# NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

**Company Appeal (AT) (Insolvency) No. 536 of 2022**

[Arising out of Order dated 25.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court III, Special Bench in C.P. (IB)-70(MB)/2022]

**IN THE MATTER OF:**

**Rajesh Vora, Promoter/ Director of**
**Rushabh Precision Bearings Limited**
Registered Office
404 Floor 4, Plot 6 – 208
Regent Chambers
Jamnalal Bajaj Marg
Nariman Point
Mumbai – 400 021. **...Appellant**

**Versus**

**Shimnit India Pvt. Ltd.**
Registered Office
8th Floor, Regent Chambers
Nariman Point
Mumbai – 400 021. **...Respondent**

**Present:**

**For Appellant:** **Mr. Abhijeet Sinha, Mr. Susheel Cyrial, Mr. Nirnimesh Dube, Mr. Ankur S. Kulkarni, Advocates.**

**For Respondents:** **Mr. Amanpreet Singh Rahi, Advocate.**

# J U D G M E N T

**ASHOK BHUSHAN, J.**

This Appeal by a suspended Director of the Corporate Debtor has been filed against the order dated 25.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Court III, Special Bench by which order application filed by the Respondent – 'M/s Shimnit India Pvt. Ltd.' under Section 7 has been admitted. The brief facts of the case necessary to be noticed for deciding this Appeal are:

(a) A loan agreement dated 28.05.2021 was entered between the Financial Creditor and the Corporate Debtor noticing that lender has advanced an amount of Rs.6,35,24,668/- to the Borrower carrying interest @ 18% p.a., as stipulated in Schedule-1. Lender also agreed to advance additional sum of Rs.11 Crores to the Borrower in the manner as stipulated in Schedule-2. The loan agreement contained Schedule-I and II that dealt with principal loan and additional loan, terms and conditions for repayment, the moratorium and events of default.

(b) The Corporate Debtor defaulted to make the payment.

(c) Application under Section 7 was filed by the Financial Creditor in January, 2022 mentioning the date of default as 27.11.2021 and total debt as Rs.22,23,45,748/-. Notice was issued in Section 7 application. The Adjudicating Authority heard the Financial Creditor and the Corporate Debtor and by the impugned order admitted the application holding that debt and default is proved.

(d) The Suspended Director of the Corporate Debtor has filed this Appeal challenging the order dated 25.04.2022.

2. We have heard Shri Abhijeet Sinha, learned counsel for the Appellant and Shri Amanpreet Singh Rahi, learned counsel appearing for the Respondent.

3. On 02.06.2022, noticing the submission of learned counsel for the Appellant, this Court passed following order:-

"**ORDER**
**(Virtual Mode)**

> ***02.06.2022****: Shri Abhijeet Sinha, Learned Counsel for the Appellant submits that the entire amount as claimed in Section 7 Application is Rs.22,23,45,748/- which includes interest as on 31/12/2021.*
>
> *2. He submits that the aforesaid amount alongwith upto date interest shall be paid to the Appellant provided that the Appellant is given time till 01st week of July.*
>
> *3. He submits that the Appellant undertake to pay the said payment. He has also received the Letter of Comfort for payment of the said amount.*
>
> *4. In view of the aforesaid, we adjourn this Appeal and direct the Appeal to be listed on 07th July, 2022.*
>
> *5. In the meantime, in pursuance of the Impugned Order, CoC shall not be constituted. However, IRP shall continue the 'Corporate Debtor' as a 'Going Concern'.*
>
> *6. Learned Counsel for the Appellant submits that he shall be permitted to file undertaking by*

> *tomorrow. Prayer allowed. He may file the same by tomorrow.*
>
> *List this Appeal on 07th July, 2022."*

4. When the Appeal was taken on 07.07.2022, learned counsel for the Appellant fairly submitted that amount has not yet been paid. Consequently, the interim order passed by this Tribunal was withdrawn.

5. Shri Abhijeet Sinha, learned counsel for the Appellant challenging the impugned order contends that event of default has not occurred in January, 2022 when the Financial Creditor filed Section 7 application. It is submitted that moratorium period on repayment of interest came to end on 27.11.2021 and thereafter only after failure of payment of interest for two consecutive quarters application under Section 7 could have been filed. It is submitted that no application could have been filed till 28.05.2022 since default, if any, can occur on 28.05.2022. It is submitted that insofar as Additional Loan of Rs.11 Crores is concerned, the same after being received by the Corporate Debtor was paid back to sister concern of the Corporate Debtor, hence, there is no liability with regard to Additional Loan of Rs.11 Crores.

