

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I,
KOLKATA**

CP(IB) No. 1787/KB/2019

In the matter of:

Petition under section 7(1) 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:

Subir Sengupta, Flat F-101, Green Valley Housing Complex, Kaikhali Chiria More, Kaikhali Main Road, Kolkata 700136, in the State of West Bengal.

.....Financial Creditor

-Versus-

Corrogonon India Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, and having Corporate Identification No-U23201WB1985PTC039804 and its registered office at P176, Kalindi, P.O.-Lake Town, Kolkata-700089 in the State of West Bengal.

.... Corporate Debtor

Date of Hearing : 29th March, 2022

Date of pronouncing the order: 25th April, 2022

Coram:

Shri Rajasekhar V.K., Member(Judicial)

Shri Balraj Joshi, Member(Technical)

Appearances (via video conferencing):

For the Financial Creditor	:	Mr. Rishad Medora, Advocate
		Mr. Soumava Mukherjee, Advocate
For the Corporate Debtor	:	Ms. Jishnu Chowdhury, Advocate
		Mr. Pratiti Das, Advocate

ORDER

Rajasekhar V.K., Member (Judicial):

1. This Court convened through video conferencing.
2. This Company Petition under section 7(1) of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 , has been filed by **Subir Sengupta** (hereinafter referred to as the Financial Creditor), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Corrogonon India Private Limited** (hereinafter referred to as the Corporate Debtor).

Submissions on behalf of the Financial Creditor:

3. It is submitted on behalf of the Financial Creditor that in July, 2015, the Corporate Debtor through one Mr. Ayandeep Dutta approached the Financial Creditor and asked for certain financial assistance, on the pretext that the Corporate Debtor had been awarded a contract by IRCON through MBL, for platform refurbishing and renovation work in Shalimar Railway Station and Santragachi Railway Station. The Corporate Debtor was in need of financial assistance and as such upon the representation made by the Director of the Corporate Debtor, Mr. Suman Bhattacharya, the Financial Creditor advanced loan to the tune of ₹25,51,025/- (Rupees Twenty- Five Lakh Fifty- One Thousand and Twenty-Five Only) to the Corporate Debtor in six tranches between the period of 2015 and 2016.
4. The Financial Creditor was appointed as a project coordinator, limited for the purpose of operating the bank account of the Corporate Debtor specifically dealing with the project for the purpose of which loans were advanced by the Financial Creditor. To that effect a Board Resolution dated 2nd October 2015 was drawn by the Corporate Debtor. The Corporate Debtor was obliged to repay such loan along with interest @ 12% p.a. by 31st December 2018.
5. The Financial Creditor for the purpose of rendering financial assistance to the Corporate Debtor availed a Personal Loan from ICICI Bank to the tune of ₹14,59,000/-(Rupees Fourteen Lakh Fifty-Nine Thousand Only) and the Financial Creditor was also under an impression that from the money which the

corporate debtor would refund, the Financial creditor would repay the EMI from the said amount, and in view of the foregoing the Financial Creditor asked the Corporate Debtor to refund the amount of loan directly to the loan account of the Financial Creditor.

6. Sometime around February 2017 the Corporate Debtor started to default in repaying the loan advances by the Financial Creditor and last such payment was made on 31st August, 2017. Upon enquiry the Corporate Debtor on some pretext or others started avoiding the Financial Creditor. Till date the corporate debtor had paid only ₹6,31,400/- (Rupees Six Lakh Thirty-One Thousand Four Hundred Only) till date.
7. The Financial Creditor left with no other alternatives was paying the loan amount advanced by the banker along with interest from time to time and lastly such loan was paid on September 2019 and to that effect the Financial Creditor already had to incur a huge loss.
8. The Financial Creditor issued a legal notice on 24th September 2018 in favour of the Corporate Debtor for repayment of the outstanding amount of ₹22,24,401/- (Rupees Twenty- Two Lakh Twenty- Four Thousand and Four Hundred and One Only) including the interest which had accrued on that date, to be paid within 15 days from the date of the notice. No reply was received from the Corporate Debtor to the said notice.
9. The Corporate Debtor was obliged to repay such loan along with interest @ 12% p.a. by 31st December 2018, which he failed to do. Hence the date of default is 31st December 2018. As on 10.09.2019, an aggregate sum of ₹30,94,363/- (Rupees Thirty Lakh Ninety-Four Thousand, Three Hundred and Sixty-Three Only) including interest and overdue interest, was due and payable by the Corporate Debtor.

