

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
CP. NO. 1067/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. Standard Chartered Bank

7th Floor, Parinee Crescenzo, Opp. MCA
Plot No. C-38 & 39, G-Block, Bandra-Kurla Complex
Bandra (East), Mumbai – 400 051 Financial Creditor/Applicant

2. Prag Distillery (P) Ltd.

P.O. Tilaknagar, Tal. Shirampur,
Dist. Ahmednagar,
Shrirampur, Maharashtra – 413 720 Corporate Debtor.

Counsel for the Financial Creditor : Ms. Jyoti Singh a/w Ms. Smi
Verma i/by Phoenix Legal.

Counsel for the Corporate Debtor: Mr. Kunal Bhamage a/w
Mr. Akshay Pawar.

ORDER

(Heard on 20.06.2017)

(Pronounced on 27.06.2017)

Per V. Nallasenapathy, Member (Technical)

1. The Financial Creditor, Standard Chartered Bank, a Banking Corporation incorporated in England by the Royal Charter, 1853, having its principal office at 1, Basinghall Avenue, London, EC2V 5DD filed this Company petition against the Corporate Debtor Prag Distillery Pvt. Ltd, for initiation of Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016 (“the Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016, alleging that the Corporate Debtor defaulted in repaying the debt of USD 2,183,915.71 (USD Two Million One Lakh Eighty Three Thousand Nine Hundred and Fifteen and Seventy One Pennies).

2. The Company Petition was filed by Mr. Shailesh Agrawal, an employee of the Financial Creditor who is authorised to file this Petition by a Power of Attorney executed by the Financial Creditor on 1.6.2017.

3. The Financial Creditor granted a term loan facility to the Corporate Debtor for an amount of USD 11,000,000 (USD Eleven Million) by way of External Commercial borrowing under Automatic Route. A Facility Agreement was executed on 7.3.2011 between the Corporate Debtor, M/s. Tilaknagar Industries Ltd., Tilak Nagar, Shrirampur, Ahmednagar-413720 as Guarantor, the Financial Creditor as Lender and the Financial Creditor's commercial branch viz. Standard Chartered Bank, Hyderabad Branch as Security Agent.

4. Further, as part of the conditions for grant of the said facility and in order to secure the due repayment of the loan by the Financial Creditor, the following Agreements were executed by and between the parties:

(a) Memorandum of Charge dated 08.03.2011 executed by borrower in favour of the Bank, inter-alia created a first and exclusive charge in favour of security agent for the benefit of Bank on the following assets:

- i. Fixed Assets
- ii. Debt Service Reserve Account (DSRA) and all monies lying thereunder.
- iii. Fixed Deposits
- iv. Collection Account and all monies lying thereunder.

(b) Debt Service Account Agreement dated 08.03.2011, which encapsulate that in case default occurs in terms of facility agreement, any amount in DSRA shall be utilized towards repayment of facility to the bank.

(c) Letter of Continuing Guarantee dated 28.03.2011 executed by the guarantor.

(d) Personal Guarantee dated 28.03.2011 executed by Mr. Amit Dahunukar, who is a director of the Corporate Debtor.

(e) Memorandum of Entry dated 11.08.2011 read with memo of rectification dated 30.11.2011 executed by the borrower in favour of the Bank and the Security Agent whereby the borrower acknowledged and confirmed that the mortgage was created in favour of the Security Agent for the benefit of Bank by way of deposit of title deeds in respect of all that piece and parcel of land situated at East Godavri District, Biccavole Sub registry, Rangampet Mandal, Nallamilli Panchayat, Nallamili Village, Ziroit dry land , R.S. No. 199/1 and extant of Ac 4-00 cents, in R.S. No. 200/2 am extant pf Ac 4-44 cents and in R.S. No. 200/3 and extant of Ac 0-05 3/5 cents, total extant Ac 8/49 3/5 cents equivalent to 41, 120 sq. yards of land and document no. 1-205, admeasuring approximately 41,120 sq. yards.

