

In the National Company Law Tribunal
Mumbai Bench.

CP (IB) 294/NCLT/MB/2018

Under Section 7 of Insolvency & Bankruptcy Code, 2016

In the matter of

IDBI Bank Limited : Petitioner / Financial Creditor

V/s

S. Kumars Nationwide Limited : Respondent / Corporate Debtor

Heard on 12.04.2018

Order delivered on: 24.04.2018

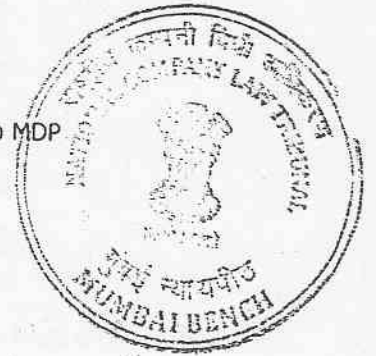
Coram:

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

For the Petitioner(s): : 1. Mr. Prakash Shinde,
2. Mr. Rohan Agarwal, Advocates, i/b MDP
& Partners,

For the Respondent(s): : 1. Mr. Chirag Modi,
2. Mrs. Raveena Yadav, Advocates.

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



ORDER

1. In the capacity of "Financial Creditor" the applicant IDBI Bank has submitted a Petition under Section 7 of the insolvency Code on 21st February 2018 against the Financial Corporate Debtor M/s. S. Kumar Nationwide Limited, Worli, Lower Parel (W), Mumbai-400013 pertaining to a Financial Debt of ₹834,22,96,587/-, (Principal amount) stated to be disbursed. Along with Interest total default in payment claimed at ₹1680,69,35,210/-.

2. The statement as on 1st February 2018 in respect of loan granted to M/s. S. Kumar Nationwide and also the total outstanding financial debt is also calculated amounting to ₹1680,69,35,210/- as under :-

IDBI Bank Ltd. (Financial Creditor)

Statement of dues as on February 1, 2018 in respect of
loan granted to M/s S Kumars Nationwide Ltd.

Account No.	Nature of Facility	Principal	Interest & Other Charges	(Amount in Rs.) Total Outstanding
126673200000231	Term Loan	538915999.03	763369146.99	1302285146.02
1001673200001700	Term Loan	92530523.06	117958736.00	210489259.06
1001673200003711	Term Loan	572187288.00	783629627.00	1355816915.00

1001672200000532	Funded Intt. Term Loan	650619778.00	0.00	650619778.00
126655100000231	Cash Credit A/c	6488042999.04	6793770229.94	13281813228.98
1000776000000037	Expenses A/c	0.00	5910883.00	5910883.00
TOTAL		8342296587.13	8464638622.93	16806935210.06

Certified that the above sum is outstanding in the ordinary Books of accounts Maintained by IDBI Bank Ltd., H.O., Mumbai through its wholly owned subsidiary viz. IDBI Intech Ltd. in the normal and ordinary course of business and such books are still in the custody of IDBI Intech Ltd."

3. The Debtor Company was incorporated on 28th September 1990 with RoC, Mumbai. The Company is engaged in manufacturing of Cotton Fabrics and shirting at Bharuch Unit. It has a Weaving Unit at Dewas. One more Unit is for spinning and weaving at Balghar. In one of the report the Bank has narrated the background of the Debtor Company as under :-

- M/s. S. Kumars Nationwide Limited (SKNL/the Company) is public limited company which got incorporated on 28th September, 1990 with the Register (sic) of Companies, Maharashtra at Mumbai and registered office of the Company is located at B2 - 501 & C - 501, Marathon Innova, Opp. Peninsula Corporate Park, Off. Ganpatrao Kadam Marg, Lower Parel (W), Mumbai - 400 013.
- The name was changed to S. Kumars Nationwide Limited (SKNL) in October 2000. SKNL is one of India's leading textile and apparel companies with expertise in multi-fiber manufacturing. The company has extended its presence in multiple product categories from Fabrics to Apparels and Home Textiles.
- SKNL has set up a texturizing and twisting plant at Dewas in Madhya Pradesh. In 1997, SKNL acquired a spinning-cum-weaving unit near Dewas (Madhya Pradesh), from Standard Industries Limited."

