

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**COURT NO. V, MUMBAI BENCH**

**CP No. 73/(IB)-MB-V/2021**

Under Section 7 of the Insolvency and  
Bankruptcy Code, 2016 r.w. Rule 4 of  
the Insolvency and Bankruptcy  
(Application to Adjudicating  
Authority) Rules, 2016

*In the matter of*

**Nagpur Nagarik Sahakari Bank Ltd.**

Having its Registered Office at:

79, Dr. Ambedkar Chowk, Central  
Avenue, Maharashtra, Nagpur- 440008

.... Petitioner/ Financial Creditor

Vs.

**M/s Greatwall Corporate Service**

**Private Limited**

Having its Registered Office at:

Office No. 2 S No. 120, MHADA

Commercial Complex, Near Phule Nagar

RTO Pune, Alandi Road Yerwada, Pune

Maharashtra- 411006.

.... Corporate Debtor/Respondent

Order Reserved On: 07.03.2022

Order Pronounced On: 15.03.2022

**Coram:**

Hon'ble Suchitra Kanuparthi, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia Member (Technical)

*Appearances (Via Video Conference):*

For the Petitioner : Mr. Sandeep Bajaj Adv. a/w

Ms. Aakansha Nehra Adv.

For the Respondent : Mr. Nausher Kohli Adv. a/w

Mr. Aman Kacheria Adv.

*Per: Anuradha Sanjay Bhatia Member (Technical)*

ORDER

1. The Petitioners/Applicant viz. 'Nagpur Nagarik Sahakari Bank Limited' (hereinafter as Petitioner) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code 2016, (hereinafter as Code) against 'M/s Greatwall Corporate Services Private Limited.' (hereinafter as 'Corporate Debtor').
2. In the requisite Form-1, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 6,00,00,000/-, and the amount claimed to be in default is Rs. 7,66,45,930/- along with future interest @16% per annum, the terms of sanction provided that the rate of interest to be

applied is 14% per annum along with 2% per annum as the default interest.  
The date of default is stated to be 30.11.2020

### **BRIEF HISTORY OF THE CASE**

3. The Petitioner is a Multi-State Scheduled Bank duly registered under the Banking Regulations, Act, 1949. The Petitioner is engaged in the business of Financial Banking and being a reputed bank enjoys the utmost prestige in the market.
4. The Corporate Debtor is a Company incorporated under the provisions of the Companies Act, 1956 and is a continuing company as on date under the provisions of the Companies Act, 2013. The Corporate Debtor is engaged in the business of supplying labour, manpower etc. for the organizations.
5. The present Application arises out of the SCC Account No. A03151/2 opened on 21.08.2017 and subsequently renewed on 28.09.2018. The present application has been preferred by the Petitioner in respect of the failure of the Corporate Debtor in clearing the outstanding dues in respect of the SCC Account of the Corporate Debtor maintained with the Petitioner.
6. The Corporate Debtor approached the Petitioner for availing a secured cash credit facility. Accordingly, the SCC account was opened on 21.08.2017 bearing number A03151/2. Thereafter, the Corporate Debtor in pursuance of the SCC account, entered into agreement of Secured Cash Credit on 21.08.2017 and the Equitable Mortgage was created by deposit of title deeds, in respect of the whole of land situated at Survey/ Gat No. 18 & 19/4/5/1 Gram panchayat Mouze- Khavti, Tah- Khed, Distt- Ratnagiri (hereinafter referred to as "said property") in favour of the Petitioner, including the following:

- A. Copy of the 7/12 Extract of Gat No 18 and 19/4+5/1 situated at Village Khavti, Taluka: Khed Distt: Ratnagiri.
  - B. Copies of N.A. Orders.
  - C. Copies of Sanction Plans.
  - D. Original Sale Deed dated 26.05.2016 alongwith index- II and registration receipt.
  - E. Original Payment Receipts.
7. In respect of creating the requisite security, the following documents were executed by the Corporate Debtor and the requisite personnel, in favour of the Petitioner:
- A. Irrevocable Power of Attorney dated 21.08.2017.
  - B. Mortgagor's declaration for Equitable Mortgage dated 21.08.2017 to declare their intention and proposal of mortgage for furnishing the required security in lieu of the grant of SCC Account with a limit of Rs. 6,00,00,000/-.
  - C. Memorandum of Record of Equitable Mortgage dated 21.08.2017
  - D. Mortgagor's letter of confirmation dated 21.08.2017.
  - E. The Deed of Hypothecation dated 01.09.2017.
8. The Corporate Debtor being the holder of the Secured Cash Credit Account No. A03151/2 approached the Petitioner and requested renewal of the above specific SCC Account with a sanctioned upper limit of Rs. 6,00,00,000/-. Copy of application dated 29.08.2018 submitted by the Corporate Debtor for renewal of the SCC Account is annexed to the Petition.
9. The Petitioner vide Sanction letter dated 24.09.2018 and acceptance letter dated 28.09.2018 informed the Corporate Debtor of the acceptance of latter's request for the renewal of the SCC Limit of Rs. 6,00,00,000/- and specified

the terms and conditions as laid down by the Board in their meeting dated 21.09.2018. hereinafter referred to as the **“Second SCC Agreement”**.

