IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB)1255/MB/C-IV/2020
Under section 7 of the I&B Code, 2016
In the matter of

Agrasen Trade Merchant Private Limited
…Financial Creditor
v/s.
Moli Merchant Traders Private Limited
[U51909MH2010PTC202135]
…Corporate Debtor

Order Delivered on: 23.09.2021

Coram:

Shri Rajesh Sharma — Smt. Suchitra Kanuparthi

Hon'ble Member (Technical) — Hon'ble Member (Judicial)

For the Petitioner:Mr. Amit Shah, Advocate

For the Respondent: Ms. Geeta Lundwani, Advocate

ORDER

Per:Suchitra Kanuparthi,Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by **Agrasen Trade Merchant Private Limited** ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Moli Merchant Traders Private**

Limited (“the Corporate Debtor”). The Financial Creditor claiming a sum of Rs.10,771,580/- as on 20.03.2020 which is said to be the debt and default.

BRIEF FACTS:

1. The Petitioner is involved in the business of trading mills and is a Private Limited Company incorporated under the provisions of Companies Act. The Corporate Debtor is also involved in trading of still makers.
2. The Petitioner being a Financial Creditor pursuant to the request made by the Corporate Debtor provided total loan amount of Rs.2,61,50,000/- (Rupees Two Crore Sixty-One Lakh Fifty Thousand Only). The said loan was disbursed to the Petitioner on 28.11.2018, 30.01.2019, 28.03.2019, 30.03.2019, 07.06.2019, 10.06.2019 and 15.01.2020. The Petitioner has annexed the copy of the Bank Statement evidencing disbursement of the loan to Corporate Debtor.
3. Both the parties executed an Inter-Corporate Loan Agreement dated 19th November, 2018 wherein it was agreed that the lender shall extends an amount of one crore which can be extended upto two crores.
4. It was agreed by the parties that the facility will be unsecured and the borrower will issue advance cheque of principal amount together with interest. The rate of interest payable as agreed was 15% per annum on monthly basis. It was further agreed that the facility will be repayable on demand and as an when the lender raises demand, the borrower will have to make payment within a period of 10 days of receipt of demand letter.

5. The Corporate Debtor on 29.02.2020 issued letter to the Petitioner acknowledging that they had taken loan from the Petitioner by way of short-term finance an amount of Rs.1,01,19,120/- is the principal and interest due and outstanding as on date. The Corporate Debtor also agreed to pay interest of 15% per annum on the said amount.
6. The Corporate Debtor also issued a demand promissory note dated 29.02.2020 for an amounting to Rs.1,01,19,120/- with interest @15% till the date of repayment.
7. As per the terms of agreement the said loan was to be repaid on demand by the Corporate Debtor. The Financial Creditor was in urgent need of money, hence recalled the entire loan along with applicable interest vide letter dated 10.03.2020.
8. The Petitioner had been meeting and continuously following up regarding payment but, however, the Corporate Debtor was requesting further time under the garb of false commitments to repay the loans along with interest.
9. The Corporate Debtor failed to pay agreed principal amount along with the interest and the same was accruing and remained outstanding in the Ledger Accounts of the Corporate Debtor, as maintained by the Petitioner for a period from 01.04.2018 to 31.07.2020. The last payment of Rs.12,00,000/- was received from Corporate Debtor on 27.12.2019, the said amount was adjusted towards outstanding principal and interest.

10. Pursuant to which amount of Rs.1,07,71,580/- comprising of Rs.85,00,000/- towards principal and Rs.22,71,580/- towards interest component is still due and outstanding.

11. The Corporate Debtor admitted its liability and acknowledged Ledger Account for a period from 01.04.2018 to 29.02.2020 but however, the Corporate Debtor failed to pay the outstanding dues. The table of outstanding dues is reproduced hereunder:

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Annexure L

Agrasen Trade Merchants Pvt. Ltd.
CIN: U51900MH2010PTC206067
Moli Merchant Traders Pvt Ltd
Ledger Account
W-82, Taloja Industrial Area,
MIDC, Navi Mumbai-410208