4. The Bank has further narrated the background of the company in one another report as under :-

- S. Kumars Group was founded in 1948 by Shri Abhayakumar Kashiwal and Shri. Shambhukumar Kashiwal by establishing textile distribution network and subsequently commencing textile manufacturing activities.
- The Company has incorporated as a private limited company on 28th September, under the Companies Act, 1956 and has become a deemed Public Company under Section 43 A (1) w.e.f. 28th February 1991.
- The Company has become a simplicitor public Company, vide special Resolution passed on 7th July 1992 and fresh certificate of change of name as issued on 28th September 1993. It is engaged in the business of trading in synthetic/blended fabrics.
- With a view to meet the growing demand for its product, S. Kumars Synfabs Ltd. has acquired shuttleless looms and other plant from S. Kumar Enterprises (Synfabs) Ltd. and is installing further shuttleless looms and other equipment at Dewas and setting up texturizing and twisting plant at Pithampur in Madhya Pradesh.
- S. Kumars Synfabs Ltd. was promoted keeping in mind the S. Kumars Group overall corporate strategy and given objectives of segregating the export business from the local business. S. Kumars Synfabs Limited is promoted by the group with the intention of making it the flagship company of the group's synthetic textile business.
- S. Kumars Synfabs Ltd. was promoted by S. Kumar Enterprises (Synfabs) Ltd. and commenced its business in September.
- The Group has also established its presence in the Middle East and the U.K/European markets. The Group exported goods worth Rs. 15 crores in the year.
- S. Kumars Group is among the early business houses that ushered in the widespread use of polyester and Polyester blends in apparel fabric in India, introduced 100% polyester sarees and used Acrylic Fibre in everyday suiting and Shirtings. It was also among the first textile Groups to take up systematic textile marketing by establishing a widespread network of dealers and retailers, and regularly advertising its products. It was amongst the first to establish India as a source of fashion blended fabric in the United Kingdom.



- The Company has privately placed 10.00 Lacs Non-Convertible Debentures of Rs. 100/- each aggregating to Rs. 10.00 Crores, with the Industrial Development Bank of India (IDBI) and the Unit Trust of India (UTI) to complete the means of finance of the expansion project undertaken by the Company.
- The Company has acquired from Standard Industries Limited, a spinning - cum- weaving unit situated near Dewas in M.P. The unit has an installed capacity of 38,564 spindles and 64 Suizer double width shuttleless weaving machines.
- The Company is setting up a state-of-the-art Worsted mill near Mysore in Karnataka.
- The Company has entered into a technical and marketing collaboration with Reid & Taylor of Scotland for manufacturing and marketing of exclusive worsted suiting.
- The Company has signed an agreement with National Securities Depository Limited (NSDL) for joining the Depository System, which facilitates scripless trading.
- The Company has, introduced a novel concept in distribution called Direct to Retail (DRT).
- S. Kumars Synfabs, the Rs. 600 crore synthetic-textiles company has decided to extend its Reid & Taylor brand to ready-to-wear segment.
- Rs. 600 crore textile major S Kumars Synfab has signed Bollywood sensation Hritvik Roshan to be their new brand ambassador for an undisclosed sum to mark their entry into the readymade apparel market.
- Chennai High Court has, through an interim injunction, prevented S Kumars from using the brand name 'Cinnamon'.
- S. Kumars Synfabs Ltd. has appointed Andersen Consulting to review its product portfolio in different market segments and maximize the company's strengths in marketing brand building and brand creation.
- S. Kumar's Synfabs, has been forced to launch a new ready-to-wear brand."

5. The Bank has also recorded an overview of textile industry as under :-

4.1 Background:

India is the one of the world's largest producers of textiles and garments. Abundant availability of raw materials such as cotton, wool, silk and jute as well as skilled workforce have made the country a sourcing hub, it is the world's second largest producer of textiles and garments. The Indian textiles industry accounts for about 24% of the world's spindle capacity and eight per cent of global rotor capacity. The potential size of the Indian textiles and apparel industry is expected to reach US\$ 223 billion by 2021.

