

In the National Company Law Tribunal  
Mumbai Bench.

CP No. 1506/I&BC/NCLT/MB/MAH/2017

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

In the matter of

KAPOKH FIBRES AND INDUSTRIES LIMITED : Petitioner

V/s

AAFLOAT TEXTILES (INDIA) LIMITED : Respondent

Heard on : 15.12.2017  
Order delivered on: 29.12.2017

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)  
Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

For the Petitioner(s): : 1. Mr. Rushil Aiya  
2. Mr. R.M. Aiya.

Per M.K. Shrawat, Member (Judicial).

**ORDER**

1. This Petition is filed by an '**Assignee**' as a 'Financial Creditor' on 25<sup>th</sup> October, 2017 on Form No. 1 for a Financial Debt in default of ₹ **119,84,41,249/-** against the 'Corporate Debtor' M/s Aafloat Textile (India) Limited Bhayender (E), Thane.

2. The particulars of the financial debt has revealed that the Principle outstanding Debt was ₹ **70,76,89,396/-**. The said amount constituted by following financial facilities:-

"i. Foreign Currency Loan to the tune of **Rs. 34,66,32,294/-**  
(Rupees **Thirty Four Crore Sixty Six Lacs Thirty Two Thousand**



**Two Hundred and Ninety Four Only)** due to **ICICI Bank** as on **21<sup>st</sup> January, 2003** assigned in favour of Asset Reconstruction Company India Limited (ARCIL). On **31.3.2013** and re-assigned to financial Creditor herein on **18<sup>th</sup> April, 2013**.

ii. Financial Assistance provided to the Corporate Debtor to the tune of **Rs. 5,62,49,102/- (Rupees Five Crores Sixty Two Lacs Forty Nine Thousand One Hundred and Two Only)** due to State bank of India assigned to ARCIL on **31.3.2013** and re-assigned in favour of Financial Creditor on **18<sup>th</sup> April, 2013**.

iii. Financial Assistance in the form of Advance Deposit of Rs. 3,15,00,000/- (Rupees Three Crore Fifteen Lacs Only) towards subscription of 16% Debentures of Face Value Rs. 100/- each of the Aggregate Nominal Value of **Rs. 3,50,00,000/- (Rupees Three Crore Fifty Lacs)** by Unit Trust of India assigned to the Financial Creditor herein on **19.7.2013**.

iv. Financial Assistance provided to the Corporate Debtor by Central Bank of India to the tune of **Rs. 19,06,76,000 (Rupees Nineteen Crore Six Lacs Seventy Six Thousand Only)** due as on 31.3.1996. Financial assistance provided by Bank of India to the Corporate Debtor to the tune of **Rs. 2,39,32,000/- (Rupees Two Crore Thirty Nine Lacs Thirty Two Thousand Only)** due as on 31.3.2012 and financial assistance provided by ICICI Bank (then Bank of Rajasthan) to the Corporate Debtor to the tune of **Rs. 5,52,00,000/- (Rupees Five Crore Fifty Two Lacs only)** due as on 10.3.2013 assigned to Invest Assets Securitization and Reconstruction Private Limited (INVENT) on **31.3.2013, 31.3.2012 and 4.2013** respectively, re-assigned to Financial Creditor herein on **5.12.2013.**"

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2.1 Along with the Petition, a computation of the claim is annexed as under :-

**"Annexure - F**

**COMPUTATION OF CLAIM**

**(as on 31.3.2017)**

Sr o.	Particulars	Amount
1	Long Term Loans and Advances of M/s Aafloat Textiles (India) Ltd. purchased from various Secured Creditors namely Asset Reconstruction (India) Ltd. Invent Asset Securitization and Reconstruction Pvt. Ltd., UTI, by Kapokh Fibres & Industries Ltd.	Rs. 56,08,69,956/-
2	Details of Operational Debt	Rs. 55,92,691/-
3	Compute Interest @ 18% p.a. from 18.4.2013-23.10.2017	Rs.63,19,78,602,15/-
4	Total	<b>Rs. 119,84,41,249.15/-</b>

