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Azadi Ka
Amrit Mahotsav

National Company Law Tribunal
Kolkata Bench

5, Esplanade Row (West) Kolkata-700 001
(Ph: 033-22486330 Email : registrar-kol@nclt.gov.in)

No. NCLT/KB/2022/5068

- ① Reliance Commercial Finance Ltd
Reliance Centre, 6th Floor, South Wing, Off Western
Express, Highway, Santacruz (East), Mumbai-400055, India
abmassociates1516@gmail.com
- ② Psaphi Fashions Pvt Ltd.
Parishan Garments Park, SDF-4, 4th Floor, 19 Canal
South Road, Kol-700015, WB.
- ③ Ms. Meera Prasad
Flat No. 103, First Floor, Anurag Apartment, Ashok
Ashali, Near Dibadik Flyover, Ranchi,
Jharkhand - 834002, M. pdmeera@gmail.com
- ④ Registrar of Companies, Kolkata.
Nizam Palace, II Indico Building, 2nd Floor, 23A/4,
A.J.C Bose Road, Kol-700020, WB.
roc.kolkata@mea.gov.in

Sub: CP(1B)/C.P. NO. 1275 Of 2019 C.A. No. Of I.A. No. Of

In the matter of Reliance Commercial Finance Ltd
vs-
Psaphi Fashions Pvt Ltd.

Sir,
I am directed to forward herewith a copy of the order dated 18/10/2022, passed by this Tribunal in respect of the above matter, for information/ compliance thereof.

Encl. As stated



Yours faithfully,
Abanjee
Court Officer
NCLT, Kolkata Bench

Date: 20.10.2022
Place: Kolkata



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
(Court-I)
KOLKATA**

CP (IB) No. 1275/KB/2019

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

**Reliance Commercial Finance Limited
[CIN: U66010MH2000PLC128301]**

...Financial Creditor

Versus

**Prapti Fashions Private Limited
[CIN: U18101WB2001PTC093391]**

...Corporate Debtor

Order reserved on: 17 July 2022

Order pronounced on: 18 October 2022

Coram:

Shri Rohit Kapoor : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Appearances (through hybrid mode):

For the Financial Creditor : Mr. Anirban Ray, Advocate

Mr. Arnab Basu Mullick, Advocate

For the Corporate Debtor : Mr. Joy Saha, Senior Advocate

Ms. Rakhi Purnima Paul, Advocate

Mr. Rishad Medora, Advocate

ORDER

Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.





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2. This is a Company Petition filed under section 7 of the insolvency and Bankruptcy Code, 2016 by Reliance Commercial Finance Limited, represented by Mr. Jayanta Mondal, authorized through a Power of Attorney dated 31 October 2019, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Prapti Fashions Private Limited [CIN: U18101WB2001PTC093391] (“Corporate Debtor”).
3. The Corporate Debtor was incorporated on 02 July 2001, having CIN: U18101WB2001PTC093391, under the Companies Act, 1956. It’s registered office is Paridhan Garments Park, SDF-4, 4th Floor, 19 Canal South Road, Kolkata- 700015. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 21 June 2019 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.5,46,74,948/- (Rupees Five Crore Forty Six Lakh Seventy Four Thousand Nine Hundred and Forty Eight only) as on 01 June 2019.

Submission of Mr. Anirban Ray, learned Counsel appearing for the Financial Creditor

5. Mr. Anirban Ray submitted that one Madhuri Commodities Private Limited had approached Reliance Capital Limited for revolving trade facility to the tune of total Rs. 12,00,00,000/- (Rs. 2,00,00,000/- towards Trade Finance and Rs. 10,00,00,000/- towards Supply Chain Finance). Thereafter as a result of alleged cash crunch, Madhuri Commodities Private Limited could not repay the said loan and started defaulting. Reliance Capital Limited recalled the said loan facilities and demanded payment of the foreclosed amount.



