

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

CP (IB) 2161/MB/C-IV/2019

Under section 7 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

**Rushabh Civil Contractors Private
Limited**

[CIN: U45202MH2008PTC181967]

...Financial Creditor

Versus

Centrio Lifespaces Limited

[CIN: U45201MH2007PLC173246]

...Corporate Debtor

Order Delivered on 06.05.2020

Coram:

Mr. Rajasekhar V. K. : Member (Judicial)
Mr. Ravikumar Duraisamy : Member (Technical)

Appearances:

For the Financial Creditor : Mr Gaurav Joshi, Senior
Advocate, a/w Mr Feroze Patel,
i/b M/s BK Gala & Associates

For the Corporate Debtor : Mr Pradeep Sancheti, Senior
Advocate, i/b Mr Ramesh
Saraogi, Advocate

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Rushabh Civil Contractors Private Limited [CIN: U45202MH2008PTC181967] ("the Petitioner-Financial Creditor"), a company within the meaning of section 2(20) of the Companies Act, 2013 and represented by its Director, Mr Easwaran Viswanathan Iyer, on the basis of a Board Resolution dated 14.05.2019 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Centrio Lifespaces Limited ("the Corporate Debtor").
2. The Corporate Debtor is a public company limited by shares and incorporated on 20.08.2007 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its CIN is U45201MH2007PLC173246. Its registered office is at 204, 2nd Floor, B-Wing, Eastern Heights, CTS No.7-PT, PL Lokhande Marg, Govandi (E), Mumbai, Maharashtra 400 043. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 28.05.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.12,39,06,879.00 (Rupees twelve crore thirty-nine lakh six thousand eight hundred and seventy-nine only) as principal and interest as on 15.05.2019, which is the date of default.

The case of the Petitioner-Financial Creditor:

4. The case of the Petitioner-Financial Creditor is as follows: -
- (a) The Petitioner-Financial Creditor and the Corporate Debtor executed a Financial Contract on 02.12.2015, whereby it was agreed that the Petitioner-Financial Creditor would provide a loan of upto ₹12,00,00,000/- (Rupees twelve crore only) to the Corporate Debtor at an interest rate of 12% per annum, repayable on demand (Point No.1 of Sl.No.1 of Part IV at page 8 of the Petition);
 - (b) Amounts were disbursed immediately preceding and pursuant to the said financial contract, from 07.11.2015 till 11.01.2018 (Point No.3 of Sl No.1 of Part IV at page 9 of the Petition);
 - (c) The Petitioner-Financial Creditor and the Corporate Debtor maintained open accounts, and the Corporate Debtor would of its own volition make partial repayment of the principal amounts along with interest amounts to the Petitioner-Financial Creditor from time to time (Point No.4 of Sl No.1 of Part IV at page 13 of the Petition);
 - (d) The Corporate Debtor has acknowledged the existence of the financial debt, as borne out by the Confirmation of Accounts executed by the Corporate Debtor on 01.04.2016, 01.04.2017 and 01.02.2018. In terms of the Confirmation of Accounts executed on 01.02.2018, the Corporate Debtor owes a sum of

₹10,25,65,265/- (Rupees ten crore twenty-five lakh sixty-five thousand two hundred and sixty-five only) as on 31.01.2018. (Point No.5 of Sl No.1 of Part IV at page 13 of the Petition);

- (e) Since the loan is repayable on demand, the Petitioner-Financial Creditor issued a Demand Notice dated 13.05.2019 to the Corporate Debtor, calling upon the Corporate Debtor to make full payment of the outstanding loan amount of ₹12,39,06,879/- (Rupees twelve crore thirty-nine lakh six thousand eight hundred and seventy-nine only) within twenty-four hours of receipt of the Notice [Demand Notice at Exhibit 'I' at pp.78-79 of the Petition].
- (f) This Demand Notice carries the heading "Corrected Demand Notice" (p.78). The earlier Demand Notice dated 06.05.2019 has been placed on record as Exhibit 'T' at pp.267-269. The only change in the Demand Notice dated 06.05.2019 and the revised Demand Notice dated 13.05.2019 is that the reference to the Loan Agreement was erroneously stated to be 02.12.2014 instead of 02.12.2015.
- (g) There is also confirmation in the audited balance sheets of the Corporate Debtor for the financial year 2017-18, which confirms that a sum of ₹9,38,70,500/- (Rupees nine crore thirty-eight lakh seventy thousand and five hundred only) (Point No.6 of Sl No.1 of Part IV at page 13 of the Petition).

