

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – III**

C.P.(IB)-549(MB)/C-III/2023

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

In the matter of

M/s. Vidhant Realty Private Limited

Having Registered Office at: 25, Floor-2, Plot-59/61, Arsiwala Mansion, Nathalal Parikh Marg, Colaba, Mumbai- 400005.

.....Financial Creditor/Applicant

Vs

M/s. Aaban Apparels and Realcon Private Limited

Having Registered Office at: Unit No. 6, Ground Floor, Kamath Industrial Estate, Opp Siddhi Vinayak Temple, Prabhadevi, Mumbai- 400025.

.....Corporate Debtor/Respondent

Order Pronounced on: 07.02.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Financial Creditor: Adv. Manoj Mishra

For the Corporate Debtor: Adv. Nithish Bangera

ORDER

Per: - Smt. Lakshmi Gurung (Judicial Member).

1. The Present **Company Petition (IB)-549(MB)/2023** has been filed under section 7 of Insolvency and Bankruptcy Code, 2016 (“IBC, 2016”) by **M/s. Vidhant Realty Private Limited, (“Financial Creditor/Petitioner”)** for initiating Corporate Insolvency Resolution Process (**“CIRP”**) against **M/s. Aaban Apparels and Realcon Private Limited (“Corporate Debtor/ Respondent”)** for default in repayment of loan.

Background Facts

2. The Corporate Debtor, vide request letter dated 21.08.2017, approached the Financial Creditor for availing a loan of Rs. 1,00,00,000/- (Rupees One Crore Only) for the purpose of expanding its textile business.
3. Thereafter, the Board of Directors of the Financial Creditor considered the proposal in its Board meeting held on 25.08.2017 in relation to approval of loan to the CD on following terms and conditions:
 - a. *Loan Amount: Rs. 60,00,000/-*
 - b. *Rate of interest: 22% p.a., quarterly compounding*
 - c. *Disbursement: In suitable installments during FY 2017-18*
 - d. *Period of repayment: Bullet repayment along with interest within a period not exceeding 4 years.*
 - e. *Overdue interest: 3% over and above ROI in case of default in repayment of principal or interest, on due date.*
 - f. *Security: Documents to be executed by the authorized person of the borrower company.*
 - g. *Tangible Security: Nil*
4. The FC issued letter dated 25.08.2017 to CD communicating the approval of loan of Rs. 60 Lakhs, in response to which, the CD passed the board resolution on 24.10.2017 granting approval to avail the loan of Rs. 60 Lakhs.

5. Therefore, FC disbursed an amount of Rs. 60 Lakhs in favour of the Corporate Debtor. The details of the disbursement amount are tabulated below: -

Sr. No.	Date	Cheque No.	Bank Name	Disbursement Amount
1.	14.11.2017	816648	Corporation Bank	59,49,380/-
			Processing and service charges	50,620/-
			Total	60,00,000/-

6. Thereafter, the Corporate Debtor sent letter to the Petitioner on 15.11.2017 acknowledging receipt of Rs. 60,00,000/- (Rupees Sixty Lakhs Only) and assured to repay the entire amount along with accumulated interest on 01.04.2021 i.e., the due date. The Corporate Debtor also issued Demand Promissory Note dated 15.11.2017 in favour of Financial Creditor clearly undertaking to repay the said amount of Rs. 60 Lakhs on 01.04.2021, along with interest @ 22% p.a. quarterly compounding.
7. Accordingly, with reference to the letter dated 15.11.2017 and Demand Promissory Note dated 15.11.2017, the Petitioner sent a letter to the Corporate Debtor on 30.03.2021, requesting to repay the entire principal sum of Rs. 60 Lakhs along with due interest by 01.04.2021. Instead of making the payment of the debt, the Corporate Debtor, vide letter dated 02.04.2021 expressed its deep regret in not honoring its commitment and further requested the Petitioner to defer the repayment till 22.11.2021.
8. Taking into consideration the difficulties faced by the Respondent, the Petitioner accepted the request of the corporate Debtor and allowed the repayment of the sums by 22.11.2021. However, the Corporate Debtor failed again to repay the amount.

