

MDP LEGAL UPDATES

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MDP HIGHLIGHTS

MDP ASSISTS UNION BANK OF INDIA LED CONSORTIUM CONSISTING OF 7 OTHER BANKS IN FILING JOINT CLAIM AGAINST P&S JEWELRY.

P&S Jewellery Limited “Corporate Debtor” approached the Hon’ble Mumbai Bench of NCLT under a voluntary application (section 10 under the Insolvency and Bankruptcy Code, 2016) for its winding up.

The Hon’ble Bench admitted the application and passed an order on 29 May 2017.

Moratorium was applied and Mr. Vipul Choksi, Partner at Shah Gupta & Co. was nominated as the “Interim Resolution Professional” [“IRP”] in the matter.

MDP & Partners, Advocates and Solicitors, assisted the entire consortium of eight banks comprising of UBI, CBI, Vijaya Bank, Andhra Bank, SBI, BOB, Syndicate and Canara Bank in filing their claims against the Debtor well within the timeline. The aggregate claim exceeded INR 769 crores.

MDP ASSISTS FINANCIAL CREDITORS FOR FILING THEIR CLAIMS IN EARC LED MATTER BEFORE NCLT AGAINST BHARATI DEFENCE & INFRASTRUCTURE LTD

Edelweiss Asset Reconstruction Company (“**EARC**”) approached Hon’ble Mumbai Bench of NCLT with an application to initiate corporate insolvency resolution process (section 7 under the Insolvency and Bankruptcy Code, 2016). The Hon’ble Bench admitted the application and passed an order on 06 June 2017.

EARC held 83% in the consortium when various lenders have assigned their facilities to EARC.

Moratorium has been declared with effect from 06 June 2017 under Section 14 of the IB Code, 2016. Mr. Dhinlal Shah, Partner at Ernst & Young LLP, located at Ahmadabad, was nominated as the “Interim Resolution Professional” [“**IRP**”] in the matter.

MDP & Partners, Advocates and Solicitors, assisted four banks comprising of BOB, UCO, PNB, and Canara Bank, in filing their claims well within time. The aggregate claim of all these banks was approximately 1,720 crores various lenders in the total claim of approximately INR 9,164 crores.

MDP & PARTNERS REPRESENTED SBI AT THE FIRST MEETING OF COMMITTEE OF CREDITORS HELD ON 15 JUNE 2017 WITH IRP MR. DEVENDRA JAIN, AN AHMEDABAD BASED CHARTERED ACCOUNTANT IN CASE OF M/S. SHIRDI INDUSTRIES LIMITED [“CORPORATE DEBTOR”], PROMOTED BY MR. RAKESH KUMAR AGARWAL AND MR. SARVESH AGARWAL.

Under the voluntary application which was filed by the Corporate Debtor, Shirdi Industries u/s 10 of the IB Code, before the Hon’ble Mumbai Bench of NCLT, and where claims have been filed by various creditors with the IRP including SBI who has to recover an amount of approx. Rs. 76 crores, having a share of about 12.50% in the assets of the company, first meeting of committee of creditors was held on 15 June 2017.

MDP & Partners represented SBI in the said meeting, when necessary resolution has been passed ratifying IRP’s appointment as RP.

We await Information Memorandum and draft Resolution Plan in the said matter, to assist SBI further.

MDP & PARTNERS, SUCCESSFULLY DEFENDED AN INCOME TAX APPEAL BEFORE THE BOMBAY HIGH COURT AGAINST THE REVENUE DEPARTMENT ON 29 JUNE 2017

MDP & Partners successfully defended KSS Petron Ltd (formerly known as Petron Investments), in an Income Tax Appeal which was filed by Revenue before Bombay High Court Bench comprising of Hon'ble Mr. Justice S.V. Gangapurwala and Hon'ble Mr. Justice G. S. Kulkarni.

The said appeal was filed for levy of penalty under section 271 (1) (c) of the Income Tax Act, 1961 on disallowance made by AO in respect of expenditure being Legal & Professional Fees incurred by the assessee during financial year ended 31 March 2008, the same being reflected as Revenue Expenditure instead of Capital Expenditure, in its books of accounts and the tax return for Assessment Year 2008-2009.