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6. By a settlement agreement dated 29 December, 2017¹ entered into and executed between Reliance Capital Limited and Madhuri Commodities Private Limited and its co-borrower(s)/guarantor(s) the outstanding amount was accordingly structured and part payment was to be made by Madhuri Commodities Private Limited and the remaining amount was restructured as new loan in favour of Prapti Fashions Private Limited. The settlement agreement was signed by the common Directors of Madhuri Commodities Private Limited and Prapti Fashions Private Limited.
7. The learned Counsel submitted that pursuant to a scheme of arrangement sanctioned by the Hon'ble Bombay High Court *vide* order dated 09 December 2016 wherein the Commercial Finance Division of Reliance Capital Limited was transferred to the Financial Creditor i.e. Reliance Commercial Finance Limited, hence the debt owed to Reliance Capital Limited by the Corporate Debtor shifted to the Financial Creditor.
8. The Financial Creditor executed a fresh loan agreement in favour of the Corporate Debtor for Rs.6,00,00,000/- (Rupees Six Crore only) at the rate of 12.5%.
9. The Corporate Debtor paid a few installments and then defaulted in payment.
10. The Financial Creditor recalled the loan *vide* letter dated 06 February 2019, the Corporate Debtor made payment of the defaulted instalment for the month of January 2019 on 07 February 2019. The Corporate Debtor replied to the recall notice on 19 February 2019 where in the corporate debtor denied the existence of any debt. Another recall notice was sent on 20th February 2019 which was duly received by

¹ Annexure "A-5" at Pp. 23- of the Company Petition





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the Corporate Debtor and its directors but the Corporate Debtor failed to make payment.

11. The Corporate Debtor replied through its advocate on 01 March 2019 making bare denial and dispute to the said letters. *Vide* letter dated 04 April 2019, the Financial Creditor clarified the disputes raised by the Corporate Debtor.
12. It is further submitted that the Corporate Debtor *vide* letter dated 04 February 2019 sought for restructuring claiming to be a Micro Small Medium Scale Industry (“MSME”) on the basis of a RBI Circular. The Financial Creditor *vide* letter dated 04 April 2019 called upon the Corporate Debtor to prove that it is an MSME.
13. The Corporate Debtor did not reply to the said notice but instead made payments of the loan taken. The Financial Creditor recalled its loan *vide* a letter dated 05 June 2019 which was received by the Corporate Debtor on 06 June 2019.
14. Hence, after receipt of installment amounts as applicable to the loan account, there is a due of of Rs of Rs.5,46,74,948/- (Rupees Five Crore Forty Six Lakh Seventy Four Thousand Nine Hundred and Forty Eight only) calculated upto 01 June 2019.
15. Mr. Ray submitted that where any amount raised under any other transaction which has the commercial effect of a borrowing would also tantamount to a financial debt. He placed reliance on the order of the Hon’ble Supreme Court in *Orator Marketing Private Limited v. Samtex Desinz Private Limited, 2021 SCC OnLine SC 513* (paragraph 22-28).
16. The learned Counsel further submitted that the debt of Madhuri Commodities Private Limited was transferred by way of term loan to effect the borrowing and would also tantamount to assignment of



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debt. That there cannot be a fresh disbursement when there is an assignment of debt.

17. The Financial Creditor has placed the following documents on record:

- a. Copy of the loan Facility Agreement; annexed and marked as A-8 at Pp. 46-63;
- b. Copies of Loan recall notice dated 06 February 2019, 01 March 2019; annexed and marked as A-9 at Pp. 64-65;
- c. Copies of Replies to the recall letter dated 19 February 2019, 04 April 2019 annexed and marked as A-10 at Pp. 66-67, A-14 at Pp. 82-83 respectively;
- d. Letter dated 04 February 2019 for restructuring; annexed and marked as A-15 at Page 86;
- e. Reply to the letter dated 04 February 2019 on 20 February 2019; annexed and marked as A-16 at Pp. 87-88;
- f. Copy of loan recall notice dated 05 June 2019; annexed and marked as A-19 at Pp.110A-100D;
- g. Copy of Bank Statement; annexed and marked as A-25 at Pp. 179-181
- h. Copy of CIBIL Report; annexed and marked as A-24 at Pp. 125-178

18. The Financial Creditor has proposed the name of **Mr. Kanchan Dutta**, registration number IBBI/IPA-001/IP-P00202/2017-18/0391, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority]





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Rules, 2016 which is annexed and marked as A-22 at Page 121 of the Company Petition.

