

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT- V, MUMBAI BENCH

C.P. No. 358/IB/MB/2020

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with **Rule 4** of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Universal Petro-Chemicals Limited

P-34, India Exchange Place,

Kolkata: 700 001

.... **Petitioner/Financial Creditor**

V/s.

Joy Homecreation Limited

306 Madhva Madhya Commercial Premises,
plot no: C/4E Block
Bandra Kurla Complex, Bandra East: 400
051

.... **Corporate Debtor**

Order Reserved On: 16.12.2022

Order Pronounced On: 01.02.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (*Via Videoconferencing*):

For the Petitioner : Mr. Rushabh Thacker, Advocate.

For the Corporate Debtor: Mr. Anuj Narula, Advocate.

Per: Shri. Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The Company Petition is filed by "Universal Petro-Chemicals Limited" (hereinafter referred as '**Petitioner**') seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against Joy Homecreation Limited (hereinafter referred as '**Corporate Debtor**') by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter referred "**Code**" read with Rule 4 of Insolvency & Bankruptcy

(Application to Adjudication Authority) Rules, 2016 for a resolution of an unresolved Financial Debt of **Rs. 77,58,750/-**.

2. Petitioner's Submissions:

- i. The Petitioner states that, upon the request of Corporate Debtor, the Petitioner had advanced a short-term accommodation loan of Rs. 50,00,000/- vide a cheque No. 690036 dated 18.07.2014. The said loan was transferred with a rate of interest @ 12% per annum. Further, both the parties agreed that the interest will be paid after the interval of 90 days and the said loan was payable only on demand.
- ii. The Petitioner submits that in February, 2015, the Corporate Debtor further requested for an additional sum of Rs. 25,00,000/- at the same rate of interest and on the same terms of payment. Thereafter, the Petitioner transferred the said amount of Rs. 25,00,000/- to the Corporate Debtor's account.
- iii. Further, the parties mutually agreed that the interest will be increased from 12% to 15% p.a. from January 2017 till the payment thereof and the loan amount along with an interest was repayable in three months.
- iv. Thereafter, the Corporate Debtor paid the interest on the loan advanced and also paid the mandatory TDS up to March, 2018, after which it failed and neglected to pay interest as well as the TDS.
- v. The Petitioner submits that the debt fell on due on 4th November 2019. Thereafter, the Corporate Debtor with a view to discharge its liability issued two cheques bearing nos. 641990 and 641989 dated 1st October, 2019 and 16th August, 2019 respectively for a total sum of Rs. 75,00,000/- and Rs. 2,58,750/-. However, the cheques drawn on Indian Overseas Bank were dishonoured with the remark, "Payment Stopped by Attachment Court Order".

- vi. Pursuant to above, on 9th November, 2019, the Petitioner issued two notices under Section 138(b) of the Negotiable Instrument Act, 1881. Further, the Petitioner states that, the Corporate Debtor replied to aforementioned notices vide an email dated 26.11.2019 admitting its liability. Thereafter, on 20th December, 2019, the Petitioner had issued a notice demanding the repayment of all the outstanding dues amounting to Rs. 77,58,750/-. However, the Corporate Debtor has neglected and failed to repay its debts
- vii. The following documents categorically demonstrate the financial debt due and payable by the Corporate Debtor to the Financial Creditor :-
 - a. Copy of cheques dated 16.08.2019 for Rs. 2,58,750/- and dated 01.10.2019 for Rs. 75,00,000/-
 - b. Copy of the cheque deposit Memos dated 04.11.2019
 - c. Copies of cheque return memos dated 05.11.2019
 - d. Letter dated 20.01.2017, 01.04.2015, 01.04.2016, 24.02.2015, 22.07.2014 from Corporate Debtor
 - e. Bill of Exchange dated 18.07.2014 and 24.02.2015
 - f. Documents reflecting payment of TDS

3. Reply Filed by the Corporate Debtor

The Corporate Debtor has filed a detailed reply opposing the Company Petition as follows:

- i. The Corporate Debtor submits that the present Petition is not maintainable as there is no financial debt within the meaning of the Code.
- ii. The Corporate Debtor states that the present Petition is self-contradictory as on one hand the Petitioner seeks to initiate the CIRP under Section 7 from the caption of the Petition but on other

hand, the prayer clause states for initiation of the CIRP under Section 9 of the Code. The prayer for initiation of the CIRP under Section 9 is not maintainable in absence of any Notice issued under sub-section (1) of Section 8 of the Code. The Corporate Debtor further states that, the Petitioner has made false statements in the Petition and have not issued a Notice prescribed in FORM -3 of the Code demanding the payment of the Operational Debt.

