the Corporate Debtor as NPA. On 06.09.2019, the Corporate Debtor was declared a willful defaulter by the Petitioner on the ground that the Corporate Debtor had siphoned off the funds sanctioned by the Petitioner. Copies of the said letters are placed at “**Annexure 15**” of the Petition.

Submissions made the Corporate Debtor:

10. Records reveal that on 24.08.2022 Adv. Sarika Gawade was present for the Corporate Debtor. Thereafter, though matter was listed for hearing on 9th September, 3rd October, 21st October and 28th November 2022 none was present for the Corporate Debtor

on the above dates too. As the matter was listed on multiple occasion for reply of the Corporate Debtor but the Corporate Debtor chose not to represent. Hence the matter is set *ex-parte* against the Corporate Debtor and taken on merits.

Findings:

11. Heard the Ld. Counsel for the Financial Creditors and perused the records.
12. The following facts are not in dispute:
 - 12.1. At the request of the Corporate Debtor, the Financial Creditor granted and disbursed in favour of the Corporate Debtor, an amount of Rs. 5,50,00,000/- (Rupees Five Crore Fifty Lakh Only) on 16.10.2014 through a sanction letter numbered 2796.
 - 12.2. Corporate Debtor have also executed a Mortgage Deed dated 08.01.2015. The said mortgage deed has been registered with the sub-registrar of Patan at serial no. 89 of 2015.
 - 12.3. Several letters and notices have been issued to the Corporate Debtor calling upon the repayment of the debt.
 - 12.4. The said amount was extended to the Corporate Debtor for a consideration in time value of money and hence is a Financial Debt within the meaning of Section 5(8) of the IBC.
 - 12.5. At the outset, we note that there is no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Lakh (as per Section 4 of the IBC). From evidence and material on record, we also hold that the application is filed by properly authorized officer of the Bank.

13. We rely on the order of the Hon'ble Supreme Court in the case of ***M/S Innoventive Industries Vs ICICI Bank and Anr. (Civil Appeal Nos. 8337-8338 of 2017)*** relevant portion that reads as follows:
14. “28. *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the*

application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

15. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.
16. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the Corporate Debtor owes money to the Financial Creditor.
17. The Financial Creditor has proposed the name of **Mr. Ajay G Marathe**, Registration No: IBBI/IPA001/IP-P01262/2018-29/12170, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
18. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is

in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

19. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP (IB) 4364/MB/C-I/2019** filed by **Janata Sahakari Bank Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Blue Cross Road Solutions Limited [CIN: U51101MH2013PLC241062]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation

and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
 - (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) **Mr. Ajay G Marathe**, Registration No: IBBI/IPA001/IP-P01262/2018-29/12170, having address at 205, Sudama Yash Apartment, Chittarajan Das Road, Dombivali (East), MH-421201, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

09.02.2023
SAM

Sd/-
JUSTICE P. N. DESHMUKH
Member (Judicial)