



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

CP(IB) No. 77/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

M/s. J M Cotton Ginning and Pressing Company Private Limited, having its registered office at: 7, Shivaji Nagar, Jalgaon – 425001, Maharashtra.

... Financial Creditor

V/s.

M/s Khandesh Builders Private Limited

B 110, Damji Shamji Corporate Square, Lakshmi Nagar, Ghatkopar Andheri East Link Road, Mumbai, Mumbai City – 400075, Maharashtra.

... Corporate Debtor

Order delivered on :- 10.06.2024.

Coram:

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

Hon'ble Shri Anil Raj Chellan, Member (Technical)



Appearances (in Physical Mode):

For the Financial Creditor: Adv. Prakhar Tandon i/b. Agam H. Maloo.

For the Corporate Debtor: Adv. Avinash R. Khanolkar a/w. Surekha Yadav.

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by M/s J M Cotton Ginning and Pressing Company Private Limited (hereinafter called “**the Petitioner**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) of M/s Khandesh Builders Private Limited (hereinafter called “**Corporate Debtor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**Code**”) for resolution of debt in default by the Corporate Debtor of INR 25,78,69,618/- (Rupees Twenty-Five Crores, Seventy-Eight Lakhs, Sixty-Nine Thousand, Six Hundred and Eighteen Only), out of which the principal loan in default is INR 7,81,55,726/- and the interest on outstanding loan is INR 17,97,13,892/-.

Facts of the case in brief: -

2. The Corporate Debtor requested the Financial Creditor to grant Inter-Corporate Loan (ICL) to the Corporate Debtor to the tune of Rs. 12,00,00,000/- (Rupees Twelve Crore Only) during the year 2004.



3. The board of directors of the Financial Creditor vide Board Resolution dated 02.04.2004 approved the request of the Corporate Debtor to grant Inter-Corporate Loan ('ICL') upto the tune of Rs. 12,00,00,000/- (Rupees Twelve Crore Only) to the Corporate Debtor subject to approval of members in the extraordinary general meeting of the Company.
4. The Corporate Debtor made various payments to the Financial Creditor towards the Inter-Corporate Loan from year 2005 to 2010. The Inter-Corporate Loan outstanding as on 31.03.2010 was Rs. 7,81,55,726/-.
5. Therefore, the Financial Creditor and Corporate Debtor executed an Inter-Corporate Loan Agreement on 31.03.2010 in order to lay down the terms and conditions of the outstanding Inter-Corporate Loan amount to Rs. 7,81,55,726/-. As per the Inter-Corporate Loan Agreement, the Inter-Corporate Loan amounting to Rs. 7,81,55,726/- was to be repaid by the Corporate Debtor to the Financial Creditor on 31.03.2011 along with interest @ 10% per annum.
6. However, the Corporate Debtor defaulted in the repayment of the Inter- Corporate Loan along with the interest. Therefore, the Financial Creditor sent various letters to the Corporate Debtor from year 2011 to year 2021 requesting the Corporate Debtor to repay the Inter- Corporate Loan along with interest.
7. The Corporate Debtor has acknowledged the outstanding Inter-Corporate Loan towards the Financial Creditor under the head 'Long Term Borrowings' in various financial statements from FY 2010-11



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to FY 2021-22 filed in Form 23AC/ACA/AOC-4 with the Registrar of Companies (ROC), Mumbai.

8. The Corporate Debtor failed to repay the Inter-Corporate Loan to the Financial Creditor in spite of repeated assurances. Hence, the Financial Creditor sent a Demand Notice dated 15.10.2022 to the Corporate Debtor demanding the Corporate Debtor to pay an amount of Rs. 25,78,69,618/- towards the Inter-Corporate Loan and interest within 7 days from the receipt of the demand notice. However, yet again, the Corporate Debtor failed to repay the Inter Corporate Loan along with interest within 7 days from receipt of the Demand Notice on 18.10.2022. Hence, committed default. Hence the present Company Petition.
9. No reply was filed on behalf of the Corporate Debtor despite granting ample opportunity and vide order dated 03.10.2023 the right to file reply was forfeited.
10. The above-captioned Company Petition was dismissed by this Bench vide Order dated 20th October, 2023. Thereafter, the Petitioner had impugned the aforesaid Order dated 20th October, 2023 before the Hon'ble National Company Law Appellate Tribunal, New Delhi ('NCLAT') by way of an appeal u/s 61 of the Code vide CA(AT)(Ins.) No. 1626/2023. The Hon'ble NCLAT was pleased to allow the aforesaid appeal remanding back the above-captioned matter to the Adjudicating Authority with a direction to decide the issue of limitation once again after taking into consideration the financial statements which were filed by the Appellant/Petitioner on the record of the Hon'ble NCLAT.



