



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT - IV**

CP No.: IB 889(ND)/2022

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/s CANARA BANK (E-SYNDICATE BANK)

...Financial Creditor / Applicant

VERSUS

M/s CREATIVE LOOMS AND CRAFTS PRIVATE LIMITED

...Corporate Debtor / Respondent

Pronounced on: 31.05.2024

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE
MEMBER (JUDICIAL)**

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

Present:

For Applicant : Adv. Hitesh Sachar, Adv. Anju Jain, Adv. Surender

For Respondent : Adv. Purti Gupta and Adv. Henna George.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by M/s Canara Bank (E-Syndicate Bank) (“**Applicant**”), seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against M/s



Creative Looms and Crafts Private Limited [CIN: U74899DL1983PTC016257] (“**Corporate Debtor**”).

2. The Corporate Debtor was incorporated on 30.07.1983, under the Companies Act, 1956. Its registered office is at H- 2, Pushpanjali, Dwarka Highway, Next to Bharat Petroleum, South West Delhi, New Delhi, Delhi, India, 110061. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was registered on 14.12.2022 with this Adjudicating Authority on the ground that the Corporate Debtor had defaulted in the payment of a total sum of Rs. **10,87,07,393.65/-** (Rupees Ten Crores Eighty Seven Lakhs Seven Thousand Three Hundred Ninety Three and Sixty Five Paise only), whereby the principal amount is Rs. 4,78,48,176 (Rupees Four Crore Seventy Eight Lakhs Forty Eight Thousand One Hundred and Seventy-Six only) and interest amount is Rs. 6,08,59,217.65 (Rupees Six Crores Eight Lakhs Fifty Nine Thousand Two Hundred Seventeen and Sixty Five Paise only). Bifurcation of this loan amount is as follows:

Facility	Principal amount due	Interest amount due	Total amount due
Secured Overdraft Hypothecation (“ Loan 1 ”)	Rs. 2,62,50,000	Rs. 3,30,10,789.20	Rs. 5,92,60,789.2
Term Loan (“ Loan 2 ”)	Rs. 2,15,98,176	Rs. 2,78,48,428.45	Rs. 4,94,46,604.45
Total	Rs. 4,78,48,176	Rs. 6,08,59,217.65	Rs. 10,87,07,393.65



4. It is further averred in the Petition that the Corporate Debtor had submitted loan application dated 25.01.2015 to the Applicant Bank for grant of **Loan 1**: Secured Overdraft Hypothecation Facility with a unit of Rs. 2 Crores, for working capital purpose; **Loan 2**: Term loan (OSL) with a limit of Rs. 3 Crores for setting up a gym and spa at Plot no. 146 Sector-44, Industrial Area, Gurgaon, Haryana [*Annexure-4 at Page No. 50 to 64 of petition*]. This Loan advanced to the Corporate Debtor was duly secured by Hypothecation of entire current assets of the Corporate Debtor including Stocks and Receivables and UREM (Unregistered Equitable Mortgage) over the immovable property of the Corporate Debtor on *pari-passu* basis alongwith, Corporation Bank (Now known as Union Bank of India) Green Park Branch, for the property situated at Plot No. 146, Sector - 44, Industrial Area, Gurgaon, Haryana. (*Annexure-5 to Annexure-6 at Page No- 65 to 130 of petition*)
5. The Corporate Debtor defaulted in the repayment of the Loan-1 on 04.05.2017 and Loan-2 on 02.01.2017 (*Annexure-12 at Page No. 224-259 of petition*)
6. Ld. Counsel for the Applicant submitted that:
 - 6.1 On 30.06.2017, the Applicant issued Legal Notice under Section 13(2) of SARFAESI Act against the Corporate Debtor as the Corporate Debtor defaulted in repayment of the loan [*Annexure-7 at Page no. 131-135 of petition*]. Pertinently, the Corporate Debtor sent a letter dated 24.07.2018 to the Applicant acknowledging its outstanding liabilities as on 28.02.2018. [*Annexure-8 at Page No. 136-138 of petition*].