It was argued that since the assessee had disclosed all the relevant facts and provided sufficient details of expenditures incurred, in the course of assessment proceedings, **there was no concealment of income**. Further, the classification and/or characterisation of expenditure was based on the treatment as reflected in its Balance Sheet for the financial year ended 31 March 2008 prepared by statutory auditors acting in their professional capacity, hence **there was no furnishing of any inaccurate particulars of income** for the purposes of Section 271(1)(c).

Further it was stated that since the initiation of penalty proceedings by the Assessing Officer was on the ground that expenditure was capital in nature and levy of penalty was on the ground that the assessee company did not incur expenditure for regular business exigencies and the said expenditure since incurred for divestment of shares of company into its subsidiaries was incurred by shareholders, there is difference in grounds for initiation and levy of penalty, which is not acceptable.

The Hon'ble Bench has dismissed the revenue's appeal in favour of the assessee.

ARBITRAL TRIBUNAL VIDE ITS AWARD DATED 5TH MAY, 2017 (“AWARD”), DIRECTED SHREEJI AUTO WORLD PVT. LTD. & ORS. (“SHREEJI AUTO”) TO PAY AN AMOUNT OF RS. 11,53,78,048/- ALONGWITH INTEREST AT 6% P.A. ON THE PRINCIPAL OUTSTANDING AMOUNT OF RS. 8,55,23,462/- TO TATA CAPITAL FINANCIAL SERVICES LIMITED – THE CLAIMANT (“TCFSL”), FROM 12TH AUGUST, 2016 TILL PAYMENT AND/OR REALIZATION.

Mr. Tushar Kadam (Senior Associate) and Mr. Jay Vakil (Associate) successfully represented TCFSL in Arbitration proceedings before Mr. Arzan Bulsara, the Learned Sole Arbitrator (“Arbitral Tribunal”) filed against Shreeji Auto.

TCFSL filed Arbitration Petition No. 1783 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 (“Act”) before the Bombay High Court, wherein the parties entered into the Consent Terms dated 8th September, 2016 (“Consent Terms”) and the said Petition was disposed off in terms of the said Consent Terms. As per the said Consent Terms the matter was referred to the said Arbitral Tribunal.

On 16th March, 2017, MDP successfully argued on behalf of TCFSL before the said Arbitral Tribunal and the Arbitral Tribunal passed the said Award directing the Shreeji Auto and Ors. jointly and severally to pay an amount of Rs. 11,53,78,048/- (Rupees Eleven Crores Fifty Three Lakhs Seventy Eight Thousand and Fourty Eight only) alongwith interest at 6% p.a. on the principal outstanding amount of Rs.8,55,23,462/- (Rupees Eight Crores Fifty Five Lakhs Twenty Three Thousand Four Hundred and Sixty Two only) from 12th August, 2016 till payment and/or realization, to TCFSL.

MDP EXECUTES LOAN DOCUMENTATION FOR A NON-FUND BASED FINANCIAL ASSISTANCE FACILITY OF INR 200,00,00,000 AND FUND BASED OVERDRAFT FACILITY OF INR 100,00,00,000 TO SUPPLIERS OF AVIATION TURBINE FUEL AND IN FAVOUR OF AIRPORT AUTHORITIES AND FOR THE WORKING CAPITAL REQUIREMENT OF GO AIRLINES (INDIA) LIMITED

The Borrower, Go Airlines (India) Limited availed of the non-fund based financial assistance and fund based overdraft facility from Dena Bank. Mr. Nishit Dhruva (Managing Partner) along with Mr. Chirag Bhavsar, Ms. Khushbu Chhajer and Mr. Shaleen Tiwari (Associates) of MDP & Partners was the sole legal advisor for both the Borrower and the Lender and drafted the loan documentation and ancillary documents in respect of non-fund based financial assistance and fund based overdraft facility of Rs. 300,00,00,000 availed from Dena Bank, inter alia, for the suppliers of Aviation Turbine Fuel and in favour of airport authorities and for the working capital requirement availed by the Borrower.

