

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI
CP (IB) No.865/MB/2022

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

IN THE MATTER OF:

Central Bank of India

[PAN: AAACC2498P]

Corporate Finance Branch

1st Floor, MMO Building

M.G. Road, Fort

Mumbai-400001.

...Financial Creditor

V/s.

Ojas Tradelease and Mall Management Private Limited

[CIN:U70102MH2006PTC161887]

Knowledge House, Off Shyam Nagar

Jogeshwari-Vikhroli 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. Abdullah Qureshi a/w Adv.
Shradha Patil i/b India Law LLP.

Corporate Debtor : Sr. Adv. Ashish Kamat a/w. Mr. Harsh Moorjani, Adv.
Petrushka Dasgupte, Adv. Krishna Baruah, Adv. Ankita Yadav
i/b Link Legal.

ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

- 1.1 This is an Application bearing C.P. (IB) No.865/MB/2022 filed by the Central Bank of India, the Financial Creditor on 22.06.2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the AAA Rules") for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of M/s Ojas Tradelease and Mall Management Private Limited, the Corporate Debtor.
- 1.2 The Corporate Debtor is the Corporate Guarantor to Iskrupa Mall Management Company Private Limited (hereinafter referred to as "the Principal Borrower"). The Financial Creditor granted a Term Loan of Rs.150 crores *vide* Sanction Letter dated 19.09.2015. Pursuant to this, the Financial Creditor entered into a Term Loan Agreement dated 24.09.2015 with the Principal Borrower. The said facility was duly guaranteed by the Corporate Debtor through a Deed of Guarantee executed on 24.09.2015.
- 1.3 Thereafter, a default was committed by the Principal Borrower on 30.09.2020 and it requested for One-Time Restructuring (OTR) under the 'Resolution Framework for Covid-19 Related Stress' announced by the Reserve Bank of India *vide* its Circular dated 06.08.2020. The OTR was executed on 19.06.2021 pursuant to which the Financial Creditor entered into a Restructuring Agreement

dated 21.06.2021 with the Principal Borrower. Simultaneously, the Corporate Guarantor executed a Deed of Guarantee dated 21.06.2021. However, the Principal Borrower failed to honour its obligation to repay the principal and interest due on 31.03.2022 and its loan account was classified as Non-Performing Asset (NPA) on 30.04.2022.

- 1.4 Subsequently, Demand Notice dated 06.06.2022 was sent by the Financial Creditor to both the Principal Borrower and the Corporate Debtor in its capacity as the Guarantor but no payments were made. This led the Financial Creditor to prefer the present Application under Section 7 of the Code seeking initiation of CIRP in respect of the Corporate Debtor.
- 1.5 The amount of financial debt claimed to be in default is Rs.72,32,17,258.14/- (Seventy-Two Crores Thirty-Two Lakhs Seventeen Thousand Two Hundred and Fifty-Eight Rupees and Fourteen Paise) as on 29.05.2022 along with interest and other charges and the date of default is stated to be 31.03.2022 under the OTR.

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 Code, the Corporate Debtor filed IA No.3903 of 2022 on 13.12.2022 under Section 60(5) of the Code challenging the maintainability of the present Application preferred by the Financial Creditor primarily on two grounds that it was barred under Section 10A of the Code and that parallel proceedings for the same debt had been

initiated against the Principal Borrower, two Personal Guarantors and two Corporate Guarantors including the Corporate Debtor.

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 a financial creditor simultaneously against the primary borrower and the corporate/ personal guarantors. All the other key issues raised in both the IA and in this Application such as parallel proceedings against Principal Borrower and Personal/Corporate Guarantors under Section 7 of the Code; filing proceedings for insolvency by secured creditor; necessity to prove insufficiency of assets to satisfy the debt of the Corporate Debtor before invoking action under the Code; adequacy of primary security by way of hypothecation of tangible assets and receivables; financial distress and inability of the Corporate Debtor to discharge its debts and liabilities; occurrence of default and date of default in case of the Corporate Debtor/Guarantor and applicability of Section 10A of the Code were comprehensively addressed and adjudicated in the same order while disposing of the said IA.