- 6.2 The Applicant also issued a loan recall notice calling upon the Corporate Debtor and its guarantors to make repayment of all outstanding liabilities [Annexure-9 at Page No. 139-145 of petition]. Thereafter on 09.05.2019, the Applicant filed an Application under Section 19 of the Recovery of Debt and Bankruptcy Act, 1993 bearing O.A. no. 624 of 2019 against the Corporate Debtor.
- 6.3 On 22.11.2021, the Corporate Debtor submitted restructuring proposal for Loan-1 and Loan-2. The Corporate Debtor has duly admitted its liability in its books of accounts, as annexed, since 2015-2016 till the date of filing the Application. [Annexure-11 at Page No.222-223 of petition].
- 6.4 The Applicant also relied upon the following judgments to support his argument that the case is liable to be admitted:
- a. ***M/s Innovative Industries Ltd vs. ICICI Bank & ANR, Civil Appeal No-8337-8338 of 2017***
 - b. ***M. Suresh Kumar Reddy vs Canara Bank & Ors Civil Appeal No. 7121 of 2022***
 - c. ***E.S. Krishnamurthy & Ors vs M/s Bharath Hi Tech Builders Pvt Ltd Civil Appeal No. 3325 of 2020***
 - d. ***Asset Reconstruction Company (India) Limited Ks. Tulip Star Hotels Limited & Ors Civil Appeal No. 84-85 of 2020***
 - e. ***State Bank of India versus Arvindra Electronics Pvt. Ltd. Civil Appeal No. 6954 OF 2022***
 - f. ***Sameer Bansal vs Canara Bank & Anr. Company Appeal (AT) (Insolvency) No. 1188 of 2022***
- 6.5 The present petition is well within the limitation period, as the default date is 04.05.2017, the Corporate Debtor has acknowledged its



liability all throughout in the Financial Statements as filed with Registrar of Companies. [Ref: page 156 A, 200A of petition].

6.6 Further the Counsel submitted that, in the Para 85 of **“Asset Reconstruction Company (India) Limited vs. Tulip Star Hotels Limited & Ors Civil Appeal No. 84-85 of 2020”**, it is held that it is well settled that entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgement under Section 18 of the Limitation Act.

7. Replying to the averments of the Ld. Counsel for the Applicant, the Ld. Counsel for the Corporate Debtor took the following defenses in arguing his case:

Novation of Contract:

7.1 The Company had entered into an OTS dated 28.03.2023 with Canara Bank only for the purpose of amicable resolution of issues. The payment timeline granted in terms of the settlement is till 30.09.2024.

7.2 The terms of OTS entered into by the Corporate Debtor Company was placed on record by the Corporate Debtor Company through an Affidavit dated 22.04.2023 @ Pg.No.4-6. The Corporate Debtor also started making payments to the Applicant in terms of settlement/OTS arrived at between the parties by arranging funds through a strategic investor. The Corporate Debtor has paid an amount of 'Rs. 68.85 lakhs to Canara Bank in terms of OTS.

7.3 Accordingly, there is a novation of contract which took place on 28.03.2023. **(Tamil Nadu Industrial Investment Corporation Ltd., Rep. by its Managing Director vs. Millennium Business Solutions Pvt. Limited, rep. by its Managing Director & Anr. 2004 SCC Online Mad 840).**



7.4 Thus, the default clause and/or the contract/agreement on the basis of which the captioned petition has been filed, has ceased to exist and therefore, the captioned petition has no legs to stand.

Reasonable time/opportunity ought to be granted to the Company to comply with the OTS.

7.5 It is submitted that as the Company has paid substantial amounts, it is evident that the Company has a bona fide intention to settle the matter amicably. Further, the aforesaid reasons which led to delay in payment have to be kept in mind as in the present case, the Company could not comply with OTS since the strategic investor declined to invest amounts in view of the fact that Canara Bank failed to withdraw the captioned petition. Accordingly, reasonable time/opportunity ought to be granted to the Company to comply with the OTS. ***(Anu Bhalla & Anr. vs. District Magistrate, Pathankot & Anr. 2020 SCC Online P&H 4387)***

The computation of alleged default

7.6 Since during the pendency of the captioned insolvency petition, the Corporate Debtor has paid substantial amount in terms of settlement/OTS arrived at between the parties, therefore, the claim amount of Rs. 10,87,07,393/- cannot be relied upon and in view of mismatch of amounts claimed, the captioned petition deserves to be dismissed.

RBI Guidelines

7.7 The Corporate Debtor had submitted a restructuring scheme. Pursuant to the RBI guidelines, all restructuring schemes have been



rehabilitated. Further, Canara Bank will have to show as to how it will get more money by pursuing the insolvency petition rather than complying with the OTS for the Corporate Debtor and as to how the interests of all the stakeholders will be protected while going through a resolution plan. Further the Corporate Debtor is also an MSME and the Applicant ought to have adhered to the corrective action plan as stipulated under the RBI Circular No. FIDD.MSME & NFS.BC.No.21/06.02.31/2015- 16 dated 17.03.2016 pertaining to the Micro, Small and Medium Enterprises.