1-Apr-2018 to 29-Feb-2020

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Date		Particulars	Vch Type	Vch No.	Debit	Credit
29-11-2018	Cr	Axis Bank O/D 918030054894348	Payment	257	7,00,000.00	
30-1-2019	Cr	Axis Bank Ltd. A/C No.: 914020055792972	Payment	332	15,00,000.00	
7-3-2019	Dr	Axis Bank O/D 918030054894348	Receipt	172		1,50,000.00
25-3-2019	Cr	Axis Bank O/D 918030054894348	Payment	413	9,00,000.00	
30-3-2019	Cr	Axis Bank Ltd. A/C No.: 914020055792972	Payment	415	25,50,000.00	
31-3-2019	Dr	Axis Bank O/D 918030054894348	Receipt	193		15,00,000.00
					56,50,000.00	16,50,000.00
	Dr	Closing Balance				40,00,000.00
					56,50,000.00	**56,50,000.00**
1-4-2019	Cr	Opening Balance			**40,00,000.00**	
1-4-2019	Cr	Interest Income (Moli)	Journal	3	74,056.83	
30-4-2019	Dr	Axis Bank O/D 918030054894348	Receipt	3		20,65,000.00
	Cr	Interest Income (Moli)	Journal	10	50,228.09	
24-5-2019	Dr	Axis Bank O/D 918030054894348	Receipt	8		3,35,000.00
31-5-2019	Cr	Interest Income (Moli)	Journal	18	25,329.45	
7-6-2019	Cr	Axis Bank O/D 918030054894348	Payment	38	1,00,00,000.00	
10-6-2019	Cr	Axis Bank O/D 918030054894348	Payment	40	80,00,000.00	
30-6-2019	Cr	Interest Income (Moli)	Journal	33	1,82,011.25	
31-7-2019	Cr	Interest Income (Moli)	Journal	50	2,53,923.45	
31-8-2019	Cr	Interest Income (Moli)	Journal	55	2,57,158.37	
6-9-2019	Dr	Axis Bank Ltd. A/C No.: 914020055792972	Receipt	37		23,00,000.00
19-9-2019	Dr	Axis Bank Ltd. A/C No.: 914020055792972	Receipt	40		30,00,000.00
21-9-2019	Dr	Axis Bank Ltd. A/C No.: 914020055792972	Receipt	42		9,00,000.00
24-9-2019	Dr	Axis Bank Ltd. A/C No.: 914020055792972	Receipt	43		25,00,000.00
30-9-2019	Cr	Interest Income (Moli)	Journal	90	2,07,320.46	
11-10-2019	Dr	Axis Bank Ltd. A/C No.: 914020055792972	Receipt	54		20,00,000.00
21-10-2019	Dr	Axis Bank Ltd. A/C No.: 914020055792972	Receipt	57		16,00,000.00
22-10-2019	Dr	Axis Bank Ltd. A/C No.: 914020055792972	Receipt	59		1,00,000.00
31-10-2019	Cr	Interest Income (Moli)	Journal	102	1,29,482.32	
30-11-2019	Cr	Interest Income (Moli)	Journal	115	1,03,309.03	
27-12-2019	Dr	Axis Bank Ltd. A/C No.: 914020055792972	Receipt	111		12,00,000.00
31-12-2019	Cr	Interest Income (Moli)	Journal	126	1,06,250.92	
15-1-2020	Cr	Axis Bank Ltd. A/C No.: 914020055792972	Payment	467	25,00,000.00	
31-1-2020	Cr	Interest Income (Moli)	Journal	135	1,10,872.59	
29-2-2020	Cr	Interest Income (Moli)	Journal	143	1,19,177.40	
					2,61,19,120.16	1,60,00,000.00
	Dr	Closing Balance				1,01,19,120.16
					2,61,19,120.16	**2,61,19,120.16**

For AGRASEN [illegible] PRIVATE LIMITED
Authorised Signatory

For MOLI MERCHANT TRADERS PVT. LTD.
Sanjay A [illegible]
Director/Auth. Signatory

12. The Petitioner, thereafter, issued a Demand Notice dated 17.08.2020 to the Corporate Debtor demanding outstanding payment of Rs.1,07,71,580/-

comprising of Rs.85,00,000/- toward repayment of loan amount of Rs.22,71,580/- towards repaid interest for a period as on 31.07.2020.

13. The Corporate Debtor failed to repay the debt, hence the Petitioner has filed the petition u/s 7 of the IBC.

REPLY OF THE CORPORATE DEBTOR

14. The Corporate Debtor at the outset contended that the present petition has been filed with mala fide intentions, the Directors of Corporate Debtor as well as Financial Creditor are well-known to each other and that they had long standing working relationship.

