

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV**

CP (IB) 692/MB/2023

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Central Bank of India

[CIN: U99999MH1911PTC000337]

‘Chandermukhi’, Nariman Point, Mumbai-400 021.

... Financial Creditor/Applicant

Versus

Superfine Profile and Extrusions Private Limited

[CIN: U27203PN2001PTC016044]

1267, Pratibha, Dalmandai, Ahmednagar-414001.

... Corporate Debtor/Respondent

Order Delivered on: 03.01.2024

Coram:

Hon'ble Member (Technical)

Ms. Anu Jagmohan Singh

Hon'ble Member (Judicial)

Mr. Kishore Vemulapalli

Appearances:

- For the Financial Creditor : Mr. Rahul Sarda i/b Adv. Aiqan Z. Memon, Ld. Counsel for Financial Creditor.
- For the Corporate Debtor : Mr. Rohit Gupta a/w Ms. Prashansa Aggarwal, Ms. Mahtab Katariya & Ms. Monali Solanki i/b Katariya & Associates, Ld. Counsel for Corporate Debtor.

ORDER

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Central Bank of India** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Superfine Profile and Extrusions Private Limited** ("the Corporate Debtor").
2. The Corporate Debtor is a private company limited by shares incorporated on 10.04.2001 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Pune. Its registered office is at Gat No. 58/1, Nagar Kalyan Road/P Bhalwani, Tal-Parner MH-414103. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present Petition was filed on 29.07.2023 before this Tribunal for claiming a sum for a Secured Loan for a sum of INR 66,21,05,008/- (Rupees Sixty-Six Crore Twenty-One Lakh Five Thousand and Eight Rupees only) vide a Corporate Guarantee

Agreement dated 22.08.2015 and 18.11.2016 for the Aggregate debt of INR 73,61,00,000/- (Seventy-Three Crore and Sixty-One Lakh Only) including the outstanding principal and interest. The Date of Default as per part IV was on 06.03.2023.

Submissions made by the Financial Creditor:

4. The Financial Creditor submits that a corporate guarantee deed was entered into on 22.08.2015 and 18.11.2016 between Central Bank of India i.e. the Financial Creditor and Superfine Profile and Extrusion Pvt. Ltd. i.e. the Corporate Debtor in respect of all credit facilities “*as may be agreed from time to time between the bank and the borrower*”. Thus, the corporate guarantor had provided a corporate guarantee in favour of bank, for securing the credit facilities granted to the principal borrower i.e. Superfine Metals Private Limited on 22.08.2015 & 18.11.2016 for an amount of Rs. 66,21,05,008/- /- (Rupees Sixty-Six Crore Twenty-One Lakh Five Thousand and Eight Rupees only) which is disbursed in the following nature:

Nature of Facility	A/C No.	Amount Disbursed (Rs.)
Cash Credit	3056432616	54,27,45,208.00
Term Loan	3305046620	50,67,01,98.00
FITL (Funded Interest Term Loan)	3852802470	3,16,90,762.00

Cash	Credit	3793059834	3,69,98,840.00
Adhoc			

5. The Financial Creditor submits that the corresponding security interests was created over movable and immovable property by way of Hypothecation and Mortgage which are listed below:
- i. First pari passu charge by way of Equitable Mortgage EM No. 1767 dated 06.11.2020 of all that piece and parcel of Plot No. E-29 admeasuring 16,800 sq. meters, Supa-Partner Industrial Area, MIDC Taluka Partner District Ahmednagar.
 - ii. First pari passu charge by way of Equitable Mortgage EM No. 1767 dated 06.11.2020 of all that piece and parcel of Plot No. E-39 admeasuring 16,800 sq. meters, Supa-Partner Industrial Area, MIDC Taluka Partner District Ahmednagar.
 - iii. First pari passu by way of Hypothecation of Stock of Inventory and assignment of Book Debt of the Corporate Debtor.
 - iv. First pari passu charge by way of Hypothecation of Plant & Machinery of the Corporate Debtor.
 - v. First charge by way of Hypothecation of movable fixed assets of Corporate Debtor purchased out of Term Loan IV.
6. The Financial Creditor submits that record of default with Information Utility i.e NeSL report is annexed with the petition showing that there is a default by the Corporate Debtor.
7. The Financial Creditor submits that as per the Guarantee Deed the Corporate Debtor was liable to pay on demand. A demand notice was then addressed to the Corporate Guarantor on

06.03.2023 to repay the outstanding loan claimed to be due and payable by the Corporate Debtor to the Financial Creditor.

8. Since, there was no response received from the Corporate Debtor nor any repayment made, the Financial Creditor filed Section 7 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor for initiating Corporate Insolvency Resolution Process.

Submissions made by the Corporate Debtor:

9. The Respondent submits that this Petition is for default of 4 facilities i.e. Cash Credit, Term Loan, Funded Interest Term Loan (FITL) and Cash Credit Ad-hoc and this Petition is filed on the basis of 2 guarantee documents viz. 22nd August 2015 and 18th November 2016 and invocation of aforesaid Guarantees vide notice dated 06.03.2023.
10. The Respondent submits that the date stated in the Present Petition to be the date of default is 29.11.2020. Therefore, the Petition is barred by section 10A of the Insolvency & Bankruptcy Code, 2016.
11. The Respondent submits that the most significant aspect of this matter is Cash credit Ad Hoc and Funded Interest Term Loan (FITL) facilities were sanctioned for the first time under sanction letters dated 26th December 2019 and 9th September 2020 respectively. They were not in existence on 22nd August 2015 and 18th November 2016. Therefore, by no stretch of imagination,

these facilities could have been guaranteed under the guarantee deeds dated 22nd August 2015 and 18th November 2016.

