

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH.

C.P. No.3585/I&BC/NCLT/MB/MAH/2018

Under Section 7 of Insolvency & Bankruptcy Code, 2016

In the matter of

ICICI Bank Limited : Petitioner/ Financial Creditor

V/s

Gitanjali Gems Limited : Respondent/ Corporate Debtor.

Heard on 03.10.2018
Order delivered on: 08.10.2018

Coram:

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

For the Petitioner(s) : 1. Mr. Sagar Divekar, Advocate.

For the Respondent(s) : None Present.

Per M.K. Shrawat, Member (Judicial)

ORDER

1. A Petition has been filed by the “**Financial Creditor**” **ICICI Bank Ltd.** on 10th September 2018 on Form no. 1 u/s 7 of the I&B Code 2016 read with rule 4 of I&BC (Application to Adjudicating Authority) Rule 16 pertaining to a total debt amount in **default of ₹608,64,41,361** inclusive of the debt in relation External Commercial Borrowing (ECB) facility.
2. The description of the “**Corporate Debtor**” is that **M/s Gitanjali Gems Limited** (“in short GGL”)having its Registered Office at Bandra Kurla Complex Mumbai. At the outset it is clarified that pursuant to an order of the Hon'ble High Court dated 17th June 2016 Gitanjali Exports Corporation Ltd (In short GECL) by a scheme of amalgamation stood merged in to Gitanjali Gems Limited. As a consequence, all debt and liabilities of the GECL had been transferred and vested in GGL.
3. That GGL is a public Limited Company engaged in the business of manufacturing importing and exporting gold jewellery. One Mr.Mehul C Choksi is the Promoter and the Managing Director of the Corporate Debtor. ICICI Bank is the lead bank in consortium agreement dated 23rdMarch 2007

meant for Working Capital. Acting through its branch located in Dubai the applicant had advanced a loan to GGL through its Singapore Branch to GGL by way of ECB agreement dated 10th September 2006. Pursuant thereto vide working capital consortium agreement dated 23rd March 2007 a consortium of 21 lenders led by Allahabad Bank sanctioned a working capital loan aggregating up to 791.82 crores. The said facility was secured by a joint deed of hypothecation dated 23rd March 2007. Subsequently, various other banks joined the consortium and by Joint Supplemental Working Capital Consortium Agreements dated 4 July 2008, 30 November 2010 and 30 August 2011 to GGL Facility Agreement, the overall sanction limit extended to the Corporate Debtor was enhanced to INR 2477 Crores (INR Two Thousand Four Hundred and Seventy- Seven crores only). Thereafter by one more Supplemental Capital Consortium Agreement dated 6 July 2012, the overall sanction limit of working capital loan extended to the Corporate Debtor was enhanced from INR 2477 Crores to INR 3610 Crores (Supplemental GGL Facility Agreement) of which, the Applicant sanctioned a working capital loan of INR 325 Crores.

4. The Corporate Debtor had created the following securities (as per the applicant)

:-

“ i. First and exclusive charge over the Movable Fixed Assets (as described in Schedule C thereunder):

ii. First and exclusive charge over the Current Assets (as described in Schedule B thereunder): and

iii. First and exclusive charge over the residential flat being Flat No. 102, Kheni Towers, Village KoleKalyan, Manipada Road, Santacruz (East), Mumbai admeasuring 940 sq. ft (more particularly described in Schedule G thereunder).

iv. Leasehold rights over non-agricultural land of 8.913 Hec. Situated at Village Taluka Panvel District Raighad, Maharashtra (more particularly described in Schedule F thereunder).”

5. Through Decent Securities and Finance Private Limited mortgaged office premises at BKC, Mumbai admeasuring 354.39 sq. mts and 4 car parking on the ground floor in favour of the AllBank Finance Limited on first and exclusive charge basis.

6. Further Eureka Finstock Private Limited mortgaged office premises at BKC, Mumbai admeasuring 3844 sq. ft. carpet area open terrace and 13 car parking

on the ground floor in favour of AllBankFinace Limited on first and exclusive charge basis.

