



IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I

CP (IB) 860/MB/2022

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Mr. KISANRAO KASHIPRASAD BORELE

Plot No.59, Flat No.401, Near Aath Rasta Chauk,
Laxmi Nagar, Nagpur - 440022.

... Financial Creditor /Petitioner

Versus

**LATAKISAN CONSTRUCTIONS PRIVATE
LIMITED**

[CIN: U45201MH2014PTC253842]

Rajat Sankul, Rambag Road, ST Stand, Ganeshpeth,
Nagpur 440018 MH

... Corporate Debtor / Respondent

Order Delivered on: 23.06.2023

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Adv. Jatin Kumar
For the Corporate Debtor : Adv. Devashish Godbole

ORDER

Per: H. V. Subba Rao, Member (Judicial)

1. This is a Company Petition filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by Mr. Kisanrao Kashiprasad Borele (“the Financial Creditor”), seeking



to initiate Fast Track Corporate Insolvency Resolution Process (CIRP) against **Latakisan Constructions Private Limited** ("the Corporate Debtor").

2. It is submitted that the Corporate Debtor is eligible for initiation of Fast-Track Corporate Insolvency Resolution Process (FTCIRP) in the following manner:

- (i) *That the Ministry of Corporate Affairs on 14.06.2017 had issued Notification No. S.O. 1911(E) under Section 55(2) of the Code. The above Notification is appended to the Petition as Annexure – 2 (pgs.16-17).*
- (ii) *Under Clause (a) of the above Notification, small companies as defined under Section 2(85) of the Companies Act, 2013 have been notified as eligible for initiation of FTCIRP.*
- (iii) *that as per the Financial Statements contained in the Independent Auditor's Report of the Corporate Debtor for the year ending at 31.3.2021, the Corporate Debtor qualifies as a small company under Section 2(85) of the Companies Act, 2013.*
- (iv) *That the turnover of the Corporate Debtor for the year ending 31.03.2021 was Rs.17,82,828/-. The aforesaid Independent Auditor's Report of the Corporate Debtor for the year ending 31.03.2021 is appended to the Petition as Annexure – 3 (pages 18-34).*

3. The present Petition was filed on 22.08.2022 before this Adjudicating Authority on the ground that a total loan of Rs.3,05,07,000.95 (Rupees Three Crore Five lakhs Seven



thousand and paise Ninety-five only) was granted to the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same.

4. The Corporate Debtor is company incorporated on 05/03/2014 under the Companies Act, 2013, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Rajat Sankul, Rambag Road, ST Stand, Ganeshpeth, Nagpur-440018, MH. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions made by Financial Creditor by way of Application/ Petition:

5. The Financial Creditor submits that the total amount of Debt granted is Rs.3,05,07,000.95 (Rupees Three Crore Five lakhs Seven thousand and paise Ninety-five only) and the amount claimed to be in default in Part IV of the Petition is Rs.3,05,07,000.95 towards principal amount and Rs.1,41,75,658/- (as on 15.06.2022) towards interest at the rate of 18% per annum computed from 03.09.2021 i.e. cumulative amount aggregating to Rs.4,46,82,658/- (as on 15.06.2022) is payable by the Corporate Debtor. The date of default stated to be is 15.06.2022. The debt thus, is not time-barred.

Particulars of financial debt and disbursement:

6. Detailed working of amounts disbursed and amount due.

Date of transaction	Bank account No.	Principal amount (in Rs.)	Interest @ 24% compounded	Principal + Interest (in Rs.)
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			monthly till 15.06.2022 (in Rs.)	
16.04.2020	911010044957117 (Axis Bank)	60,00,000	38,43,636	98,43,636
30.06.2020	911010044957117 (Axis Bank)	39,50,000	22,78,752	62,28,752
30.06.2020	911010044957117 (Axis Bank)	25,00,000	14,42,248	39,42,248
14.07.2020	488010100025878 (Axis Bank)	3,50,000	2,01,915	5,51,915
05.08.2020	488010100025878 (Axis Bank)	47,00,000	25,66,104	72,66,104
11.08.2020	911010044957117 (Axis Bank)	15,00,000	8,18,970	23,18,970
19.08.2020	488010100025878 (Axis Bank)	5,00,000	2,57,833	7,57,833
17.11.2020	911010044957117 (Axis Bank)	10,00,000	4,28,246	14,28,246
10.12.2020	488010100025878 (Axis Bank)	7,00,000	2,99,772	9,99,772
02.08.2021	002000730000938 (Pusad Urban Cooperative Bank)	93,07,000	20,38,181	1,13,45,181
TOTAL DUE AS ON 15.06.2022		3,05,07,000	1,41,75,658	4,46,82,658