MDP EXECUTES LOAN DOCUMENTATION FOR THE BANK GUARANTEE (“BG”) CUM STAND-BY LETTER OF CREDIT (“SBLC”) FACILITY OF INR 500,00,00,000 WITH A SUB-LIMIT OF OVERDRAFT (“OVERDRAFT/OD”) OF INR 50,00,00,000 FOR THE SECURITY OF THE LEASED AIRCRAFT, TOWARDS MAINTENANCE AND OPERATIONAL EXPENSES AVAILED BY GO AIRLINES (INDIA) LIMITED

The Borrower, Go Airlines (India) Limited availed of the BG cum SBLC with a sub-limit of OD from Bank of Baroda. Mr. Nishit Dhruva (Managing Partner) along with Mr. Chirag Bhavsar, Ms. Khushbu Chhajed and Mr. Shaleen Tiwari (Associates) of MDP & Partners was the sole legal advisor for both the Borrower and the Lender and drafted the loan documentation and ancillary documents in respect of BG cum SBLC with a sub-limit of OD of INR 50,00,00,000 availed from Bank of Baroda for the repayment of the existing high cost debt availed by the Borrower, inter alia for the security of the leased aircraft, towards maintenance and operational expenses.

MDP EXECUTES LOAN DOCUMENTATION FOR A TERM OF LOAN INR 390,00,00,000 FOR THE REFINANCING OF HIGH COST DEBT OF EXISTING PRIVATE LENDERS AND FOR COMPLETION OF THE PROJECT AVAILED BY ECSTACY REALTY PRIVATE LIMITED

The Borrower, Ecstacy Realty Private Limited availed of the term loan from Union Bank of India. Mr. Nishit Dhruva (Managing Partner) along with Mr. Chirag Bhavsar, Ms. Khushbu Chhajed and Mr. Shaleen Tiwari (Associates) of MDP & Partners was the sole legal advisor for both the Borrower and the Lender and drafted the loan documentation and ancillary documents in respect of term loan of Rs. 390,00,00,000 availed from Union Bank of India for the refinancing of high cost debt of existing private lenders and for completion of the Project.

MDP EXECUTES LOAN DOCUMENTATION FOR A TERM OF LOAN BEING LEASE RENTAL DISCOUNTING FACILITY OF INR 200,00,00,000 FOR THE REPAYMENT OF TERM LOAN FROM INDUSIND BANK LIMITED ESTIMATED AT INR 134,00,00,000 AND FOR DEVELOPMENT OF OTHER ONGOING PROJECTS/ OTHER BUSINESS PURPOSE BY CARNIVAL SOFT PRIVATE LIMITED

The Borrower, Carnival Soft Private Limited availed of the term loan from Syndicate Bank. Mr. Nishit Dhruva (Managing Partner) along with Mr. Chirag Bhavsar, Ms. Khushbu Chhajed and Mr. Shaleen Tiwari (Associates) of MDP & Partners was the sole legal advisor for both the Borrower and the Lender and drafted the loan documentation and ancillary documents in respect of term loan of Rs. 200,00,00,000 availed from Syndicate Bank for the development of other ongoing projects/ other business purpose by Carnival Soft Private Limited.

MDP EXECUTES LOAN DOCUMENTATION FOR A TERM OF LOAN BEING LEASE RENTAL DISCOUNTING FACILITY OF INR 130,00,00,000 FOR THE REPAYMENT OF TERM LOAN FROM INDUSIND BANK LIMITED ESTIMATED AT INR 115,00,00,000 AND FOR DEVELOPMENT OF OTHER ONGOING PROJECTS/ OTHER BUSINESS PURPOSE BY CARNIVAL TECHNO PARK PRIVATE LIMITED

The Borrower, Carnival Techno Park Private Limited availed of the term loan from Syndicate Bank. Mr. Nishit Dhruva (Managing Partner) along with Mr. Chirag Bhavsar, Ms. Khushbu Chhajed and Mr. Shaleen Tiwari (Associates) of MDP & Partners was the sole legal advisor for both the Borrower and the Lender and drafted the loan documentation and ancillary documents in respect of term loan of Rs. 130,00,00,000 availed from Syndicate Bank for the development of other ongoing projects/ other business purpose by Carnival Techno Park Private Limited.

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