- iii. The Corporate Debtor further submits that the Petition proceeds on the false premises that the Corporate Debtor in their reply dated 26th November, 2019 had unequivocally admitted their claim to repay the debt to the Petitioner. The Corporate Debtor claims that a bare perusal of the letter dated 26th November, 2019 reveals that no such admission has been made by them. On the contrary, the Corporate Debtor has categorically denied the allegations made in the Petitioners Notice and has also denied the liability to make payment to the Petitioner.
- iv. The Petitioner has claimed the financial debt on the basis of the cheques issued by the Corporate Debtor which were dishonoured. However, the Petitioner has suppressed the following facts :
 - a. The cheques were issued by the Corporate Debtor were only as and by way of “security” and these were blank cheques based on a specific instruction and mutual understanding of the parties that the cheques would be deposited by the Petitioner only after prior confirmation of the Corporate Debtor.
 - b. The Petitioner has wrongfully deposited the cheques including the security cheques despite the abovementioned specific instruction having been stated

in the Corporate Debtor's Letter dated 26th November 2019.

- c. Further, the Corporate Debtor claims that even otherwise it would not have issued cheques for a sum of Rs. 75,00,000/- dated 1st October 2019 and of Rs 2,58,750/- dated 16th August 2019 as between the period from 25th August 2019 to 22nd September 2019, the Director of the Corporate Debtor i.e. Mr. Jayant B. Soni, who is also the key person, was hospitalised 2 to 3 times and was advised complete rest for 15 days. As he was bed-ridden and confined at home, he could not have issued the cheques. The Corporate Debtor has relied on Mr. Jayant Soni's hospitalisation and discharge papers of the relevant time.

Findings:

4. We have heard the counsel for the Petitioner and gone through the records.
5. The Petitioner claims to have advanced a loan of Rs. 75,00,000/- by way of two tranches 18.07.2014 and 24.02.2015 to the Corporate Debtor out of which a sum of Rs. 50,00,000/- was paid through cheque dated 18.07.2014 and the remaining amount of Rs. 25,00,000/- was transferred by way of RTGS (NEFT) on 24.02.2015. The Petitioner has also relied upon the Bills of Exchange dated 18.07.2014 and 24.02.2015. It has also been claimed that it was a short term loan and the Corporate Debtor had agreed to pay an interest @ 12% p.a. at the loan amount and the interest was payable after an interval of 90 days and the loan was repayable on demand. It is further been claimed that it was agreed upon between the parties that the applicable rate of interest would be 15% from Jan 2017 onwards. The debt became due on 04.11.2019 and two cheques issued by the Corporate Debtor towards the repayment of the loan amount were dishonoured. Though

the date of default has not been specifically mentioned, yet from whatever has been stated in the Petition under section 7, the date of default is 09.11.2019 when the aforementioned cheques were dishonored. Though in the reply filed on behalf of the Corporate Debtor it has been only exclusively denied that any loan was incurred by the Corporate Debtor, however, in the letter dated 22.07.2014 through which the Corporate Debtor sent the cheque of Rs. 1,06,500 on account of the interest to the Petitioner, it has been candidly admitted that the interest was being paid on account of loan of Rs. 50 lacs @ 12% p.a. Similarly, in the letter dated 24.02.2015, the Corporate Debtor has once again admitted that cheque of Rs. 68,250 was being sent towards the interest of loan of Rs. 25,000,00/- calculating the sum @ 12% for the period from 01.01.2016 to 13.03.2016. Again, in another letter dated 01.04.2015 there is an acknowledgement of the transaction being debt as the Corporate Debtor has referred to certain payment on account of interest in the said letter. The Corporate Debtor further paid interest vide letters dated 01.04.2016 and 20.01.2017.

6. Thus, there does not remain even iota of doubt about fact that the Corporate Debtor had borrowed Rs. 75,00,000/- from the Petitioner as a short-term loan and therefore it cannot be said that it was not a financial debt or the transaction was not covered under the definition of financial debt as envisaged under the Code
7. It has been contended on behalf of the Corporate Debtor that the Petitioner has wrongly claimed that the Corporate Debtor had issued two cheques to repay the outstanding loan amount of Rs. 75,00,000/- and Rs. 2,58,750/- dated 1st October 2019 and 16th August, 2019 respectively. It has further been contended on behalf of the Corporate Debtor that, as a matter of fact, these cheques were issued as a security to the Petitioner and the same were to be deposited only after getting prior confirmation of the Corporate Debtor. It has also been claimed

that since, Mr. Jayant Soni was hospitalized and was bed ridden due to ill health, the question of issuing the cheques did not arise.

