

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

CP (IB) 170/MB/C-II/2018

Under section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

1. Mrs. Meghna Rajeev Kore

Occupation: Business, residing at Kore Lawn,
383/3, Sahyog Nagar, MSEB Road Government
Colony, Vishrambaug, Sangli- 416 416.

2. Ms. Sakshi Rajeev Kore

3. Master Dev Rajeev Kore

Through his mother and natural guardian, Mrs.
Meghana Rajeev Kore.

...Financial Creditors/Petitioners

Versus

Shaila Clubs & Resorts Private Limited

[CIN: U55101PN2005PTC020668]

Office at Kore Plaza, Behind Hotel Pia Prakash,
Vishrambaug, Sangli-416 416

...Corporate Debtor/Respondent

Order Delivered on 29.10.2021

Coram:

Hon'ble Member (Judicial) : Mr. Ashok Kumar Borah
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Rafeeq Peermohideen,
Advocate.
For the Corporate Debtor : None.

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. This is a Company Petition filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Mrs. Meghna Rajeev Kore and Anr.** ("the Financial Creditors"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Shaila Clubs & Resorts Private Limited** ("the Corporate Debtor").
2. The Corporate Debtor is a Public company limited by shares and incorporated on 02.05.2005 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is **U55101PN2005PTC020668**. Its registered office is at Kore Plaza, Behind Hotel Pia Prakash, Vishrambaug, Sangli-416 416. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions made by Financial Creditor by way of Application/Petition:

3. The Petitioners are the legal heirs of late Shri. Rajeev Ramling Kore who was founder member, promoter and Director of the Corporate Debtor.
4. The Corporate Debtor had borrowed the amount of Rs.3,59,00,000/- from the said deceased. Pertinently the amount

borrowed from the said deceased admitted in the audited statement of accounts of the Corporate Debtor. Copies of audited statement of accounts of the Corporate Debtor for Assessment years 2011-12, 2013-14, 2014-15 and 2015-16 are annexed as **“Exhibit - B1 to B4”**.

5. On 08.07.2013 Mr. Rajeev Ramling Kore passed away interstate leaving behind the Petitioners as his legal heirs entitled to inherit the estate and effect left by the deceased. Copy of Death Certificate annexed as **“Exhibit - C”** and Copy of Succession Certificate dated 09.02.2017 annexed as **“Exhibit - D”**.
6. The Petitioners on 03.10.2017 duly served at the Registered Office of the said Corporate Debtor, a notice of demand calling upon the Corporate Debtor to pay to Petitioners the said sum of Rs.3,59,00,000/- together with interest at the rate of 18% p.a. within seven days of receipt of said notice. Copy of Notice dated 03.10.2017 annexed as **“Exhibit - E”**
7. The total amount of debt as on the date of filing this Application including interest is Rs.3,76,70,410/- (Rupees Three Crores Seventy) dated of default was 14.10.2017.

Submissions made by the Advocate of Corporate Debtor by way of Affidavit in Reply:

8. It is submitted that the present Company Petition is to be dismissed on the ground that there has been no default by the

Corporate Debtor repaying the Principal Loan Amount. Section 2(12) of the Code defines a “default” as “*non-payment of debt when whole or any part of instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be*”. The Corporate Debtor submits that the Financial Creditor have failed to prove that the Principal Loan Amount has become due and payable as on the date of this Company petition Loan Amount has become due and payable as on the date of this Company Petition and the terms of repayment of the Principal Loan Amount. The Financial Creditor has also not proved that was any agreements for any levy of interest applicable to repayment of the Principal Loan Amount.

9. The Corporate Debtor states that the Deceased had provide the Principal Loan Amount to the Corporate on an oral understanding that hit would be repaid from the sale proceed of its principal asset being the club premises comprising of basement and three upper floors with swimming pool having an aggregate constructed area of 18,000 square feet (built-up) and open spaces of 6,525 square feet (built-up) at plot No. NA/164(pt) CTS no. C/12/A, Everest Cooperative Housing society Limited, 151, Hill Road, Bandra (West), Mumbai-400 050 (hereinafter referred to as the “**Club Premises**”).
10. As the Club Premised are still the subject matter of arbitration and litigation proceedings at the time of filing Affidavit-in-Reply, the

Corporate Debtor submits that the Principal Loan Amount has not become due and payable and therefore, there is no default by the Corporate Debtor in repayment of the same. The Corporate Debtor states that litigation proceedings had commenced during the Deceased's control and management of the Corporate Debtor in 2010. Therefore, the Deceased was fully aware that the Principal Loan Amount was to be repaid only from the sale proceeds of the Club Premises.

11. We have heard the arguments of Financial creditor and Corporate Debtor and perused the records.
12. In the present case in hand it is noted that the legal heirs of the Financial Creditor also successor to the Original Financial Creditor now on record. Petitioners vide a notice of demand called upon the Corporate Debtor dated 03.10.20217 to pay to Petitioners. Further it is also noted that money/loan acknowledged by the Corporate Debtor in various financial statements. The contention of the Corporate Debtor that there was understanding that money will be paid after sale of asset only has no substance in it.
13. We also consider the facts of the case in the lights of the Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section

7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

14. The Financial Creditor has proposed the name of **Mr. Milind Kasodekar**, Registration No. IBBI/IPA-022/IP-N00116/2017-2018/10285, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written consent in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
15. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
16. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP (IB) 170/MB/C-II/2018** filed by **Mrs. Meghna Rajeev Koren and Anr.**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency

Resolution Process (CIRP) against **Shaila Clubs & Resorts Private Limited [CIN: U55101PN2005PTC020668]**, the Corporate Debtor, is **admitted**.

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:

- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Milind Kasodekar**, Registration No. IBBI/IPA-022/IP-N00116/2017-2018/10285, having address at MRM Associates, Company Secretaries, 77, Vijayanagar Colony, 2147, Sadashiv Peth, Pune 411030, [email: Milind.kasodekar@mrmcs.com], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate

Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.1,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

CP (IB) 170/MB/C-II/2018

- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Dated the 29th day of October, 2021

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

29.10.2021
SAM

Sd/-

ASHOK KUMAR BORAH
Member (Judicial)