Submissions on behalf of the Corporate Debtor:

10. The Corporate Debtor has submitted that the instant Petition lacks the basic criterion of an Petition under Section 7 (3) (b) of the Insolvency and Bankruptcy Code, 2016 and the mandatory fulfilment of proposing the name of the Interim Resolution Professional in Part - III of the form. The provisions

of the Code, 2016 mandatorily states suggesting of IRP which the Petitioner has failed to comply with and as such the Petition should be dismissed in *limine* on such ground itself.

11. The Petitioner has also failed to establish the loan facility allegedly availed by the corporate debtor. The Petitioner was admittedly appointed as the project co-ordinator and was completely involved in the project and there is not a single shred of evidence to prove advancement of any loans from the alleged financial creditor in any manner whatsoever. The board resolution as annexed by the Petitioner speaks clearly about appointment of the Petitioner as a project co-ordinator and in such capacity has made several highhanded and dubious transactions to third parties from such bank account without accounting for the same against invoices not concerned and/or related with/to the said project and the bank account. The corporate debtor reserves its rights to counter sue the alleged financial creditor for such fraudulent activities.
12. The Petitioner herein voluntarily involved himself in the said project and there is no enforceable loan agreement or contract or document or any demand promissory note to demonstrate any advancement of loan made towards the corporate debtor as alleged or at all. The Petitioner has also failed to evidence the fact of loans being obtained by the Petitioner from any financial institution and repayment of the same thereof pertaining to the said project.
13. The Petitioner was solely responsible for managing the bank account and operations thereof. The financial reports of the corporate debtor in no manner whatsoever reflects any loans and advances from the Petitioner. It is in furtherance contended that a financial contract as defined under rule 3 (1) (d) of the Insolvency and Bankruptcy Rules, 2016 requires mandatory setting out the terms of the financial debt including tenure of the debt, interest payable and date of repayment which in the instant case is not in existence and there is no accompanying document to demonstrate the same.
14. Further, at the time of filing an Petition by a Financial Creditor before the Adjudicating Authority, the Financial Creditor is mandatorily required to

furnish the complete copy of the financial contract written in nature regarding such loan transactions.

15. It is also submitted that the claim is hopelessly barred by the laws of limitation. The board resolution is dated 2nd October, 2015 and the claim has been lodged beyond the period of three years which apparently bars the Petitioner from lodging its claim. The Petitioner's claim is devoid of the basic ingredients of a financial debt as defined under section 5 (8) of the Code, 2016 and the Petitioner is put to strict proof thereof.
16. It is submitted that there is no debt or default on the part of the corporate debtor and the corporate debtor denies the contentions made in Part - IV and there is no document to prove any interest quotient as alleged and as such the corporate debtor is not liable to pay any alleged interest or any amount purportedly claimed by the Petitioner herein.
17. The contention and allegations made in the purported demand notice dated 24th September, 2018 bearing reference N/CIPL(SS)/01 /18-19 are denied as the same was never issued to the corporate debtor and acknowledgement on the part of the corporate debtor pursuant to such debt is denied and disputed and the Petitioner is put to strict proof thereof.

Rejoinder on behalf of the Financial Creditor:

18. It is stated that at the behest of the Corporate Debtor the Financial Creditor availed a bank loan, and as agreed thereby, the Corporate Debtor also time to time paid the sum towards monthly installments till August 31, 2017, and as such mere denial of the fact that the transaction between the parties cannot be termed as Financial Debt is not tenable in the eyes of law.
19. The Financial Creditor submits that the Financial Creditor had advanced loan, payable on demand, for a sum of Rs. 25,51,025/- (Rupees Twenty- Five Lakh Fifty- One Thousand and Twenty-Five Only) to the corporate debtor. It is denied that there is no enforceable loan agreement or contract or document or any demand promissory note to demonstrate advancement of loan towards the corporate debtor. It is stated that from the bank statement itself which forms part of the original Petition, it will be evident that from time to time the financial

creditor had advanced loan amount in favour of the corporate debtor and the corporate debtor also time to time repaid certain amount of money to the financial creditor.

