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

CP (IB) 2440/MB/C-I/2019

Under section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of

Gajendra Investment Limited
[CIN: U65990MH1987PLC045488]
Aidan Building, 1st Dhobi Talaolane, Mumbai - 400002.

… Financial Creditor /Petitioner

Versus

Rushabh Civil Contractor Private Limited
[CIN: U45202MH2008PTC181967]
F 29, Prime Mall, Beside IRLA-Church, IRLA Road, Vile Parle (West), Mumbai – 400056.

… Corporate Debtor /Respondent

Order Delivered on 27.06.2022

Coram:

Hon'ble Member (Judicial)	:	Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical)	:	Mr. Kapal Kumar Vohra

Appearances:

For the Financial Creditor	:	Mr. Pulkit Sharma, Counsel.
For the Corporate Debtor	:	Mr. Nausher Kohli, Counsel.

ORDER

Per: Justice P. N. Deshmukh, Member (Judicial)

1. This is a Company Petition filed under section 7 ("**the Petition"**) of the Insolvency and Bankruptcy Code, 2016 **(IBC)** by **Gajendra Investment Limited** ("the Financial Creditor or FC"), seeking to

initiate Corporate Insolvency Resolution Process (CIRP) against **Rushabh Civil Contractor Private Limited** ("the Corporate Debtor or CD").

2. The Corporate Debtor is a Private Company limited by shares and incorporated on 07.05.2008 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Therefore, this Bench has jurisdiction to deal with this petition.

3. The Financial Creditor gave an advance amount of Rs.3,77,00,000/- on 14.09.2016 to the Corporate Debtor. Further Financial Creditor submits that the Corporate Debtor has given Confirmation of accounts dated 15.04.2017 to the Financial Creditor. The Corporate Debtor had promised to pay the interest but failed to pay the interest amount and only deposited the part TDS amount of Rs.2,66,558/- on 01.08.2018.

4. The Financial Creditor provided that the default occurred on 19.06.2019, amount outstanding and payable as on 31.06.2019 is Rs.1,51,36,000/- comprising of Principal amount and Interest thereon. Copy of Particulars of claim is Annexed to Petition as 'Annexure B'.

5. The details of finance advance provided by the Financial Creditor to Corporate Debtor together with refund of advance amount. The detailed transaction i.e. each and every financial transaction from 14.09.2016 till 31.05.2019 is given in the Particulars of Claims as

per 'Annexure B'. On the date of filing this Petition in Part IV of Form 1, debt is described as below:

Particulars of Financial Debt		
1.	Total Amount of Debt Granted Date(s) of Disbursement	As per the Particulars of Claim enclosed. Amount Outstanding as on 31.05.2019 Rs.1,51,36,000/-
2.	Amount Claimed to be in default and the date on which the default occurred (Attached the workings for computation of Amount and days of default in Tabular Form)	The Default occurred on 19.06.2019. Amount Outstanding and Payable as on 31.05.2019 Rs.1,51,36,000/- comprising of Principle Amount and Interest thereon. Particulars of Claims Annexed as '**Annexure B**'.

6. The Corporate Debtor has filed its last Balance Sheet with Registrar of Companies for the year ended 31.03.2017. The borrowings made by Corporate debtor from Financial Creditor is stated under the heading "Short Term Borrowings Note No. 7 – Inter Corporate Loans". The Corporate Debtor has made a statement in the Balance Sheet that "all the above loans are repayable on demand". The Corporate Debtor not filed the Balance Sheet subsequent to that. Copy of Balance Sheet as on 31.03.2017 is Annexed to Petition as 'Annexure C'.

7. The Financial Creditor had addressed letter dated 14.06.2019 to the Corporate Debtor asking the Corporate Debtor to pay the

outstanding debt amount of Rs. 1,51,36,000/- being the debt outstanding as on 31.05.2019. This letter dated 14.06.2019 provided 3 days' time for the Corporate Debtor to make the payment. This letter was received by the Corporate Debtor on 15.06.2019, the Corporate Debtor neither replied to the letter nor made the payment to the Financial Creditor. Thus, the default accrued on 19.06.2019. A copy of said letter dated 14.06.2019 together with track status annexed to Petition as 'Annexure F'.

Submissions made by the Advocate of CD by Affidavit in Reply:

8. The Respondent submits that the Petitioner has failed to produce any document that may be termed as a Financial Contract in support of the purported claim in the present Petition. Significantly, the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 *inter alia* postulate that an Application under Section 7 of the Code is to be supported by a financial contract between the financial creditor and the Corporate Debtor *"setting out the terms of the financial debt, including the tenure of the debt, interest payable and the repayment".* In the present proceedings, there is no document and / or instrument executed by and between the Petitioner and Respondent setting out the tenure of debt, interest payable, interest rate and date on which the purported amounts would be repayable.