6. Shri Amanpreet Singh Rahi, learned counsel for the Respondent refuting the submission of learned counsel for the Appellant submits that Appellant has committed default in repayment of Principal Loan as well as Additional Loan, hence, Section 7 application was rightly filed and admitted by the Adjudicating Authority. It is submitted that the submission of the

Appellant that Additional Loan of Rs.11 Crores was immediately transferred to Sister Concern of the Corporate Debtor hence there is no liability to repay the same is wholly erroneous. It is submitted that amount of Rs.11 Crores – Additional Loan was received by the Corporate Debtor from 10.06.201 to 18.06.2021 in eleven equal amounts in its bank account. Thereafter, this was transferred to personal accounts of Mr. Rajesh D. Vohra, who further paid his debt owed to M/s Bravo Builders Pvt. Ltd. Receipt of Rs.11 Crores is an admitted fact and this submission that there is no liability to repay Additional Loan is misleading and incorrect. Learned counsel submitted that interpretation of the Event of Default is not correctly done by the Appellant. The moratorium came to an end on 27.11.2021, hence, interest of two quarters immediately became due which was to be paid on 28.11.2021. It is submitted that Appellant has filed an affidavit dated 02.06.2022 in this Tribunal where he undertook to make entire payment of Rs.22,23,45,748/-, hence, Appellant cannot be heard to say that no amount was payable by the Appellant. Appellant is bound by its undertaking. The Appeal deserves to be dismissed only on the ground of Affidavit of Undertaking filed by the Appellant.

7. We have considered submissions of learned counsel for the parties and perused the record.

8. Part IV of the Section 7 application refers to three amount of loan namely Principal Loan, Additional Loan and Further Loan. Following are the details given in Section 7 application:-

***PARTICULARS OF FINANCIAL DEBT***

| ***Sr. No.*** | ***Particulars*** | ***Amount (in Rs.)*** |
|---|---|---|
| ***Principal Loan*** | | |
| *1.* | *Principal Amount* | *6,35,74,028/-* |
| *2.* | *Interest (at the rate of 18% PA) Amount* | *91,34,876/-* |
| ***Total*** | ***(A)*** | ***7,27,08,904/-*** |
| ***Additional Loan*** | | |
| *1.* | *Principal Amount* | *11,00,00,000/-* |
| *2.* | *Interest (at the rate of 18% PA) Amount* | *1,08,59,178/-* |
| ***Total*** | ***(B)*** | ***12,08,59,178/-*** |
| ***Further Loan*** | | |
| *1.* | *Principal Amount* | *2,65,00,000/-* |
| *2.* | *Interest (at the rate of 18% PA) Amount* | *22,77,666/-* |
| ***Total*** | ***(C)*** | ***2,87,77,666/-*** |
| ***Grand Total (A+B+C)*** | | ***22,23,45,748/-*** |

***Date of Default:***

***27.11.2021 (Six months from the date of the Loan Agreement dated 28.05.2021)***

9. The Loan Agreement dated 28.05.2021 has been brought on the record which refers to Principal Loan as well as Additional Loan. Para 4A of the Loan Agreement is as follows:-

*"4. **REPAYMENT OF THE LOAN AMOUNT-***

*(a) The Borrower may repay all or any portion of the Principal Loan and Additional Loan at any time or from time to time, provided that repayment of full Principal Loan and Additional Loan along with the applicable interest shall be repaid by the Borrower on or before the 'Maturity Date' as stipulated in* ***SCHEDULES 1 and 2*** *hereunder. The Maturity Date of loans may be extended as mutually agreed between the Parties in writing."*

10. The Loan Agreement contains two schedules – Schedule-1 and Schedule-2, which are to the following effect:-

*"**SCHEDULE-1***

*(Principal Loan)*

*A. The Lender has in terms of the following schedule already disbursed payments amounting to Rs.6,35,74,668/- which shall bear interest @ 18% per annum from the date of disbursement:*

| *Sr. No.* | *Date of Payment* | *Particulars* | *Amount in Rs.* | *Ch No. / UTR No.* | *Purpose* |
|---|---|---|---|---|---|
| *1.* | *11.01.2021* | *National Stock Exchange of India A/c RPBL* | *7,10,640* | *CMS176 4297833* | *Towards listing fees* |
| *2.* | *16.03.2021* | *Rushabh Precision Bearings Ltd.* | *3,87,46,714* | *2053* | *Repayment of Loan from Kotak Bank* |
| *3.* | *16.03.2021* | *Rushabh Precision Bearings Ltd.* | *2,25,39,513* | *2041* | *Repayment of Loan from Kotak Bank* |

| | | | | | |
|---|---|---|---|---|---|
| *4.* | *26.03.2021* | *Rushabh Precision Bearings Ltd.* | *3,36,635* | *CMS1877757246* | *Repayment of Loan from Kotak Bank* |
| *5.* | *31.03.2021* | *National Stock Exchange of India A/c RPBL* | *12,41,166* | *CMS1884884248* | *Towards listing fees* |
| *Total* | | | *6,35,74,668* | | |

*B. The tenure of the Principal Loan shall be three years.*

*C. There shall be a 6 month moratorium period for repayment of interest from the date of execution of this Agreement. The interest shall be applicable and levied from the date of disbursement of the Principal Loan amount. The interest accrued for the first 6 months shall be paid immediately upon the expiration of the moratorium.*