5. The Financial Contract dated 02.12.2015 has been placed on record as **Exhibit 'C'** at p.25 of the Petition. This provides for interest in case of delayed payments, to be charged at the rate of 12% per annum. Bank statements are also attached as **Exhibits 'K' to 'O'** at pp.83-202 of the Petition. The total debt due and payable to the Petitioner-Financial Creditor is ₹12,39,06,879.00 (Rupees twelve crore thirty-nine lakh six thousand eight hundred and seventy-nine only), as mentioned at p.76 of the Petition.

The case of the Corporate Debtor:

6. Mr Pradeep Sancheti, Learned Senior Counsel, appeared along with Mr Ramesh Saraogi, Learned Counsel on behalf of the Corporate Debtor and made submissions.
7. In its reply dated 05.09.2019, the Corporate Debtor has *inter alia* set up the following defence: -
- (a) Two sister concerns of the Corporate Debtor, *viz.*, Gajendra Investment Limited and Pratiti Trading Private Limited, have provided financial assistance to the Petitioner-Financial Creditor (para 3 at page 2 of the Reply);
- (b) The Petitioner-Financial Creditor and the Corporate Debtor were part of the "Satra Group of Companies." There is continuous and uninterrupted receipt and payment of money between the Petitioner-Financial Creditor and the Satra Group without any business deal backing for such movement of

funds. The petitioner is only an "adjustment company" of the Satra Group. In other words, it is a channel for managing the monetary affairs of Satra Group [para 3 and 5(ii) at page 2 and 4 of the Reply];

- (c) The name of the Corporate Debtor was changed to "Centrio Lifespaces Limited" from its earlier name of "Satra Realty and Builders Limited" consequent upon the present management group, *i.e.*, MJ Shah Group, taking over the Corporate Debtor on 19.07.2018 (para 6 at page 7 of the Reply);
- (d) There are illegal and cross financial transactions between "Satra Group" and the Petitioner-Financial Creditor between January 2015 and April 2015 to the tune of ₹7.00 crore (para 8 & 9 at page 8 of the Reply); and the same is written off in the books of the Corporate Debtor as on 31.12.2017. This siphoned off money of ₹7.00 crore between January 2015 and April 2015 is proposed to be recovered through this petition in a collusive manner;
- (e) The present petition has been filed without authority. The Board Resolution dated 14.05.2019 marked as Exhibit 'A' and Exhibit 'B' at pp.23-24 of the Petition do not authorise the filing of the present petition. Mr Easwaran Viswanathan Iyer, the Director of the Petitioner-Financial Creditor who has been authorised to file the present Petition, joined the petitioner-Financial Creditor only on 14.05.2019 and therefore he has no

knowledge of the transactions entered into previously. Further, the affidavit verifying petition is not sworn to in the manner prescribed in Form NCLT-6 (para 10 at page 10-11 of the Reply);

- (f) The so-called "Financial Contract" dated 02.12.2015 (Exhibit 'C' at p.25 of the Petition) is only an internal letter of the Satra Group created solely for filing the present petition. Further, this is in violation of the provisions of section 186 of the Companies Act, 2013, which provides that the maximum loan amount can only be upto 100% of the free reserves of a company. In the case of the petitioner-Financial Creditor, the free reserves as at 31.03.2015 were only ₹2,53,08,746/-, whereas the loan amount was upto ₹12.00 crore (para 11(i) at page 11 of the Reply);
- (g) The Income Tax Department has issued garnishee notice dated 12.01.2018 against the Petitioner-Financial Creditor and filed criminal complaints before the 38th Additional Chief Metropolitan Magistrate's Court, Ballard Pier, Mumbai (para 14 at page 13 of the Reply);
- (h) The present petition is a collusive one between the Petitioner-Financial Creditor and the Satra Group. Further, the Petitioner-Financial Creditor has to pay the dues to the sister companies of the Corporate Debtor, which have already initiated proceedings under section 7 of the IBC against the

