

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH – I, CHENNAI

CP/IB/25/CHE/2023

(filed 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 **Coromandel Granites (I) Limited**

Mr. ASHOK GUPTA,

S/o. Shri. Dharampal Gupta,

No. 38, Laxmi Nivas Building,

Marshalls Road, Egmore, Chennai-600 008

... *Financial Creditor / Applicant*

Versus-

M/s. COROMANDEL GRANITES (I) LTD.,

C/o. G. Jayanthi, No. 2,

Kamarajar Street, 1st Floor,

Ashok Nagar, Lawspet, Pondicherry-605 008

... *Corporate Debtor / Respondent*

Present:

For Applicant : *Mr. Athiban Vijay A.K., Advocate*

For Respondent : *Mr. B. Sarath Babu, Advocate*

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 14th December 2023

ORDER

(Heard through Video Conferencing)

This petition under Section 7 read with Rule 4 of Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2016) (“the



Code”) has been filed by **Shri. Ashok Gupta** in the capacity of Financial Creditor against the Respondent/Corporate Debtor **M/s. Coromandel Granites Private Limited** for initiating Corporate Insolvency Resolution Process (“CIRP”).

2. In Part-I of the application, the Applicant has given his particulars and address of his Registered Office i.e. No. 38, Laxmi Nivas Building, Marshalls Road, Egmore, Chennai-600 008. Part-II of the application contains the details of the Corporate Debtor. It was incorporated on 30.05.1986 with Authorized Share Capital of Rs.5,00,00,000/- (Rupees Five Crores only) and Paid-Up Capital of Rs.4,99,48,000/- (Rupees Four Crores Ninety Nine Lakhs Forty Eight Thousand only) having Registered office at Pondicherry within the jurisdiction of this Tribunal.

3. In Part – III of the Application, the Applicant has proposed the name of one Mr. Perumal Ulaganathan as the Interim Resolution Professional.

4. In Part-IV, the Applicant has disclosed the debt amount and date of default as 17.02.2020, i.e. the date on which the last cheque was



returned with an endorsement "INSUFFICIENT FUNDS". In Part-V, the Applicant has given the details of the documents including Statement of Accounts, Copy of Affidavit, Loan account statement etc.

5. The Applicant has also filed the record of financial information in Form-C issued by NESL showing the default amount as Rs.4,77,16,815.15 (Rupees Four Crores Seventy Seven Lakhs Sixteen Thousand Eight Hundred and Fifteen and Paise Fifteen only) and date of default as **01.01.2019**.

6. It is alleged that the Applicant was a Financier by nature of his job and was financially assisting various businesses and individuals. He was introduced to the Corporate Debtor i.e. Coromandel Granites (I) Limited by his friend Mr. Mahendarji. He financed the Corporate Debtor with a loan of Rs.1,23,00,000/- (Rupees One Crore Twenty Three Lakhs only) with interest payable at 24% per annum compounded in various tranches by cheques drawn on Axis Bank in favour of the Corporate Debtor as detailed in Part-IV of the application. It is stated that once the amount was transferred, he was



given the position of Chief Financial Officer (“CFO”) in the Corporate Debtor Company and was also made Director of the Corporate Debtor.

7. It is alleged that the Corporate Debtor failed to repay the loan and started creating hindrances and also restricted him from entering the premises. He had a meeting with the representative of the Corporate Debtor viz., Shri. Mahaveer Bafna on 30.01.2019 wherein they mutually agreed to part ways as they were not able to work together. In the meeting, the Corporate Debtor also acknowledged that a sum of Rs.1,23,00,000/- (Rupees One Crore Twenty Three Lakhs only) was payable to the Applicant with interest. The outstanding amount was calculated as Rs.1,95,73,287/- (Rupees One Crore Ninety Five Lakhs Seventy Three Thousand Two Hundred and Eighty Seven only) which was agreed to be repaid by the Corporate Debtor in 39 installments, for which, it issued 39 post-dated cheques as per details as **Annexure-I(4)**.

8. A Demand Promissory Note was also executed along with an Affidavit on 31.12.2018 by the representative Shri. Mahaveer Bafna on



behalf of the Corporate Debtor promising to repay the said amount with interest.

