

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V

CP(IB) 308 MB 2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016

IN THE MATTER OF

M/s Starwort Engineers Pvt. Ltd.

Mayuresh Cosmos, 10th Floor, Plot No.
37, Sector 11 C.B.D. Belapur, Navi
Mumbai – 400614.

... Financial Creditor

V/s.

M/s Krosslink Infrastructure Ltd.

511, vyapar Bhavan, 5th Floor, 49,
P.D'mello Road, Carnac Bunder,
Masjid (E), Mumbai- 400009.

... Corporate Debtor

Order delivered on :- 02.11.2023

Coram:

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

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

Appearances:

For the Financial Creditor : Adv. Dinesh Kumar Dubey

For the Corporate Debtor : Adv. Rohan Agarwal

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by M/s Starwort Engineers Pvt. Ltd. (hereinafter called "**the Petitioner**") seeking to

initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s Krosslink Infrastructure Ltd. (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 7 Insolvency and bankruptcy code, 2016 (hereinafter called "**Code**") on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 13,07,49,534/- as on 31.01.2023.

The submissions by the Financial Creditor: -

2. The Financial Creditor states that the Facility Agreement dated 15.03.2017 was entered and executed between the Financial Creditor and Corporate Debtor through which the Corporate Debtor had borrowed an amount of Rs. 6,00,75,000/- as an Inter Corporate Deposit (hereinafter referred to as "ICD") at the interest at 15% per annum. The interest was payable together at the time of payment of the ICD. As per the Facility Agreement, the Corporate Debtor had undertaken to make repayment of the ICD along with interest accrued thereon on 14.03.2019.
3. The Financial Creditor further states that the said payment of amount of Rs. 6,00,75,000/- was disbursed to the Corporate Debtor's account on 17.03.2017 which is specifically recorded by Kotak Mahindra Bank in its letter dated 20.01.2023.
4. The Financial Creditor further states that an amount of Rs. 7,84,67,825/- (Principal + Interest @ 15% per annum as on 30.03.2023) fell due on 30.03.2019 as per the Facility

Agreement. However, after a laps of almost 2 years Corporate Debtor vide its letter dated 29.03.2019 requested the Financial Creditor to renew the period of repayment upto 1 year i.e. upto 30.03.2020.

5. The Financial Creditor vide its letter dated 29.03.2019 accepted the Corporate Debtor's request and accordingly renewed the Corporate Debtor's repayment date strictly as 30.03.2020. However, in spite of a further lapse of almost two years, the Corporate Debtor has ignored to make the legitimate payment of the Financial Creditor.
6. Thereafter, the Financial Creditor sent a Demand Notice dated 01.02.2023 to the Corporate Debtor demanding payment of Rs. 13,07,49,534/- along with interest @ 20% per annum as agreed in the Facility Agreement within 15 days from the date of issuance of the said Demand Notice. Upon receipt of the said Demand Notice, the Corporate Debtor vide its letter dated 04.02.2023 requested the Financial Creditor to allow them an opportunity to repay the dues by September 2023.
7. The Corporate Debtor vide its letter dated 14.02.2023 requested the Financial Creditor for discussions for an amicable settlement of the matter. Both the parties arrived at a mutually agreed settlement of the matter including the amount to be paid by the Corporate Debtor to the Financial Creditor and the time frame thereof vide Settlement Agreement dated 06.03.2023.
8. Clause 2.1(a) of the Settlement Agreement stipulated that an amount of Rs. 1 crore be paid by the Corporate Debtor

to the Financial Creditor on or before 09.03.2023. However, the Corporate Debtor failed to comply with this stipulation and is thus in default of its payment obligation to the Financial Creditor. Hence, the Petition.

The Reply filed by the Corporate Debtor:-

9. The Corporate Debtor states that the Petition filed by the Financial Creditor is not maintainable, frivolous, misconceived, baseless and discloses no cause of action against this Corporate Debtor and is liable to be dismissed with costs.
10. It is stated that the Petition is barred by the limitation, the Corporate Debtor was required to repay the amount in the matter on 31.03.2019.
11. The date of default if any is 30.03.2019 and the present Petition is filed in 2023 which is after a lapse of almost four years.
12. It is further stated that the balance confirmation for the year 2016-17, 2017-18, 2018-19 and 2019-20 cannot be relied upon, since the same was routine audit process and cannot be taken as an acknowledgment for debt. The Financial Creditor has not produced any Balance Sheet of the Financial Creditor nor any other document which can demonstrate the acknowledgement of the debt on part of the Corporate Debtor.
13. The present Petition seems to have been signed by Mr. Umesh Amrutlal Dave claiming himself to be the Authorized Representative of the Financial Creditor. However no Board

Resolution authorizing the said Mr. Umesh Amrutlal Dave has been attached to the Company Petition demonstrating that the said Mr. Umesh Amrutlal Dave has been authorized by the Board of Directors to file the present Petition and thus on this ground the present Company Petition should be dismissed in limine.

