



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

**CP (IB) No. 40/MB-IV/2022**

**&**

**IA (IB) 1190/MB-IV/2022**

**In**

**CP (IB) No. 40/MB-IV/2022**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Phoenix Arc Private Limited**

[CIN: U67190MH2007PTC168303]

...Financial Creditor/Applicant

V/s

**Colour Roof (India) Limited**

[CIN: U27200MH2000PLC126598]

...Corporate Debtor/Respondent

**Order Dated: 24.02.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Manaswi Agrawal a/w Ms. Saloni Kalwade i/b Meraki Chambers, Advocates.

For the Respondent(s) : Mr. Chetan Kapadia a/w Mr. Rohan Agrawal & Mr. Prakash Shinde i/b MDP & Partners, Advocate.

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This is an application bearing C.P. (IB) No. 40/MB/C-IV/2022 filed by Phoenix Arc Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Colour Roof (India) Limited, Corporate Debtor.
2. The Application is filed by Mr. Grleen Chhabra, Authorised Signatory of the Financial Creditor duly authorised vide its Board Resolution dated 07.09.2021 passed by the Board of Directors, claiming total default of Rs. 1,66,33,49,015/- (Rupees one hundred sixty-six crore thirty-three lakh forty-nine thousand fifteen only) as on 31.10.2021 together with interest at the rate of 2% p.a. from 01.11.2021.
3. The Corporate Debtor availed various Financial Facilities from a Consortium of banks comprising of Bank of India, Indian Bank (later replaced by State Bank of India), the Hongkong and Shanghai Banking Corporation Limited and Axis Bank. Bank of India was the lead Bank of the Consortium.
4. The Financial Facilities were advanced to the Corporate Debtor for the first time under the Working Capital Consortium Agreement dated 16.09.2002 by the Consortium Members viz. Bank of India and Indian Bank. Thereafter, the Consortium members advanced revised, renewed

and extended fresh Financial Facilities to the Corporate Debtor from time to time.

5. The present Petition is filed in respect of the following debt(s) under Financial Facilities extended by Bank of India:
  - Cash Credit Facility of Rs.43,18,11,891/-, which is stated to be in default from 31.03.2015
  - Star Sahayata Term Loan of Rs.99,74,73,641/- which is stated to be in default from 31.03.2015; and
  - Inland Bill Purchase Facility (Letter of Credit) of Rs.23,40,63,483/- which is stated to be in default from 31.03.2019
6. Bank of India assigned the above Facilities to the Financial Creditor under an Assignment Agreement dated 22.11.2018, copy of which has been filed with the Petition.
7. The Financial Creditor issued the Loan Recall Notice dated 19.09.2016 claiming total outstanding of Rs.79,59,32,259.93 (Rupees seventy-nine crore fifty-nine lakh thirty-two thousand two hundred fifty-nine and ninety-three paise only) as on 31.08.2016 to be payable within 7 days from the date of receipt of this Notice.
8. The Corporate Debtor has filed an Interim Affidavit-in-reply dated 16.04.2022 challenging the main Company Petition on the ground of Limitation and defective Petition.

9. The Corporate Debtor has also filed Affidavit-in-reply dated 14.11.2022 and Additional Affidavit dated 10.11.2022 to place on record the Consent Terms dated 26.09.2022 filed before the DRT Mumbai which were entered into between the Financial Creditor and the Corporate Debtor. The Corporate Debtor submitted that the Corporate Debtor has agreed to make payment of the outstanding dues as per Clause 9 of the Consent Terms. The Corporate Debtor has not denied that it also defaulted in payment of outstanding debt in terms of the Consent Terms dated 26.09.2022 entered between the parties.

*Findings/Observations:*

10. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
11. Bank of India has provided the Financial Facilities to the Corporate Debtor and the lender assigned its debt to the Financial Creditor vide Assignment Agreement dated 22.11.2018. The Corporate Debtor has placed on record the Consent Terms dated 26.09.2022, filed before the DRT, Mumbai in OA No. 14 of 2017, vide its Additional Affidavit dated 10.11.2022. Subsequently, the DRT, Mumbai disposed of the said Application vide its order dated 26.09.2022 in view of the said Consent Terms between the parties.
12. It is observed from the Consent Terms that as per Clause 9 of the said Consent Terms, the Corporate Debtor was liable to pay the outstanding dues to the Financial Creditor. However, the Corporate Debtor has

failed to honour the terms of the Consent Terms entered between the parties and defaulted in payment of such outstanding dues.

13. In view of the Consent Terms and the Order of DRT Mumbai dated 26.09.2022, the fresh period of limitation will start and hence, the present application is not barred by limitation. Nonetheless, a sum of Rs.23,40,63,483/- is claimed to be outstanding under 'inland bill purchase account' facility and is stated to in default since 31.03.2019 as per Part-IV of the Petition. Also, the Corporate Debtor has acknowledged its liability in respect of all three Credit Facilities vide LOA dated 24.04.2019. In view of this also the objection on ground of limitation does not have any merit.
14. The Consent Terms as filed before DRT, Mumbai and forgoing basis of Order dated 26.09.2022 passed by DRT, Mumbai establishes that there exists a debt and such debt has not been paid from time to time, lastly, in accordance with Clause 9 of the Consent Terms. Accordingly, there exists a default in payment thereof.
15. After perusal of the material on record, this Bench is of considered view that the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is complete and filed in the proper form.
16. In view of the above, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we are of the

considered view that the present Petition deserved to be admitted under Section 7 of the Code for initiation of CIRP against the Corporate Debtor. Accordingly, the Application filed by the Financial Creditor is liable to be admitted.

17. The Applicant has proposed the name of Mr. Hemant Kumar Shah, a registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code.

### **ORDER**

18. This Application being C.P. (IB) No. 40/MB/C-IV/2022 filed by Phoenix Arc Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Colour Roof (India) Limited, Corporate Debtor is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- a) 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;



- b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor 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 possession of the corporate debtor.
- II. 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
  - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the

liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Hemant Kumar Shah, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P-01936/2020-2021/13037], as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims.
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**
19. The Corporate Debtor has filed an Interlocutory Applying bearing IA No. 1190/MB-IV/2022 challenging the main Company Petition



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&  
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filed by the Financial Creditor under Section 7 of the Code. The Corporate Debtor himself vide Additional Affidavit has filed the Consent Terms entered into between the parties. Hence, in view of this, this Application is **Dismissed as Infructuous**.

Sd/-

Prabhat Kumar  
Member (Technical)  
24.02.2023

Sd/-

Kishore Vemulapalli  
Member (Judicial)