11. The Petitioner has placed on record the financial statements of the Corporate Debtor from FY 2011-12 to 2022-23 vide Additional Affidavit dated 07th May, 2024. The Corporate Debtor too has filed an Additional Affidavit dated 10th May, 2024 on record *inter-alia* stating that the reply which was filed by the Corporate Debtor before the Hon'ble NCLAT in the aforesaid appeal may be treated as reply in the above-captioned matter.

Findings: -

12. We have heard the Counsel for the parties and gone through the records.
13. The Counsel for the Petitioner has argued that in this case the factum of existence of financial debt and the default committed by the Corporate Debtor is not disputed and therefore, it is a fit case for admission. Learned Counsel for the Petitioner further contends that the Corporate Debtor has acknowledged its debt due to the Financial Creditor in the Balance-sheets for the financial years from FY 2011-12 to 2022-23 and thus, the debt due by the Corporate Debtor to the Financial Creditor is within the period of limitation for the purpose of filing the present petition.
14. On the other hand, the Counsel for the Corporate Debtor has argued that the Financial Creditor had agreed to advance a loan of Rs. 12 crores whereas a sum of Rs. 7 crores only was disbursed which caused financial hardships to the Corporate Debtor. Counsel for the Corporate Debtor contends that the present petition is barred by the law of limitation. Therefore, the Petition deserves to be dismissed.



15. We have considered the contentions raised by the Counsel for the parties.
16. In this case we have noticed that the Inter Corporate Loan agreement was executed on 31.03.2010 for a sum of Rs. 7,81,55,726/-. The loan was repayable by 31.03.2011 along with interest.
17. In the Order dated 20th October, 2023 we had already held that acknowledgments made by the Corporate Debtor vide letters dated 22.04.2011 followed by letters dated 24.05.2013, 23.06.2016, 18.09.2020, 22.09.2020 and 30.06.2021 do not establish that the debt due by the Corporate Debtor is within limitation for the reasons stated therein and we are not repeating those findings herein. Having said that, we shall now deal with the issue of limitation afresh based on the financial statements of the Corporate Debtor from 2010-11 to 2022-23 produced on record by the Applicant.
18. The Hon'ble Supreme Court of India in Asset Reconstruction Company (India) Limited v/s. Bishal Jaiswal & Anr. vide Judgment dated April 15, 2021 in Civil Appeal No. 323/2021, has held that an entry made in the company's balance sheet amounts to an acknowledgement of the debt and has the effect of extending the period of limitation under section 18 of the Limitation Act, 1963.
19. We have gone through the financial statements of the Corporate Debtor from 2010-11 to 2022-23 produced on record by the Applicant. On perusal of the Balance Sheet of the Corporate Debtor as on 31st March, 2011 read with the Notes to Accounts pertaining to Unsecured Loans, it is evident that the Corporate Debtor has acknowledged the principal loan of INR 7,81,55,726.00 in its Balance Sheet as on 31st March, 2011. This position has remained unchanged