Petitioner-Financial Creditor (para 15 at page 13 of the Reply);
and

- (i) The exercise of CIRP against the Corporate Debtor is a dishonest exercise by the Petitioner-Financial Creditor and the Satra Group. The present matter deserves full trial in a civil court since the petitioner is trying to play a fraud on the respondent. CIRP cannot be commenced in a summary trial when the petitioner has committed such dishonesty and collusion (Last para at page 14 of the Reply).

8. We have heard the arguments of both sides and perused the records including written submissions dated 5.11.2019, judgement of Hon'ble NCLAT and judgments of Hon'ble Supreme Court relied upon by both the counsel, further affidavit of the Corporate Debtor dated 16.09.2019, written arguments dated 24.09.2019, affidavit in rejoinder of the Petitioner dated 17.09.2019 and 23.09.2019 and our observations are given in the following paragraphs.

On Board Resolution

9. The Board Resolution dated 14th May 2019 of the Financial Creditor, authorising Mr Easwaran Viswanathan Iyer, Director of the Company, reads as follows: -

“RESOLVED THAT Mr Easwaran Viswanathan Iyer, Director of the Company, be and is hereby authorised on behalf of the Company, from

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time to time, to affirm, declare and sign all pleadings, applications, petitions, mutual understandings, consent terms, statements, memoranda of appeal, affidavits, appeal, reference, review or revision applications, documents, acknowledgements and papers for the purpose of complying with and/or cause to be complied with all statutory requirements and to inform, appear and represent the Company before any Government, Hon'ble High Court, Small Causes Courts and other courts of law, civil, criminal, industrial or labour, revenue or before all conciliators, other public officers, authorities, bodies or tribunals in connection with all suits, actions, petitions, appeals and other legal or other proceedings and matters whether civil, criminal, revenue, industrial or labour in which the Company may be concerned or interested whether as plaintiffs, defendants, petitioners, appellants, respondents, opponents, prosecutors, opposing creditors or in any other capacity whatsoever or otherwise howsoever and in all matters in any ways concerning the business affairs relating to property of the Company.

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10. On careful examination of the aforesaid Board Resolution, it is clear that the Board of the Financial Creditor never authorised the Director to initiate CIRP against the Corporate Debtor but to represent the company, concerning the business affairs relating to property of the company. The Corporate Debtor has rightly argued that the present petition is filed without any authority.
11. This Bench has consistently taken the stand that for initiating CIRP against a corporate debtor, specific board resolution is required rather than a general one. It is in the interest of justice that consistency in approach is maintained. Therefore, we are of

the considered opinion that without proper authorisation CIRP cannot be initiated against the Corporate Debtor.

The loan agreement

12. The Loan Agreement is dated 02.12.2015, but disbursement took place on 07.11.2015, *i.e.*, almost one month before the loan agreement, which puts a question mark on the genuineness of the purported transaction. In our opinion, this is not the usual business practice.
13. In para 5 of the Memorandum of Understanding (MoU) dated 23.03.2018, it has been recorded that *“It is hereby agreed between the signatories to this MoU that amount if any, to be paid to Rushabh shall be paid only after receipt of full amounts by SRBL from all the Creditors as stated in Annexure ‘A’ and not before.”*
14. Further, Para 6 *ibid* records that *“Rushabh declares and confirms that, this amount of ₹2 crore given to J. Vamshidhar Rao and ₹5 crore given to Shailima Kalvakuntla was given during the Satra Group Management of SRBL and is likely to be not recoverable from these two parties. If this amount of ₹7 Crore is not recoveredshall be debited by SRBL to the account of Rushabh and thus shall not be payable by SRBL to Rushabh”*. As per Annexure “A,” the Corporate Debtor has to recover a total outstanding amount of ₹19,74,48,789/-.
15. From the Particulars of Financial Debt provided in Form 1, Part IV of the petition, in the table showing the date of and amounts