The textiles industry has made a major contribution to the national economy in terms of direct and indirect employment generation and net foreign exchange earnings. The sector contributes about 14% to industrial production, 4% to the gross domestic product (GDP), and 27% to the country's foreign exchange inflows. It provides direct employment to over 45 million people. The textiles sector is the second largest provider of employment after agriculture. Thus, the growth and all round development of this industry has a direct bearing on the improvement of India's economy.

India has overtaken Italy, Germany, and Bangladesh to emerge as the world's second largest textile exporter. India's share in Global Textiles increased by 17.5% in 2013 compared to 2012. Textiles exports from India will touch US\$ 300 billion by the year 2024-25.

In 2012, apparel had a share of 69 per cent of the overall market; textiles contributed the remaining 31 per cent."



6. According to the Petitioner after satisfying itself with the business model of the company loan facilities were granted and in short the date wise details of the loan are as under :-

Sr. No.	Date	PARTICULARS
1.	8 th July 2009	Loan Agreement: Rupee Term Loan Agreement between the Company and Financial Creditor with respect to Rupee Term Loan of Rs.120 Crore.
2.	10 th Jan. 2008	Loan Agreement: Rupee Term Loan Agreement executed and by and between the Company and the Financial Creditor with respect to Rupee Term Loan of Rs 75 Crore.
3.		Total amount of debt granted along with dates of disbursements
4.	9 th Feb 2018	Statement of dues as on February 1, 2018

2021

5.		Details of securities availing various facilities
6.		Copy of Valuation Reports issued in respect of mortgaged properties by the valuers (2015)
7.	10 th Jan 2008	Deed of Hypothecation executed by and between Company and Financial Creditor with respect to increase Rupee Term Loan Facility of Rs 75 Crore by way of hypothecation of movables and immovable assets.
8.	8 th July 2009	Deed of Hypothecation by and between the Company and Financial Creditor with respect to Rupee Term Loan Facility of Rs 120 Crore by way of Hypothecation of movables more particularly described therein
9.	8 th July 2009	Corporate Guarantee Agreement executed by Anjani Finvest Private Limited in favour of Financial Creditor with respect to Rupee Term Loan Agreement.
10.	17 th July 2009	Agreement of Pledge of Shares executed by and between Financial Creditor & Anjani Finvest Pvt. Ltd and others in favour of Financial Creditor with respect to Rupee Term Loan
11.	26 th Mar 2009	Supplemental Joint Deed of Hypothecation by way of Second Pan Passu charge on current assets.
12.	22 nd April 2010	Copies of Memorandum of Entries dated <ul style="list-style-type: none"> • 22nd April 2010, • 6th Sept 2010, • 8th April 2011, • 9th July 2011, • 11th July 2011, • 21st Sept 2011, • 11th Oct 2011, and • 10th June 2012
13.	22 nd Oct 2010	Deed of Hypothecation executed by and between the Company and Financial Creditor with respect to increase in financial assistance to the extent of additional Rupee Term Loan Facility of Rs. 18 Crores by way of a first charge by way of hypothecation of brand "Belmont" by the hypothecator
14.	11 th Oct 2011	Copy of Declaration and Undertaking with respect to Mortgage by deposit of title deeds by the Company with IDBI Trusteeship Services Ltd acting as Security Agent for the Financial Creditor.
15.	29 th Dec 2012	Working Capital Facility Agreement dated 29 th Dec 2012 executed by and between Financial Creditor and the Company with respect to working capital facilities.
16.	29 th Dec 2012	Personal Guarantee Agreement executed by Nitin S. Kashwal in favor of IDBI Bank Ltd with respect to Working Capital Facilities
17.	29 th Dec 2012	Deed of Hypothecation



7. On 8th May 2013 the Debtor Company had issued a "revival letter" to Bank of India Nariman Point Mumbai being a Leader of Consortium and requested therein that the facility granted as per working capital Consortium agreement dated 16th October 1998 and thereafter modified and extended supplemental working capital consortium agreement dated 18th Nov. 1999 and several other such supplemental agreements be revived with an undertaking that the liability would remain in force as already agreed upon. All such letters and correspondence thus established that admittedly the loan liability was very much in existence and the Debtor had given an Undertaking to the Lender.

