

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

**C.P.(IB)-1184 (MB)/C-III/2023**

(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*

**M/S SYNERGY WOOD AND GLASS PRIVATE**

**LIMITED**, a company incorporated under Companies Act, 1956 having its registered office at 173/174, Sejal Encasa, S.V. Road, Kandivali- (West), Mumbai- 400067

...Financial Creditor

Versus

**M/S SHRI ANIRUDDHA WOOD PRIVATE**

**LIMITED**, a company incorporated under Companies Act, 1956 having its registered office at Parvati Niwas Top Floor, Room No-17, Above Prabhu Niketan Hotel, Daftary Road, Malad- (East), Mumbai- 400 097

...Corporate Debtor

**Order Pronounced on 21.02.2024**

***Coram:***

**MS. LAKSHMI GURUNG, HON'BLE MEMBER (J)**

**SH. CHARANJEET SINGH GULATI, HON'BLE MEMBER (T)**

***Appearances:***

For Financial Creditor: Adv. Avinash Khanolkar

For Corporate Debtor: Adv. Kajal S. Chaurasia

**Per: MS. LAKSHMI GURUNG, MEMBER (J)**

1. The Present **Company Petition (IB)-1184 (MB)/2023** has been filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**'IBC'** / **'the Code'**) by Synergy Wood and Glass Private Limited (**'Financial Creditor/FC'**) for initiating Corporate Insolvency Resolution Process against Shri Aniruddha Wood Private Limited (**'Corporate Debtor/CD'**) for default in repayment of loan.

2. **Brief facts emerging from the documents annexed to the Petition:**

2.1. Loan agreement was executed on 20.04.2023 by and between the Corporate Debtor (referred as "**Borrower**" in the loan agreement) and Financial Creditor (referred as "**Lender**" in the loan agreement), with following terms and conditions:

- a. **Term Loan Facility:** The Lender has extended a loan facility of Rs. 1,00,00,000/- (Rupees One Crore Only) to the Borrower which shall be repaid by the Borrower within a period of one year from the date of receipt of the payment i.e. on or before 31.03.2014.
- b. **Interest and Penalty:** The Borrower shall, until the loan is paid off, pay to the Lender proportionately interest on the amount of the loan for the time being at the rate of 12% (Twelve per cent) per annum. The interest shall be paid regularly on quarterly rests basis.
- c. **Late Fee:** All interest which shall accrue on the loan or any part thereof and for the time being remaining unpaid and all other money which have become due and payable under this agreement, if not paid on due date, shall carry late fee @one rupee per thousand per day calculated on quarterly cumulative basis instead of 12% rate of interest payable to the Lender.

- 2.2. The CD issued post-dated cheque No. 125238 dated 31.03.2014 drawn on State Bank of India towards payment of the principal amount of Rs. 1,00,00,000/- (Rupees One Crore only), in addition to cheques for interest payment.
- 2.3. The CD also issued Promissory Note for Rs. 1,00,00,000/- dated 20.04.2013 payable on demand or as directed in writing by the FC with interest thereon @ rate of 12% p.a.
- 2.4. Upon non-payment of the loan, the FC sent letter dated 07.10.2014 requesting CD to make the payment of the outstanding amount which worked out to Rs. 1,33,36,185/- (Rupees One Crore Thirty -Three Lakhs thirty-six thousand one hundred and eighty-five) as on 30.09.2014.
- 2.5. Vide letter dated 01.12.2014 CD acknowledged the letter of FC dated 07.10.2014. It also admitted the debt of Rs. 1,00,00,000/- having received from FC and expressed its willingness to handover the original documents of land adjacent to the factory of CD in Bachau towards security which is currently valuing approximately Rs. 1 Crore.
- 2.6. Thereafter, at the request of the CD and with the consent of the FC, the parties entered into the Supplemental Agreement dated 15.04.2016. The debt amount mentioned in the said Supplemental Agreement was the amount due as on 31.03.2016 which amounted to Rs. 2,23,76,209/- (Rupees Two Crore Twenty-Three Lakhs Seventy-Six Hundred Two hundred and Nine). It is stated in the supplementary agreement that the CD shall repay the due amount of principal along with interest to the FC on or before **31.03.2018**.
- 2.7. Upon failure of the CD to repay the loan on 31.03.2018, FC sent a reminder letter dated 20.08.2018 to CD requesting to make the payment of the loan as per the agreement. The CD, vide letter dated

10.10.2018 acknowledged the receipt of the letter of the FC and requested more time to repay the loan.