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disbursed by the Financial Creditor to the Corporate Debtor, it is noted that some huge payments made to the Corporate Debtor do not appear in the five bank statements submitted by the Financial Creditor. Some of the entries are extracted in the tables below:

Sl No	Amount (₹)	Date of Disbursement	Paid to
1.	24,65,321.00	07.11.2015	No entry
2.	12,50,000.00	15.02.2016	No entry
3.	34,00,000.00	26.09.2016	No entry
4.	30,00,000.00	29.09.2016	No entry
5.	18,00,000.00	02.02.2017	No entry

16. Further, payments made to other companies and not to the Corporate Debtor have been included in the Company Petition, as extracted in the table below:

Sl No	Amount (₹)	Date of Disbursement	Paid to
1.	35,00,000.00	05.03.2016	SPDPL
2.	35,00,000.00	31.03.2016	SPDPL
3.	22,00,000.00	08.06.2016	Rushabh Civil
4.	10,00,000.00	29.06.2016	Rushabh Civil

17. Therefore, the Application in Form 1 filed by the petitioner contains lot of discrepancies.

18. Further from the bank statement of IDBI, we have also noted that the dates of transaction are not in either ascending or descending order. For example, after 9.11.2015 transaction of 7.11.2015 appears; after transaction of 9.12.2015 transaction of 7.12.2015 appears, after 30.04.2016 transactions of 28.04.2016 and 27.04.2016 appear. Therefore, the veracity of IDBI bank statement submitted by the Financial Creditor is itself in question.

Demand Notices and discrepancies noticed therein

19. As per petition, date of default is 15.05.2019. However, the first Demand Notice was issued on 06.05.2019 and the second Demand Notice was issued on 13.05.2019. Both of these dates are before the actual date of default.
20. As per Demand Notices dated 06.05.2019 and 13.05.2019, the balance amount of ₹12.39 crore is to be repayable within 24 hours of receipt of the notice. We are of the view that recalling such a huge amount within 24 hours is not a normal business practice.

Police complaint

21. A police complaint dated 07.10.2019 has been filed by the Financial Creditor requesting to register criminal complaint against one of the Directors of the Corporate Debtor for fraudulently preparing a false MoU and backdating it.
22. Since the matter is being investigated by the police authorities, we refrain from making any comments lest we prejudice the

investigations. The police authorities are free to take an independent view as regards the criminal investigations, unfettered by the views expressed in this Order.

Balance outstanding confirmation letters were signed by the old management and not by the new management

23. The Corporate Debtor also raised other issues, *e.g.*, loan agreement dated 02.12.2015 was never given to the Corporate Debtor but to the MJ Shah Group, violation of section 186 of Companies Act, 2013, etc.
24. In view of the aforesaid discussions, we are of the considered view that the Financial Creditor has failed to establish that there was a debt due and payable and that a default has occurred. Further, the Financial Creditor has failed to produce proper authorisation to initiate CIRP against the Corporate Debtor. The petition also has inconsistencies and inaccurate information and documents such as the Demand Notices being issued before the date of default, the disbursement details include payment made to other companies whose relationship with the Corporate Debtor has not been established, no corresponding Bank Entry or evidence of making payment to Corporate Debtor etc.
25. Therefore, the petition fails and CIRP cannot be initiated against the Corporate Debtor as prayed for.

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26. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on grounds of dismissal of the present petition by this Adjudicating Authority.
27. Let a copy of this order be communicated to the parties in terms of the provisions of section 9(5)(ii) of the IBC.

Sd/-
Ravikumar Duraisamy
Member (Technical)

Sd/-
Rajasekhar V.K.
Member (Judicial)

06.05.2020