

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) - 1896/I&B/MB/2019
Under Section 7 of the I&B Code, 2016

In the matter of

Prafulla Shah
T1- 3303, Crescent Bay,
Jerbai Wadia Road,
Bhoiwada, Parel, Mumbai – 400 012

.... Financial Creditor

Vs

Safetec Healthcare & Hygiene Pvt. Ltd.
202/203, Span Land mark,
Andheri – Kurla Raod,
Andheri East, Mumbai – 400 093.

....Corporate Debtor

Order delivered on: 17.01.2020

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)
Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Chetan R. Shah a/w Abhishek Nikharge i/b
Mehul shah

For the Corporate Debtor: Sumedha Sawant i/b Nainesh N. Amin

Per: Shri Shyam Babu Gautam, Member

ORDER

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I&B) Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Prafulla Shah (hereinafter called the 'petitioner') seeking the Corporate Insolvency Resolution Process of Safetec Healthcare & Hygiene Pvt. Ltd. (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor has committed default in making the repayments of the loan granted to them.
2. The petitioner is an individual and has filed this petition against the Corporate Debtor who is a company incorporated on 04/03/1999 bearing CIN U33112MH1999PTC118633, having Authorised Capital of Rs. 4,00,00,000/- and Paid-Up Capital of Rs. 3,46,66,660/-. The petitioner is filing this petition on behalf of her

husband Mr. Prakash G. Shah (henceforth called "the deceased") who passed away on 8th August 2017.

3. The counsel for the petitioner submits that the director of Corporate Debtor Mr. Bipin Jhaveri had approached the deceased around the month of May, 2013 requesting him to grant a loan of Rs. 50,00,000/-. Accordingly, a total amount of Rs. 50,00,000/- was disbursed by the deceased in favour of the Corporate Debtor. An interest at the rate of 1% per month was to be charged on the Corporate Debtor. A promissory note for an amount of Rs.50,00,000/- and interest @12% p.m. dated 28/06/2013 was also executed between them which was payable on demand to the said deceased or his survivor.
4. The petitioner further submitted that the Corporate Debtor have paid on 1st February, 2014, the amount of interest of Rs. 3,20,000/- at the rate of 1% for the period from 19/06/2013 to 31/03/2014. By a letter dated 13/02/2015 and annexed as Annexure "D" with the copy of the petition which was addressed to the Corporate Debtor, the Financial Creditor has requested the confirmation of payment for the period from 01/04/2013 to 31/03/2014. The said amount has been paid as the interest on the principal amount till 31/03/2014 and no interest is paid thereafter.
5. Balance confirmation of Rs.50,00,000/- was made by the Corporate Debtor by the way of a promissory note dated 25/05/2016 which is annexed as Annexure "E" wherein the interest was imposed at the rate of 1% per month.
6. A Demand Notice dated 10/10/2018 for an amount of Rs.71,15,616/- which was inclusive of Rs.50,00,000/- as the principal amount and an interest of Rs.21,15,616/- calculated till 10/10/2018, was sent to the Corporate Debtor by the Financial Creditor. There was neither any reply to this Demand Notice nor was the amount paid by the Corporate Debtor. And hence, the said company petition has been filed by the Financial Creditor before this Bench.

7. Therefore, the total amount claimed to be in default by the Financial Creditor is Rs.80,49,315/- which is inclusive of Rs.50,00,000/- being the principal amount and Rs.30,49,315/- as the interest till 30/04/2019.
8. In support of the contentions made by the petitioner, the following documents have been attached in the copy of the petition:
 - i. Copy of the Death Certificate of Mr. Prakash Shah.
 - ii. Copy of the Promissory Note dated 28/06/2013.
 - iii. Copy of the Promissory Note dated 25/05/2016.
 - iv. Copy of the Demand Notice dated 10/10/2018.
 - v. Copy of the Bank Statement.
 - vi. Copy of the Confirmation of Account.
 - vii. Copy of the Consent Letter given by Ms. Neha Savla dated 09/05/2019 to act as Insolvency Resolution Professional.
9. The Corporate Debtor has denied all the contentions made by the petitioner by raising objections on the maintainability of the petition on the following grounds:
 - a. That there is no privity of contract;
 - b. That the petitioner in the present matter is not a Financial Creditor or that there is no Financial Debt due on him;
 - c. That the rate of interest is exorbitant, and the petitioner does not have any licence to carry on money lending business.
10. On the other hand, the Corporate Debtor has accepted the liability and stated that the company is not in a position to pay the dues and submits to the orders of this Bench as may be passed in their interest by admitting the petition and appointing an Interim Resolution Professional.