7. The Financial Creditor submits that the Corporate Debtor had entered into a Mortgage Deed on 17.07.2014, with Pusad Urban Co-operative Bank Limited (**the Bank**) and the Financial Creditor, wherein the Bank had agreed to sanction a working capital loan with a limit of Rs.3,50,00,000/-, by creating an equitable mortgage on the property of the Financial Creditor. The said Mortgage Deed was signed by the representatives of the Bank, Corporate Debtor and Financial Creditor. The Mortgage



Deed dated 17.07.2014 along with all the relevant documents (and translations) are collectively annexed to the Petition as **Annexure – 6 (colly) (pages 39-112).**

8. Further, the directors of the Corporate Debtor anticipated a default in the above-mentioned loan, and hence, they entered into a Loan Agreement dated 20.08.2019 with the Financial Creditor, wherein the Financial Creditor would discharge the liabilities of the Corporate Debtor in case the Corporate Debtor is unable to repay its debt to the Bank. As per this Loan Agreement, after the whole of the liability of the Corporate Debtor with the Bank is discharged by the Financial Creditor, the Corporate Debtor would have to repay the this amount to the Financial Creditor within six months from the date of execution of release deed along with an interest compoundable @ 24% per annum (compounded at monthly rest) computed from the date of first tranche of payment made by the Financial Creditor. A copy of the Loan Agreement dated 20.08.2019 is annexed to the Petition as **Annexure – 7 (pages 113-118).**
9. That on 01.04.2020, the Corporate Debtor issued a letter to the Financial Creditor, requesting it to start making payments in terms of Loan Agreement dated 20.08.2019. The said letter is annexed to the Petition as **Annexure – 8 (pages 119).**
10. The Financial Creditor through a series of payments starting from 16.04.2020 till 02.08.2021 deposited a total of Rs.3,05,07,000.95 as repayment of the Corporate Debtor debt with the Bank. The statements of three bank accounts of the Financial Creditor showing the relevant transactions (along with



certification under Banker's Book Evidence Act, 1891) are collectively annexed to the Petition as **Annexure – 9 (colly) (pages 120-130).**

11. The Bank through a no due certificate dated 02.08.2021 have certified that it has no further outstanding against the Corporate Debtor and have released the mortgage on Financial Creditor's land by way of release deed dated 24.08.2021. The above documents are collectively annexed to the Petition as **Annexure – 10 (colly) (pages 131-210).**
12. That the Financial Creditor, on 24.08.2021, issued a letter informing the Corporate Debtor, that all of its Liabilities towards the Bank have been discharged by the Financial Creditor and asked it to fulfil its obligations as per the Loan Agreement dated 20.08.2019. the said letter is annexed to the Petition as **Annexure – 11 (pages 211-212)**
13. That as per the arrangement between the parties, the Corporate Debtor was supposed to repay the amount paid by the Financial Creditor on its behalf, within 6 months from the date of execution of release deed i.e. six months from 24.08.2021. The Financial Creditor, vide its letter dated 24.02.2022, again reminded the Corporate Debtor of its obligations under the Loan Agreement dated 20.08.2019. A copy of the said is annexed to the Petition as **Annexure – 12 (page 213)**
14. However, the Corporate Debtor vide its letter dated 28.02.2022, informed the Financial Creditor its inability to discharge its obligations as per the Loan Agreement dated 20.08.2019 and



sought another 18 months for payments of the amount. Copy of the said letter is annexed to the Petition as **Annexure – 13 (page 214)**

15. The Financial Creditor submits that it has been 9 months since the execution of the Release Deed, and the Corporate Debtor has still not been able to discharge the liability.
16. The Financial Creditor has also annexed Record of Default with the Information Utility to the Petition as **Annexure – 14 (pages 215-216)**
17. The Financial Creditor submits that an Application for initiation of CIRP has been submitted to the Insolvency and Bankruptcy Board of India in Form 1A and proof of service to the Corporate Debtor has been annexed to the Petition as **Annexure – 15 (pages 217-218, & 219)**.