8. We have thoughtfully considered the above contentions raised by the Counsel for the Corporate Debtor but have found the same to be devoid of substance. Once it is admitted by the Corporate Debtor that the cheques were issued by it, even if, the same were issued by way of security, the Petitioner was well within its rights to present the cheques at any time, once the default had been committed by the Corporate Debtor in payment of interest as well as principle. In this regard, reference can be made to the various letters issued by the Corporate Debtor between 22nd July, 2014 till 20th January, 2017 and through these letters, the Corporate Debtor has been sending cheques of various amounts to the Petitioner on account of interest. Once the Corporate Debtor stopped paying interest, the Petitioner was constrained to deposit the cheques dated 01.10.2019 for Rs. 75,00,000/- and another dated 16.08.2019 for Rs. 2,58,750/-. Thereafter, the Petitioner sent notice dated 09.11.2019 claiming amount of the dishonoured cheques. The Corporate Debtor sent reply to the notice dated 16.11.2019 stating therein that Mr. Jayant Soni of the Corporate Debtor has been keeping ill health and was suffering from multiple health issues and was hospitalized and due to his ill health and hospitalization, the business had adversely been affected and therefore, the delay in payment has not been intentional or wilful but was due to unforeseen and unprecedented circumstances. A perusal of the reply dated 26.11.2019 clearly indicates that the availment of the loan by the Corporate Debtor has not at all been disputed or denied and the delay in payment of interest and principle has been sought to be explained only by referring to the stress being faced by the Respondent/Corporate Debtor due to market conditions like pandemic and ill health of Mr. Jayant Soni.
9. Therefore, in our considered view, the dishonour of the cheques and non-payment of the cheque amounts despite notices dated 09.11.2019

clearly gave a cause of action to the Petitioner to file the present Petition under Section 7 of the Code, on the basis of the non-payment of debt with effect from date of default, i.e. dishonouring of the cheques of Rs. 75 lacs on 5th November, 2019. Even otherwise, it is evident from the record that the Corporate Debtor has been paying interest till January, 2017 and also issued cheque dated 16th August, 2019 for Rs. 2,58,750/- towards interest. Therefore, the Petition has definitely been filed within the period of limitation.

10. Lastly, it has been argued on behalf of the Corporate Debtor that the present Petition is not maintainable considering the fact that though the Petition is shown to have been filed under Section 7 of the Code but on page No. 10 in the notice of the admission, a request has been made to this Hon'ble Authority for initiation of Corporate Insolvency Resolution Process under Section 9 of the Code. Thus, the Petition is self-contradictory as it is not clear whether the same is filed under Section 7 or under Section 9 and is liable to be dismissed on this ground alone.
11. We have considered the above contentions but have found it to be not tenable. The present Petition has been filed under Section 7 and on almost of all the documents titled indicate that the Petition has been filed under Section 7 of the Code. Not only this, Petition has been filed using Form-1 which is prescribed under the Code for filing Petition under Section 7. The mentioning of Section 9 in the notice of admission at page No. 10 seems to be only a typographical mistake and on account of the inadvertent typographical mistake, the Petitioner cannot be non-suited.
12. As a result of the above discussions, we are of the considered view that the Petition has rightly claimed that a Financial Debt of Rs. 75 lacs were extended to the Corporate Debtor who has failed to repay the same with interest and has committed default in the repayment of the Financial Debt. Therefore, the instant Petition under Section 7 of the Code

deserves to be **admitted**. It is ordered accordingly and in terms of the following order.

ORDER

- a. The above Company Petition No. (IB) 358 (MB) of 2020 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Joy Homecreation Limited**.

- b. The Petitioner has proposed the name of **Ms. Tanuja Jalan** Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00101/2017-18/10244, e-mail id:tanujajalan@yahoo.in, residing at G-2/12B, Sunder Sangam Co-Op.Soc., Sunder Nagar, S.V. Rad, Malad (W), Mumbai: 400 064,; as the Interim Resolution Insolvency Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. 5 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards fee till his fees is decided by CoC.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the 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 moratorium period.
- f. 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.
- g. 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P.(IB)/358/MB/2020 is **admitted**.

1. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

**ANURADHA SANJAY BHATIA
(TECHNICAL MEMBER)**

SD/-

**KULDIP KUMAR KAREER
(JUDICIAL MEMBER)**