**(Rupees One Hundred and Nineteen Crores Eighty Four Lacs Fourty One Thousand Two Hundred and Forty Nine and Fifteen Paise only)."**

3. The brief background was that the Corporate Debtor defaulted in repayment of the financial assistance provided by ICICI Bank in the year October, 2000. The 'Corporate Debtor' was declared **"Sick Company"** in the year 2002. Due to which the Corporate Debtor had filed a Reference under section 15(1) of Sick Industrial Companies Act, 1985 before Board of Industrial and Financial Reconstruction (BIFR) on 16.09.2002. The Company was declared SICK vide order dated 04.09.2003 by BIFR. ICICI Bank was appointed as "Operating Agency" (O.A.). The Company was directed to Wind-Up vide order dated 31.01.2007 because of the reason that the Draft Rehabilitation Scheme (DRS) was opposed by the Secured Creditors. The decision of winding up was communicated to Hon'ble High Court, who had taken cognizance vide order dated 31.01.2007 and admitted Company



Petition No. 245 of 2007 and Official Liquidator was appointed. Meanwhile, the debtor had filed an appeal before AAIFR who stayed the order of BIFR on 18<sup>th</sup> June, 2007. As a consequence, the Hon'ble High Court granted stay of the winding up proceedings. However, later on AAIFR had dismissed the appeal of the Debtor for non-prosecution. As a consequence, the winding up proceedings revived. But later on, the Corporate Debtor filed a Restoration Application on 23.07.2009 before AAIFR and the Hon'ble High Court vide order dated 09.05.2013 recalled its order of 16<sup>th</sup> July, 2009. Due to the recall of the order, the issue of settlement of the outstanding debt again revived for adjudication as per Law.

4. Our attention has been drawn on **"Assignment Agreement"** executed on 18<sup>th</sup> April, 2013 between the Asset Reconstruction Company (India) Limited (ARCIL) and Kapokh Fibers and Industries Limited (KFIL) (Financial Creditor/Petitioner). In the said Agreement, the ICICI Bank and State Bank of India were termed as "Originators". It was mentioned that the said two Banks have vide Assignment Agreement dated 31<sup>st</sup> March, 2004 have assigned financial assets in favour of ARCIL. The KFIL (Financial Creditor/Petitioner) had expressed its desire to ARCIL (Seller/Trustee) to acquire the Financial Assets from ARCIL and in turn confirmed its willingness to assign the financial assets in favour of the "Purchaser" (KFIL/Financial Creditor/Petitioner). The purchase consideration was ₹ 7,42,68,767/- for the assignment of financial assets under the said agreement paid by the Purchaser (KFIL). The Seller upon receiving the consideration from the Purchaser assigned all rights in the financial assets on "as is where is basis" in favour of the Purchaser.

5. There was another Deed of Assignment of 19<sup>th</sup> July, 2013 executed between Administrator of UTI (SUUTI) and UTI Trustee Company Private Limited, both termed as Assigner "Seller" and on the other hand KFIL (Financial Creditor/Petitioner) was the "Assignee/Purchaser" of the financial arrangement. As per the said Deed the UTI had granted financial assistance to M/s Aafloat Textile (India) Limited (Corporate Debtor) and advance deposit



of ₹ 315 Lacs towards subscription to 16% debentures of ₹ 100/- each in aggregate nominal value of ₹ 350 lacs as the "Financial Assistance" on private placement basis. The Borrower M/s Aafloat Textile (India) Limited had appointed ICICI Bank as the "Debenture Trustees". The Borrower had also created security for the debentures in favour of UTI. The Borrower had failed to make payment of interest. The Borrower had also failed the redemption of debenture thus having outstanding sum of ₹ 8726 lacs as on 30<sup>th</sup> of September, 2012. The assignee (Petitioner) had decided to acquire the outstanding debt of financial assistance along with all securities of the Assignor. The Assignor agreed with the Assignee to assign the loans/debentures in favour of Assignee. Our attention has also been drawn on the document executed between the Borrower Aafloat Textile and UTI according to which advance deposit of ₹ 315 lacs was against the 16% SRNCD of ₹ 750 lacs.