7. Mr. Mehul C. Choksi mortgaged a non-agricultural land of 8.913 Situated in Panvel Taluka, District Raighad, Maharashtra in favour of AllBank Finance Limited on first and exclusive charge basis.
8. Facts and evidence on record have demonstrated GGL facility was enhanced from time to time during the period between 2007 to 2013. In this regard an amended agreement is mentioned; dated 11 June 2014. The exposure of ICICI Bank had therefore enhanced to Rs.405 Crores.
9. Even after that, GGL again approached ICICI for enhancement of the facility from Rs. 405 Crores to Rs. 465 Crores. Accordingly a “Credit Arrangement Letter” dated 27th April 2016 was issued on certain modified term and conditions. A bilateral agreement dated 19th August 2016 was executed between GGL and ICICI.
10. Attention was drawn on an “Amendatory Credit Arrangement Letter” dated 9th August 2016. According to which there was a change on the “Charge” and thereafter certain foreign brands held by the subsidiaries or step-down subsidiaries were included, namely ‘Canadia’ and ‘Revv’ owned by Jewellery Marketing Company, and ‘Passion Stone’ owned by Gitanjali USA Inc., a substituted charge was created.
11. It is also pertinent to place on record that the Loan facility granted was secured by securities, hypothecation and by pledging of the assets. Records of the case contains a long list of such securities or execution of deeds, in short listed below :-

“a. Supplemental Deed of Hypothecation dated 19th August 2016 executed by GGL, hypothecation current assets and movable properties of GGL as more particularly detailed therein a copy of the Supplemental Deed of Hypothecation is annexed with the Petition.

b. Deed of Hypothecation dated 24 October 2016 executed by Gili India Limited (Gili) under which the intellectual property in relation to its trademarks were hypothecated. A copy of the Deed of Hypothecation is annexed with the Petition.

c. Power of Attorney executed by Gili whereby the Applicant, in terms of the Bilateral Agreement and the Deed of Hypothecation dated 24 October 2016 executed by Gili, was granted rights (as

more particularly detailed therein) in respect of the intellectual properties in the trademarks of Gili. A copy of Power of Attorney is annexed with the Petition.

d. Deed of Hypothecation dated 24 October 2016 was executed by Asmi Jewellery India Limited, Spectrum Jewellery Limited and Nakshatra Brands Limited whereby the intellectual properties in relation to its trademark being 'Asmi' and 'Sangini' were granted, conveyed, assigned, assured and transferred to the Applicant on a first charge basis. A copy of the deed of Hypothecation is annexed with the petition.

e. Power of Attorney executed by Asmi jewellery India Limited, Spectrum Jewellery Limited and Naskshatra Brands Limited whereby the Applicant, in terms of the Bilateral Agreement and the Deed of Hypothecation dated 24 October 2016 executed by Asmi Jewellery India Limited, Spectrum jewellery Limited and NakshatraBrands Limited, was granted rights (as more particularly detailed therein) in respect of the intellectual properties in the trademarks of AsmiJewellery India Limited, Spectrum Jewellery Limited and Nakshatra Brands Limited. Copies of the Power of Attorneys is annexed with the petition.

f. Charge on brand created over 'Canada' and "Revv' owned by Jewellery Marketing Company, and 'Passion Stone' owned by Gitanjali USA inc.,

g. Power of Attorney for creation of Mortgage Security dated 24 October 2016 executed by GGL in favour of the Applicant on first pari-passu charge in respect of property situated in Kole Kalyan, Manipada Road Mumbai. A copy of the Power of Attorney for creation of mortgage Security is annexed with the petition.

h. Power of Attorney for creation on Mortgage Security dated 24 October 2016 executed by GGL in favour of the Applicant on second pari-passu charge in respect of property situated in factory land and building, SEEPZ, Mumbai. A copy of the Power of Attorney for creation of Mortgage security annexed with the petition.

