



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI
CP (IB) No.839/MB/2022

*[Under Section 7 of the Insolvency and Bankruptcy Code,
2016 r/w Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

Central Bank of India

[PAN NO.-AAACC2498P]

Registered Office: Corporate Finance Branch
1st Floor, MMO Building, M.G. Road, Fort
Mumbai - 400001.

...Financial Creditor

V/s

Iskrupa Mall Management Company Private Limited

[CIN: U70100MH2005PTC151439]

Registered Office: Pantaloon Knowledge House, Shyam Nagar
Off Jogeshwari – Vikharoli Link Road, Jogeshwari (East)
Mumbai- 400060.

...Corporate Debtor

Pronounced: 24.09.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Financial Creditor: Adv. Amir Arsiwala a/w Adv. Shradha Patil i/b India
Law LLP.

Corporate Debtor: Sr. Adv. Gaurav Joshi, Adv. Tanisha Chaudhary a/w
Petruskha Dasgupta, Adv. Krishna Baruah, Adv.
Harsh Moorjani a/w. Adv. Ankita Yadav i/b Link Legal.



ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This is an Application bearing C.P. (IB) No.839/MB/2022 filed on 27.07.2022 by Central Bank of India Limited, the Financial Creditor (FC) against Iskruha Mall Management Company Private Limited, the Corporate Debtor (CD) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Adjudicating Authority) Rules 2016, for initiating Corporate Insolvency Resolution Process (CIRP).


1.2 The CD approached the FC and requested financial facilities. Consequently, the FC granted credit facility to the CD *vide* Sanction Letter dated 19.09.2015. Pursuant to this, the CD entered into Term Loan Agreement of Rs. 150 Crore with the FC on 24.09.2015. Thereafter, a default was committed by the CD on 30.09.2020 and it requested the FC for One Time Restructuring (OTR) under 'Resolution Framework for COVID-19 related Stress' announced by the Reserve Bank of India (RBI) *vide* its circular dated 06.08.2020 and the same was approved by the FC by executing OTR dated 19.06.2021. Pursuant to this, the FC entered into a Restructuring Agreement with the CD dated 21.06.2021.



- 1.3 The FC claimed that the CD failed to honour its obligation to repay the principal and interest which fell due on 31.03.2022 under the OTR. The said account of the CD was downgraded to SMA-2 category with effect from 31.03.2022 and on account of continuous default for 30 days the account became Non-Performing Asset (NPA) on 30.04.2022.
- 1.4 Subsequently, demand notice dated 04.05.2022 was sent by the FC to the CD but no payments were made. The CD replied to the demand notice on 07.06.2022 seeking time to repay the dues. This led the FC to prefer the present Application under Section 7 of the IBC seeking initiation of CIRP in respect of the CD.
- 1.5 The alleged claim amount is Rs.72,32,17,258.14/- (Seventy-Two Crore Thirty-Two Lakhs Seventeen Thousand Two Hundred and Fifty-Eight Rupees and Fourteen Paise) as of 29.05.2022, along with interest and other charges and the Date of Default is stated as 31.03.2022 (Under OTR) in Part IV of the Application.

2. ANALYSIS AND FINDINGS


- 2.1 Heard the Ld. Counsel/ Sr. Counsel for the parties and perused the materials available on record.
- 2.2 Post-filing of the present Application under Section 7 of the IBC, the CD filed IA No. 797 of 2023 on 28.02.2023 under Section 60(5) of the IBC challenging its maintainability primarily on two grounds that it was



barred under Section 10A of the IBC and that parallel proceedings for the same debt had been initiated against the Principal Borrower, two Personal Guarantors and two Corporate Guarantors, the CD herein.

2.3 After hearing the Ld. Counsel for both parties and upon due consideration of the pleadings and materials available on record, we dismissed the said IA *vide* our detailed order dated 30.08.2024, *inter alia*, holding that the present Application is not barred by Section 10A and that action for initiating CIRP can be taken by the FC simultaneously against the CD and the corporate/ personal guarantors. All the other key issues raised in the IA and in this Application were comprehensively addressed and adjudicated in the same order while disposing of the said IA such as multiple proceedings under section 7 of the IBC claiming the same financial debt; filing IBC proceedings for insolvency by secured creditor; necessity to prove sufficiency of assets to satisfy the debt of the Corporate Debtor; adequacy of primary security by way of hypothecation of tangible assets and receivable; financial distress and inability of the Corporate Debtor to discharge its debts and liabilities; and date of default of the Corporate Debtor to be taken as 29.12.2020, when the account of the CD was declared NPA and not on 31.03.2022 when the OTR failed and applicability of Section 10A of the IBC.