12. The Respondent submits that the guarantee has not been rightly invoked by the Petitioner as the guarantee deed only entitles the consortium to demand from the Respondent the amount due to the consortium. However, the Petitioner has issued the demand letter to the Respondent invoking guarantee only in relation to its own debt and not on behalf of the consortium, which is therefore contrary to the guarantee deed.

13. The Respondent submits further that following documents deliberately are not at all placed on record i.e. Loan Agreement, Sanction letter, Statement of Bank Account and has also produced inadequate, incomplete, inconsistent, unstamped and defective documents are placed and that the Petition is incomplete.

Findings:

14. Heard the Ld. Counsel for the Financial Creditors and Ld. Counsel for the Corporate Debtor and perused the records.

15. The following facts are not in dispute:

- i. At the request of the Corporate Debtor, the Financial Creditor agreed and disbursed an amount aggregating to Rs. 66,21,05,008/- (Rupees Sixty-Six Crore Twenty-One Lakh Five

Thousand and Eight Rupees only) in favor of the Corporate Debtor.

- ii. Further, there is a Corporate Guarantee Deed executed on 22.08.2015 & 18.11.2016 in favour of bank, for securing the credit facilities granted to the principal borrower i.e. Superfine Metals Private Limited.
 - iii. Pertinently, on non-payment of Amount in relation to the Credit Facilities and proceedings initiated by Financial Creditor under section 13(2) of the SARFAESI Act and Recall Notice dated 02.01.2023 against the Principal Borrower, the Financial Creditor had issued Invocation of Guarantee Notice on 06.03.2023 to the Corporate Guarantor calling upon the repayment of Debt.
 - iv. The said amount was extended to the Corporate Debtor for a consideration in time value of money and hence is a Financial Debt within the meaning of Section 5(8) of the IBC.
16. On grounds of Limitation, this Bench is of the view that the Present Petition is filed against a corporate guarantor and that the guarantor is liable to pay the amount to the Financial Creditor “Forthwith on demand” as per the Corporate Guarantee Deed. And that the demand notice was sent on 06.03.2023. Thus, the petition is filed within the period of Limitation.
17. This Bench takes note that the present petition is not barred by section 10A of IBC (as claimed by the Respondent) as it is a settled position of law that in case of a corporate guarantee which is payable on demand, the default occurs when a demand is made by

the financial creditor and there is a failure to pay the amount under the guarantee. It is also settled that the date of default by the principal borrower is not relevant to determine the date of default by the guarantor and that the demand notice was issued on 06.03.2023 which is outside section 10A period.

18. During the Proceedings, the Financial Creditor drew our attention that the credit facilities were not sanctioned in the year 2019 but way back in the year 2013. This is clear from the sanction letter dated 27.11.2013 at page 111 of the petition and the disbursement at page 40 which shows entries from the year 2013 onwards. After the year 2013, the credit facilities were renewed from time to time. Hence, the submission of the Respondent that guarantee deed dated 22.08.2015 and 18.11.2016 are not relevant for transaction of 2019, is not sustainable.
19. This Bench also takes note that the corporate guarantee was issued not only in favour of the consortium but also in favour of each of the members of the consortium including the financial creditor herein viz. Central Bank of India. This is clear from the following expression in the deed of Guarantee:

“Lead Bank which expression shall unless repugnant to the context or meaning thereof be deemed to include the Central Bank of India and other consortium member banks constituting the Central Bank of India Consortium from time to time or each of them or any one or more of them”.
20. We also consider the facts of the case in the lights of the Order passed by Hon’ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of

2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a ‘dispute’ as far as Section 7 petition is concerned. As soon as a ‘debt’ and ‘default’ is proved, the adjudicating authority is bound to admit the petition.

21. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor and has defaulted in the payment of Financial debt of more than Rs. 1 Crore (as per Section 4 of the IBC). Hence, the debt due and default is established. From evidence and material on record, we also hold that the application is filed by properly authorized person. Therefore, this Company Petition is liable to be admitted.
22. The Financial Creditor has proposed the name of **Mr. Jitendra Ramesh Palande**, Registration No: IBBI/IPA-003/IP-N00028/2017-18/10188, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
23. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this,

this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

24. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP (IB) 692/MB/2023** filed by **Central Bank of India [CIN: U99999MH1911PTC000337]**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) **Superfine Profile and Extrusions Private Limited [CIN: U27203PN2001PTC016044]**, the Corporate Debtor, is **Admitted**. We are hereby directing the Suspended Board of Director to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding with providing necessary documents/information as required by the RP/IRP.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:
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- (i) 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;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation

6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) **Mr. Jitendra Ramesh Palande**, Registration No: IBBI/IPA-003/IP-N00028/2017-18/10188, having address at Office No. 411, Kakade Bizz Icon, Ganeshkhind Road, Shivajinagar, Pune, Maharashtra- 411005, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) 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 of the IBC. 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 within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs. 5,00,000 with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
Member (Technical)

Sd/-

KISHORE VEMULAPALLI
Member (Judicial)