

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

**C.P. 1408/IB/MB/2020**

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*

**Apollo Pipes Limited**

37 Hargobind Enclave Vikas Marg,

New Delhi – 110092

**..... Financial Creditor/Applicant**

**Vs**

**Kisan Mouldings Limited**

Tex Centre K Wing 3<sup>rd</sup> Floor 26-A,  
Chandivili Road Near HDFC Bank Andheri  
East, Mumbai, Maharashtra – 400072

**..... Corporate Debtor**

**Order Reserved On: 09.01.2023**

**Order Pronounced On: 15.03.2023**

**Coram:**

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

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

***Appearances: -***

**For the Petitioner:** Adv. Karan Gandhi & Ms. Komal Karva

**For the Respondent:** Adv. J M Bhargat

*Per: Shri. Kuldip Kumar Kareer, Member (Judicial)*

### **ORDER**

1. The above Company Petition is filed by **Apollo Pipes Limited** hereinafter referred to as the ("**Financial Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Kisan Mouldings Limited** hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Financial Debt of Rs. 1,20,38,771/- including interest.

### **Facts of the Case: -**

2. It is stated that the Financial Creditor and the Corporate Debtor entered into an Asset Purchase Agreement on 06.11.2019. Under the Agreement, the Seller/Corporate Debtor had to obtain No Dues Certificate from all the lenders. However, after a lapse of more than a month's time, the Seller/Corporate Debtor could not perform his obligations. As a result of the parties entered into agreement dated 13.12.2019 whereby it was agreed that the Financial Creditor would advance a sum of Rs. 2,75,00,000/- to the Corporate Debtor which would be utilized by the latter for the purposes stated in Para 3 of the Agreement. As per the Agreement, a sum of Rs. 1,00,00,000/- out of 2,75,00,000/- was advanced as a loan/deposit to the Corporate Debtor which was repayable after 45 days with interest @ 12%. In this regard, the parties executed a separate loan agreement dated 13.12.2019 itself.
3. As per the terms of the Loan Agreement, the Financial Creditor was entitled to recover interest and liquidated damages in case of default committed by the Corporate Debtor. The Corporate Debtor in addition to the execution of the loan agreement handed over 4 cheques Rs. 25,00,000/- each drawn on Punjab

National Bank. The loan was further guaranteed by the Personal Guarantor, Mr. Rishav Sanjeev Aggarwal who also issued cheque Rs. 1,00,00,000/- in favour of the Financial Creditor. The Corporate Debtor further executed Demand Promissory Note dated 13.12.2019 promising to repay Rs. 1,00,00,000/- with interest @ 12% p.m.

4. When the payment was not made by the Corporate Debtor, the Financial Creditor deposited the 4 cheques of Rs. 25,00,000/- which were returned unpaid by the Bank with the remark "Payment Stopped by Drawer". In this manner, the Corporate Debtor failed to repay the loan amount despite the fact that period of repayment expired on 22.03.2020. A Legal Notice dated 02.12.2020, under Section 138 of the Negotiable Instruments Act was also issued but despite that, the payment was not made. As per Part IV of the Petition, the date of default is 22.03.2020 when a period of 45 days expired as per the agreement. Hence the Petition.

**Reply filed by the Corporate Debtor:-**

5. The Petition has been resisted by the Corporate Debtor. In reply, the Corporate Debtor has pleaded that the Petitioner entered into Asset Purchase Agreement on 06.11.2019 in respect of plot number 172-b and 173-a situated at Village Nogenhalli, Kora Hubli, Tukur Taluka Karnataka for a sale consideration of Rs. 21,51,00,000/-. As the Corporate Debtor was running short of funds, it could not get the lien of ICICI Bank Limited and PNB on the properties released which was to the tune of Rs. 1,00,00,000/-. Accordingly, the Corporate Debtor accepted the offer of the Petitioner and agreed to take Rs. 1,00,00,000/- as temporary loan. As agreed, the Corporate Debtor arranged to release the lien from the said Banks/Institutions. However, due to Covid-19 situation, he could not repay the loan as agreed. The Corporate Debtor sought time through letter dated 25.08.2020 to complete the payment by 31.12.2020, in response to which, Mr. Ajay Jain stated that the payment be made by 12.09.2020 to the Petitioner. Thereafter, interest amount of Rs. 1,47,945/- along with a sum of Rs. 5,00,000/- was remitted via NEFT to the Petitioner on 08.09.2020 but the

Petitioner taking undue advantage of the situation deceitfully deposited cheque no. 273781 dated 19.10.2020 of PNB issued as security by Mr. Rishav Aggarwal out of his personal account. The Petitioner further deposited 4 cheques of Rs. 25,00,000/- each without any information to the Corporate Debtor which were dishonored.