The Company is technically feasible and financially viable.

7.8 The Corporate Debtor suffered on various factors beyond its control, but despite being an NPA, the Company is still operational and efforts are being made to resolve the issues. Canara Bank is only a marginal lender with the major loans being of Union Bank of India. The initiation of CIRP shall be detrimental not only to the Company and other stakeholders but also thousands of workers as well as their families/dependants.

Discretion under Section 7, Insolvency Code

7.9 The Adjudicating Authority has the discretion to reject an Insolvency Petition filed under Section 7 of Insolvency Code because of the usage of the word 'may' in Section 7 (5). This discretion has been upheld by the Hon'ble Supreme Court in the matter of ***Vidharbha Industries Power Ltd. vs Axis Bank Ltd. (2022 SCC Online SC 841)***.

7.10 In the matter of ***E.S Krishnamurthy and Ors. V. Bharath Hi-tech Builders Private Limited 2021 SCC Online SC 1242***, the Hon'ble Supreme Court has held that settlement has to be encouraged.



7.11 The Corporate Debtor also relies upon the Judgment of the Hon'ble NCLAT in the matter of **Ashok Kumar Tyagi Vs UCO Bank, Company (AT)(Ins) No.1323/2022**, which was affirmed in Indian Bank Vs Ashok Kumar Tyagi, Civil Appeal No.5177/2023, wherein the Hon'ble NCLAT had while passing the final Judgment kept the insolvency proceedings in abeyance for a couple of months to facilitate a settlement between the lender bank and the corporate debtor entity.

Section 65 of the Insolvency Code

7.12 The captioned Insolvency Petition is mala fide, vexatious and barred by Section 65 of the Code as interpreted by the Hon'ble Supreme Court in the matter of *Pioneer Urban Land and Infrastructure Limited & Anr. Vs. Union of India & Drs. 2019 SCC Online SC 1005* Further, the Hon'ble Supreme Court has repeatedly held that Insolvency proceedings are not recovery proceedings. (*Transmission Corpn. of A.P. Ltd. v. Equipment Conductors & Cables Ltd. (2019) 12 SCC 697 and Mis. Invent Asset Securitization and Reconstruction Pvt. Ltd. vs. Mis. Girnar Fibres Ltd. (Judgment dated 25.04.22 in Civil Appeal No. 3033 of 2022)*).

8. The Counsel for the Applicant further laid down the following arguments in rejoinder to the reply of the Corporate Debtor:

8.1 The issue raised by the Corporate Debtor that once OTS arrived it amounts to novation of contract and any default if occurs the earlier agreement can't be relied upon. This does not hold good as by OTS the Applicant Bank has never given up its rights as per original agreements. (*Ref: clause 12 of OTS at page 13 of reply*), it states in the



event of non-compliance with any of the terms of the sanction, it stands automatically withdrawn without assigning any reasons for the same and the Bank reserves the right to proceed as it deems fit including proceeding legally for recovery of the entire dues.

8.2 That the Corporate Debtor also raised objection with regard to extension of time under OTS to be considered and allowed. With regard to said objection it is submitted that in **“State Bank of India versus Arvindra Electronics Pvt. Ltd. Civil Appeal No. 6954 OF 2022”** the Hon’ble Supreme Court has clearly laid down that no borrower can, as a matter of right pray for a grant for the benefit of one-time settlement scheme and further no extension of time of payment under OTS can be considered by any court / Tribunal.

9. We have heard the learned Counsels appearing for Applicant and Corporate Debtor and perused the documents on records. We find that:

9.1 In adjudicating upon the matter at hand, it is observed that the Applicant extended credit facilities totaling Rs. 5,00,00,000/- (Rupees Five Crores) to the Corporate Debtor, contingent upon adherence to the repayment terms as stated in the Sanction Letter. While partial payments were tendered by the Corporate Debtor, it is undisputed that there is a default regarding the outstanding sum, with its repayment presently in arrears.

9.2 The Corporate Debtor contends that the alleged default amount has not been accurately computed, citing partial payments made during the One-Time Settlement amounting to Rs. 68.85 Lakhs needs to be considered while computing the debt due. Deducting this partial payment from the total debt of Rs. 10,00,00,000 (Rupees Ten Crores), the resultant balance stands at Rs. 9,31,15,000 (Rupees Nine Crores Thirty One Lakhs Fifteen Thousand only). Therefore, the residual



debt, post-deduction, exceeds Rs. 1,00,00,000 (Rupees One Crore), as stipulated in Section 4 of the Insolvency and Bankruptcy Code, 2016 (IBC).