9. It is alleged that when the Applicant presented the first seven installment cheques to his bank M/s. Axis Bank Limited, Purasawalkam Branch, Chenna-600 007, he was shocked to find that all the above cheques were dishonoured with an endorsement "FUNDS INSUFFICIENT" vide **Annexure-1(7)**. He tried to contact the Corporate Debtor but they avoided which made the Applicant issue notice dated 20.02.2022 (**Annexure-1(8)**) to the Corporate Debtor calling upon it to pay the amount. However, the Corporate Debtor neither responded to the notice nor paid any amount. It is stated, last installment repayment was to be made by 15.06.2021 which the Corporate Debtor failed to repay.

10. On getting notice of the application, the Corporate Debtor/Respondent filed the reply denying the averments made in the application and alleged that in March, 2020, the Applicant had taken signed cheques and misused it with an intention to spoil the name of the Corporate Debtor. A Legal notice dated 14.03.2020 was sent to the



Applicant for claiming the signed cheques illegally stolen from the custody of the Corporate Debtor and misusing the same but the Applicant never responded to the notice nor returned the cheques. It is alleged that no ledger confirmation has been filed by the Applicant. It is also alleged that the alleged default took place in 2018, so the application filed by the Applicant is barred by limitation.

11. Rejoinder is filed by the Applicant wherein he denied the averments made in the reply/counter and reiterated what has been stated in the application. It is stated that the amount lent by the Applicant to the Corporate Debtor was shown as a part of indebtedness and borrowings of the Corporate Debtor as an Unsecured Loan in its financial statements for the FY 2021 – 2022, as available with the Ministry of Corporate Affairs i.e. MGT Form-7, MGT-Form 8 and Form No.AOC4 – XBRL. It is alleged that the alleged notice dated 14.03.2020 was not received by the Applicant. It is stated that, the Applicant had provided loan to the Corporate Debtor in his individual capacity which was to be repaid along with interest and the same was acknowledged as a debt under Section 5(8) of IBC, 2016 by the Corporate Debtor in the affidavit dated 30.01.2019 filed as



Annexure-I(6). The bank statements clearly show that the amount was transferred from the Applicant's account to the Corporate Debtor. It is stated that the last post-dated cheque was returned by the Bank on 17.02.2020 and therefore the petition was filed well within the period of limitation.

12. We have heard Learned Counsel for the parties and perused the record.

13. The statement of accounts placed by the Applicant of his Account Number 189010100044341 for the period from 01.04.2016 to 26.12.2022 maintained with Axis Bank, Laxmi Vilas Bank Building, Marshalls Road, Egmore, Chennai-600 008 show that on various dates the amount were transferred to the Respondent/Corporate Debtor in his personal capacity (**Pages 41-100**). The Corporate Debtor in order to repay the loan, had issued the post-dated cheques, drawn on Indian Bank, Thousand Lights Branch, Chennai in favour of the Applicant. The Respondent through its Managing Director Shri. Mahaveer Bafna for himself and other Directors, had signed an Affidavit dated 30.01.2019 whereby he had acknowledged that Ashok Gupta had



financed the company a loan of Rs.1,23,00,000/- (Rupees One Crore Twenty Three Lakhs only) with interest payable at 24% per annum compounded on the 1st of every Calendar Month and the outstanding amount as on 31.12.2018 is Rs.1,95,73,287/- (Rupees One Crore Ninety Five Lakhs Seventy Three Thousand Two Hundred and Eighty Seven only). This affidavit also finds reference of repayment through 39 post-dated cheques in favour of the Applicant affirming that the cheques on presentation would be honoured.

14. It may be true that Shri. Ashok Gupta was introduced as Director in the Company/Corporate Debtor in the year 2016 but the record shows that he had lent finance / money to the Corporate Debtor in his individual capacity not as a Director, which the Company/Corporate Debtor was liable to repay. The Applicant has given the repayment details at Page-120 of the application and also placed the cheque Return Memos.