FINDINGS

11. We have heard both the parties at length, taken all their submissions into account and perused the documents and evidences placed on record. An amount of Rs.50,00,000/- was disbursed by the Financial Creditor in favour of the Corporate Debtor for which there was a Promissory Note dated 28/06/2013 executed by the Corporate Debtor in favour of the Financial

Creditor. Again, another Promissory Note for the same amount of Rs.50,00,000/- dated 25/05/2016 was executed. After going through these Promissory Notes, it has become very clear that there was Loan given to the Corporate Debtor by the husband of the petitioner Mr. Prakash G. Shah who later died and therefore, this petition was preferred.

12. A total amount of Rs.3,20,000/- was paid on 01/02/2014 by the Corporate Debtor to the Financial Creditor as the interest for the period from 19/06/2013 to 31/03/2014. Therefore, the total amount claimed to be in default is Rs.80,49,315/- inclusive of Rs.50,00,000/- being the principal amount plus interest @1% per month amounting to Rs.30,49,315/-. A Demand Notice dated 10/10/2018 was sent to the Corporate Debtor by the petitioner to which neither any reply nor any payment was made. Therefore, it can be safely concluded that both the parties shared a relationship that of a Creditor and Debtor.
13. The Corporate Debtor had made few contentions for dismissal of this petition which are dealt with hereunder. The very first contention is that there is no privity of contract. But it is to be noted that the Corporate Debtor itself has executed the abovementioned two promissory notes which are placed on record by the Financial Creditor. Therefore, this contention that there is no privity of contract cannot survive. The second contention raised by the Corporate Debtor is that this petition is frivolous for the reason that the petitioner is the wife of the person who has granted the said amount to the Corporate Debtor. It is a well settled principle of law that the wife is the immediate successor after the death of her husband and therefore, she is very well entitled to file this petition and therefore, this contention does not survive. The Corporate Debtor had further contended that the Financial Creditor was not entitled to carry on any money lending business and also that the rate of interest levied is exorbitant, but it is to be noted that the said amount was taken by the Corporate Debtor from the Financial Creditor themselves for which they even executed promissory notes. Also, the rate of interest which is charged by the petitioner is clearly mentioned in the said Promissory Notes executed by the Corporate Debtor themselves and therefore, it is

implied that the said rate of interest was agreed by them. This Bench firmly believes that the Corporate Debtor is raising these wild objections/contentions only to escape the liability of paying its dues.

14. Despite the above contentions made by the Corporate Debtor, there has been an admission on their part by stating that the company is not in a position to pay off the dues and therefore, submit to the orders of this Tribunal. Also, it is to be noted that the Corporate Debtor time and again made a confirmation to the total outstanding amount. Therefore, it can be safely concluded that there is an existence of debt and the Corporate Debtor is liable to repay the amount due and payable to the Financial Creditor.
15. Hence, it is hereby concluded that this petition fulfils all the requisite conditions for admission of a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 and therefore, the petition deserves to be admitted.
16. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of a petition under section 7 of the I&B Code. Therefore, the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:
 - (I) (a) 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;
 - (b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (c) 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 (SARFAESI Act);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- (II) 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.
- (III) 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.
- (IV) That the order of moratorium shall have effect from 17.01.2020 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.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints, Ms. Neha Savla, having her office at Nayana Premji Savla, 1/101-A, Vishal Susheel CHS, Nariman Road, Vile Parle (East), Mumbai 400 057 and having Registration No. IBBI/IPA-003/IP-N00051/2017-18/10491 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

17. Accordingly, this Petition is admitted.

18. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-

Shyam Babu Gautam
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)

/SNEHA/