9. Further, the Petitioner issued a letter upon the Corporate Debtor on 23.11.2021, calling upon the Respondent to repay the entire dues within 30 (thirty) days. In response to this, the Corporate Debtor sought for more time to repay the entire amount of principal along with interest.
10. Thereafter, the Petitioner issued Recall Notice dated 23.05.2022, calling upon the Corporate Debtor to repay the loan amount of Rs. 60,00,000/- along with interest @22% p.a. quarterly interest and overdue interest @3% p.a. from the date of default i.e. 01.04.2021. The Petitioner further issued Final Demand/Recall Notice dated 03.04.2023, calling upon the Respondent to repay the total outstanding loan amount of Rs. 2,01,26,987/- (Rupees Two Crore One Lakh Twenty-Six Thousand Nine Hundred Eighty-Seven Only), as tabulated below: -

Sr. No.	Particulars (as on 15.05.2023)	Amount (in INR)
1.	Principal Outstanding	60,00,000/-
2.	Total Interest	1,33,59,984/-
3.	Overdue Charges/Penal Interest	7,67,002/-
	Total	2,01,26,987/-

11. In view of the above background the Financial Creditor has filed the present petition stating that the Corporate Debtor owes to the Petitioner a total outstanding amount of Rs. 2,01,26,987/- (Rupees Two Crore One Lakh Twenty-Six Thousand Nine Hundred Eighty-Seven Only). As per Part IV of the petition, **date of default is 01.04.2021.**
12. Court notice was issued to the Respondent/Corporate Debtor, vide order dated 05.07.2023 and directions were issued to the Corporate Debtor to file a reply within two weeks and to appear in person or through an Advocate on next date of hearing. On 17.08.2023, this Court noted that *“Notice sent to the Corporate Debtor through registry was returned with an endorsement “Not Known”. The Registry was further directed to issue*

fresh notice to the Corporate Debtor. As per the Track report, the item was returned with a note stating “insufficient address”.

13. On 03.10.2023, the Counsel appearing for the Financial Creditor submitted that notice has been served on the Corporate Debtor. On 08.11.2023, PCS Nithish Bangera, appeared for the Corporate Debtor, and sought time to file reply and the directions were given to the Corporate Debtor to file reply within two weeks in following terms: *“let the reply be filed within two weeks by serving a copy to the opposite side failing which right to file a reply shall stand forfeited. List the matter on 04.12.2023”.*
14. On 04.12.2023, none appeared for the parties, therefore matter was posted on 24.01.2024 for hearing. On 24.01.2024, the Corporate Debtor was represented by PCS Nithish Bangera and made oral submissions wherein following three objections were raised:
 - a. Present Petition is beyond limitation period as the cause of action arose on 14.11.2017.
 - b. The Loan amount is Rs. 60 Lakhs which is less than the threshold limit of Rs. 1 Crore under section 4 of IBC.
 - c. The debt became due during 10A period. Hence, petition is not maintainable.

Findings

15. Heard the Ld. Counsel/PCS for the Parties and perused the Annexure attached to the Petition.
16. The Petitioner has annexed copies of the following documents with the Petition:
 - i) Request Letter dated 21.08.2017 issued by the Corporate Debtor.
 - ii) Approval Letter of the Petitioner dated 25.08.2017.
 - iii) Board Resolution dated 25.08.2017 passed by the Board of Directors of the Corporate Debtor.

- iv) Demand Promissory Note dated 15.11.2017 issued by the Corporate Debtor in favour of the Petitioner, with repayment date as 01.04.2021.
- v) Copy of Recall notice and Final Demand Notice dated 23.05.2022 and 03.04.2023 respectively along with acknowledgement of receipt by the Respondent.
- vi) Record of Default (RoD Certificate) dated 06.06.2023 issued by NeSL with Date of Default as 01.04.2021 and status showing Authenticated.

17. Now we propose to deal with the challenge to the maintainability of present petition raised by the CD.

17.1 In relation to the contention that Petition is barred by limitation as the cause of action arose on 15.11.2017, we note that the Corporate Debtor had issued Demand Promissory Note dated 15.11.2017 in favour of the Petitioner, with undertaking to repay the loan amount on 01.04.2021 along with interest @22%. Clearly the maturity date of Demand Promissory Note is 01.04.2021 which has been rightly shown as date of default in the Petition. In view of the DPN with maturity date 01.04.2021, cause of action arose on 01.04.2021 hence we reject the contention of the CD that cause of action arose on 15.11.2017 and petition is barred by limitation. We hold that date of default is 01.04.2021 and petition has been filed 23.06.2023 which within limitation period.