19. Court Notice had been served on the Corporate Debtor on 22 August 2019. The Corporate Debtor entered appearance on 24 October 2019.

Submissions of Mr. Joy Saha, Learned Senior Counsel appearing for the Corporate Debtor.

20. Mr. Joy Saha led us through page 24 of the Company Petition and submitted that Prapti Fashions Private Limited was not a party to the settlement dated 29 December 2017. The other individuals have signed the settlement agreement in the capacity of employees of Madhuri Commodities Private Limited which is clear from the address given at paragraphs 3.2.2. to 3.2.5 of the settlement agreement.

21. There is no document to prove that the Financial Creditor disbursed any amount to the Corporate Debtor. No loan was disbursed to the Corporate Debtor on 11 January 2018.

22. The Borrower's name is blank in the Facility Agreement at Page 46 of the Company Petition. The said Facility Agreement has been signed by Prapti Fashions Private Limited and Madhuri Commodities Private Limited, hence the sum of Rs.6 Crore was in fact the debt of Madhuri Commodities Private Limited.

23. Mr. Joy Saha then referred to Page 13 of the Company Petition wherein the Financial Creditor has submitted that the Corporate Debtor has failed and neglected to file the requisite e-Form with the Registrar of Companies for registering the said charge over the properties of the Company. Mr. Saha submitted that referred to Form No. CHG-1 dated 04 May 2026 of Madhuri Commodities Private





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Limited, wherein properties of Madhuri Commodities Private Limited was registered in favour of the Financial Creditor.

24. The Financial Creditor has not filed a Board Resolution under section 180(1)(c) of the Companies Act to demonstrate that the Corporate debtor had sought for loan.
25. The Corporate Debtor filed a Supplementary affidavit stating that the Corporate Debtor has filed a Title Suit before the learned Alipore Court against the Financial Creditor being Title Suit No. 569 of 2021 praying for declaration that no money was disbursed by the Financial Creditor to the Corporate Debtor.
26. The Financial Creditor in Form I has not mentioned about Madhuri Commodities Private Limited and has hence suppressed the said fact which warrants dismissal of the petition. He placed reliance on *Ramjas Foundation v. UOI (2010) 14 SCC 38* (paragraph 21 to 30) and *Meghmala v. G. Reddy (2010) 8 SCC 383* (paragraphs 2, 28 to 36 and 50).
27. The letter dated 19 February 2019 was signed by one Aditya Agarwal, who is not the Director of the Corporate Debtor hence the letter is liable to be ignored.
28. There was never any transfer of funds to the Corporate Debtor neither was the Corporate Debtor a guarantor of Madhuri Commodities Private Limited.
29. The Financial Creditor has sent a notice dated 28 May 2019 under section 13(2) of the SARFAESI Act, 2002 and notice dated 21 December 2020 under rule 8(1) of the Security Interest (Enforcement) Rule, 2002.





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30. The Corporate Debtor has instituted a S.A. bearing Dy. No. 225 of 2021 in the Debts Recovery Tribunal, Kolkata under section 17 of the SARFAESI Act, 2002, wherein the Corporate Debtor has contented all the documents filed in the present Company Petition as wrongful and illegal.

Rejoinder of the learned Counsel in reply to the Corporate Debtor

31. Mr. Ray submitted that the Corporate Debtor in its reply affidavit has admitted the loan was assigned to the Financial Creditor, he questioned whether the Corporate Debtor can be allowed to change his stance from what has been said in the affidavit-in-reply.

Issues

32. The issues in question in the present C.P are:

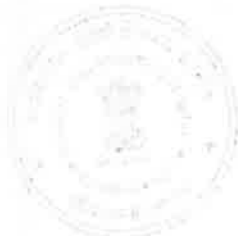
- a. Whether there was a loan agreement between the Financial Creditor and Corporate Debtor?
- b. Whether the Financial Creditor did not disburse any amount to the Corporate Debtor?

Analysis and Findings

33. Heard the learned Counsel appearing for the Financial Creditor and the learned Senior Counsel appearing for the Corporate Debtor and perused the record.

