

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. V, MUMBAI BENCH

CP No. 498/(IB)-MB-V/2021

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 4 of the
Insolvency and Bankruptcy (Application
to Adjudicating Authority) Rules,
2016

In the matter of

Moon Star Securities Trading & Finance
Co. Ltd.

222, Hemkunt Chambers, 89, Nehru
Place, New Delhi-110019

.... Petitioner

Vs.

Raghuleela Builders Private Limited

Having its Registered Office at:

One BKC, A wing 1401, Plot No. C-66,
G Block, Bandra Kurla Complex, Bandra
(East), Mumbai, Maharashtra-400051

...Corporate Debtor/Respondent

Order Pronounced On: 04.10.2021

Coram:

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Chandra Bhan Singh, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner : Ms. Ranjana Roy Gawai, Ms.
Vasudha Sen and Ms. Aayushi
Singh, Advocates

For the Respondent : None Present

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. The Petitioners/Applicant viz. 'Moon Star Securities Trading & Finance Co. Ltd.' (hereinafter as Petitioner) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Raghuleela Builders Private Limited' (hereinafter as 'Corporate Debtor').
2. In the requisite Form-1, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs.10,00,00,000/-, and the amount claimed to be in default is Rs. 13,27,13,691/-. The date of default is stated to be 28.01.2019.

SUBMISSIONS BY THE PETITIONER: -

3. The Petitioner extended an Inter Corporate Deposit (hereinafter referred to as "ICD") to the Corporate Debtor for a period of 121 days with an interest @ 21% p.a. with effect from 29.05.2018, the said amount was deposit by way of an RTGS to the Corporate Debtor on 29.05.2018.

4. The Corporate Debtor was unable to repay the ICD within the agreed period. Thereafter on 25.09.2018, the Corporate Debtor issued a communication confirming the renewal of the ICD of Rs. 10 Cr. for a period of 121 days with effect from 29.09.2018 to 28.01.2019, with an increased rate of interest of 22% p.a.
5. The Corporate Debtor had also issued five cheques payable at par, the details of the cheques are hereinbelow:

Sr. No.	Cheque Number	Cheque Date	Interest Amt @ 22% Net of TDS (In Rs.)	Cheque Drawn on
1.	124961	25.10.2018	16,27,397	ICICI Bank Bandra Branch
2.	124962	28.11.2018	16,81,644	ICICI Bank Bandra Branch
3.	124963	28.12.2018	16,27,397	ICICI Bank Bandra Branch
4.	124964	28.01.2019	16,27,397	ICICI Bank Bandra Branch
5.	124940	28.01.2019	10,00,00,000	ICICI Bank Bandra Branch

The above mentioned five cheques which were deposited by the Petitioner on the due dates had bounced.

6. Thereafter, the Corporate Debtor on 24.04.2019 again issued the cheque to repay the outstanding dues. The said cheque was deposited by the Petitioner but was returned by the bank due to insufficient funds.
7. Thereafter various rounds of negotiations and talks took place between the Petitioner and the Corporate Debtor for recovery of the outstanding amounts. After the rounds of meetings, the Corporate Debtor again issued the cheque no.

126772 drawn on ICICI bank, Bandra Branch, Mumbai, and the same was not deposited upon the specific instructions of the Corporate Debtor.

8. The Corporate Debtor once again failed to execute its obligations and since the cheque dated 20.06.2019 were on the verge of expiring, the Petitioner started following up with the Corporate Debtor for the payment, but no payments had been received from the Corporate Debtor.
9. Thereafter, on 30.10.2019 another cheque no. 121780 drawn on ICICI Bank Bandra Branch, Mumbai for an amount of Rs. 10 Cr. was issued by the Corporate Debtor and the Corporate Debtor assured that the remaining amount interest would be payed shortly. The Corporate Debtor specifically requested the Petitioner not to deposit the cheque and assured that the entire amount will be repaid via RTGS, again the Corporate Debtor failed to repay the amount to the Petitioner.
10. On 18.09.2020 due to non-payment of the dues the Petitioner had issued the legal notice on the Corporate Debtor. The Corporate Debtor replied to the legal notice on 27.09.2020 and accepted the liability to pay the outstanding debts.
11. The Petitioner produced the account statements from 01.04.2018 to 31.03.2020 to demonstrate that the Corporate Debtor has failed to pay the debt.
12. Hence, due to nonpayment of debts the Petitioner file this Petition u/s 7 of the IBC as a Financial Creditor for initiating the Corporate insolvency Resolution process (CIRP).

