

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

CP (IB) 244/2023

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

**Rushabh Civil Contractors Private
Limited, Through Interim Resolution
Professional**

[CIN: U45202MH2008PTC181967]

Having Registered Office at –

G-31, Prime Malt, Beside Irla- Church,
Irla Road, Vile Parle-West Mumbai,
Maharashtra - 400056

**... Financial Creditor /
Petitioner**

Versus

M/s. Point Developers Private Limited

[CIN: U45202MH2011PTC213880]

Having Registered Office at -

Office No. 505, Business Point, D. K. Sandhu
Marg, Opposite Saibaba Mandir, Chembur
Mumbai, Maharashtra, 400071

**... Corporate Debtor /
Respondent**

Order Delivered On : 26.07.2024

Coram:

Hon'ble Member (Judicial) : Sh. Justice Virendrasingh G Bisht (Retd.)

Hon'ble Member (Technical): Sh. Prabhat Kumar

Appearances:

For the Financial Creditor : Mr. Kunal Damle, Advocate

For the Corporate Debtor : Mr. K. Vaishonav, Advocate

ORDER

Per: Prabhat Kumar, (Member, Technical)

1. This Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by **Rushabh Civil Contractors Private Limited**, through its Interim Resolution Professional, Mr. Debi Prasanna Sarangi (“Financial Creditor”), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **M/s. Point Developers Private Limited (“Corporate Debtor”)**.
2. The Corporate Debtor is a private company limited by shares incorporated on 22.02.2011 under the Companies Act, 1956, with the Registrar of Companies, Mumbai. Its registered office is situated at Office No. 505, Business Point, D. K. Sandhu Marg, Opposite Saibaba Mandir, Chembur Mumbai, Maharashtra, 400071. Therefore, this Bench has jurisdiction to deal with this Petition.
3. The present Petition was filed on 20.01.2023 before this Adjudicating Authority on the ground that loans and advances of Rs.9,56,83,836/- (Rupees Nine Crores, Fifty Six Lakhs, Eighty Three Thousand, Eight Hundred and Thirty Six Only) were availed by the Corporate Debtor i.e. Rs. 3,50,00,000/- (Rupees Three Crores and Fifty Lakhs Only) along with interest at the rate of 18% p.a. and the Corporate Debtor has defaulted in repayment of the same.
4. The total amount claimed to be in default by the Financial Creditor is Rs.9,56,83,836/- (Rupees Nine Crores, Fifty Six Lakhs, Eighty Three

Thousand, Eight Hundred and Thirty Six Only). The date of default is stated to be 07.12.2022.

Submissions advanced by Learned Counsel on behalf of the Financial Creditor

5. The Financial Creditor submits that the Corporate Debtor approached the Financial Creditor in 2016 seeking financial assistance. Accordingly, the Financial Creditor provided financial assistance to the Corporate Debtor by way of loans and advances to be repayable with interest thereon as and when demanded by the Financial Creditor.
6. It is submitted that on 16.12.2016, the Financial Creditor transferred an amount of Rs. 3,50,00,000/- (Rupees Three Crores and Fifty Lakhs Only) to the Corporate Debtor being amount towards loans and advances ("**Advance Amount**").
7. It is submitted that this Tribunal vide Order dated 27.06.2022 in CP(IB) No. 2440/2019 initiated CIRP against the Financial Creditor herein. Further, vide Order dated 22.08.2022, this Tribunal appointed Mr. Debi Prasanna Sarangi as the Interim Resolution Professional ("**IRP**") of the Financial Creditor. On perusal of the books of accounts and records of the Corporate Debtor, the IRP noticed that repayment of loans and advances along with interest thereon is due and payable by the Corporate Debtor.
8. Accordingly, the IRP vide Legal Notice dated 29.11.2022 requested the Corporate Debtor to repay the amount advanced along with the interest thereon within 7 days of receipt of the Notice. However, the Corporate Debtor failed to respond to the Notice and also failed to repay the debt due. The Legal Notice dated 29.11.2022 demanding payment was sent on 30.11.2022. Therefore, the date of default is stated to be 07.12.2022, i.e. 7 days from 30.11.2022.
9. The total outstanding amount of debt is Rs. 9,56,83,836/- (Rupees Nine Crores, Fifty Six Lakhs, Eighty Three Thousand, Eight Hundred