- i. *Power of Attorney for creation of Mortgage Security dated 24 October 2016 executed by Hydereabad Gems SEZ Ltd. in favour of the Applicant on second pari-passu charge in respect of property situated in Ranga Reddy District, Telangana. A copy of the power of Attorney for creation of Mortgage Security is annexed with the petition.*
- j. *Power of Attorney for creation of Mortgage Security dated 24 October 2016 executed by Decent Investment and Finance Limited in favour of the Applicant on first pari-passu charge in respect of property situated in Laxmi Towers, BKC, Mumbai. A copy of the Power of Attorney for creation of Mortgage Security is annexed with the petition.*
- k. *Power of Attorney for creation of Mortgage Security dated 24 October 2016 executed by Decent Securities and Finance Limited in favour of the Applicant on first pari-passu charge in respect of property situated in Laxmi Towers, BKC, Mumbai. A copy of the Power of Attorney for creation of Mortgage Security is annexed with the petition.*
- l. *Power of Attorney for creation of Mortgage Security dated 24 October 2016 executed by Eureka Finstock Private Limited in favour of the Applicant on first paripasu charge in respect of property situated in Laxmi Towers, BKC, Mumbai. A copy of the Power of Attorney for creation of Mortgage Security is annexed with the petition.*
- m. *Power of Attorney for creation of Mortgage Security dated 24th October 2016 executed by Nashik Multi Services SEZ Limited in favour of the Applicant on first pari-passu charge in respect of property situated in Balwant Nagar and MundeGaon, Taluka Igatpuri, District Nashik. A copy of the Power of Attorney for creation of Mortgage Security is annexed with the petition.*
- n. *Deed of Adherence cum confirmation dated 24 October 2016 by Nakshatra Brands Limited in favour of the Applicant. A copy of the Deed of Adherence cum confirmation is annexed with the Petition”.*

12. One more event took place. A “Renewal Credit Arrangement” was executed vide a letter dated 1st September 2017 through which it was acknowledge that

all debts and liabilities of GECL stood transferred and vested in GGL. Pursuant to the said letter working capital and EPC Limit was further enhanced to ₹506 crores. On 26th December 2017 a “Supplemental Working Capital Consortium” was executed between GGL and Consortium. It is very significant to place on record that earlier the consortium lenders were having the exposure of ₹5198 crores which was revised to Rs 5218 Crores. This supplemental GGL facility agreement was also secured by ‘Deed of Mortgage-cum-charge’ dated 26th December 2016, “Share Pledge Agreement dated 10th October 2014 and 16th February 2015 duly executed by Mr. Mehul C. Choksi. It is informed that by the said Share Pledge Agreement the exposure of ICICI was to the tune of ₹70 crores. Contractual comfort to the Supplemental GGL Facility Agreement II was provided by way of Deed of Guarantee dated 26th December 2017 issued by Nashik Multi Services SEZ Ltd., Decent Securities and Finance Private Limited, Eureka Finstock Private Limited, Mr. Mehul C. Choksi, Decent Investment and Finance Private Limited and Hyderabad Gems SEZ Ltd. in favour of the IDBI Trusteeship Services Limited guaranteeing the amount of ₹5198 crores.

13. It is also worth to place on record that the Debtor Company had also availed **External Commercial Borrower Facility** initially for a sum of Rs.50 million US Dollars. In this regard “Credit Arrangement Letter for ECB facility was executed on 8th September 2011 and ECB CAL Agreement was executed on 10th September 2011. The said ECB CAL was amended from time to time. The said facility was also secured by personal guaranty of Mehul C. Choksi, Deed of Hypothecation mortgage of property and Irrevocable unconditional undertaking by Gitanjali Infratech Limited.

14. **Criminal Proceedings:-** Punjab National Bank has registered a Criminal Complaint through FIR dated 15th February 2018 with Central Bureau of Investigation against Mehul C. Choksi, Director of Gitanjali Groups. Enforcement directorate has also been informed. Proceedings were initiated under Prevention of Money Laundering Act, 2002. Under another Act of Fugitive Economics Offenders Ordinance, 2018 came into force and under this Act compliant got registered.

15. Due to continuing defaults, a recall notice was issued on 19th February 2018 and another recall notice was issued on 21st February 2018. As per the said notices it was called upon the Corporate Debtor to own the obligation to pay the outstanding debt under GGL Facility and GECL Facility aggregating to Rs

471,62,150 as on 31st January 2015 together with interest. Likewise recall notice was issued in respect of ECB facility on 21st February 2018 (ECB Recall Notice for outstanding debt or USD 116,92,665.). The Corporate Debtor failed to fulfil it's obligation.

16. The Petitioner has also filed an application before Debt Recovery Tribunal, Mumbai u/s 19 for a claim of a ₹486,44,20,22.10 and USD 12,053,170.39. Simultaneously the Petitioner moved this application under I&B Code for rehabilitation or untimely for liquidation of the Debtor Company.