SUBMISSIONS BY THE CORPORATE DEBTOR:

13. The Corporate Debtor submits that the Petitioner is not legal entity/company and, therefore, does not fall under the definition of “Person” as defined u/s 3(23) of the Insolvency and Bankruptcy Code, 2016 and the Petitioner does not fall within the definition of “Financial Creditor” as defined u/s 5(7) of the Code. Therefore, no amount is due and payable from the side of the Corporate Debtor.
14. The Petitioner does not disclose the letter dated 29.05.2018 with the subject “Adjustment of ICD towards sale consideration of the said premises”, which refers that incase of default, the Petitioner can sell the one BKC building and shall make payment of balance sale consideration payable under the Agreement for sale and the Corporate Debtor shall treat the return amount as further part payment towards purchase of the premises and the Corporate Debtor shall adjust in the account. The letter clearly provided *“We shall be relived of any such payment to you and the same shall be treated as settled and repaid to you”*.
15. The Petitioner has acknowledged in the letter of mortgage dated 29.05.2018 that if the Corporate Debtor fails to make payment of Rs 10 Cr. then the Petitioner is authorized to transfer/sell the units in the building One BKC to themselves or in the open market to recover the outstanding dues and the Corporate Debtor handed over the MOFA/Agreement for sale signed by the director of the Corporate Debtor in favour of the Petitioner and for purpose of registration together with a executed, signed and sealed power of attorney in a favour of Sunil Vaidya. The copy of the letter dated 29.05.2018, copy of the mortgage letter dated 29.05.2018, copy of the Power of attorney in a favour of Sunil Vaidya and the copy of the board resolution dated 29.05.2018 are annexed to the Petition.

16. The Corporate Debtor disputes that the claim for interest from 01.06.2019 to 31.10.2020 aggregating Rs. 3,12,21,918/- or any part thereof. The Corporate Debtor also mentioned that all the claims towards interest has been paid till May 2019 and disputes the claim for payment of TDS of Rs. 14,91,773/-.
17. The Corporate Debtor submits that grave hardship, prejudice and difficulties would be caused to the Corporate Debtor and the value of the assets of the Corporate Debtor would substantially deplete, if the petition is admitted and insolvency resolution process is initiated against the Corporate Debtor. The Corporate Debtor is a reputed company engaged in the development of large and valuable real estate in Mumbai.

REJOINDER BY THE PETITIONER:

18. The Petitioner submits that the Financial Creditor is very much a legal entity/a company duly incorporated in India under the provisions of the Companies Act 1956. The Corporate Debtor has wrongly interpreted the purport of the Code, the “Person” u/s 3(25) includes a company and in turn the definition of “Financial Creditor” u/s 5(7) of the Code very much includes a “Person” to whom financial debt is owed.
19. The letter dated 29.05.2018 is a fabricated. Self-serving and concocted document that had never seen the light of the day until the filing of the Reply and the agreement between the Petitioner and Corporate Debtor does not bear the signature of the Petitioner.

20. The Petitioner submits that the Corporate Debtor is not a solvent company if the Corporate Debtor is a solvent company then Corporate Debtor would have paid the Principal Amount to the Petitioner.