Submissions made by the Corporate Debtor by way of Affidavit in Reply

18. The Corporate Debtor states that the allegations made in the captioned Petition is false and fabricated story maliciously concocted by the Financial Creditor Bank.
19. The Corporate Debtor states that the Financial Creditor is guilty of fraud, misrepresentation and hidden the relevant following facts that are vital to the question at issue:
 - a) The Corporate Debtor states the Financial Creditor is liable for engaging in exorbitant interest charging and has misused



the Corporate Debtor's precarious legal position to profiteers from the same.

- b) The Corporate Debtor states that the Financial Creditor has called in for the loan before it was due and payable according to the Agreement.
- c) The Corporate Debtor states that the Loan Agreement between the parties is dated 20.08.2019. The repayment was to be done only after the Financial Creditor has discharged the liability of the Corporate Debtor with Pusad Bank.
- d) The Corporate Debtor further states that Financial Creditor has not annexed any Notice or document whereby the Financial Creditor has intimated the Corporate Debtor about the money being payable or due.
- e) The Corporate Debtor further states that the Financial Creditor has failed to state that there are on-going negotiations for and one-time settlement and that there exists a significant scope for settling the matter.
- f) The Corporate Debtor states that the present Petition is filed merely to pressurize the Corporate Debtor. It sought for extension of 18 months' time to repay the loan but the Financial Creditor has failed to response the same and has directly filed the said Petition.

Findings:

- 20. Heard the Ld. Counsel for the Financial Creditors and the Ld. Counsel for the Corporate Debtor and perused the records.



21. The Counsel for Petitioner through his arguments articulated the existence of “debt” and “default” which are corroborated from the records annexed to the Petition.
22. Let us deal with the objections raised by the Corporate Debtor, the first and foremost objection is exorbitant interest charged by the Financial Creditor which is beyond the scope and enquiry of Section 7 petition. The next contention is that the repayment was to be done by the Corporate Debtor to the Financial Creditor only after discharging the loan to Pusad Bank by the Financial Creditor as per the terms of loan agreement dated 20.08.2019. In this regard it is appropriate to mention here that the Financial Creditor has not only placed the statement of accounts in support of the repayment done by him to Pusad Bank but also annexed no due certificate dated 02.08.2021 at page Nos. 131 to 210 which clearly proves that the Financial Creditor has discharged the liability of the Corporate Debtor on their behalf.
23. The other contention is that the Financial Creditor has not demanded any payment in writing. In this regard, it is important to mention here that the Financial Creditor on 24.08.2021 issued a letter informing the Corporate Debtor that all its liabilities towards the bank have been discharged by them and demanded the Corporate Debtor to fulfil their obligations as per the loan agreement which is annexed page 211 to 212 of the Company Petition.



Thus, it is very clear from the above observations that the pleas raised by the Corporate Debtor in their affidavit-in-reply are blatant lies and are raised merely for the sake of defence.

24. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.
25. Upon perusal of records, this Bench is of the considered opinion that the Corporate Debtor is in default of debt and owes money to the Financial Creditor.
26. The Financial Creditor has proposed the name of **Mr. Prasad Dharap**, Registration No. IBBI/IPA-001/IP-P00702/2017-18/11228, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration. Annexed as **Annexure-4 (pgs. 35-37 of CP)** to Company Petition.



27. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
28. It is, accordingly, hereby ordered as follows: -
- (a) The Petition bearing **CP (IB) 860/MB/2022** filed by **Kisanrao Kashiprasad Borele**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Latakisan Constructions Private Limited [CIN: U45201MH2014PTC253842]**, the Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, regarding the following:
 - (i) 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;



- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:
- (i) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IB Code.



- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Mr. Prasad Dharap**, Registration No.IBBI/IPA-001/IP-P00702/2017-18/11228, having address at Plot No.47, “Prasad”, Opposite Lendhra Park,, New Ramdaspath, Nagpur -400010 Email: dharap65@rediffmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).



- (i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
SHYAM BABU GAUTAM
Member (Technical)

23.06.2023
SAM

Sd/-
H. V. SUBBA RAO
Member (Judicial)