

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) - 3634/I&B/MB/2019
Under Section 7 of the I&B Code, 2016

In the matter of

Kamlesh Satish Agarwal Goyal
Proprietor of Meera Tradelinks
606, Pune Krushi Uttapanna,
Bazar Samiti, Marketyard, Pune 411 037

.... Financial Creditor

Vs.

Govindam Metals & Alloy Private Limited
B-15, Phase (I), Addi MIDC
Jalna, 431 203

....Corporate Debtor

Order delivered on: 17.01.2020

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)
Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Mrs. Khushboo Shah Rajani, i/b AKR Advisors
LLP

For the Corporate Debtor: Sachin Narendra Agarwal, Director, Party
in person

Per: Shri Bhaskara Pantula Mohan, Member (J)

ORDER

1. This is a company petition filed by Kamlesh Satish Agarwal (hereinafter called the 'Petitioner') who is a proprietor of Meera Tradelinks, seeking to set in motion the Corporate Insolvency Resolution Process of Govindam Metals & Alloys Private Limited (hereinafter called the 'Corporate Debtor') 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 on the ground that the Corporate Debtor committed breach by making default in repaying of the amount of loan agreement entered into both the parties.

2. The petitioner is the proprietor of a proprietary concern Meera Tradelinks which is a proprietary concern. The Corporate Debtor is a company incorporated on 16/04/2008, bearing Corporate Identification No: U27320MH2008PTC181246 and having Authorised Share Capital and Paid-Up Share Capital of Rs.4,00,00,000/-.
3. The counsel appearing on behalf of the petitioner mentioned that a business loan was provided by them to the Corporate Debtor amounting to Rs.25,00,000/- and bearing interest @12% p.a. This loan was provided vide a Loan Agreement dated 12/05/2014 entered into between Late Shri. Lalchand Agrawal (Grandfather of the petitioner) and the Corporate Debtor which is annexed at Annexure 4 of the copy of petition. The said amount was disbursed by the petitioner in favour of the Corporate Debtor in two tranches. Rs.15,00,000/- was disbursed on 02/05/2014 and Rs.10,00,000/- was disbursed on 08/05/2014 by the petitioner in favour of the Corporate Debtor. The Corporate Debtor had repaid an amount of Rs.1,31,700/- to the petitioner and the rest amount of Rs.23,68,300/- and interest at the rate of 12% p.a. upto 30/09/2019 amounting to Rs.20,37,089/- is still due on the Corporate Debtor. Therefore, the total amount claimed to be in default by the petitioner is totals to Rs.44,05,389/-.
4. The petitioner has annexed the copies of ledger accounts of the Corporate Debtor as appearing in the books of the petitioner dated 01/04/2015, 01/04/2016, 01/04/2017, 01/04/2018 and 01/04/2019 at Annexure-7 of the copy of the petition. The petitioner at Annexure-8 has annexed an Independent Auditor's Report by a Chartered Accountant Mr. Ashish Ashok Baheti dated 30/09/2017. To this report, the Balance Sheet as on 31/03/2017, Statement of profit and loss and the notes of unaudited financial statements of the Corporate Debtor have been annexed.
5. The petitioner vide his letter dated 02/11/2018 addressed to the Corporate Debtor which is annexed at Annexure-5 of the petition, demanded the outstanding loan amount of Rs.39,71,901/- which is inclusive of Rs.25,00,000/- being the principal amount plus interest of Rs.14,71,901/-. To this letter, the Corporate Debtor had replied vide his letter dated 12/11/2018 annexed at Annexure 6 of the

petition wherein the said amount has been confirmed by the Corporate Debtor stating that it was borrowed by them from Late Shri. Lalchand Agrawal who is the grandfather of petitioner and that they are bound to pay a total sum of Rs.39,71,901/- as on 31/10/2018.

6. There was no reply filed on behalf of the Corporate Debtor. On 14/11/2019, the director of the Corporate Debtor Mr. Sachin Narendra Agrawal was present before this bench and had mentioned that he accepts the liability and that the Corporate Debtor defaulted in making the payment of Financial Creditor. Accordingly, this court is pleased to pass the following order:

FINDINGS

7. We have heard the petitioner at length, taken all submissions into account and perused the documents and evidences placed on record. We have also heard the director of the Corporate Debtor Mr. Sachin Narendra Agrawal. It has become very clear that there was an express Loan Agreement dated 12/05/2014 entered between the grandfather of the petitioner and the Corporate Debtor. Accordingly, the petitioner had disbursed an amount of Rs.15,00,000/- on 02/05/2014 and Rs.10,00,000/- on 08/05/2014 to the Corporate Debtor. Thus, a total amount of Rs. 25,00,000/- was disbursed by the petitioner in favour of the corporate debtor. Out of this principal amount of Rs.25,00,000/-, an amount of Rs.1,31,700/- was paid by the Corporate Debtor to the petitioner. The interest at the rate of 12% p.a. was agreed between both the parties vide the said Loan Agreement. Therefore, the total amount to be paid to the petitioner by the Corporate Debtor amounts to Rs.44,05,389/- which is inclusive of Rs.23,68,300/- i.e. the unpaid principal amount and an interest of Rs.20,37,089/- upto 30/09/2019. Therefore, it can be safely concluded that both the parties shared a relationship of creditor and debtor.
8. After perusing all the documents on record and hearing both the parties, we have come to a conclusion that there is a default on the part of the Corporate Debtor in making the payment towards their liability to the Petitioner. Despite repeated requests and reminders, the Corporate Debtor failed to repay the dues. Also, it is to be said

that the documents submitted by the petitioner are enough to bring out the liability on part of the Corporate Debtor. Moreover, The Corporate Debtor through a letter dated 12/11/2018 had acknowledged the amount due on them. Also, the director of the Corporate Debtor was himself present before this Bench and has admitted the liability and that there was default on their part in repaying the said amount to the petitioner.

9. It is further to be noted that this petition fulfils all the requisite conditions to admit a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 and therefore, the petition deserves to be admitted.
10. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of a petition under section 7 of the I&B Code. Therefore, the Application 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 17.01.2020 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. Arun Rajabhau Joshi, having office at 1st Floor, E-Wing, Bharat Bazar Complex, API Corner, Chikalthana MIDC, Aurangabad 431 006 and having Registration No. IBBI/IPA-002/IP-N00350/2017-18/11000 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

11. Accordingly, this Petition is admitted.

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

Sd/-

Shyam Babu Gautam
Member (Technical)

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)

/SNEHA/