5. The Facility Agreement provides that the Facility may only be used by the Corporate Debtor for financing capital expenditure for bottling capacity expansion in a principal amount not exceeding the total commitment of USD 11,000,000. Further the said Facility Agreement set out a repayment schedule entirely the time period and the number of instalment of the loan to the Financial Creditor.

6. Subsequently, on 28.12.2012, an Amendment Agreement was executed between the Financial Creditor, Corporate Debtor, Guarantor and the Security Agent, wherein it was stated that at the request of the Corporate Debtor, the Financial Creditor requested to amend the definition of final maturity date and accordingly the final maturity date was fixed as 8.3.2016. Likewise, the instalment repayment was fixed at USD 6,87,500 payable on 6.7.2012, 5.10.2012, 4.1.2013, 2.4.2013, 29.6.2013, 25.9.2013, 22.12.2013, 20.3.2014, 16.6.2014, 12.9.2014, 9.12.2014, 8.3.2015, 7.6.2015 and 7.9.2015.

7. Thereafter, on 23.5.2014, at the request of the Corporate Debtor the same parties entered into an Amendment and Supplemental Agreement to the Facility Agreement, wherein certain terms of the Facility Agreement were amended.

8. The Corporate Debtor by a letter dated 21.06.2016 addressed to the Financial Creditor stated that a sum of USD 2.06 million is presently outstanding against the External Commercial Borrowing (ECB) of USD 11.0 million and since the holding company is undergoing liquidity crunch at present, efforts are being in process to revamp the operations. The letter further adds that since **three ECB instalments were not paid**, the same has resulted in cancellation of hedging contract, the ECB loan is presently unhedged and open to INR/USD fluctuations, the high INR/USD fluctuations will affect the cash-flow and profitability, therefore requested the Financial Creditor to covert the ECB to Rupee Term Loan.

9. The Financial Creditor on 02.12.2016 issued a statutory notice for winding up u/s 433(e) read with sec 433 of the Companies Act for payment of outstanding amount of USD 2,062,500.00 (USD two million sixty two

thousand and five hundred only), inclusive of interest along with sum of USD 84,171.21 towards past due interest.

10. Subsequently, on 02.03.2017, the Financial Creditor issued a legal notice for payment of outstanding amount of USD 2,062,500.00 inclusive of interest along with USD 112,342.65 towards past due interest within 10 days of receipt of notice, failing which proceedings under Insolvency and Bankruptcy Code, 2016 will be initiated against the Corporate Debtor. The Corporate Debtor in its reply dated 23.03.2017, alleged that the statutory notice dated 02.03.2017, was received by it on 15.03.2017, that it serviced 13 out of the 16 earmarked payments of USD 687,500.00 each along with interest as per the terms of the facility, repaid USD 8.9375 million towards repayment of principal and also serviced regular interest up to the date when the last instalment was due. It further adds that being IMFL manufacturer they are facing certain difficulties occasioned on account of certain unforeseen and also uncontrollable events such as certain States imposing prohibition of sale of liquor, etc. The Corporate Debtor has also averred that they have noted discrepancy in the amount claimed by way of interest and requested to provide the working which could be sorted out mutually across the table.

11. The Corporate Debtor by a letter dated 11.05.2017 addressed to the Financial Creditor stated that it has paid 13 instalments out of the 16 instalments of the ECB loan of USD 11 million and the present outstanding is USD 2.06 million and requested the CEO of the Financial Creditor to give an opportunity to meet him personally for settlement of the debt.

12. As to the Petition filed by the Financial Creditor, this Bench, on perusal of this documents filed by the Creditor, it is evident that the Corporate Debtor defaulted in repaying the last 3 instalments of 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:

- a. 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.
- b. 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.
- c. 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.

- d. That the order of moratorium shall have effect from 20.06.2017 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.
- e. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- f. That this Bench hereby appoints Ms. Dipti Mehta, 19, Sunshine Building, 78B, Dr. A.B. Road, Worli, Mumbai – 400 0178, Maharashtra, e-mail id: dipti@mehta-mehta.com, Registration No.: IBBI/IPA-002/IP-00038/2016-17/1733, as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

13. Accordingly, this Petition is admitted.

14. 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)