2.8. The FC sent another letter dated 17.11.2018 demanding the outstanding amount of Rs. 5,29,96,462/- (Rupees Five Crore Twenty-Nine Lakhs Ninety-Six Thousand Four hundred and Sixty-Two) due as on 30.09.2018, to which CD replied vide its letter dated 10.12.2018 that it shall revert with a repayment schedule and requested FC not to proceed with any adverse action against it.

2.9. There is further exchange of communication between the FC and CD on similar lines. The FC vide letter dated 17.04.2019 requested to CD to make the payment on or before 30.06.2019 failing which it shall be constrained to proceed legally against the CD. In response to the said letter of FC, CD vide its reply dated 30.04.2019 offering to pay lumpsum Rs. 25,00,000/- by 30.06.2019 and for balance payment it would share the schedule for repayment.

2.10. Since CD did not make any payment, FC sent yet another notice dated 04.04.2022 asking the CD to make the payment of loan on or before 30.04.2022, failing which legal action would be taken.

2.11. Since CD failed to repay the loan FC has filed the present Petition on **25.09.2023**.

2.12. Record of Information (Form-C) of NeSL dated 06.12.2023 shows Principal outstanding of Rs 1,00,00,000 (Rupees One Crore), Total Outstanding of Rs. 28,62,59,850 (Rupees Twenty-Eight Crores, Sixty-Two Lakhs, Fifty-Nine Thousand and Eight Hundred and Fifty) and Date of Default as **30.04.2022**.

### **3. REPLY BY CORPORATE DEBTOR:**

3.1. The Corporate Debtor has filed reply in which it has admitted the factum of Loan Agreement dated 20.04.2013 and supplemental

agreement dated 15.04.2016 with the Financial Creditor and also the receipt of the loan of Rs. 1,00,00,000/-. It has also stated as follows:

- a. CD was facing business losses since last few years and was constrained to avail loan of Rs. 1,00,00,000/- at the rate of Rs. 12% from the FC.
- b. The CD had defaulted in servicing of loan account with Cosmos Co-operative Bank Ltd. which had turned NPA and to avoid SARFAESI action against it, the CD had availed the loan from the FC.
- c. CD has issued postdated cheque for the principal amount as well as interest till 31.03.2014 but could not honour the said cheque and requested for extension of the period for the repayment and entered into a supplemental agreement dated 15.04.2016 with the FC.
- d. The Financial Creditor had orally promised Corporate Debtor to pay a fresh financial facility of Rs. 2,00,00,000/- (Rupees Two Crore) for Working Capital purposes after the said loan but failed to do so.
- e. After release of fresh financial facilities of Rs. 2,00,00,000/- the Corporate Debtor was willing to handover the original documents of its land adjacent to factory in Bachau towards security.
- f. The Corporate Debtor had received various letters calling for repayment of the loan amount dated 07.10.2014, 20.08.2018, 17.11.2018, 17.04.2019 and 04.04.2022. the CD replied every letter of FC vide letters dated 01.12.2014, 10.10.2018, 10.12.2018 and 30.04.2019 respectively.

- g. In all the letters Corporate Debtor mentioned that it was arranging funds from private sources to repay the amounts due to the Financial Creditor.
- h. Since the FC failed to disburse the agreed amount of Rs. 2,00,00,000/- and due to acute financial constraints CD initiated discussions with other parties to save the business.  
CD
- i. Lastly, the Corporate Debtor has submitted that it is willing to settle the account.