*D. The interest on the Principal Loan shall be payable on last day of every quarter and shall be calculated on the basis of 365 days to a year on reducing balance. The interest shall be payable quarterly from the date of first disbursement.*

*E. That any failure to make payment towards the interest against the Principal Loan amount for 2(two) consecutive quarters (i.e. 6 months) shall trigger an event of default in terms of clause 8 hereinabove."*

*"**SCHEDULE-2***

*(Additional Loan)*

*A. The Lender shall upon compliance of condition precedent for the Additional Loan (in* *accordance with clause 6), in terms of the following schedule disburse payments amounting to Rs.11,00,00,000/- which shall bear interest @ 18% per annum.*

B. *The tenure of the Additional Loan shall be one year.*

C. *The interest shall be applicable and levied from the date of disbursement of the Additional Loan amount.*

D. *The interest on the Additional Loan shall be payable on last day of every month and shall be calculated on the basis of 365 days to a year on reducing balance. The interest shall be payable quarterly from the date of first disbursement.*

E. *That any failure to make payment towards the interest against the Additional Loan amount for 2 (two) consecutive quarters (i.e. 6 months) shall trigger an event of default in terms of clause 8 hereinabove."*

11. The submission of Shri Sinha is that when Clause (C) and Clause (E) of Schedule-1 are read together it is clear that after expiry of moratorium when interest against Principal Loan is in default for two consecutive quarters, the event of default shall occur. Reply of the Respondent is that the interest was payable from the date of disbursement of Principal Loan amount and it became due every month but due to moratorium became payable on 27.11.2022. The interest remained in default for two consecutive quarters i.e from 28.05.2021 to 27.11.2021. Learned counsel for the Respondent further submitted that Schedule-2 which dealt with

Additional Loan of Rs.11 Crores did not contain any moratorium and the interest was payable quarterly from the date of first disbursement and on failure to make payment towards interest for two consecutive quarters default was to trigger. It is submitted that disbursement of Additional Loan of Rs.11 Crores is admitted fact and there being no moratorium in Schedule-2, two consecutive quarters were expired on 27.11.2021 making the loan due.

12. With regard to Additional Loan, the submission of learned counsel for the Appellant is that the said amount after receipt was transferred to the Sister Concern of the Corporate Debtor. The bank statement of the Corporate Debtor has been brought on record which indicate that amount of Rs.11 Crores was received in 11 instalments of Rs.1 Crore each which amount was transferred in the personal account of the Appellant and thereafter to another entity M/s Bravo Builders Pvt. Ltd. Receipt of Additional Loan of Rs.11 Crores was not even denied. As per Schedule-2, interest of two quarters became due on 27.11.2021 and thus, in any event default was committed with regard to Additional Loan.

13. The Adjudicating Authority in the impugned order has after considering the submissions of the parties has returned finding that default was committed. In para 21 of the order following has been held by the Adjudicating Authority:-

> *"21. The Bench also notes that any extension of period of repayment of interest is exclusively*

> *the prerogative of the lender and it is at his sole discretion. Therefore, the Corporate Debtor cannot take the plea that it should have been extended by another six months from 27.11.2021. The Bench also notes that, in fact, in their additional Affidavit filed on 16.03.2022, the Corporate Debtor also acknowledges that he has received Rs.11 crore from the Financial Creditor and hence there is a clear admission of default on part of the Corporate Debtor."*

14. Even if for arguments sake, the event of default had not occurred with Principal Loan, the event of default did occur for Additional Loan and Further Loan on 27.11.2021 giving right to the Financial Creditor to file Section 7 application in January, 2022.

15. We, thus, are satisfied that Adjudicating Authority has rightly after finding debt and default admitted Section 7 application. We may further notice one more aspect of the present Appeal. On the very first day when this Appeal came for consideration before this Appellate Tribunal, learned counsel for the Appellant submitted that Appellant intends to settle the entire amount of Principal and interest within a period of three months. Further on 02.06.2022, Appellant undertook to make payment of entire amount of Rs.22,23,45,748/-. Further, an Affidavit of Undertaking was also filed on 02.06.2022, where in para 2 following has been stated:-

> *"2. I, hereby, undertake to pay the entire amount of Rs.22,23,45,748/- (Rupees Twenty Two*

> *Crores Twenty Three Lakhs Forty Five Thousand Seven Hundred and Forty Eight) to the Respondent which includes entire amount as claimed in the instant Section 7 Application alongwith interest accrued thereupon till 31/12/2021 on or before 05/07/2022 in terms of the Order dated 02/06/2022 passed by this Hon'ble Tribunal in the instant Appeal."*

16. In view of the aforesaid, the submission of the Appellant that no event of default took place in loan cannot be accepted. Nor, Appellant can be permitted to submit that no default took place in the payment of loan. We, thus, are fully satisfied that the Adjudicating Authority did not commit any error in admitting Section 7 application. There is no merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]**
**Chairperson**

**[Barun Mitra]**
**Member (Technical)**

**NEW DELHI**

**24th August, 2022**

*Archana*