9. A perusal of the present Petition and in particular Sr. No. 5, Part V of Form I, the Petitioner has inputted "NA" in respect of the

row in the tabular chart for the entry "THE LATEST AND COMPLETE COPY OF THE FINANCIAL CONTRACT RELECTING ALL AMENDMENTS AND WAIVERS TO DATE".

10. Similarly, in Sr. No. 8, Part V of Form I, the Petitioner was supposed to annex the "LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT, THE AMOUNT AND DATE OF DEFAULT". A perusal of the documents enlisted would manifest that the same in no manner demonstrates the terms the terms of the financial debt, the tenure of the debt, details of interest payable and date of repayment etc. and the absence of the written contract is therefore conspicuous.

11. Thus, it is the Petitioners own admission that there is no written contract much less oral contract or financial contract in support of its case.

12. In order to seek order in Section 7 of the IBC, one has to demonstrate that there is debt and default. This can be ascertained on the basis of –

    i. Contract executed between the Parties.

    ii. Statement of Accounts.

    iii. Record of default.

13. In present case date of default is recorded as 19.06.2019. Basis on which this date is set out as date of default is the demand notice i.e. 14.06.2019, wherein the alleged loan was demanded and same was not paid therefore the said date of default. It is this aspect of the matter which need to be considered.

14. We have heard the arguments of FC and CD and perused the records.

15. It is evident from the documents on record that the advance was availed from the Financial Creditor by the Corporate Debtor and that amount was duly disbursed to the Corporate Debtor from time to time. The balance confirmation statement which has also been signed by the Corporate Debtor evidences the fact that the amount was disbursed and the same is an acknowlegement of liability. In addition to the balance confirmation statement the liability of the Corporate Debtor is clearly reflected in the balance sheet of the Corporate Debtor.

16. It is settled law as upheld by the Hon'ble Supreme Court of India in paragraph 30 of order passed in the case of "*Innovative Industries v. ICICI Bank*" reproduced here below:

"…..

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 supplied)

17. 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.

18. In the case of *Asset Reconstruction Company (India) Limited v. Bishal Jaiswal and Anr. (2021) 6 SCC 366*, the Hon'ble Supreme Court of India has now settled that admission of a debt in the balance sheet signed by the Corporate Debtor would amount to an acknowledgement of such debt, thereby giving rise to a fresh period of limitation under Section 18 of the Limitation Act,1963. (Refer paragraphs: 8, 9, 16,21 and 22 to 33).

19. The above settled position of law is directly applicable to the facts of the present case. In view of the same, it is abundantly clear that the Corporate Debtor owes a financial debt to the Financial Creditor. There is Balance confirmation by the Corporate Debtor of the dues payable to the Financial Creditor. On account of its acknowlegement of debt the Corporate Debtor has confirmed the amount as stipulated in the confirmation of accounts dated 15.04.2017, due and payable to the Financial Creditor. The Financial Creditor submits that in view of the Corporate Debtor's loan having become due and payable on demand and its failure and inability to pay the same, the Petition to be admitted.

20. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that Corporate Debtor owes money to the Financial Creditor.

21. The Financial Creditor has proposed the name of **Mr. Rajesh Mittal,** Registration No. IBBI/IPA-002/IP-N00083/2017-2018/10224, 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.

22. 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

in excess of 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.

23. It is, accordingly, hereby ordered as follows: -

(a) The petition bearing **CP (IB) 2440/MB/C-I/2019** filed by **Gajendra Investment Limited,** 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 **Rushabh Civil Contractor Private Limited [CIN: U45202MH2008PTC181967],** the Corporate Debtor, is **admitted**.

(b) 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 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 IBC, as the case may be.

(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. Rajesh Mittal,** Registration No. IBBI/IPA-002/IP-N00083/2017-2018/10224, having address at Navjyoti Darshan Co-Op. HSG. Society, Near Purnima Talkies, Murbad Road, Kalyan (West) – 421301, Mumbai - 400076, Email: kamalgurnaniip@gmail.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, 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 Rs.2,00,000/- 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/-	**Sd/-**
KAPAL KUMAR VOHRA	**JUSTICE P. N. DESHMUKH**
Member (Technical)	**Member (Judicial)**

27.06.2022
SAM