10. On the occurrence of default by the Corporate Debtor, the Petitioner requested the Corporate Debtor to clear the dues accruing in respect of the SCC Account vide Notice dated 25.06.2019. When no payment was received by the Petitioner a Legal Notice dated 10.07.2019 was issued to the Corporate Debtor. Despite the service of legal notice, no payment was received by the Petitioner. Eventually, due to inaction on the part of the Corporate Debtor, the amount become due and payable to the Petitioner and the SCC account was rendered non-performing account on 30.06.2019. Copy of the same are annexed to the Petition.
11. Thereafter, in respect of such default of the Corporate Debtor, the Petitioner issued notice dated 26.07.2019 under Section 13(2) of the SARFAESI Act, 2002 and requested the Corporate Debtor to repay the dues within 60 days of the receipt of the notice. Copy of the notice dated 26.07.2019 is annexed to the Petition.
12. Upon non-payment of dues by the Corporate Debtor, within the allotted time, the Petitioner proceed to take possession of the said property, furnished as security, pursuant to the powers under Section 13(4) of the SARFAESI Act 2002 and served the notice dated 31.10.2019 issued by the Petitioner.
13. Despite of the issuance of the notices, till date the Corporate Debtor has not made the payments towards the re-payment of the Financial Debt owed to the Petitioner in respect of the SCC account (except for a minor cumulative payment of Rs. 18,99,540/- in the period from declaration of NPA i.e. 30.06.2019 till date). It is stated that as on 30.11.2020 an amount of Rs.

7,66,45,930/- along with future interest @16% per annum is outstanding from the Corporate Debtor. Further, the Corporate Debtor continues to be in default in making payment of the said amount in terms of SCC Account.

14.Hence, due to nonpayment of debts the Petitioner filed this Petition u/s 7 of the IBC as a Financial Creditor for initiating the Corporate insolvency Resolution process (CIRP).

**SUBMISSIONS BY THE CORPORATE DEBTOR:**

15.The Corporate Debtor filed the written submissions. The contentions of the Corporate Debtor are as follows:

- (i) The Corporate Debtor has several contracts lined up, expecting to generate a turnover of approximately Rs. 30 Crores per annum, from Metro Rail Projects of Thane and Nashik. Further, work wa expected with MMRDA and CIDCO, with respect to metro rail works, to the tune of approximately Rs. 50 crores per annum. Substantial tenders were likely to be obtained in the next 2-3 months.
- (ii) The Corporate Debtor is in the process of selling few properties, infusing some equity and obtaining long term working capital loans for the business of the Corporate Debtor.
- (iii) The Corporate Debtor submits that for a small portion of a loan amount, the entire operations and functioning of a 25+ years company having 2200 employees shall be prejudiced. Therefore, the Corporate Debtor is making the following proposal for the consideration of this Tribunal as well as the Petitioner. The Corporate Debtor is certain that the entire loan amount of the Petitioner shall be repaid by 31.03.2022 in the following manner:

<b>Sr No.</b>	<b>Payment schedule</b>	<b>Amount (Rs.)</b>
1.	Before 20 <sup>th</sup> February 2022	25,00,000/-
2.	Before 28 <sup>th</sup> February 2022	25,00,000/-
3.	Before 10 <sup>th</sup> March 2022	5,00,00,000/-
4.	Before 20 <sup>th</sup> March 2022	2,00,00,000/-
5.	Before 25 <sup>th</sup> March 2022	Any Amount pending an account of interest charges

- (iv) It is the Corporate Debtor's submissions that the agreement for Secured Cash Credit dated 21.08.2017, demand Promissory Notes dated 21.08.2017, Deed of Hypothecation dated 01.09.2017, the Agreement for Secured Cash Credit dated 28.09.2018, demand promissory notes dated 28.09.2018 documents are ex-facie insufficiently stamped.

**FINDINGS: -**

16. Upon perusal of the Petition and hearing both the parties, it is established that the Petitioner has disbursed the cash credit facility to the Corporate Debtor, vide a sanction letter, dated 21.08.2017, for an amount of Rs. 6,00,00,000/- This loan was extended at a rate of interest of 16% per annum. However, Corporate Debtor was not able to repay the same and an amount of Rs. 7,66,45,930/- was due and outstanding, as on 30.11.2020. The Company Petition u/s.7 of Insolvency & Bankruptcy Code 2016, was filed on 23.12.2020.

17. The Respondent, Greatwall Corporate Services Private Limited has filed its written submission where *inter alia* it has mentioned that it tried to settle the matter.

18. On 03.02.2022 the matter was listed for the hearing. Both parties have argued the matter at length and the corporate Debtor mentions that they are willing to pay the entire amount by 31.03.2022. On 25.02.2022 the matter was listed for the clarification. The counsel for the Corporate Debtor had come up with a proposal and stated that he would report settlements within a weeks' time. Thereafter, on 07.03.2022, when the matter was further listed for clarification/reporting settlement. We were informed that no settlement has been arrived at.
19. This Bench concludes that it is established beyond doubt that there is debt and default and the Petition deserves admission.
20. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. The Corporate Debtor has acknowledged the disbursement of credit facility and its liability to repay the same. However, the Corporate Debtor failed to pay. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
21. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner.
22. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of 'debt' and 'default', for admission of a petition under section 7

of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.

23. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.
24. Further that, we have also perused the Form – 2 i.e., written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
25. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Atul Rajwadkar, having registration No. IBBI/IPA-001/IP-P00152/2017-18/10321, having address at 47, Hindusthan Colony, Wardha Road, Nagpur, Maharashtra ,440015 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
26. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

27. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
28. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
29. In view of the above, the Bench “**Admitted**” the Company Petition No. **73/(IB)-MB-V/2021** u/s.7 initiating CIRP against the Corporate Debtor M/s Greatwall Corporate Services Private Limited. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
30. Ordered Accordingly.

Sd/-  
Anuradha Sanjay Bhatia  
Member (Technical)

Sd/-  
Suchitra Kanuparthi  
Member (Judicial)