- 9.3 The Counsel for the Corporate Debtor contends that Canara Bank, the present Applicant, holds a marginal position in lending compared to Union Bank of India. Nevertheless, it remains undisputed that the Corporate Debtor is indebted to the Applicant, with the outstanding amount surpassing Rs. 1,00,00,000 (Rupees One Crore).
- 9.4 Moreover, it is pertinent to note that the default transpired on 04.05.2017. However, the Corporate Debtor acknowledged the debt on various occasions, including a letter dated 24.07.2018 and within its Balance Sheet for the period ending 31.03.2021. Consequently, the limitation period commences from 31.03.2021. Given that the petition was filed on 14.12.2022, within the three-year statutory limitation period from either the date of default or acknowledgement of debt, in accordance with Article 137 of the Limitation Act, 1963, alongwith the precedent established in ***B.K. Educational Services Private Limited v Parag Gupta and Associates (Civil Appeal No. 23988 of 2017 MANU/SC/1160/2018)***, it stands as valid within the prescribed timeframe.
- 9.5 Furthermore, the Corporate Debtor has advanced a plea of commercial solvency, which, in our assessment, does not bear relevance. Pursuant to Section 7 of the IBC, 2016, an application may be admitted upon the existence of a due and payable debt, as evidenced in the present case. The differentiation of facts from those elucidated in the judgment of ***Vidharbha Industries Power Ltd. vs Axis Bank Ltd. (2022 SCC Online SC 841)*** tenders the plea of the Corporate Debtor untenable.



- 9.6 Upon review, it is evident that the Corporate Debtor duly acknowledged the debt on 24.07.2018. Following this acknowledgment, the applicant initiated SARFAESI proceedings against the Corporate Debtor and presented a restructuring proposal. Regrettably, the proposed restructuring proved unsuccessful, culminating in the filing of the present Application by the Applicant.
- 9.7 This Adjudicating Authority recognizes that ample time and opportunities have been extended to the Corporate Debtor to amicably settle the outstanding claim. However, despite these opportunities, all endeavors towards resolution have ultimately faltered. Time sensitivity lies at the heart of the Insolvency and Bankruptcy Code (IBC), and any further extension would contravene the fundamental objectives of the IBC, rendering its purpose ineffectual. Consequently, the plea of the Corporate Debtor requesting additional time to adhere to the proposed One Time Settlement (OTS) proposal is hereby declined.
- 9.8 Additionally, while the Corporate Debtor asserts its classification as a Micro, Small, and Medium Enterprise (MSME), it is imperative to note that no specific exemption pertains to the initiation of a Section 7 petition against an MSME entity. Hence, this Adjudicating Authority has to assess whether the conditions delineated in the IBC, 2016 for a Section 7 proceeding are met. In the instant case, all requisite conditions for the admission of a petition filed by a Financial Creditor are satisfied, rendering it suitable for admission.
10. In light of the above facts and circumstances, it is ordered as follows: -



10.1 The Application bearing IB-889(ND)/2022 filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Corporate Debtor is **admitted**.

10.2 We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(a) 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, Adjudicating Authority, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

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

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

10.3 It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor



as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.

- 10.4 We also declare a moratorium in terms of Section 14 of the Code. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
- 10.5 The Applicant has proposed the name of Mr. Naresh Kumar Munjal as the Interim Resolution Professional (“IRP”) having address: 125 Second Floor, Kailash Hills, New Delhi, National Capital Territory of Delhi, 110065. His Email id is nkmunjalcacs@yahoo.co.in. His registration number is IBBI/IPA-001/IP-P00362/2017-2018/10620. The Applicant has filed a copy of the consent issued by Mr. Naresh Kumar Munjal in Form 2 and Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B (*Attached to the Application as Annexure-3 colly*). Accordingly, Mr. Naresh Kumar Munjal is appointed as IRP.
- 10.6 In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to



- Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- 10.7 During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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 one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- 10.8 The IRP shall perform all his functions as contemplated, interalia, by Sections 17, 18, 20 & 21 of the Code. He is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- 10.9 The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- 10.10 The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expense to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by IRP and shall be paid back to the Financial Creditor.



- 10.11 In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- 10.12 The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- 10.13 The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- 10.14 A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Accordingly, the present petition bearing CP No. **IB 899 (ND)/2022** is **admitted**. No order as to cost.

-Sd-

(DR. SANJEEV RANJAN)

MEMBER (TECHNICAL)

-Sd-

(MANNI SANKARIAH SHANMUGA SUNDARAM)

MEMBER (JUDICIAL)