2.4 Having already decided the issue of maintainability of the present Application under Section 10A in favour of the FC in the said IA and



all other issues, this Bench is of the view that the CD has acknowledged the existence of debt and default. We took the view that the liability of the CD arose when the CD failed to make payment of the first Structured Quarterly Installment (SQI) under the OTR which was due and payable on 31.03.2022.

2.5 The pleadings and averments of both parties in this Application and in the IA are identical and the contentions raised by the CD were thoroughly addressed in the order in IA dated 30.08.2024 by us. Therefore, we hold that the findings contained in Paras 4.2 to 4.11 of the said order in IA No.797/2023 will hold good with regard to this main Application as well and will form part of this order and hence the same are not being reproduced or reiterated here for the sake of brevity.

2.6 In reply to the main Application, the CD has pleaded that it was unable to discharge its debt obligations due to liquidity issues in the wake of Covid-19 Pandemic coupled with failure of the proposed Scheme of Arrangement with the Reliance Group. However, it is settled law that with the enactment of the IBC, the legislative policy has moved away from the concept of “inability to pay debts” to “determination of default” and that the IBC is not adversarial litigation but a beneficial legislation to put a dying corporate debtor back on its feet. In a situation of financial stress, the cause of default is not material but protecting the economic interest of the corporate debtor is more relevant. The paramount interest to be safeguarded is that of the CD and admission



into insolvency resolution process does not prejudice such interest but, in fact, protects it [***Swiss Ribbons v. Union of India 2019 SCC OnLine SC 73***]. Therefore, the plea taken by the CD is legally untenable and is accordingly dismissed.

- 2.7 Further, it is observed from the record that the CD along with Future Corporate Resources Private Limited, corporate guarantor, had filed Writ Petitions before the Hon'ble Bombay High Court in WP (L) Nos 25350/2023 and 27363/2023 wherein the Hon'ble High Court had *vide* common order dated 15.02.2024 directed this Tribunal to adjudicate, at the first instance, the IAs filed by the above parties challenging the issue as to maintainability of the main Application, *inter alia*, on the ground of Section 10A of the IBC. In compliance with the aforesaid order dated 15.02.2024 of the Hon'ble High Court in the aforementioned Writ Petitions, we adjudicated upon the issue; however, decided it against the CD. Since the order in the IA was adverse to the CD, we refrained from giving effect to the order in the IA until 24.09.2024 in deference to the aforesaid order of Hon'ble High Court. No subsequent direction of Hon'ble High Court has been brought to our attention by either party. Therefore, the only action left for us in this matter is to order initiation of CIRP in respect of the CD, appoint an Interim Resolution Professional (IRP) and declare a moratorium in terms of Section 14 of the IBC.



2.8 In view of the above discussions and findings as well as those contained in the order dated 30.08.2024 in IA No.797 of 2023, we have no hesitation in concluding that there exists a "financial debt" within the meaning of Section 5(8) of the IBC far exceeding the monetary threshold of One Crore Rupees under Section 4 of the IBC which is due and payable by the CD to the FC and that the CD has defaulted in payment of such debt. In other words, the existence of financial debt and the occurrence of default have been conclusively established by the FC. We find that the Application is complete in all respects. The FC has also complied with Section 7(3)(b) of the IBC by filing an affidavit proposing the name of Mr. Avil Jerome Menezes, a registered Insolvency Professional, to act as the Interim Resolution Professional (IRP). A declaration in Form-2 dated 11.06.2022 has been filed confirming that no disciplinary proceeding is pending against him. Upon verification from the IBBI website, we find that the IRP has a valid Authorisation for Assignment (AFA) until 27.11.2024. Therefore, all pre-requisites under Section 7(5)(a) of the IBC have been met, and we are satisfied that the application is fit for admission under Section 7 of the IBC.

ORDER

This Application bearing **C.P. (IB) No. CP(IB)839/MB/2022** filed under Section 7 of the IBC by the FC for initiating CIRP in the case of Iskrupa Mall Management Company Pvt Ltd, the CD, is **admitted**.



We further declare moratorium u/s 14 of IBC with consequential directions as mentioned below:

I. We prohibit:


- a) the institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) transferring, encumbering, alienating or disposing of by the CD 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 CD in respect of its property including any action under the Securitisation 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 possession of the CD.

II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.



- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Avil Jerome Menezes**, a registered Insolvency Resolution Professional (IRP) having **Registration Number- [IBBI/IPA-001/IP-P00017/2016-2017/10041]** and **e-mail- avil@caavil.com** as Interim Resolution Professional, to carry out the functions as mentioned under IBC , the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25 of the IBC. The officers and managers of the CD 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.
- VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses,



incurred by IRP out of this fund, are subject to approval by the Committee of Creditors.

- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the CD.
- IX. The Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of e-mail and WhatsApp not later than two days from the date of this Order.
- X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

[Vani]