and Thirty Six Only), Rs. 3,50,00,000/- (Rupees Three Crores and Fifty Lakhs Only) being amount towards loans and advances along with interest @18% p.a. thereon till 31.12.2022 being Rs. 6,06,83,836/- (Rupees Six Crores, Six Lakhs, Eighty Three Thousand, Eight Hundred and Thirty Six Only).

10. The Corporate Debtor vide its Reply to the present Petition has disputed the debt and the maintainability of the Petition.

Submissions advanced by the Learned Counsel on behalf of the Corporate Debtor

11. The preliminary objection raised by the Corporate Debtor is on the issue of maintainability as the Applicant has failed to substantiate how the Petitioner falls within the ambit of a "Financial Creditor" as defined under the Code. It is submitted that no financial debt exists in the present case and thus, the Petitioner does not have any locus to maintain this Petition.
12. The Corporate Debtor submits that the Petitioner has failed to produce any document in support of its contention that a financial debt exists between the parties. In the absence of any such contract, it is submitted that the present Petition is not maintainable.
13. The present Petition has been filed contending that a loan was disbursed on 16.12.2016 without providing any document proving such disbursement. It is submitted that this Petition ought to be rejected for lack of any particulars. Moreover, it is submitted that the Petition today is time barred.
14. The Petitioner is presently a company undergoing CIRP and is under the control and management of its IRP. Despite the same, the Petitioner has not placed on record any resolution passed by the CoC approving the initiation of such proceedings or any Order by the

Tribunal permitting such a proceeding. Therefore, the present Petition has been filed without the requisite authorisation.

15. Further, vide an Order dated 12.07.2022 passed by the Hon'ble National Company Law Appellate Tribunal ("NCLAT"), the IRP has been directed not to constitute the CoC and the only permission granted to the IRP is to keep the Corporate Debtor as a going concern. It is submitted that the demand notice in respect of the purported loan has also been sent after the date of the above-mentioned Order. In view of the lack of any approval and the specific directions passed by the Hon'ble NCLAT, it is submitted that the IRP does not have the authority to initiate the present proceedings.
16. It is further submitted that present Petition wrongly claims the date of default to be 07.12.2022, i.e., the date when as per the Legal Notice dated 29.11.2022, the purported loan was to be repaid. The parties had, vide a letter dated 20.08.2020, agreed that the monies would be repaid on or before 01.12.2020. Consequently, the present Petition is not maintainable in view of Section 10A of the Code.
17. Moreover, the letter mentioned above also evidences that no financial debt exists as the Petitioner accepted premises in the allotted Project in lieu of the monies owed to it.
18. It is also the Corporate Debtor's case that in order to be able to legally provide financial assistance, the Corporate Debtor would require a money lending license as prescribed by the Maharashtra Money Lending (Regulation) Act, 2014. In the absence of such license, it is submitted that the institution of the present proceedings is barred under the provisions of the Maharashtra Lending (Regulations) Act, 2014 and hence ought to be rejected.

19. It is submitted that the purported amount was never granted as financial assistance to the Corporate Debtor. The Petitioner has referred to the purported amount as advances as well as loan/financial assistance. Thus, the Petitioner itself is unaware of the exact nature of the transaction and whether the debt is financial or operational debt.
20. It is further submitted that before the Respondent could respond to the Legal Notice dated 29.11.2022, the Petitioner had already lodged the present Petition. It is submitted that the failure to respond to the Legal Notice does not amount to any admission of liability.