34. The defence raised by the Corporate Debtor comprises of the following:

- a. There was no loan agreement between the Financial Creditor and the Corporate Debtor.





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- b. The Financial Creditor did not disburse any amount to the Corporate Debtor.
35. To see whether the contentions raised by the Corporate Debtor hold water or not, let us first peruse the Facility Agreement dated 11 January 2018. The name of the borrower has not been mentioned at page 46 of the Company Petition but the name and details of the Corporate Debtor has been mentioned at page 58 of the Company Petition under the heading "DETAILS OF THE BORROWERS". The name of Madhuri Commodities Private Limited has been given as Co-Borrowers.
36. Apart from that, on perusal of the replies to the recall notices on 19.02.2019, 01.03.2019 (reply sent through Counsel) at paragraph 2 of the said notice, 04.02.2019 (wherein the Corporate Debtor has prayed for restructure of loan), in all the above letters there is clear admission on the part of the Corporate Debtor that the Financial Creditor has granted loan facility to the Corporate Debtor.
37. Thirdly, we cannot ignore the reply of the Corporate Debtor filed on 30 December 2019 wherein the Corporate Debtor has stated that the Financial Creditor had granted loan to the corporate debtor *vide* Loan Facility Agreement dated 04 January 2018.
38. On perusal of the Balance Sheet for the Financial Year 2017-2018, the name of the Financial Creditor is written under the heading for term loans. Hence, there was an agreement for loan between the Corporate Debtor and the Financial Creditor and if there was no disbursal of any amount, the Corporate Debtor would not have sought for restructuring of the loan account on 04 February 2019 (Annexure A-15 at page 86 of the Company Petition).
39. In the letter praying for restructuring, the Corporate Debtor has submitted that "*due to sudden and unanticipated financial stress for a*





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temporary period we have not been able to make payment of EMI due on 15.01.2019 only.”. The stand taken in the affidavit-in-reply filed by the Corporate Debtor wherein it has stated that they have been making regular payments without any delay is contradictory to this statement made in the letter ibid.

40. It is thus clear that there is a debt and there have been delays in payment of the debt.

41. So far as the allegation that the person who signed the reply affidavit had no authorization does not find a footing as the Board Resolution dated 18 October 2019 that has been filed along with the Vakalatnama has authorized Mr.. Aditya Vikram Agarwal to do all such acts with respect to the proceedings initiated under the Code.

42. The other defenses raised by the Corporate Debtor such as filing a declaratory suit are clearly an afterthought and was done after two years from receiving the notice for this Company Petition.

43. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.

44. On perusal of the number of assignments assigned to Mr. Kanchan Dutta in the IBBI website it is seen that he has 27 assignments² assigned to him. Since this is a matter filed in 2019 and in the interregnum, clearly several more assignments have been assigned to him. We shall appoint another Insolvency Professional as given by the Board in keeping with the guidelines in this regard as envisaged in

² <https://ibbi.gov.in/en/insolvency-professional/details?fieldid=Mzkx>





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Regulation 22³ of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.

45. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

- a. The application bearing **CP (IB) No. 1275/KB/2019** filed by Reliance Commercial Finance Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Prapti Fashions Private Limited**, the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under section 14 of the IBC.
- c. 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.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Ms. Meera Prasad**, registration number **IBBI/IPA-003/IP-N00278/2020-2021/13136**, email: **pdmeera@gmail.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in

³ 22. An insolvency professional must refrain from accepting too many assignments, if he is unlikely to be able to devote adequate time to each of his assignments. Page 17 of 35 37[Clarification: An insolvency professional may, at any point of time, not have more than ten assignments as resolution professional in corporate insolvency resolution process, of which not more than three shall have admitted claims exceeding one thousand crore rupees each.]





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terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions 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 Code.

- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakh only)** 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





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(CoC) and shall be in accordance with the latest regulation issued by IBBI in this regard

- j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means 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.

46. CP (IB) No. 1275/KB/2019 to come up on 30.11.2022 for filing the periodical report.

47. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on 18th October 2022.

GGRB_LRA

CERTIFIED TO BE TRUE COPY


Court Officer 20/10/2022
National Company Law Tribunal
Kolkata Bench



