

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
TCP. NO. 856/I&BP/NCLT/MAH/2017**

Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of **Section 7 of the Insolvency and Bankruptcy Code, 2016** read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).

1. Peerless Financial Services Ltd.
3, Esplanade East, Peerless Bhavan
Kolkata – 700 069, West Bengal Financial Creditor/Applicant
2. Rasoya Proteins Ltd.
Village Wanjari, Taluk Wani,
Yavatmal – 445 304,
Maharashtra. Corporate Debtor.

Counsel for the Financial Creditor: Ms. Niketa Shah i/b M/s. Ashwin
Aukhad & Associates.

Counsel for the Corporate Debtor: None.

ORDER

(Heard on 14.06.2017)

(Pronounced on 27.06.2017)

Per V. Nallasenapathy, Member (Technical)

1. The Applicant herein has filed a Petition for winding up under Sections 433(e), 434(1)(a) and 439(1)(b) of the Companies Act, 1956 against the Corporate Debtor before the Hon'ble High Court of Bombay and the same was numbered as Company Petition No. 769/2016. The said Company Petition was transferred to this Tribunal for adjudication under section 7 of Insolvency and Bankruptcy Code, 2016 (the Code) and renumbered as TCP/856/2017.

2. The Financial Creditor namely, Peerless Financial Services Ltd. filed Form No. 1 as required under Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, on 27-03-2017, stating that the Corporate Debtor namely Rasoya Proteins Ltd. has defaulted on 21.09.2015 in making the repayment of the financial debt of Rs. 5,00,00,000/- granted on 22.09.2014 along with interest and other dues to the extent of Rs. 70,15,749/- totalling Rs. 5,70,15,749/- as on 31.07.2016 and also claimed further interest and expenses.

3. The financial creditor states that the Corporate Debtor on 19-09-2014 entered into a facility agreement wherein the Corporate Debtor has requested the Financial Creditor to grant a loan of Rs. 5,00,00,000/- for the working capital requirement. Accordingly, the Financial Creditor sanctioned the loan of Rs. 5,00,00,000/- repayable in 4 quarterly instalments of Rs. 1.25 crore each commencing from the end of 12th month, 15th month, 18th month and 21st month from the date of disbursement. The loan carries an interest of 14% per annum, payable monthly on reducing balance basis. The agreement provides for penal interest @ 2% per annum over and above applicable interest for the period of default i.e. from due date of payment up to the date of actual payment. Further, the agreement provides that penal interest will be compounded on monthly basis.

4. The Financial Creditor states that the term loan of Rs. 5,00,00,000/- was disbursed on 22.09.2014 by directly crediting the Corporate Debtors' bank account No. 50970621100001 maintained with Vijaya Bank, Trimurthi Nagar Branch, Nagpur by RTGS transfer. The Corporate Debtor has executed the following security documents:

- i. Facility Agreement dated 19th September 2014.

- ii. Share Pledge Agreement dated 19th September 2014, executed by Mr. Anil N. Lonkar, the Promoter-cum-Managing Director of the Company.
- iii. Deed of Personal Guarantee dated 19th September 2014, executed by Mr. Anil N. Lonkar, Managing Director of the Company, for securing repayment of the above loan.
- iv. Irrevocable Power of Attorney dated 19th September 2014, executed by the pledger of shares.
- v. Declaration-cum-Undertaking dated 19th September 2014, regarding non-encumbrance of security, executed by the pledger of shares.
- vi. Demand Promissory Note dated 19th September 2014.
- vii. Continuing Security Letter dated 19th September 2014.
- viii. Declaration dated 19th September 2014 regarding no overdue/past dues with existing bankers / lenders.
- ix. PDC-Letter-cum-Undertaking dated 19th September 2014.
- x. Undertaking-cum-Indemnity dated 19th September 2014, for repayment of differential stamp duty applicable on all documents.
- xi. Pledge of 62,61,200 equity shares of Rasoya Proteins Ltd. by Mr. Anil N. Lonkar, Managing Director of the Company on 18th September 2014 to secure the above loan backed by the Board Resolution of the Company dated 17th September 2014.

5. The Financial Creditor says that the loan of Rs. 5,00,00,000/- was repayable in 4 equal quarterly instalments of Rs. 1.25 crores each commencing from 21.09.2015 and ending on 21.06.2016 along with interest of 14% per annum with monthly rests on reducing balance basis. The Corporate Debtor also issued 25 post-dated cheques towards the payment of interest on monthly basis and 4 post-dated cheques for payment of instalment of principal amount. All the post-dated cheques given for

repayment of instalments of the principal amount were dishonoured when presented for payment by the Financial Creditor. Similarly, post-dated cheques given for payment of interest due w.e.f. 31-10-2015 were dishonoured. The Financial Creditor has taken proceedings u/s 138 of the Negotiable Instrument Act, 1881 in the Metropolitan Magistrate Court at Calcutta.

6. The Financial Creditor after sending few reminders, sent loan recall notice on 16.06.2016 to the company and its directors and there was no response for the same. The Financial Creditor sent a legal notice on 27.06.2016 to the Corporate Debtor calling upon to pay the outstanding of Rs. 5,55,17,994/- plus further interest @ 24% per annum from 01.01.2016 till the payment, within 3 weeks from the date of the said notice failing which legal proceedings will be taken against the Corporate Debtor.

7. The Financial Creditor has enclosed the CIBIL report order dated 17.05.2017 pertaining to the Corporate Debtor wherein it is disclosed that the Financial Creditor has granted Rs. 5,00,00,000/- as loan against shares/securities on 10.09.2014 to the Corporate Debtor. The Financial Creditor has named Mr. Rajendra Karanmal Bhuta, 1207, Yogi Paradise, Yogi Nagar, Borivali - West, Mumbai - 400 092, e-mail id: rkbhuta@gmail.com, registration No.: IP 00078.

8. This Company Petition was initially posted for hearing on 02.05.2017 and on the request of the Counsel for the Petitioner it was posted for hearing on 12.06.2017. On 12.06.2017, the Practicing Company Secretary appearing on behalf of the Corporate Debtor sought 2 days adjournment stating that efforts are being taken to settle the dues and accordingly the

case was posted on 14.06.2017 but nobody appeared on behalf of the Corporate Debtor.

9. As to the Petition filed by the Financial Creditor, this Bench, on perusal of the documents filed by the Creditor, it is evident that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional, having this Bench noticed that default has occurred and there is no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Application declaring Moratorium with the directions as mentioned below:

1. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the 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 moratorium period.

3. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 4. That the order of moratorium shall have effect from 27.06.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
 5. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
 6. That this Bench hereby appoints Mr. Rajendra Karanmal Bhuta, 1207, Yogi Paradise, Yogi Nagar, Borivali – West, Mumbai – 400 092, e-mail id: rkbhuta@gmail.com, registration No.: IP 00078, as interim resolution professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
10. Accordingly, this Petition is admitted.
11. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
B. S.V. PRAKASHKUMAR
Member (Judicial)