

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

CP (IB) 2682/MB/C-I/2019

Item 15 of 01.02.2022

U/S 7 of IBC, 2016

In the matter of

1. Dheeraj Kiranpal Singh Ahluwalia

2. Preeti Kiranpal Singh Ahluwalia

608, Sindh Housing Society, Road 6, Near Ozon
Aundh, Ganeshkhind, Pune-411007.

...Financial Creditors/Applicants

Vs

Silver Jubilee Motors Limited

[CIN: U50110PN1935PLC002423]

12, Moledina Road, Pune – 411001.

...Corporate Debtor/Respondent

Order Delivered on 28.02.2022

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Sh. K. K. Vohra

Appearances:

For the Financial Creditor : Mr. Chaitanya Nikte, Advocate.

For the Corporate Debtor : Mr. P S Thakare, PCS.

ORDER

Per: K. K. Vohra, Member (Technical)

1. This is a Company Petition filed u/s 7 ("the Petition") of the Insolvency and Bankruptcy Code, 2016 (IBC) by Dheeraj Kiranpal Singh Ahluwalia and Anr. ("the Financial Creditors" or FCs), seeking to initiate Corporate Insolvency Resolution Process

(CIRP) against Silver Jubilee Motors Limited ("the Corporate Debtor" or CD).

2. CD is a Public Company (Co) limited by shares and incorporated on 04.12.1935 under the Companies Act, 1913, with the Registrar of Companies, Mumbai. Its registered office is at 12, Moledina Road, Pune – 411001. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions made by FCs by way of Petition:

3. The captioned petition was filed on July 12, 2019.
4. FCs had sanctioned loan to **CD** for a total sum including interest of Rs.1.10 cr.
5. The amount in default along with the interest is Rs.1,20,43,970 ("Financial Debt"), which is due and payable by the CD in favour of FCs. The date of default is June 17, 2019.
6. FC has placed on record the particulars of Financial Debt documents, Records and Evidence of Default as under:

<u>Sr. No.</u>	<u>Particulars</u>
i.	Copies of Bank entries of transfer to CD by FC 1 and 2.
ii.	Copy of ledger account maintained by CD of the FCs Jointly
iii.	Copies of the cheques issued by the CD to FCs

iv.	Copies of dishonoured Cheques along with bank return memos issued in favour of FCs
v.	Copies of Loan Recall Notices dated 10.07.2019 issued by FCs

7. It is submitted that the CD has duly acknowledged and admitted the receipt of money from FCs and the same is reflected in the Balance Confirmation cum Ledger Statement maintained by the CD.
8. FCs submit that the said Loan was advanced to meet the working capital requirements of the CD and the same was payable upon demand being made by the FCs.
9. FCs under intimation of the CD deposited the Cheques issued by the CD against the Loan advanced by FCs. However, the CD defaulted in honouring the repayment of the loan as the cheques issued by the CD were dishonoured.

Submissions made by CD:

10. The alleged debt of Rs. 1.10 Crore is not a financial debt as per section 5(8) of IBC. In fact it is not a debt at all but the reimbursement of earlier dues and obligations of the FCs towards the CD. The monies were transferred from the FCs' accounts (son and wife of Mr. Kiranpal Singh Ahluwalia – Ex Whole Time Director of the CD) in the year 2017 to 2018 on account of the reimbursements of the cost and expenses incurred by the Co. It is

very much clear from the pattern of transfers that it is not any loan given to the Co but the same is simply the reimbursements to CD.