FINDINGS: -

21. The Petitioner Moon Star Securities Trading & Finance Co. Private Limited (Financial Creditor) has provided Inter Corporate Deposit (ICD) of Rs. 10,00,00,000/- for a period of 121 days. The ICD was disbursed on 29.05.2018. As per the Petition, the Respondent (Corporate Debtor) defaulted in ICD payment. The ICD was extended at the rate of interest of 21% per annum. As per the Petition the outstanding amount as on 31.10.2020 is about 13.27 Crores. The Company Petition u/s 7 was filed on 16.12.2020. The ICD was secured against a mortgage of units admeasuring approximately 6.236 Sq. Ft. Carpet Area (10.131 Sq. Ft. saleable Area) of building known as “ONE BKC”.

22. The Respondent, Raghuleela Builders Private Limited has filed its reply, where inter alia, he has raised the issue that the Petitioner is not a legal entity.

23. The bench would like to deal with the issue of “Petitioner is not a Legal Entity”. The bench in this regard notes that the Petitioner is registered under the provisions of Companies Act 1956. The Petitioner has produced the incorporation certificate and master data of the petitioner which clearly shows that the Petitioner is very much a legal entity. “Person” u/s 3(25) includes a company and in turn the definition of “Financial Creditor” u/s 5(7) of the Code very much includes a “Person” to whom financial debt is owed. Therefore, the bench has no doubt about the legality of the Petitioner

24. The other issue raised by the Corporate Debtor that the ICD was adjusted towards the sale consideration of the One BKC building and in this regard one agreement

to sell had been executed between the Petitioner and the Corporate Debtor on 29.05.2018. On the bare reading of the documents, the bench notes that the alleged agreement to sell document does not bear the signature of the Petitioner. The letter dated 29.05.2018, therefore seems to be a fabricated and concocted document.

25. The Hon'ble Supreme Court in the matter of **M/s. Innoventive Industries Ltd. V. ICICI Bank & Anr. [2018 SCC 1 407]**, wherein it has been held that as per Section 7(5) of the Code while admitting the Petition filed under Section 7(2) of the Code, the Adjudicating Authority is only required to satisfy itself that:

- (a) There is a debt due and payable,*
- (b) 'Default' has occurred,*
- (c) The application filed by the "Financial Creditor" is "Complete"*
- (d) There are no disciplinary proceedings pending against the proposed resolution professional.*

26. As per Section 7(1) of the Code two conditions need to be fulfilled for filing of a Petition u/s 7 of the Code against a Corporate Debtor i.e.: -

- (i) The Petitioner must be a "Financial Creditor" and;
- (ii) "Default" must have occurred. The term "Financial Creditor" is defined in Section 5(7) of the Code which provides that "Financial Creditor" means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred. In terms of Section 5(8) of the Code, which defines the term "Financial Debt", the financial debt means "a debt along with interest, if any, which is disbursed against the consideration for the time value of money"

27. Therefore, in view of the admitted and acknowledged ICD liability of the Corporate Debtor in its letter dated 25.09.2018 and 29.09.2018 along with the Corporate Debtor's reply to the Petitioner's demand notice, it is beyond doubt that the Petitioner is a "Financial Creditor" to whom the "Financial Debt" is owned by the Corporate Debtor.

28. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt and the Corporate Debtor failed to pay. However, the Corporate Debtor did not present itself at the time of the hearing but filed the reply on 13.09.2021. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.

29. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. The formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.

30. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record

which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

31.The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Ms. Vandana Garg having registration No. IBBI/IPA-001/IP-P00025/2016-2017/10058, having address at C-3801, Oberoi Esquire, Oberoi City Goregaon East, Mumbai, Maharashtra, having email id: vskgarg0899@gmail.com, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

32.Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

33.That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

34.That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

35. In view of the above, the Bench “**Allows**” the Company Petition No. **498/(IB)-MB-V/2021** u/s.7 initiating CIRP against the Corporate Debtor Raghuleela Builders Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

36. Ordered Accordingly.

SD/-
Chandra Bhan Singh
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)