15. The Corporate Debtor pointed out that the business activities of the Corporate Debtor have been hit since 2019, and were facing financial difficulties. The Corporate Debtor is involved in wholesale business of variety of goods, and due to COVID-19 pandemic and resulted lockdown of the Corporate Debtor faced huge losses. The Corporate Debtor, therefore, pointed out that they are striving hard to pay the outstanding dues of the Petitioner but are facing severe liquidity crisis.

16. The Corporate Debtor further, pointed out that the Financial Creditor being despite fully aware of the circumstances of the Corporate Debtor has unfairly filed the petition. The Corporate Debtor, however, has assured the Petitioner and of intentions to clear outstanding dues by selling some of the assets.

17. The Corporate Debtor, however, admitted the debt and that they have availed financial assistance from the Financial Creditor, however, they are not in a position repay the money taken from the Petitioner.

FINDINGS

18. It is undisputed fact that the parties have executed Inter-Company Loan Agreement dated 19th November, 2018 for an amount of Rs.2,61,50,000/- (Rupees two crore sixty-one lakh fifty thousand only). The said unsecured loan was disbursed to the Corporate Debtor on 28.11.2018, 30.01.2019, 28.03.2019, 30.03.2019, 07.06.2019, 10.06.2019 and 15.01.2020.

19. The short-term Inter- Corporate Loan Agreement envisages that the Petitioner would grant an amounting of Rs.1 crore which would be extended to Rs.2 crore based on good performances and satisfaction of the lender. The agreement also provides that the facility will be unsecured and the borrower will issue an advance cheque of principal amount together with interest. The rate of interest was agreed to be payable under the agreement was @15% per annum on monthly basis. Further both the parties have agreed that the facility will be repayable on demand as when the lender raises the demand, the borrower to make the payment within a period of 10 days of receipt of demand notice.

20. The borrower/ Corporate Debtor further issued Demand Promissory Note dated 29.02.2020 for an amount of Rs.1,01,19,120/- with interest @15% per annum till the date of repayment.

21. The Corporate Debtor had also acknowledged the receipt of loan amount vide letters dated 26.11.2018, 29.01.2019, 28.03.2019, 30.03.2019, 07.06.2019, 10.06.2019 and 15.01.2020.

22. The Corporate Debtor acknowledged the liability and signed the Ledger Accounts for the period from 01.04.2018 to 29.02.2020.

23. The Corporate Debtor filed his reply and contended that the Petitioner has filed present petition with mala fide intentions and that the Directors of both the companies are well-known to each other and that they had long standing working relationship.

24. The Corporate Debtor also mentions that due to ongoing COVID-19 pandemic resulting lockdown, the Corporate Debtor faced huge losses and deadlock into business activities. The Corporate Debtor is trying to resolve the issues and striving hard to clear the outstanding dues is facing severe liquidity crisis.

25. The Corporate Debtor at para 7 admitted the liability and confirms that they are not in a position to repay the advance money taken from the Financial Creditor, Para 7 of the reply is as follows:

> *"While I say that it is true that the Corporate Debtor availed financial assistance from the Financial Creditor, it is also of an admitted fact that the Corporate Debtor is not in a position to repay the advances taken from the Financial Creditor at this point of time and moreover the situation is worsened due to ongoing COVID-19 pandemic and the Corporate Debtor has to suffer irretrievable losses".*

26. This Bench is of the view that in pursuance of the Inter-Corporate Loan Agreement dated 09.11.2018 money was disbursed to the Corporate Debtor,

the Corporate Debtor failed to repay the said amount having acknowledged the debt from time to time. The last payment of Rs.12 Lakhs was made by the Corporate Debtor on 27.12.2019. In view of the unequivocal admission of liability by the Corporate Debtor in his reply, this Petition is bound to be admitted.

27. The Applicant has proposed the name of Mr. Vimal Kumar Agrawal, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-IPP00741/2017-2018/11247] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 1255/NCLT/MB/C-IV/2020 filed under Section 7 of I&B Code, 2016, presented by Agrasen Trade Merchant Private Limited, Financial Creditor/ Applicant against Moli Merchant Traders Private Limited, Corporate Debtor for initiating corporate insolvency resolution process is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

e) That 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.

f) That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

   a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

   b) a surety in a contract of guarantee to a Corporate Debtor.

II. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

III. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

IV. That this Bench appoints Mr. Vimal Kumar Agrawal, a registered insolvency resolution professional having Registration Number IBBI/IPA-001/IP-IPP00741/2017-2018/11247 as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

28. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)

23.09.2021

/skd/