11. Mr. Kiranpal Singh Ahluwalia had resigned from the CD in April 2019 and he issued Co cheques to his son and wife in June 2019 in the capacity of director of a Co which is totally illegal and fraudulent action done by Mr. Kiranpal Singh Ahluwalia.
12. There is no agreement of any loan produced by the FCs to prove that they have given loan to the Co. Not even any such documents including any email etc. which show any understanding between the parties that the FCs have given loan.
13. Date of default as mentioned in the petition is 16th June 2019 ie. date of alleged cheques. As stated supra, those cheques have never been issued by the Co but Mr. Kiranpal Singh Ahluwalia fraudulently issued those cheques to his son and wife post his resignation. Therefore, the forged documents i.e cheques in this matter are not a ground for any default by the Co. In fact the Bank memo of cheque return shows that the sign on the cheques don't match as per Bank's record and there was a stop payment instruction given by Co for those cheques (Pg 36 to 50 of petition).
14. The signature on the allegedly issued cheques (Pg 30 to 34 of petition) and the signature on the resignation letter (Pg 16 of reply) of Mr. Kiranpal Singh Ahluwalia is exactly same. Annexure 2 is the Copy of Form DIR 12 along with self-signed resignation letter of Mr. Kiranpal Singh Ahluwalia from the position of Whole

Time Director of the Co with effect from 2nd April 2019 (Pg no. 12 to 18 of the reply).

15. It is submitted that Mr. Kiranpal Sign Ahluwalia has misused his office of whole-time director and made fraud on the Co. Hence the FCs have not come with the clean hands and abusing IBC process.
16. It is denied that the CD has ever issued any balance confirmation ledger accounts. The ledger statement submitted at Pg. 28 of the petition by the FCs does not contain any signature and hence the same may not be considered as any confirmation.
17. It is also denied that any assurance was given as to the payment of any interest as there is no loan. It is categorically submitted that the FCs have merely reimbursed the funds to the CD Co for the expenses incurred by the CD for and on behalf of Mr. Kiranpal Singh Ahluwalia and the FCs herein are his close relatives. Annexure 3 of the Reply is the copy of statement and details thereof showing details of the expenses incurred (ledger account statements, FORM 26AS & statement of total expenses incurred for Mr. Ahluwalia by the Co) by the Co for Mr. Ahluwalia and FCs have made few transfer of funds to Co bank accounts and still they are liable to the Co for the remaining amount of approximately Rs. 4.82 Cr.
18. We have heard the arguments of FC and CD and perused the records.

19. While perusing records it is observed that there is **no Agreement for Loan and no specific schedule for repayment** is given by any document; without proof of disbursement, the said amount cannot be claimed as financial debt, as a disbursement is a sine qua non for any debt to fall within the ambit of the definition of financial debt. Reliance is placed on Judgment of the Hon'ble National Co Law Appellate Tribunal (NCLAT) in *Dr. B.V.S Laxmi Vs. Geometrix Laser Solution Private Limited [2018] 142CLA321*:

“30. In the present case, the Appellant has failed to bring on record any evidence to suggest that she disbursed the money has been made against 'consideration for the time value of money'. There is nothing on the record to suggest that the Respondents borrowed the money. In absence of such evidence, the Appellant cannot claim that the loan if any given by the Appellant comes within the meaning of 'financial debt' in terms of sub-section (8)(a) of Section 5 of the 'I & B Code’.

20. Upon perusal of records, this Bench is of the considered opinion that there is dispute regarding the CD having availed the Loan from the FC. **We also find that there is no proof of default [as required in t/o Section 7(5)(a) of IBC] as there was no due date in the absence of any agreement.**
21. We also consider the facts of the case in the lights of the 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. As soon as a 'debt' and 'default' is

proved, the adjudicating authority is bound to admit the petition, but matter in the hand there is no proof to show that the loan was disbursed by the FC and that there has been default in payment of the Debt by CD.

22. It is, accordingly, hereby **ordered as follows**: -

(a) The petition bearing **CP (IB) 2682/MB/C-I/2019** filed by Dheeraj Kiranpal Singh Ahluwalia and Anr., the FC, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Silver Jubilee Motors Limited, the Corporate Debtor, is **rejected**.

Sd/-

K. K. VOHRA
Member (Technical)

28.02.2022

Sd/-

JUSTICE P. N. DESHMUKH (RETD.)
Member (Judicial)

SAM