2.4 Having already decided the issue of maintainability of the present Application under Section 10A and all other issues in favour of the Financial Creditor in the said IA, this Bench is of the view that the Corporate Debtor has acknowledged the existence of debt and default. The Corporate Debtor being the Corporate Guarantor to the Principal Borrower and the guarantee in question being payable on demand, we took the view that the liability of the Corporate Debtor

shall arise only when demand is made by the Financial Creditor on the Corporate Debtor/ Guarantor. Since the Financial Creditor had issued a Demand Notice dated 06.06.2022 to both the Principal Borrower and the Corporate Debtor/ Guarantor in terms of the Guarantee Deed and called upon them to pay the outstanding amount due within 14 days from date of receipt of said notice, we held that the date of default in case of the Corporate Debtor would be 20.06.2022 and hence outside the period covered by Section 10A of the Code.

2.5 The pleadings and averments of both parties in this Application and in the IA are identical and the contentions raised by the Corporate Debtor were thoroughly addressed in the detailed IA order dated 30.08.2024 by this Bench. Therefore, we hold that the findings contained in Paras 4.2 to 4.20 of the said order 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.

2.6 In reply to the main Application, the Corporate Debtor 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 Code, the legislative policy has moved away from the concept of “inability to pay debts” to “determination of default” and that the Code 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 relevant but protecting the economic interest of the corporate debtor is more

relevant. The paramount interest to be safeguarded is that of the corporate debtor 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 Corporate Debtor is legally untenable and is accordingly dismissed.

2.7 Further, it is observed from the record that the Corporate Debtor along with Future Corporate Resources Private Limited had filed Writ Petitions before the Hon'ble High Court in WP (L) No. 25350 of 2023 and WP (L) No. 27363 of 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 Code. 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 Corporate Debtor. Since the order in the IA was adverse to the Corporate Debtor, 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 Corporate Debtor, appoint an Interim Resolution Professional (IRP) and declare a moratorium in terms of Section 14 of the Code.

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.3903 of 2022, we have no hesitation in

concluding that there exists a "financial debt" within the meaning of Section 5(8) of the Code far exceeding the monetary threshold of One Crore Rupees under Section 4 of the Code which is due and payable by the Corporate Debtor to the Financial Creditor and that the Corporate Debtor 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 Financial Creditor. We find that the Application is complete in all respects. The Financial Creditor has also complied with Section 7(3)(b) of the Code by filing an affidavit proposing the name of Mr. Avil Jerome Menezes, a registered Insolvency Professional, 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 Code have been met, and we are satisfied that the application is fit for admission under Section 7 of the Code.

ORDER

In view of the aforesaid findings, this Application bearing C.P.(IB) No.865/MB/2022 filed under Section 7 of the Code by the Central Bank of India, the Financial Creditor, for initiating CIRP in respect of Ojas Tradelease and Mall Management Private Limited, the Corporate Debtor is **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as mentioned below:-

1. We prohibit-
 - b) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - c) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - d) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - e) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
2. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
3. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under Section 31(1) of the Code or passes an order for the liquidation of the Corporate Debtor under Section 33 thereof, as the case may be.
4. That the public announcement of the CIRP shall be made in immediately as specified under Section 13 of the Code read with Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
5. That this Bench hereby appoints **Mr. Avil Jerome Menezes, a registered Insolvency Professional** having **Registration Number IBBI/IPA-001/IP-**

P00017/2016-2017/10041 and **e-mail address avil@caavil.com** having valid Authorisation for Assignment up to 27.11.2024 as the IRP to carry out the functions under the Code.

6. That the fee payable to IRP/RP shall be in accordance with such Regulations/Circulars/ Directions as may be issued by the IBBI.
7. That during the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the Code. The officers and managers of the Corporate Debtor are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the Corporate Debtor. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the Code. Coercive steps will follow against them under the provisions of the Code read with Rule 11 of the NCLT Rules for any violation of law.
8. That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
9. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the Financial Creditor is directed to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds becoming available

with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.

10. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the Corporate Debtor.
11. A copy of the Order shall also be forwarded to the IBBI for record and dissemination on their website.
12. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of Speed Post, e-mail and WhatsApp.
13. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

Deepa & JNK

Sd/-

**K. R. SAJI KUMAR
MEMBER (JUDICIAL)**