Findings

21. We have heard the parties and perused the records.
22. We shall first deal with the issue of maintainability before adjudicating on the merits of the case.
23. The Respondent has challenged the maintainability of the present Petition on the following grounds :
 - i. failure of establishing financial debt
 - ii. lack of documents to support existence of financial debt
 - iii. lack of document evidencing disbursement of loan
 - iv. barred by limitation
 - v. the correct date of default being 01.12.2020, the present Petition cannot be filed in view of Section 10A of the Code
 - vi. want of requisite authorisation
24. It is noted that there is no written contract for the transaction, and the Petitioner has relied on the entries made in their Ledger to establish that a debt exists. This Tribunal ordered the Corporate Debtor to place their Ledger on record and after perusing the same, it was observed that there were indeed corresponding entries of the said amount advanced

to the Corporate Debtor in their Ledger. The Corporate Debtor's Ledger also displayed entries regarding payment of "Interest on Loan" and "T.D.S. on Interest". The Corporate Debtor has refuted that the entries regarding the TDS payment amount to acknowledgement of debt by placing reliance on *P.M. Cold Storage Pvt. Ltd. vs Goouksheer Farm Fresh Pvt. Ltd. and Mr. Sanjeev [Company Appeal (AT) (Insolvency) No. 615 of 2020]* wherein it was held as follows :

"20. The fact that the corporate debtor has paid TDS on interest payable cannot be considered as acknowledgement in writing of the liability by the corporate debtor and therefore, such TDS payment will not have any effect of being an acknowledgement of debt."

25. However, the Corporate Debtor has also placed on record a Letter dated 20.08.2020 wherein they have admitted that there are outstanding loans that remain to be paid and the representative of the Corporate Debtor has undertaken to repay the entire outstanding amount on or before 01.12.2020. It is important to note here that although the Corporate Debtor has disputed the nature of debt, they themselves have referred to the outstanding amount as a "Loan" in the above-mentioned Letter, implying that they were complicit in the understanding that the debt indeed does amount to a financial debt.
26. We are of the opinion that this Letter constitutes an acknowledgement of debt qua the Corporate Debtor in addition to clarifying the nature of debt. Hence, the Corporate Debtor's contention that there are no documents to substantiate the establishment and existence of a financial debt and subsequent default hold no ground.
27. The contentions of limitation and requisite authorisation are enmeshed and hence shall be dealt with together.

28. It is the Petitioner's case that the loan was disbursed to the Corporate Debtor on 16.12.2016 to be repayable with interest thereon as and when demanded by the Petitioner. Subsequently, the IRP of the Petitioner vide Legal Notice dated 29.11.2022 sent to the Corporate Debtor on 30.11.2022 requested the Corporate Debtor to repay the amount advanced along with the interest thereon within 7 days of receipt of the Legal Notice, which the Corporate Debtor failed to repay. Therefore, the date of default as per the Petitioner is stated to be 07.12.2022, i.e. 7 days from 30.11.2022. Per contra, the Corporate Debtor contends that the parties had, vide a letter dated 20.08.2020, agreed that the monies would be repaid on or before 01.12.2020 and hence upon failure to repay, the date of default should be 01.12.2020. Consequently, the present Petition is not maintainable in view of Section 10A of the Code, which bars initiation of CIRP proceedings against any Corporate Debtor for any default arising on or after 25.03.2020 for a period of one year therefrom.
29. During the course of arguments, the Counsel for the Corporate Debtor also relied on *Radha Exports (India) Private Limited vs K.P. Jayaram and Anr. [(2020) 10 Supreme Court Cases 538]* decided by the Hon'ble Supreme Court to state that in accordance with Articles 19, 20 and 21 of the Limitation Act, 1963, the limitation period for the present Petition expired within 3 years from when the loan was made/when the cheque was paid, i.e. within 3 years from 16.12.2016, i.e. 16.12.2019. The Counsel for the Petitioner rebutted this contention by stating that the Letter dated 20.08.2020 sent by the Corporate Debtor to the Petitioner amounts to a written acknowledgement of liability by the Corporate Debtor, and in accordance with Section 18 of the Limitation Act, 1963, this would result in a fresh period of limitation to be computed from the time when the acknowledgment was so signed. However, the Counsel for the Corporate Debtor was quick to point out that Section 18 of the Limitation Act, 1963 provides for a fresh computation in cases where such written acknowledgment of

