

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

CP (IB) 595/MB/2023

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

Mahipal Enterprises

Having its registered office at: 302, Laxmi
Vaibhav, C-Wing, Factory Lane, Borivali
West, Mumbai - 400092.

...Financial Creditor

Versus

Aastik Trading Private Limited

Having registered office at:- Gala No. 3,
Sarvoday Bhavan, 37 Ramchandra Lane,
Plot No. 36, Malad West, Mumbai – 400064.

.....Corporate Debtor

Order Delivered on :-05.03.2024

Coram:

Mr. Anil Raj Chellan Mr. Kuldip Kumar Kareer
Member (Technical) Member (Judicial)

Appearances:

For the Financial Creditor: Adv. Prakhar Tandon

For the Corporate Debtor: None Present

ORDER

Per:- Kuldip Kumar Kareer, Member Judicial

1. This Company petition is filed by Mahipal Enterprises (hereinafter referred to as "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Aastik Trading Private Limited (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and bankruptcy code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 1,80,28,686/- (Rupees One Crore Eighty Lakhs Twenty-Eight Thousand Six Hundred Eighty-Six Only). The date of default has occurred on 01.10.2021.

The submissions of the Financial Creditor are as follows:

2. The Financial Creditor is engaged in the business of wholesale of Electrical items and supply of Industrial maintenance items.
3. On request of the Corporate Debtor, one M./s Cordcon Builders Private Limited (hereinafter referred to as "Lender"), sanctioned inter corporate deposit/ loan facility of Rs. 1,08,00,000/- for a period of two years during 2017-2018 and 2018-2019 and accordingly a loan Agreement was executed on 01.09.2017.
4. The Financial Creditor herein requested the lender to grant assignment of debt for the said loan and give all the rights to receive the payment

against the said loan amount from the Corporate Debtor. Pursuant thereto, a Deed of Assignment dated 01.07.2020 was executed between the Lender as assignor and the Financial Creditor as assignee wherein the lender transferred all the rights to recover the defaulted loan amount from the Corporate Debtor on the terms and conditions stated therein.

5. As per the said Deed of Assignment, it was agreed between the parties that the Corporate Debtor will repay the loan amount of Rs. 1,08,00,000/- (Rupees One Crore Eight Lakhs Only) within a period of 15 months from the date of execution of the said Deed of Assignment along with 24% interest p.a. in 4 instalments i.e. Rs. 25,00,000/- on 01.10.2021, Rs.25,00,000/- on 01.12.2021, Rs.25,00,000/- on 15.01.2022 and the Rs. 33,00,000/- along with applicable rate of interest.
6. The Corporate Debtor failed to abide the terms of the said Deed of Assignment and defaulted in payment of instalment against the said amount of Rs. 1,08,00,000/-. Pursuant thereto, upon failure of payment of the Corporate Debtor, the Financial Creditor issued first Demand Notice dated 15.10.2021 *inter alia* calling upon the Corporate Debtor to repay the first instalment as per the schedule forming part of Deed of Assignment.
7. In reply to the said Demand Notice, the Corporate Debtor through its letter dated 19.10.2021, acknowledged that an amount of Rs. 1,08,00,000/- along with an interest @ 24% p.a. were in arrears and outstanding to be paid by the Corporate Debtor. Due to Financial stringency and weak position, the Corporate Debtor was unable to pay the payment. In the said letter, the Corporate Debtor requested to

extend the time by 2 months for the payment of the instalment of the loan.

8. Considering the Financial Crunch faced by the Corporate Debtor, the Financial Creditor extended the time limit for payment of the instalment of the loan by 2 months. However, the Corporate Debtor again failed to repay the first as well as second instalment of the loan which was due on 01.12.2021. Hence, the Financial Creditor was constrained to issue second Demand Notice dated 21.12.2021. In response to the said Demand Notice, the Corporate Debtor again acknowledged the outstanding dues and requested for further extension of time for repayment of the loan.
9. Upon failure on the part of the Corporate Debtor, the Financial Creditor sent a final notice dated 22.11.2022 thereby calling upon the Corporate Debtor to pay the outstanding loan.
10. The Financial Creditor have annexed copies of the Statement of accounts, Bank Statements and Ledger confirmations
11. In the light of continuing default on the part of the Corporate Debtor in making the payments of the amount owed to the Financial Creditor, the Financial Creditor is constrained to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.
12. None appeared on behalf of the Corporate Debtor. The Corporate Debtor had been duly served with the court notice on 28.07.2023 but chose not to appear nor filed the reply and hence was proceeded *ex-parte* on 08.01.2024.

FINDINGS

14. We have heard the counsel appearing for the Financial Creditor and gone through the records.
15. It has been pointed out by the Counsel for the Financial Creditor that the Corporate Debtor was granted Inter Corporate Deposit/loan facility of Rs. 1,08,00,000 (Rupees One Crore Eight Lakhs Only) vide Loan Agreement dated 01.09.2017 by M/s Cordcon Builders Private Limited. A Demand Promissory Note was also issued by the Corporate Debtor in favour of the said Lender. Further, the said loan was assigned by the Lender to the Financial Creditor vide Deed of Assignment dated 01.07.2020 whereby all the rights, title and interests were assigned to the Financial Creditor herein and the Corporate Debtor was also party to the said Assignment Deed.
16. It has further been pointed out by the Counsel for the Financial Creditor that on multiple occasions demand notice was sent to the Corporate Debtor. Pursuant to the said Demand notice, the Corporate Debtor has acknowledged its liability from time to time vide reply dated 19.10.2021 and 24.12.2021. As per the NeSL report (Annexure VI) also the date of default is 01.10.2021.
17. No reply has been filed on behalf of the Corporate Debtor and as stated above the Corporate Debtor was proceeded ex-parte. Thus, all the averments made in the Petition have gone uncontroverted. Even otherwise on the basis of the averments made in the Petition and the documents placed on record, it stands established that the Corporate Debtor availed a loan of Rs. 1,08,00,00,000/- from the original lender

vide agreement dated 01.09.2017 for a period of two years the loan was assigned to the Financial Creditor vide deed of assignment dated 01.07.2020 whereby the latter agreed to repay the loan in four installments, however, the payment was not made despite demand notice dated 15.10.2021. Therefore, the Financial Creditor has been able to establish the existence of financial debt in respect of which the default has been committed by the Corporate Debtor and further the Petition has been filed within the period of limitation. Accordingly, we find that the present Petition under Section 7 of the Code to be a fit case for admission. It is ordered in following terms:

ORDER

- a. **The above Company Petition No. (IB) 595 (MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Aastik Trading Private Limited.**

- b. This Bench hereby **appoints Mr. Arun Nandlal Agrawal, Registration No: IBBI/IPA-003/IP-P-00282/2020-21/13234 as the Interim Resolution Professional having email :- iparun@gmail.com**, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs. Three 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/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**