**Analysis & FINDINGS:**

- 4. We have heard Ld. Counsel for the Petitioner and the Respondent and perused the record.
- 5. The Corporate Debtor in its reply filed on 24.01.2024 did not deny the debt and default and its repayment as enumerated in para 3 above. Even during the hearing of the matter, the debt and default was admitted.
- 6. As per part IV of the Petition, date of default has been mentioned as 30.04.2022. However, during the hearing, query was put to the Counsel for Financial Creditor that according to the Supplemental Agreement dated 15.04.2016, the loan was to be repaid along with interest on 31.03.2018, therefore the date of default mentioned in Part IV does not appear to be correct. Therefore, the Counsel for FC agreed that the date of default should be taken as **31.03.2018**. If 31.03.2018 is taken as the date of default then the issue arises whether the petition has been filed within limitation. Since the petition was filed on 25.09.2023, apparently, it is barred by limitation unless there is acknowledgement of debt before expiry of 31.03.2021. The Counsel for the FC has relied upon the letter dated 30.04.2019 of the CD acknowledging the debt.

7. It is noted that the Corporate Debtor has acknowledged the debt vide its letter dated 30.04.2019 admitting the receipt of letter dated 17.04.2019 issued by the Financial Creditor demanding repayment of loan along with the interest on or before 30.06.2019. The Corporate Debtor has further offered to make lumpsum payment of Rs. 25,00,000/- (Rupees Twenty Lakhs only) as on 31.03.2022 and also offered to make the balance repayment for which it promised to share the schedule of repayment with Financial Creditor. The letter of CD dated 30.04.2019 is reproduced as below:

*“We confirm that we are in the final stages of discussions with one private investor who is willing to revive the Company by infusion of Working Capital funds. The discussions are in the final stages and we hope to sign off the MOU in this regard soon.*

*Please note we shall make a lumpsum payment of Rs. 25,00,000/- on or before June 30, 2019 and for the balance amount, we shall be sharing with you a repayment schedule once the formalities of the infusion of the funds in the Company are completed.”*

8. To examine whether present petition is within limitation, **Section 18 of the Limitation Act 1963**, is referred:

“S. 18.

***Effect of acknowledgment in writing.*** - (1) *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.”*

9. In view of the fresh period of limitation as provided under Section 18 of the Limitation Act, the limitation period gets extended for another 3 years from 30.04.2019. Further in Suo Motu Writ Petition (Civil) No. 3 of 2020 the Hon'ble Supreme Court directed that the period from 15.03.2020 to 28.02.2022 shall stand excluded in computing the limitation period. Considering the above discussions, the petition filed on 25.09.2023 is clearly within limitation. Hence, the 'debt' as claimed by the Financial Creditor is well within the period of limitation. It is not denied that the Corporate Debtor has committed 'default' in repayment of the said 'financial debt'.
10. We rely upon the judgement of the Hon'ble Supreme Court in the matter of **Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407**, which clearly held that: -

*“30. On the other hand, as we have seen, **in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due** in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”*

(Emphasis Provided)

11. In view of the aforementioned judgement it is clear that the Adjudicating Authority only has to determine whether the “debt” which may be disputed was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application. In other words, if the “debt” and “default” has been proved, the petition has to be admitted. In the present case, sufficient evidence has been adduced by the Petitioner to prove the debt and default.

12. We are of the considered view that the Financial Creditor has proved the existence of debt and default. Further the debt is in excess of Rs. 1 Crore and thus above the threshold limit mandated in Section 4(1) of the Code.

**ORDER**

13. Accordingly, this Company Petition is **admitted** with the following directions:

- i. The above **Company Petition (IB) 1184 (MB)/ 2023 is allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Shri Aniruddha Wood Private Limited**.
- ii. The Petitioner has suggested name of Mr. Pramod Dattaram Rasam an Interim Resolution Professional whose consent dated 15.04.2022 to be appointed as an Interim Resolution Professional of Corporate Debtor along with AFA dated 14.11.2023, valid upto 13.11.2024. Accordingly, we appoint **Mr. Pramod Dattaram Rasam ([pdrasam@gmail.com](mailto:pdrasam@gmail.com)), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-00722/2017/11259** as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- iii. The Financial Creditor shall deposit an amount of Rs. 5 Lakh 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.
- iv. As a consequence, this Bench hereby directs operation of moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 and prohibits the following:
  - a. 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;

- b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c. 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;
- d. 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.
14. In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the concerned Registrar of Companies, immediately. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.
15. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
16. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**  
**CHARANJEET SINGH GULATI**  
**(MEMBER TECHNICAL)**

**Sd/-**  
**LAKSHMI GURUNG**  
**(MEMBER JUDICIAL)**