liability has been signed before the expiration of the prescribed period for a suit or application in respect of any property or right, which in the present case, expired on 16.12.2019 and hence, the Petitioner's reliance on Section 18 of the Limitation Act, 1963 is erroneous.

30. The Corporate Debtor has also disputed the Petitioner's computation of the date of default, and consequently, the computation of limitation on the ground that the IRP of the Petitioner did not have the requisite authority to take any action against the Corporate Debtor including the issuance of the Legal Notice dated 29.11.2022, which forms the basis for the Petitioner's computation of limitation.
31. The Corporate Debtor has relied on the Order dated 12.07.2022 passed by the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of *Rahul H. Mehta vs Gajendra Investment Ltd. & Anr. [Company Appeal (AT)(Insolvency) No. 739 of 2022]*, wherein the Hon'ble NCLAT has directed as follows :

"Subject to deposit of the said amount, the IRP shall not constitute the Committee of Creditors in pursuance of the Impugned Order dated 27th June, 2022 however IRP shall continue and keep the Corporate Debtor as a going concern."

32. It is the Corporate Debtor's contention that the IRP of the Petitioner herein, the Appellant in the above-mentioned matter, was directed not to constitute the CoC subject to the payment of the deposit of the said amount by the Appellant. The subsequent Order of the NCLAT dated 22.07.2022 records that the Appellant had deposited the requisite amount and accordingly, the IRP did not constitute the CoC. The Corporate Debtor has then questioned how the present Petition came to be filed without a CoC resolution approving the same, which is a requisite under the Code. The Corporate Debtor has further argued that in light of the above-mentioned Order of the Hon'ble NCLAT, the IRP had a very limited role in the CIRP proceedings of the Petitioner Company herein.

33. It is trite law that in cases where terms of repayment cannot be ascertained and the loan is repayable on demand, the demand notice seeking repayment becomes the primary document to ascertain the date of default. In the present case the Legal Notice issued by the IRP of the Petitioner herein states that repayment is to be made within 7 days of receipt of the Legal Notice, i.e. on or before 07.12.2022. The Corporate Debtor has failed to repay the outstanding debt and therefore, the date of default is correctly stated by the Petitioner to be 07.12.2022. The present Petition has been filed on 06.02.2023 and is therefore well within the requisite limitation period.
34. As regards the requisite authorisation for filing of the present Petition, this Bench drew the attention of the Counsel of the Corporate Debtor to the Hon'ble NCLAT's Order dated 12.07.2022 placed on record by them which also states that “*...however IRP shall continue and keep the Corporate Debtor as a going concern.*” which implied that the IRP could undertake all actions required to ensure that the Corporate Debtor's operations are continued.
35. The Counsel for the Corporate Debtor upon this inquiry by the Bench placed reliance on Section 20 of the Code which propounds actions to be undertaken by the IRP to manage the operations of the corporate debtor as a going concern. Section 20 of the Code is reproduced below for convenience :

20. Management of operations of corporate debtor as going concern.

(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

(2) For the purposes of sub-section (1), the interim resolution professional shall have the authority-

(a) to appoint accountants, legal or other professionals as may be necessary;

(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

Provided that no prior consent of the creditor shall be required where the value of such property is not less than the amount equivalent to twice the amount of the debt.

(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and

(e) to take all such actions as are necessary to keep the corporate debtor as a going concern.