17.2 In relation to the contention that the Loan amount is Rs. 60 Lakhs, which is less than the threshold limit of Rs. 1 Crore under section 4 of IBC, we rely on the case of ***Netafirm Agricultural Financing Agency (P) Ltd. v. Baliraja Sakhar Karkhana Ltd., 2023 SCC OnLine NCLAT 241***, order dated 03.05.2023, wherein Hon'ble National Company Law Appellate Tribunal has held that *the amount of Principal and Interest added is Rs. 1.33 Crore, which is beyond the minimum*

threshold, required. The Hon'ble NCLAT further observed that when the Deed of Guarantee mentions the interest on default, then for finding out threshold both amount Principal and Interest has to be computed. While not expressing any opinion on the merits of the case, the NCLAT set aside the impugned order passed by the Adjudicating Authority and held that the Adjudicating Authority has committed error in rejecting the application under S. 7 for not fulfilling threshold under S. 4 IBC.

17.3 In the present case, the Demand Promissory Note issued by the Corporate Debtor to the Petitioner mentions that the interest shall be payable on default, then for finding out threshold, both the amount of Principal and Interest have to be computed. Contents of the Demand Promissory Note are as follows:

"M/s. Aaban Apparels and Realcon Private Limited, hereby acknowledges receipt of Rs. 60,00,000/- from M/s. Vidhant Realty Private Limited.

Further, we promise and undertake to repay the said amount of Rs. 60,00,000/- to M/s. Vidhant Realty Private Limited on 01.04.2021 i.e. at the end of 4(four) years.

*We, M/s. Aaban Apparels and Realcon Private Limited, further promises and **undertakes to pay interest 22% p.a., quarterly compounding on the said sum of Rs. 60,00,000/- and states and confirms that the accumulated interest from this date would be paid on the due date i.e. 01/04/2021 along with the principal amount.***

*M/s. Aaban Apparels and Realcon Private Limited, also confirms and states that in case of default in repayment of principal or accumulated interest on due date i.e. 01.04.2021, M/s. Aaban Apparels and Realcon Private Limited **would pay overdue interest @3% over and above the contracted rate of interest of 22% p.a., for the amount and period in default.**"*

[Emphasis Provided]

In view of the above cited Judgement and above reproduced DPN, we hold that the default amount is above Rs. 1 Crore and crosses the threshold limit.

17.4 Further, in relation to the contention that the debt became due during 10-A period, the period under Section 10A is from 25.03.2020 to 24.03.2021. In the present case, it is very much clear from **the Board Resolution dated 25.08.2017 passed by the Board of Directors of the Petitioner; Demand Promissory Note dated 15.11.2017 issued by the Corporate Debtor in favour of the Petitioner, with repayment date as 01.04.2021** and **Record of Default (RoD Certificate) dated 06.06.2023 issued by NeSL**, that the date of default is 01.04.2021, which is outside the period of Section 10A.

17.5 We therefore reject the challenge to the maintainability of the present petition and proceed to decide the matter on merit.

18. In the judgement of the Hon'ble Supreme Court in the **Innoventive Industries Limited vs. ICICI Bank and Another (2018)1 SCC 407**, it was held that-

"The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, **the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.** It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of*

the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

(Emphasis Provided)

19. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the “debt” was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application. In the present case, sufficient evidence has been adduced by the Petitioner to prove the debt and default.
20. In view of the undisputed documents annexed to the petition including DPN, the Financial Creditor has proved existence of debt and default. Further the debt is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code. Also the Petition filed is within limitation as date of default is 01.04.2021 as the petition is filed on 23.06.2023. Therefore, we hereby admit this company petition and also looking at the consent given by the Insolvency Professional, we hereby appoint **Mr. Sandeep Jawaharlal Singhal** as an IRP, with a direction to the Financial Creditor to pay remuneration to the IRP and his expenses until the constitution of CoC.
21. Accordingly, this Company Petition is **admitted** with the following directions:
 - a. **The above Company Petition (IB) 549(MB)/2023 is allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Aaban Apparels and Realcon Private Limited.**
 - b. This Bench appoints **Mr. Sandeep Jawaharlal Singhal**, having Registration No: **IBBI/IPA-001/IP-P-00519/2017-2018/10920**, email: sandeepjsinghal@hotmail.com; Address: **313/314, Giri Shikhar, Plot No. 8891, Opposite Goenka Hall, J B Nagar, Andheri(east), Mumbai City Maharashtra- 400059** as the 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 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:
 - 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 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 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.
22. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.
23. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately. The Registry is further directed to send a copy of this order to the Insolvency and bankruptcy Board of India for their record.

Sd/-

**CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)**

Sd/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**

Arpan, LRA