15. It is seen from the record that when the Respondent/Corporate Debtor failed to repay the loan, the Applicant sent a legal notice to the Respondent calling upon to repay the loan along with interest lest he



would be constrained to initiate IBC proceedings against the Corporate Debtor. The NeSL Certificate filed by the Applicant shows the date of default as 01.01.2019 and outstanding/debt amount as Rs.4,77,16,815.15/- (Rupees Four Crores Seventy Seven Lakhs Sixteen Thousand Eight Hundred and Fifteen only). Record shows that the Corporate Debtor neither responded to the legal notice nor filed any reply.

16. In the instant case, the Respondent has claimed to have sent a legal notice dated 14.03.2020 alleging that the Applicant has stolen the signed cheques from the custody of the Corporate Debtor and misused the same. Surprisingly, the Corporate Debtor did not give any instructions to the Bank to stop payment against the cheques nor lodged any criminal complaint against the Applicant as to the theft of the signed cheques. It appears that the Respondent sent the notice as a counterblast to the legal notice dated 28.02.2020 sent by the Applicant for initiating the criminal complaint under the Negotiable Instrument Act regarding dishonour of the cheque for a sum of Rs.5,00,000/- (Rupees Five Lakhs only). It is seen from the record that the post-dated cheques are of the period from 15.11.2019 to 15.06.2021. Out of



the above post-dated cheques, 13 post-dated cheques were returned unpaid with an endorsement "FUNDS INSUFFICIENT" during the period from 16.11.2019 to 17.02.2020. This application has been filed on 03.01.2023. It is settled position of law that when a cheque is issued, irrespective of the fact whether it is honoured or dishonoured, would amount to acknowledgment of debt as envisaged by Section 18 of the Limitation Act, 1963.

17. In the instant case, the Applicant has proved the debt which is more than Rs.1.00 Crore (Rupees One Crore) i.e. the threshold limit provided under Section 4 of the IBC. He had advanced the loan in the capacity of Financial Creditor and the said debt is a 'financial debt' as it was debt carrying an interest disbursed against the consideration for the time value of money which has also been held in the case of "*Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd., (2023) 3 SCC 753*". It is settled law that the Director of the Corporate Debtor can be qualified as a Financial Creditor and there is no restriction for the same. It was held in the case of "*Shailesh Sangani v. Joel Cardoso and Another, 2019 SCC Online NCLAT 52*" that the monies advanced by the Directors for the Shareholders of the Company to improve the



financial health or boost the economic prospects of a Company have the commercial effect of borrowing and as such it is a 'financial debt'. Non-payment of such debt falls within the mischief default defined under Section 3(12) of the Code.

18. Having considered all the facts and circumstances in totality, we are of the view that the Applicant has made out a case in his favour for initiating CIRP against the Corporate Debtor. Application filed by the Applicant/Financial Creditor is well within the period of limitation. The Applicant/Financial Creditor has proved that there is 'financial debt' and the consequent 'default' committed by the Corporate Debtor.

19. Further, the default arising in the present case is much prior to the advent of Covid-19 pandemic and as such the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. In the said circumstances we are left with no other option than to initiate (CIRP) Corporate Insolvency Resolution Process as against the Corporate Debtor. We therefore **admit** this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

20. The Financial Creditor has proposed the name of **Mr. Perumal Ulaganathan**, having **Reg. No. IBBI/IPA-001/IP-P00970/2017-**



2018/11600; Email ID: apunathan@yahoo.co.in as the Interim Resolution Professional ("IRP") who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 10/12/2024. **Mr. Perumal Ulaganathan** is appointed as the IRP and is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

21. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;



22. However, during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.



23. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

24. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



25. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

26. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

27. The IRP shall take custody of the records of information relating to the assets, finances and operations of the Corporate Debtor referred in clause (a) of section 18 and such other information required under regulation 36; and also the assets recorded in the balance sheet of the Corporate Debtor or in any other records referred in clause (f) of



section 18 of IBC, 2016 and the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall provide to the IRP, the list of assets in terms of Regulation 3A of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016.

28. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

29. Based on the above terms, the Petition stands admitted in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in



relation to the Corporate Debtor to the Registrar of Companies concerned.

30. Accordingly, CP/IB/25/CHE/2023 stands **admitted**.

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (JUDICIAL)