14. The Corporate Debtor submits that vide letter dated 14.02.2023 the Corporate Debtor had requested for discussion for reaching an amicable settlement between the parties. Accordingly, the parties arrived at a Settlement Agreement dated 06.03.2023, according to which the Corporate Debtor was required to make a payment of Rs. 1 crore on or before 09.03.2023. However, the said agreement cannot be treated as a valid Agreement since the signatory for the parties are not Authorised by any Board Resolution.
15. The Petitioner filed rejoinder reiterating the averments made in the Petition and controverting those made in the written reply.

Findings:-

16. We have heard Counsel for the parties and gone through the records.
17. The instant Petition has been filed by the Financial Creditor u/s 7 of the Code, 2016 on the ground that the Corporate Debtor has failed to repay the outstanding loan of Rs. 6,00,75,000/- which was guaranteed vide facility agreement dated 15.03.2017 executed between the parties. As per the agreement the rate of interest was 15% per annum w.e.f.

30.03.2017. The Corporate Debtor vide its letter dated 29.03.2019 made a request to extend the period of repayment up to 30.03.2020. The said request was accepted and the repayment date was extended to 30.03.2020 by the Financial Creditor vide letter dated 29.03.2019. However, the outstanding amount was not repaid despite demand notice dated 01.02.2023 was served upon the Corporate Debtor to make payment of the total outstanding amount of Rs. 13,07,49,534/-.

18. The defence raised in the reply is that the Petition is barred by time. According to the Counsel for the Corporate Debtor the facility agreement was executed on 15.03.2017 and as per the agreement the amount was required to be re-paid on 30.03.2019 whereas the Petition has been filed after a period of three years from 30.03.2019. The Counsel for the Corporate Debtor has further pointed out that the balance confirmations issued by the Corporate Debtor for the years from 2016-17 to 2019-20 cannot be relied upon as the same were issued as a routine audit exercise and cannot be equated with acknowledgments.
19. We have thoughtfully considered the above contentions raised by the Counsel for the Corporate Debtor but have found the same to be devoid of any force or substance. No doubt the loan was advanced vide agreement dated 15.03.2017. However, the Corporate Debtor vide its letter dated 29.03.2019 requested the Financial Creditor to extend the repayment date to 30.03.2020. In the reply filed by the Corporate Debtor, the issuance of the letter dated 29.03.2019 has not been disputed. Thereafter, vide letter

dated 29.03.2020 the time was extended. Therefore, the due date for repayment of the outstanding amount of loan was 30.03.2020.

20. The Petitioner has also relied upon balance confirmations issued by the Corporate Debtor on 01.04.2017, 01.04.2018, 01.04.2019 and 01.04.2020 whereby the total outstanding amount including interest has been acknowledged by the Corporate Debtor from time to time. In view of the balance confirmations, which are acknowledgments of debt, the present Petition which was filed on 10.03.2023, cannot be said to be barred by time.
21. It is also worth mentioning that after the demand notice dated 01.02.2023 was issued to the Corporate Debtor, the latter executed a settlement agreement dated 06.03.2023 with the Petitioner undertaking to pay at least Rs. 1 crore out of the outstanding amount on or before 09.03.2023 and the remaining amount of Rs. 5,00,75,000/- on or before 09.06.2023. Even the said commitment was not honoured by the Corporate Debtor as no payment was made on 09.03.2023.
22. The argument that the balance confirmations were issued in routine audit process and the same cannot be treated as acknowledgment is nothing but specious and cannot be accepted.
23. No other points have been raised on behalf of the Corporate Debtor. Even otherwise, in this case the factum of existence of the financial debt and its default has been proved on

record. It has also been established that the present Petition is well within the period of limitation.

24. In the light of the above discussion, we find the instant Petition to be a fit one to be admitted u/7 of the Insolvency and Bankruptcy Code, 2016. It is ordered accordingly in the following terms:

ORDER

- a. **The above Company Petition No. (IB) -308 (MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Krosslink Infrastructure Ltd.**
- b. This Bench hereby appoints Ms. Anil Kumar Dad, Registration No: IBBI/IPA-001/IP-P-02519/2021-22/13840 as the Interim Resolution Professional email :- anil.dad@gmail.com, and address at 6019-20, World Trade Center, Ring Road, Surat – 395002, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 3 Lakhs 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 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 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

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

Sd/-

ANURADHA SANJAY BHATIA
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)