8. Due to the default of repayment of loan the IDBI Bank issued a "Notice of recalling" loans dated 12th June 2014. In the said "Notice of recall" the loan agreements entered into and various facilities granted along with Rupee Term Loan agreement was discussed

and finally communicated that since the default of non-payment committed by the corporate debtor, the Bank has become entitled to "Recall" its entire Principal amount and Interest amount outstanding against the Debtor.

9. The Bank has also decided to issue a notice under Section 13 (2) of the SARFAESI Act. It is worth to mention at this stage itself that the said statutory notice was issued without prejudice to other legal rights and remedies available.

10. On 30 January 2017, the Respected DRT Karnataka at Bangalore Bench had passed an order (OA No. 711/2015) by acknowledging the classification as "Non-Performing Assets" and thereafter held the debtor as liable to pay the entire Loan amount together with interest and in case of default to grant liberty to sale the property hypothecated/mortgaged. A recovery certificate was issued.

11. All these facts have duly established the Debt due against the "Financial Debtor" as well as the default committed in non-payment.

12. On this background, the Financial Creditor filed Petition under section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor giving details as per Form No.1 an Application by Financial Creditor to initiate Corporate Resolution Process under The Code.

13. One more fact has also been noticed by this bench that there is in existence several Tax Liabilities, as follows:-

Name of the Statute	Nature of the Dues	Amount (in lacs)
Income Tax Act, 1961	Tax Deducted at Source	152.26
Provident Fund Act, 1952	Provident Fund	45.05
Employees' State Insurance Act, 1948	ESIC	77.09
Madhya Pradesh Land Revenue Act, 1959	Property Tax	71.82
Value Added Tax Act, 2005	Value Added Tax	33.01
Service Tax	Service Tax	1.73
Central Excise Act	Excise Duty	1.24

14. The Auditor has also notified certain qualifications and following two qualifications are worth to mention as noted in the Audited Balance Sheet drawn as on 31st March, 2016, reproduced below:-

" (vi)(a) Undisputed statutory dues including provident fund, investor education and protection fund, employees' state insurance, income-tax, sales-tax, wealth-tax, service tax, customs duty, excise duty, cess have not been regularly deposited with the appropriate authorities and there have been serious delays in many cases.

- (b) According to the information and explanations given to us, undisputed dues in respect of provident fund, investor education and protection fund, employees' state insurance, income-tax, wealth-tax, service tax, sales-tax, customs duty, excise duty, cess and other statutory dues which were outstanding, at the period end for a period of more than six months from the date they became payable are as follows:

Name of the Statute	Nature of the Dues	Amount (in lacs)
Income Tax Act, 1961	Tax Deducted at Source	152.26
Provident Fund Act, 1952	Provident Fund	95.05
Employees' State Insurance Act, 1948	ESIC	77.09
Madhya Pradesh Land Revenue Act, 1959	Property Tax	71.82
Value Added Tax Act, 2005	Value Added Tax	33.01
Service Tax	Service Tax	1.77
Central Excise Act	Excise Duty	1.24



- (ix) In our opinion and according to the information and explanations given to us, the Company has defaulted in repayment of dues to banks financial institution and debenture holder. The total amount of the default in respect of principal is Rs.34958.62 Lacs and interest is Rs. 37084.56Lacs and recalled loan is Rs.119498.06 Lacs. Further as mentioned in basis of qualified opinion paragraph point number 4 the company has not provided for interest after 1st January 2014 till the date of the balance sheet. "

15. The Financial Creditor has proposed the name of the Insolvency Resolution Professional (IRP) Mr. Abhay Narayan Manudhane, Address: 201, Subhash Ashish Plot No.129, Near RTO Junction, Model Town, 4 Bungalows, Andheri (West), Mumbai – 400 053, Registration No. IBB1/IPA-001/IP-P00054/2016-17/10128. The IRP has given his consent in Form No.2 for the above assignment.

16. Since the 'default' in repayments is established as mentioned *supra*, the Petition deserves to be "Admitted". 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.

17. 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

MV

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 of The Code.

18. Accordingly, **this CP(IB)294/NCLT/MB/2018 stood admitted.**

19. The Corporate Insolvency Resolution Process is commenced from the date of this order.

Sd/-

M.K. SHRAWAT
Member(Judicial)

Date : 24.04.2018
ug



04/05/2018

National Company Law Tribunal, Mumbai Bench