

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Item No. 201
IB-410/ND/2024

IN THE MATTER OF:

Creative Capital Services Ltd.

... Applicant/Petitioner

Versus

Futuristics Garments Pvt. Ltd.

... Respondent

Under Section: 7 of IBC, 2016

Order delivered on 06.09.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the CG/CD : Ms. Eshna Kumar, Ms. Jasleen Singh, Mr. Akshat Maheshwari (Advs)

For the FC : Adv. Nakul Gandhi, Adv. Mujeeb

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

Ms. Eshna Kumar, Ld. Counsel appearing for the Corporate Guarantor/Respondent fairly submitted that the Respondents stood as Corporate Guarantor qua the Financial Facility extended by the Creditor viz., Creative Capital Services Ltd. to Principal Borrower viz., Akshaj Hi-Tech Infrastructure Pvt. Ltd. and the Deed of Guarantee is on record as enclosure to the Application. She could draw our attention to Clause 3 of the Guarantee Deed which reads thus:

3. In the event of any default on the part of the Borrower in payment / repayment of any of the moneys referred to above or in the event of any default on the part of the Borrower to comply with or perform any of the terms, conditions and covenants contained in the Loan Agreement, the Guarantor(s) shall, upon demand, forthwith pay to the Lender without demur all the amounts payable by the Borrower under the Loan Agreement.

2. Para 4 of the application preferred by the Creative Capital Services Ltd. wherein, the amount of debt and the date of default are indicated reads thus:

PART - IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED, DATE(S) OF DISBURSEMENT	<p>The Financial Creditor was the owner and holder of 1885095 equity shares bearing distinctive numbers from 3114866 to 4999960, of a company namely M/s Emsons Organic Limited. In the month of January-February 2012, the Corporate Debtor approached the Financial Creditor with an offer to purchase the said shares. Upon agreeing to the said offer, a consideration amount of INR. 8,48,29,275/- (Rupees Eight Crores Forty-Eight Lakhs Twenty-Nine Thousand Two Hundred Seventy-Five Only) was fixed. The Financial Creditor transferred the said shares in the favour of Corporate Debtor.</p> <p>In order to secure the repayment of the Consideration amount w.r.t. to the shares, Agreement 2012 was executed between the Financial Creditor and Corporate Debtor.</p> <p>Upon the Corporate Debtor's failure to repay the consideration amount, Agreement 2014 was executed between the Financial Creditor and Corporate Debtor enumerating all the terms and conditions of the repayment of the loan amount along with the repayment schedule. Through this Agreement, the consideration amount was converted to a mortgage loan.</p> <p>Copy of Share Transfer Form, bearing distinctive number 412108, dated 01.02.2012 is annexed herewith and marked as Annexure – A</p> <p>Copy of the Corporate Loan Agreement cum Demand Promissory Note dated 12.03.2012 is annexed herewith and marked as Annexure - A/5.</p> <p>Copy of the Deed of Personal Guarantee dated 12.03.2012 is annexed herewith and marked as Annexure - A/6.</p>

		<p>Copy of the Deed of Corporate Guarantee dated 18.12.2014 is annexed herewith and marked as Annexure - A/7.</p> <p>Copy of the Loan Agreement dated 18.12.2014 is annexed herewith and marked as Annexure - A/8.</p> <p>Copy of Declaration dated 18.12.2024 and subsequent letter to Financial Creditor dated 31.12.2014 by Corporate Debtor is annexed herewith and marked as Annexure – A/9 (Colly).</p>						
2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM) SHARE</p>	<p>Post disbursal of the afore-mentioned loan amount, the Corporate Debtor failed to comply with the Repayment Schedule incorporated under the Loan Agreement dated 18.12.2014 since its inception i.e. 01.04.2015.</p> <table border="1"> <thead> <tr> <th>Sl No.</th><th>Details of Covenants</th><th>Status of Compliance</th></tr> </thead> <tbody> <tr> <td></td><td>Loan Agreement dated 18.12.2014</td><td>Non-compliant since 01.04.2015</td></tr> </tbody> </table> <p>It is pertinent to note here that Corporate Debtor was declared a Non-Performing Asset on 31.12.2015.</p> <p>Thereafter, the Corporate Debtor, vide letter dated 31.03.2017, 31.03.2018, 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022, and 31.03.2023, duly acknowledged the outstanding balance of INR. 8,50,00,000/- (Rupees Eight Crores Fifty Lakhs Only) in their books of account.</p> <p>After the afore-said acknowledgments, the Financial Creditor sent a Demand Notice, dated 19.08.2022, to the Corporate Debtor and both the Personal Guarantors i.e. Mr. Rajiv Goyal & Ms. Alka Goyal and recalled the entire loan amount along with applicable/contractual rate of interest, and other charges due and payable. Thereafter, the Financial Creditor issued a notice of invocation of</p>	Sl No.	Details of Covenants	Status of Compliance		Loan Agreement dated 18.12.2014	Non-compliant since 01.04.2015
Sl No.	Details of Covenants	Status of Compliance						
	Loan Agreement dated 18.12.2014	Non-compliant since 01.04.2015						

		<p>personal guarantee executed by Ms. Alka Goyal to secure the loan granted to the Corporate Debtor.</p> <p>In addition to the above, the Financial Creditor issued a Demand Notice to Ms. Alka Goyal, dated 07.01.2023, in the form of Form B against the Personal Guarantor u/r 7(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019.</p> <p>Personal Guarantor of Corporate Debtor Ms. Alka Goyal, vide letter dated 25.02.2023, replied to Demand Notice dated 07.01.2023 whereof she negated her liability w.r.t. to the said loan/outstanding amount.</p> <p>Thereafter, the Financial Creditor issued a notice of invocation of corporate guarantee executed by M/s Futuristics Garments Private Limited to secure the loan granted to the Corporate Debtor.</p> <p>Date of Default: 15.03.2024</p> <p>Copy of Acknowledgment Letter dated 31.03.2017, 31.03.2018, 31.03.2019, 31.03.2020, 31.03.2021, 31.03.2022 and 31.03.2023 is annexed herewith and marked as Annexure – A/10 (Colly).</p> <p>Copy of the Demand Notice dated 19.08.2022 is annexed herewith and marked as Annexure – A/11.</p> <p>Copy of Corporate Guarantee Invocation Notice dated 07.03.2024 along with receipt and tracking report is annexed herewith and marked as Annexure – A/12.</p>
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		Copy of the Demand Notice in the form of Form B against the Personal Guarantor u/r 7(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019 dated 07.01.2023 is annexed herewith and marked as Annexure – A/13 .
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3. The Ld. Counsel appearing for the Corporate Debtor/Respondent could also submit that the Corporate Debtor has filed specific affidavit admitting the amount of debt and default. The relevant excerpt of the Affidavit reads thus:

4. I state that there is a total debt and default of Rs. 8.5 crores (Rupees Eight Crores Fifty Lakhs Only) plus interest of 6% as due and payable by the Corporate Guarantor on behalf of the Corporate Debtor as on 15.03.2024.

4. In view of the aforementioned, particularly, the affidavit filed on behalf of the Respondent.

5. **We are left with no option but to admit the present application. Ordered accordingly. In the wake, moratorium provided under Section 14 of IBC, 2016 is declared qua the CD** and as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

6. As proposed by the Petitioner **Ms. Taruna Goel**, having Registration **IBBI/IPA-002/IP-N00314/2017-18/10902** is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. It is further ordered that:

“**Ms. Taruna Goel**, shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.”

7. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

8. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor, and the IRP mentioned above.

9. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)