even in the financial year ending on 31st March, 2023. On perusal of the Balance Sheet of the Corporate Debtor as on 31st March, 2023 read with the Notes to Accounts pertaining to Long Term Borrowings, it is evident that the Corporate Debtor has acknowledged the principal loan of INR 7,81,55,726.00 in its Balance Sheet as on 31st March, 2023. The Corporate Debtor was given a chance to contradict the financial statements placed on record by the Financial Creditor. However, the Corporate Debtor has not refuted the admissions by it in the aforesaid financial statements. Thus, the existence of debt due by the Corporate Debtor to the Financial Creditor stands proven on record. Further, in view of the fact that the Corporate Debtor has acknowledged the debt due to the Financial Creditor of INR 7,81,55,726.00/- in its balance sheets from FY 2010-11 to FY 2022-23, we hold that the acknowledgments made in the balance sheets have, in the facts of the present case, had the effect of extending the period of limitation u/s 18 of the Limitation Act, 1963. Thus, the acknowledgment qua the debt due and payable by the Corporate Debtor to the Financial Creditor amounting to INR 7,81,55,726/- was last made by the Corporate Debtor in its Balance Sheet as on 31.03.2023 which was signed on 20.09.2023, and since the present petition has been filed in the year 2023, it is held to be within the period of limitation as per the provisions of the Limitation Act, 1963.

20. The only objection raised by the Corporate Debtor in relation to the financial statements placed on record is that the Applicant could not have produced the additional documents on record at the appellate stage without satisfying or complying with the conditions under Order 41, Rules 27, 28 and 29 of the Code of Civil Procedure, 1908.



We find that this objection was already raised by the Corporate Debtor before the Hon'ble NCLAT while contesting the Company Appeal (AT)(Insolvency) No. 1626 of 2023 and yet, the Hon'ble NCLAT has allowed the Applicant/Financial Creditor to place the financial statements of the Corporate Debtor on record showing the long-term borrowings of the amount in question. Hence, we are bound to consider the financial statements of the Corporate Debtor brought on record by the Petitioner and any objections in this regard cannot be now entertained by this Bench.

21. The Financial Creditor has annexed the report of NeSL at Annexure No. 25 of the application to prove the factum of default. The NeSL report has authenticated the default committed by the Corporate Debtor of Rs. 25,78,69,618.00/- with color code "GREEN" which implies that the Corporate Debtor has confirmed the information of default and the said authentication has been completed on 23.11.2022. We also observe that the Corporate Debtor has never disputed the factum of default committed by it in repayment of debt due to the Financial Creditor. Thus, the default committed by the Corporate Debtor in repayment of financial debt of over rupees one crore stands satisfactorily proven on record.
22. We are supported by the judgment of the Hon'ble Supreme Court in the **Innoventive Industries Ltd. Vs. ICICI Bank** and Anr. (2018) 1 SCC 407, which clearly held that:

"28. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the application to rectify the defect within 7 days receipt of a notice from the adjudicating authority.



30. On the other hand, as we have seen, in the case of a Corporate Debtor who commits a default of 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 it may reject an application and not otherwise”

23. In the facts of the present case, we are satisfied that the present petition is maintainable and is within the period of limitation. Also, that the financial debt is due and there is a default in payment of debt. In light of the above facts and circumstances, it is hereby ordered as follows: -

ORDER

- (a) The petition bearing **CP(IB)-77/MB/2023** filed by M/s. **J M COTTON GINNING AND PRESSING COMPANY PRIVATE LIMITED**, the Financial Creditor, under Section 7 of the IBC, 2016 read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor M/s. **KHANDESH BUILDERS PRIVATE LIMITED** [CIN: U45200MH1984PTC031927] is hereby **admitted**;
- (b) **Mr. Shashant Sudhakar Yeola**, an Insolvency Professional having registration No. **IBBI/IPA-001/IP-P00310/2017-2018/10574**, (email: shashantsyeola@gmail.com), is hereby **appointed as Interim Resolution Professional** to carry out the functions as mentioned under IBC, the fee payable to IRP/RP shall comply



with the IBBI Regulations/ Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

(c) There shall be a moratorium under Section 14 of the IBC, in regard to 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 Securitization 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.

(d) 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. That 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;

- (e) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal 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 IBC, as the case may be.
- (f) 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.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, 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 ₹ 5,00,000/- (Rupees Five Lakhs only) with the IRP 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.
- (i) The 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



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days from the date of this Order.

- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

Sd/-

**ANIL RAJ CHELLAN
Member (Technical)**

Sd/-

**KULDIP KUMAR KAREER
Member (Judicial)**