6. According to the Corporate Debtor, the total debt is less than Rs. 1,00,00,000/- as the interest amount and principal sum of Rs. 5,00,000/- has already been returned to the Financial Creditor. Moreover, the Petitioner has arbitrarily claimed interest @ 32% which is also illegal. The Corporate Debtor has further pleaded that the date of default is 12.09.2020 which is covered under Section 10A of the Code. In the end, the Corporate Debtor has prayed for dismissal of the Petition.

**Findings: -**

7. We have heard the Counsel for the Parties and have gone through the record.
8. During the Course of arguments, the Counsel for the Corporate Debtor has contended that the Petition is barred under Section 10A of the Code. In this regard, it has been pointed out that the Petitioner itself extended the date for repayment to 31.12.2020. Therefore, according to the Counsel for the Respondent, the payment was to be made on 31.12.2020 and in case the payment was not made by the said due date, it would constitute default effective from 31.12.2020. Therefore, the date of default is 31.12.2020 which is covered under 10A period and, therefore, the petition is barred under Section 10A of the Code.
9. It has further been claimed that the cheques given for repayment were also dated 20.11.2020 and due to this also the date of default is liable to be treated as 20.11.2020 which also falls within the exempted period under Section 10A of the Code, and on this ground also, the Petition is liable to be dismissed.
10. We have thoughtfully considered the aforesaid contentions raised by the learned Counsel for the Corporate Debtor but have found the same to be not

tenable. In this regard, it is worthwhile to mention that in the loan agreement dated 13.12.2019, whereby the loan of Rs. 1,00,00,000/- was admittedly advanced to the Corporate Debtor, it is stated that the repayment was to be made at the end of 45 days. Therefore, as per the agreement, the date of default was 28.01.2020 when the period of 45 days was to expire. It is clear from the agreement that on expiry of 45 days, the Respondent was to repay amount of Rs. 1,00,00,000/- along with interest amount of Rs. 1,47,945/- as mentioned in repayment clause of the agreement. Clause 5.1 of the Agreement further provides that event of default will be non-payment by the Borrower in whole or part of the principal and interest amount on the repayment date. Since the payment was not made by 28.01.2020, the default is deemed to have occurred on the said date. Merely because the security cheques of Rs. 25 lacs each were presented for encashment on 20.11.2020 could not by itself extend the default date to 20.11.2020. It is well settled that the initial date of default always remains the same and it cannot be shifted or changed taking into consideration any subsequent events. As the amount was not repaid on the due date, i.e., 28.01.2020 the default occurred on that date. Therefore, it cannot not be said by any stretch of imagination the petition is barred under Section 10A of the Code. Similarly, merely because in the email dated 25.08.2020 (Exhibit-A) the Petitioner asked the Respondent to pay the amount by 31.12.2020 would no change the date of default from 28.01.2020.

11. Another contention has been raised by the Counsel for the Respondent that since an amount of Rs. 5,00,000/- plus interest of 1,47,945/- stood already repaid, the Petition is barred being below the threshold limit of Rs. 1 Crore. Even this contention of the Counsel for the Corporate Debtor is not sustainable. As per letter (Exhibit-C) relied upon by the Corporate Debtor, the payment of Rs. 5,00,000/- plus interest of Rs. 1,47,945/- was made on 08.09.2020. Since the loan was advanced on 13.12.2019, the interest @ 12% started accruing from the date of the agreement itself as per the terms and conditions incorporated therein. Merely because, the Respondent paid Rs. 6,47,945 on 08.09.2020, it cannot be said that the total amount of the claim falls below Rs.

1 Crore. It is not disputed that apart from the payment of Rs. 6,47,945/- no further payment was made. The Petition was filed on 02.03.2020. If the interest as per the loan agreement is taken into consideration, at the time of filing the complaint the amount due works out to more than Rs. 1 Crore, even after adjusting the payment of Rs. 6,47,945/-. Therefore, it cannot be said that the Petition does not meet the requirement of minimum amount of Rs. 1 Crore.

12.No other points have been raised.

13.As a result of the above discussion, we are of the considered view that the Petition has been able to establish that there was a debt of more than of Rs. 1 Crore in respect of which the default has been committed by the Corporate Debtor. The Petition has been filed within the period of limitation. Therefore, we are of the considered view that a clear-cut case of admission under Section 7 is made out.

14.Accordingly, the above Company Petition is '**admitted**' by passing the following:

#### **ORDER**

- a) The above Company Petition No. 1408/IB/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Kisan Mouldings Limited**.
- b) The Financial Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition. This Bench hereby appoints **Mr. Amit Gupta**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00021/2016-2017/10048, having Email id [amitguptacs@gmail.com](mailto:amitguptacs@gmail.com) 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 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon

communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

- 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 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; 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k) Accordingly, the above **C.P. 1408/IB/MB/2020** is **admitted**.
- l) 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)**