6. The matter was listed on few occasions in the past and the Petitioner had informed that the Petition was duly served upon the Respondent Debtor. Rather on 15<sup>th</sup> November, 2017 the Respondent Debtor was represented by Legal Representative and on request, matter was adjourned to 04.12.2017. However, on 04.12.2017 the Respondent Debtor remained absent. Although the next date was communicated by the Petitioner but the Corporate Debtor remained absent. As per the notings made on the relevant Order Sheet (04.12.2017), it was communicated that the file under consideration would be decided on merits and a last chance was granted to the Respondent Debtor. On the basis of these observations, one thing is clear that the Respondent Debtor appeared to be not serious in defending this insolvency proceeding. As a result, we have no option but to proceed Ex-Parte qua the Respondent to decide this Petition on its merits.

7. Based upon the past history, as narrated hereinabove, our findings are that this is fit case which deserves 'Admission' under the Insolvency Code. Undisputedly, the Debt in question is a "Financial Debt" as defined Under



Section 5(8) of the Code. The Debt in question is definitely having a Component of Interest as well as the Component of "Time Value of Money". Further, we have noted that by assignment of the Debt through several Assignment Deeds from Banks to ARCIL and to the present Financial Creditor, it is worth mentioning that the Corporate Debtor was very much the Party to those Assignment Deeds, therefore, he had **admitted the Default** as defined Under Section 3(12) of the Code for repayment of the admitted outstanding Debt.

7.1 It may not be out of place to mention that in general the Financial Debtor usually plead that due to recession in the Market, the liability of repayment could not be squared up. Although in this case there is no such defence either, but the fact of the matter is that a liability does not get extinguished on the aforesaid ground of Market Recession. There could be a situation of bad finances beyond the control of a Debtor, but in the eyes of law if the Debtor had undertaken a legal responsibility by executing Debt Agreement and failed to make the payment then it is worth to mention that there is no escape route for the defaulter in respect of an unqualified liability undertaken by him. In the eyes of law if a financial debt is in existence, duly corroborated by evidences, then whatsoever be the reason the liability cannot get extinguished. It can get extinguished only on repayment.

7.2 The Petitioner has proposed the name of the **Interim Resolution Professional "Ms. Preeti Vimal Agrawal, Office No. 11, Krishna Kunj, Above HDFC Bank, Bhayander (W), Dist. Thane - 401101, Email id: capreeti2003@gmail.com, Registration No. IBB/IPA-001/ipp-00655/2017-2018/11144.** The IRP has also given his consent in Form No. 2. The IRP is hereby appointed who shall act upon as prescribed under the provisions of Section 13 of the Code by making a public announcement immediately hereafter within a period prescribed therein. The IRP so appointed shall also comply with the provisions of section 15 onwards of the Code and collate all the claims submitted by other Creditors by constituting a **Committee of Creditors**. We hereby direct the IRP to inform the progress



of the Resolution Plan along with a compliance report within 30 days on receipt of this order. However, a liberty is hereby granted to intimate the progress even at an early date, if need be.

7.3 Once the Petition is held as fit for "Admission", hence as a consequence the '**Moratorium**' as prescribed under section 14 shall commence henceforth. On enforcement of Moratorium certain prohibitions are applicable, such as institution of any Suit before a Court of Law, transferring of any Asset of the Debtor, encumbering any rights over the assets of the Debtor. However, it is also clarified that the supply of essential goods or services to the Corporate Debtor shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan as prescribed under section 31(3) of the Code.

8. **Accordingly, this CP 1506/I&BC/NCLT/MAH/2017 stood admitted.**

9. The Corporate Insolvency Resolution process is commenced from the date of this order.

Sd/-

**BHASKARA PANTULA MOHAN**  
Member (Judicial)

**Date : 29.12.2017**

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Sd/-

**M.K. SHRAWAT**  
Member (Judicial)