IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P. (IB) - 815/MB/2020

Under Section 7 of the I&B Code, 2016

In the matter of

Moli Merchant Traders Private Limited

W 82, Taloja Industrial Area (Taloja M.I.D.C.) Village Tondhare, Panvel, Dist. Raigarh, Navi Mumbai- 410208

.... Petitioner

vs.

M/S Enrich Shreya Marine Infrastructures Private Limited

32/33, Gopal Bhuwan, 2nd Floor, 199, Princess Street, Mumbai- 400002

.... Corporate Debtor

Order Pronounced on 18.02.2021

Coram: Hon'ble Suchitra Kanuparthi, Member (Judicial)
Hon'ble Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv. Geeta Lundwani i/b Adv. Naveen Maheshwari

For the Corporate Debtor: Adv. Smit Shah

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. Moli Merchant Traders Private Limited (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Enrich Shreya Marine Infrastructures Private Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default to the extent of Rs. 37,63,507/- including interest at the rate of 12% p.a. as provided under Section 7 of Insolvency and Bankruptcy Code,

2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Contentions of the Petitioner:

2. The Counsel for the Petitioner submits that the Corporate Debtor requested the Petitioner to grant it a financial assistance for an amount of ₹35,00,000/- on 10.07.2019. The Petitioner, vide its Reply dated 13.07.2019, agreed to provide the said financial assistance to the Corporate Debtor by way of unsecured corporate loan for a period of six months along with interest at the rate of 12% p.a. The said loan of ₹35,00,000 was disbursed by the Petitioner on 15.07.2019.

3. The Corporate Debtor, vide its letter dated 15.07.2019, confirmed the receipt of the said loan and a promissory note dated 15.07.2019 was also submitted by one Mr. Jitendra Shukla on behalf of the Corporate Debtor who was authorized to execute documents pertaining to the said loan in Board Resolution dated 10.07.2019. In connection to the said loan, the Corporate Debtor also handed a Cheque No. 104593 dated 16.01.2020 drawn on Bharat Cooperative Bank Limited, Borivali east branch for ₹35,00,000/- against repayment of the temporary loan. The Petitioner, based on the representation made in the letter dated 15.07.2019, presented the said cheque to the Bank for payment which was dishonored and returned by the banker with remarks 'funds insufficient'.

4. The Counsel for the Petitioner further submits that the Corporate Debtor has failed to pay the agreed principal amount along with the interest even after various meetings and following ups regarding the payments. The Corporate Debtor had been requesting and buying time in the garb false commitments to repay the loan amount along with interest. The Corporate Debtor has failed to pay the agreed principal amount along with the interest and this outstanding amount is also reflected in the Ledger Account statements maintained by the Petitioner for the Corporate Debtor for the period of 01.04.2019 to 29.02.2020. The Corporate Debtor

has not paid even a single penny towards the interest or the repayment of the principal amount of the said loan till date to the Petitioner.

5. The Petitioner has enclosed the following documents in respect of the above said deposit:

a. Copy of the Letter dated 10.07.2019 and Reply Letter dated 13.07.2019
b. Copy of the Bank Statement evidencing disbursement of loan of ₹35,00,000/- on 15.07.2019 to the Corporate Debtor
c. Copy of the Letter dated 15.07.2019 issued by the Corporate Debtor
d. Copy of the demand promissory note dated 15.07.2019 executed by the Corporate Debtor along with the Board resolution dated 10.07.2019
e. Copy of the Cheque dated 16.01.2020
f. Copy of the Bank Memo issued by ICICI Bank and Bank Statements of 22.01.2020
g. Copy of the Ledger Account statements maintained in the books of the Petitioner for the period of 01.04.2019 to 29.02.2020

<u>Contentions of the Corporate Debtor:</u>

6. The Counsel for the Corporate Debtor submits that the business of the Corporate Debtor has been facing financial crisis since 2019 and which got worsened due to the prevailing pandemic. The Corporate Debtor deals in underwater construction services and due to lockdown faced huge losses. The Petitioner, despite being aware of the circumstances of the Corporate Debtor, has unfairly filed the present Petition against the Corporate Debtor seeking payment of the entire outstanding. The Corporate Debtor had assured and informed the Petitioner of its every intention to clear the outstanding dues somehow but the Petitioner did not pay any heed to it. Even during the meetings between the directors of the Petitioner and Corporate Debtor, it was also assured that the Corporate Debtor would not only pay back the entire amount outstanding but would

also pay interest, however it would only be possible after the activities of the Corporate Debtor commence and the Corporate Debtor is profitable again.

7. The Counsel for the Corporate Debtor further submits that it is an admitted fact that the Corporate Debtor availed financial assistance from the Petitioner and the Corporate Debtor is not in position to repay the advances taken from the Petitioner at this point of time due to its bad financial condition.

<u>Findings:</u>

8. The Bench notes that the Petitioner granted financial assistance of ₹35,00,000/- to the Corporate Debtor on 15.07.2019, the receipt of which was confirmed by the Corporate Debtor through a promissory note of the same date submitted by one Mr. Jitendra Shukla on behalf of the Corporate Debtor. In connection to the said loan amount, the Corporate Debtor handed a cheque bearing No. 104593 dated 16.01.2020 drawn on Bharat Cooperative Bank Limited, Borivali east branch for Rs. 35,00,000/- against repayment of the said loan. However, the said cheque, when presented to the Bank for repayment, was dishonored and returned with remarks “Funds Insufficient”. Even then, the Corporate Debtor has not paid any amount to the Petitioner till date. The Bench is of the considered opinion that the essential ingredients of debt and default as envisaged under Section 7 of the Code is satisfied.

9. The Bench notes, keeping in view the fact that the Corporate Debtor has admitted its dues to the Petitioner in its Reply as well as during the hearing of the Petition via videoconferencing and also the fact that the said default of the Corporate Debtor is yet reflected in the Master Ledger Account maintained by the Petitioner, the default of the Corporate Debtor is very apparent. The Bench has no hesitation in concluding that there is a debt and that the Corporate Debtor has committed a default and therefore, it is a fit case for admission.

10. This Bench, on perusal of the documents filed by the Petitioner, is of the view that the Corporate Debtor defaulted in repaying the financial assistance availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Petitioner as a major constituent for admission of a Petition under Section 7 of the Code. Therefore, the Petition under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-(I), namely:

(I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

(II) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(IV) That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

(V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of the Code.

(VI) That this Bench hereby appoints, Mr. Hajari Lal Saini, having office at 704, A wing, N.G. Sterling, Opp. Queen Marry High School, Old Golden Nest, Mira Road (e), Thane, Maharashtra– 401107; having Registration No. IBBI/IPA-001/IP/P-01553/2019-20/12494 as an Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

11. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately

Sd/-

Chandra Bhan Singh
Member (Technical)

Sd/-

Suchitra Kanuparthi
Member (Judicial)