20. The Financial Debtor denies being solely responsible for managing the bank account and operations thereof and states that the escrow account of the Corporate Debtor had been operated by one Mr. Ayandeep Ghosh, and the Financial Debtor jointly at the request and sanction of the Board of Directors of the Corporate Debtor.
21. The Financial Creditor further submits that the questions raised regarding refund of the Loan were taken by the Corporate Debtor from the Financial Creditor and the Directors of the Corporate Debtor resolved that the Financial Creditor should be allowed to be one of the operating persons of the said escrow account of the Corporate Debtor to which the Loan amount had been transferred for the specific project awarded in favour of the Corporate Debtor.
22. Moreover, the reflection of loan in the books of accounts of the Corporate Debtor is the sole responsibility of the directors of the corporate debtor, and as such the Corporate Debtor cannot shed off their liability towards the financial debt. It is further submitted that from a bare perusal of the financial report of the corporate debtor, it will appear that short term loan for the year ending 2016, 2017 and 2018 stands respectively at ₹9,76,544/- (Rupees Nine Lakh Seventy-Six Thousand and Five Hundred Fourty-Four Only), ₹1,32,41,212/- (Rupees One Crore Thirty- Two Lakh Forty- One Thousand and Two Hundred and Twelve Only), and ₹1,90,98,962/- (Rupees One Crore Ninety Lakh Ninety Eight Thousand and Nine Hundred and Sixty-Two Only) respectively, and as such the pleadings of the corporate debtor that the financial reports of the corporate debtor in no manner whatsoever reflects and loans and advances from the Petitioner is false and hence denied.
23. It is vehemently denied that Section 7(3)(c) gives a mandate upon the financial creditor to furnish copy of written financial contract at the time of filing an Petition under Section 7 of the Code, 2016. Your Financial Creditor begs to state that the agreement between the parties is oral in nature, and the loan advances

- were in good faith. It is to be stated further that the loan advances to the corporate debtor will be evident from the bank account statement, and as such the corporate debtor cannot shed off the liability of repaying the loan amount.
24. The Financial Creditor submits that the Board Resolution dated 2nd October, 2015 was in relation to authorization of operation and maintenance of escrow account of the Corporate Debtor, as such the date of board resolution is irrelevant and cannot be considered for the purpose of limitation.
25. The loan advances by the Financial Creditor to the corporate debtor and the obligations to repay the same is in the nature of specific performance of contract. Article 54 of the Schedule to the Limitation Act, 1963 deals with period of limitation in cases, of Specific Performance of a Contract and states that the limitation period in such cases will be three years from the date fixed for the performance, or, if no such date is fixed, when the plaintiff has noticed that performance is refused. The corporate debtor had paid its last due on 31st August, 2017 and since then the corporate debtor had stopped making payments.
26. Moreover on 24th September, 2018 the Financial Creditor through his advocate issued a legal notice to the corporate debtor, but the corporate debtor had failed to deny and/or never refused their obligation to perform, and thus the cause of action is continuing against the corporate debtor as on date.

Analysis and Findings

27. Heard the Ld. Counsel for the Financial Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.
28. The Corporate Debtor's contention is no written contract regarding any loan being sanctioned to the Corporate Debtor by the Financial Creditor. In this regard, we would like to rely on the stance taken by the NCLAT in **Narendra Kumar Agarwal and ors v Monotrone Leasing Private Limited and Ors.** (Company Appeal (AT) (Insolvency) No. 549 of 2020 (NCLAT; Order dated 19.01.2021) wherein it was held that the written contract cannot be treated as an essential element or pre-requisite to prove the existence of Financial Debt (Para 11)

29. However, the Financial Creditor has failed to bring on record any other evidence to substantiate its claim that there was a financial debt and a default of the same. The Financial Creditor has produced the Corporate Debtor's Annual reports for the Financial Years 2015-16, 2016-17 and 2017-18. However, the same do not reflect any debt due specifically to the Financial Creditor.
30. Further, the Financial Creditor has placed reliance on its bank statements that reflect transactions between the parties. However, in absence of any written document indicating the purpose of the said transactions, it cannot be assumed to have been towards a loan as claimed by the Financial Creditor.
31. In light of the above facts and circumstances, we would like to hold that while a written contract cannot be treated as a pre-requisite to proving the existence of financial debt, the Adjudicating Authority must be satisfied that the Corporate Debtor is not being dragged into Corporate Insolvency Resolution Process mala fide for any purpose other than the resolution of the Insolvency. In the present matter, there is not enough evidence to satisfy this Adjudicating Authority of the same.
32. Hence, we reject the Company Petition on the grounds stated above. Consequently, **C.P.(IB) No. 1787/KB/2019** shall stand dismissed. Needless to say, the Financial Creditor is free to pursue its remedies under any other law, and the dismissal of the present petition shall not stand in the way of such pursuit of remedies.
33. The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
34. Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

**BALRAJ
JOSHI**

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BALRAJ JOSHI
Date: 2022.04.25
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Balraj Joshi
Member (Technical)

**Rajasekh
ar V K**

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Date: 2022.04.25
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Rajasekhar V.K.
Member (Judicial)

Signed on this, the 25th day of April, 2022

SM[LRA]