36. The Corporate Debtor argued that Section 20 of the Code does not empower the IRP to initiate any judicial or quasi-judicial proceedings.
37. However, we are of the opinion that Section 20 is to be read in conjunction with Section 25 of the Code. Section 25 of the Code is reproduced below for convenience :

25. Duties of resolution professional. -

(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: -

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;

(c) raise interim finances subject to the approval of the committee of creditors under section 28;

(d) appoint accountants, legal or other professionals in the manner as specified by Board;

(e) maintain an updated list of claims;

(f) convene and attend all meetings of the committee of creditors;

(g) prepare the information memorandum in accordance with section 29;

(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.

(i) present all resolution plans at the meetings of the committee of creditors;

(j) file application for avoidance of transactions in accordance with Chapter III, if any; and

(k) such other actions as may be specified by the Board.

38. It is clear that Section 25(2)(b) empowers the Resolution Professional to exercise rights for the benefit of the Corporate Debtor in judicial, quasi-judicial or arbitration proceedings and that the Resolution Professional does not need to rely on the CoC's approval for the same. Hence, we are of the considered view that the IRP of the Petitioner Company herein was well within his rights to issue the Legal Notice dated 29.11.2022.

39. As demonstrated above, the present Petition is maintainable on all counts.
40. The Corporate Debtor has also disputed that the debt claimed no longer exists as their Letter dated 20.08.2020 provided for an alternate remedy that the Petitioner Company had accepted.
41. The Letter dated 20.08.2020 reads as follows :

“In view of our discussion and the prevailing Covid situation it is agreed that with respect to the Loan and the entire outstanding balance shall be repaid by you on or before 01.12.2020.

In the event we fail the repay the entire outstanding amount on or before 01.12.2020 it is agreed, accepted and acknowledged that in lieu of entire outstanding amount we shall ensure allotment of 2 residential premises admeasuring 897 sq.ft. each in E Wing at 2nd Floor to you in the Project being F Residencies, Ghatkopar at Chembur, Mumbai which is being currently being developed by a Director of our Company. The present letter by itself shall be treated as letter of allotment for the given area.”

42. However, the Petitioner has stated that the construction of the said Project has not even begun and this letter is being utilised as a dilatory tactic by the Corporate Debtor to evade its admitted liability towards the Petitioner Company.
43. Upon hearing both sides, we find force in the Petitioner’s contention and find that the Petitioner cannot be deprived of its right to pursue an alternate course of action towards resolution of its debt.
44. 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 Code. Therefore, the debt and default stands established and there is no reason to deny the admission of the present Petition. In view of this,

this Tribunal admits this Petition and orders initiation of CIRP against the Corporate Debtor

45. The Financial Creditor has proposed the name of Mr. Manoj Kumar Agrawal, Registration No. IBBI/IPA-001/IP-P00714/2017-2018/11222, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

46. It is, accordingly, hereby ordered as follows: -

(a) The Petition bearing CP (IB) 244/2023 filed by Rushabh Civil Contractors Private Limited, the Financial Creditors, under Section 7 of the Code read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against M/s. Point Developers Private Limited [CIN: U45202MH2011PTC213880], the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under Section 14 of the Code, 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 Code 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 Tribunal approves the Resolution Plan under Sub-Section (1) of Section 31 of the Code or passes an order for Liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) Mr. Manoj Kumar Agrawal Registration No. IBBI/IPA-001/IP-P00714/2017-2018/11222, having address at B-83, Andheri Green Field Tower C H S Limited, Jogeshwari Vikhroli link Road, Near Poonam Nagar, Andheri East, Mumbai City, Maharashtra, 400093 is hereby appointed as Interim Resolution Professional (“**IRP**”) of the Corporate Debtor to carry out the functions as per the Code. 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 Code.

- (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.5,00,000/- (Rupees Five 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.
- (j) The 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.

Sd/-

Prabhat Kumar
Member (Technical)

/SP/

Sd/-

Justice V.G. Bisht
Member (Judicial)