17. **CONCLUSION:** The Petitioner has annexed two important evidences i.e. i) a certificate declaring the Corporate Debtor as NPA and the other evidence ii) Recall notice dated 21st February 2018 of the loans. Even the ECB facility has also been withdrawn by "Re-call notice" dated 21st February 2018. Bank has also issued a Statutory Notice dated 7th May 2018 u/s 13 (2) of SARFAESI Act. Another notice was issued under the said act on 17th May 2018. Further, annexed with the Petition is a report of CRILC wherein status of GECL and GGL was declared as "**Moved to Default**". Further a certificate under "Banker's Books Evidence Act" is annexed certifying the correctness of statements of accounts and other documents. From the above discussed factual matrix it is clearly established that the loans are granted to the Debtor Company under various Loan Agreement and on that basis undisputedly existence of '**Debt**' is established as defined u/s 3(11) of the Code. The evidences such as classification of the Debtor as NPA and the issuance of Loan re-call notice have thus established that the Debtor is within the definition of "**Default**" as per **section 3(12)** of the Code. These are the basic requirement of admission of an application u/s 7 of the Code, duly complied.

18. During the course of hearing it has been brought to my notice that a view has been taken in the cases of subsidiaries of M/s Gitanjali Gems Limited by respected NCLT Mumbai Benches that no separate "Admission Order" is required due to the reason that the assets have already been seized by Enforcement Directorate and other Statutory Authorities. So, it has been held that the documents and related evidences, as also accounts of the Debtor Company, since already under the control of SFIO, hence no purpose shall be served if IRP/ Resolution Professional is appointed to independently commence the insolvency proceedings in respect of each case. However respected coordinate benches of NCLT have granted liberty to the Petitioner in those cases to file fresh insolvency Petition on completion of Investigation within three

months. It is true that various Government agencies have taken action against the Debtor Company but there is no harm, rather it shall facilitate, in my humble opinion, if the appointed IRP/ Resolution Professional shall also join with them in ascertaining the exact magnitude of default committed by this Debtor Company. It is worthwhile to express that all the agencies are expected to cooperate in investigation by exchanging the information gathered respectively by them. In that process the presence of the Resolution Professional is going to be very useful.

19. One more aspect supporting the “Admission” of the Petition has been conveyed, prima-facie convincing, that the Government Agencies who have seized the assets of the Defaulters are being only protected from further damage. But ultimately those seized assets have to be distributed among the creditors, either Financial Creditor or Operational Creditor. That process of disbursement can only be possible under the newly enacted I&B Code 2016. On commencement of CIRP either a Resolution plan shall be submitted for Committee of Creditors’ consideration or else Liquidation Process shall take place. In either case the due legal process is possible only under I&B Code. As a consequence, I am of the firm opinion that in a situation when Financial Debt has been ascertained and undisputedly the Debtor Company had defaulted in repayment of loan, therefore this is fit case for ‘Admission’ under I& B Code. Ordered accordingly.

20. The Financial Creditor has intimated the name of the **IRP Mr. Vijay Garg** having Registration No. IBBI/IPA-002/IPN00359/2017-18/11060, Address: Flat No. 802, Tower 6, Unitech Escape Nirvana Country Golf Course Road Extension Sector 5, Gurugram Haryana - 122018, Email: vijay.garg@duffandphelps.com. The proposed IRP has furnished the requisite Certificate in form no.2 that no Disciplinary Proceedings is pending. On due consideration, the proposal of appointment of the IRP is hereby confirmed.

21. Upon “Admission” of the Application it is hereby pronounced the declaration of “**Moratorium**” as mandated in Section 14 of The Code. The declaration of Insolvency Process and commencement of “Moratorium” shall be made by public Announcement immediately as prescribed **U/s. 13 read with Section 15 of The Code**. The appointed IRP shall perform the duties as an Interim Resolution Professional as defined **U/s. 18 of The Code i.e. “Duties of Interim Resolution Professional”** and inform the progress of the Resolution plan and the compliance of the directions of this Order **within 30 days** to this Bench. A

liberty is granted to intimate even at an early date, if need be. The IRP shall submit the 'Resolution plan' for approval as prescribed U/s. 31 of The Code on receiving "**Expression of Interest**" in response to the Advertisement made.

22. As a sequel, the Moratorium shall come into operation with immediate effect. Institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium" period. This direction shall have effect from the date of this Order till the completion of Insolvency Resolution Process.
23. As a result this CP (IB)-3585 (MB)/2018 stood "Admitted".
24. The Corporate Insolvency Resolution Process is hereby commenced from the date of this Order.

SD/-

(M.K. SHRAWAT)
Member (Judicial)

Date :08.10.2018

/SA/