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

C.P. (IB) 1051/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

Mobile Constructions Private Limited

Having its address at 6th Floor, A Wing, Universal Business Park, Chandivali, Andheri East, Mumbai-400072

..... Petitioner/ Financial Creditor

Versus

Apple Land Development Private Limited

Having its address at 2348, Bldg. No.49,
Shree Satya sai Kripa soc. Gandhi Nagar,
Opp. MIG Cricket Club, Bandra (East)
Mumbai -400051

..... Respondent/Corporate Debtor

Order Delivered on :- 21/02/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Financial Creditor : Adv. Ashish Pyasi a/w Anjali Shahi

ORDER

Per: -Mr. Kuldip Kumar Kareer, Member (Judicial)

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Mobile Constructions Private Limited** (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Apple Land Development Private Limited** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Financial Debt of Rs. 2,51,32,731/- as on 25.05.2023.

The submissions of the Financial Creditor are as follows:

2. In the year 2019, the Corporate Debtor along with the directors of Corporate Debtors approached the Applicant through one Mr. Manmohan Ghuwalewala seeking financial assistance in the form of a loan on the pretext that the Corporate Debtor assets were fully encumbered, and it was not

feasible for Corporate Debtor to raise funds from the market or financial institutions. At the request and assurance of the Corporate Debtor, Applicant /Financial Creditor agreed to extend financial assistance in the nature of a loan to the Corporate Debtor and disbursed the amount of Rs. 1,57,50,000/- to Corporate Debtor upon the conditions that the Corporate Debtor would pay interest on a half-yearly basis on the sum of Rs.1,57,50,000/- at the rate of 12% p.a. and that the Corporate Debtor would repay the principal amount of Rs. 1,57,50,000/within a period of 1 year from the date of disbursal.

3. The Financial Loan assistance to the tune of Rs. 1,57,50,000/- (Rupees One Crores Fifty-Seven Lakhs Fifty Thousand Only) ("Loan amount") was granted and disbursed to the Corporate Debtor. The rate of interest was 12% per annum and was payable on half-yearly on the Principal amount. The Corporate Debtor was liable to repay the principal amount of Rs. 1,57,50,000/- within a period of 1 year from the date of disbursal along with interest. The Applicant disbursed an aggregate sum of Rs. 1,57,50,000 to Corporate Debtors in tranches between 10.04.2019 and 24.04.2019. The details of disbursement are mentioned hereinbelow in the tabular form:

10th April, 2019	30,00,000
11th April, 2019	30,00,000
12th April, 2019	29,50,000
18th April, 2019	35,00,000
24th April, 2019	33,00,000
Total (Rs.)	**1,57,50,000**

4. The Corporate Debtor started committing default from the start itself where the principal amount along with interest thereon became due and payable on 10 October 2019, i.e. when the first instalment of half-yearly interest became

outstanding and payable to the Financial Creditor. However, the Corporate Debtor defaulted in repayment of the said interest and, therefore, committed the first default under the arrangement between the parties. Thereafter, the Corporate Debtor has also failed to repay the outstanding amount along with interest thereon in a recurring manner and the same is due and payable till this date. Thus, a default of Rs. 2,57,53,424/- (Rupee Two crore fifty-seven lakh fifty three thousand four twenty four) was committed by the Corporate Debtor as on 31st July 2023. In view of the above, vide notice dated 20 July 2020, the Financial Creditor issued a Demand Notice recalling the overdue amount. Further, vide demand notice dated 25 May 2023, the Financial Creditor issued another Demand Notice recalling the entire principal and interest amount as on May 2023.

5. It is pertinent to state that there is no denial of the liability or the notices by the Corporate Debtor. However, no payment has been made by the Corporate Debtor as a Borrower. The Financial Creditor has approached this Hon'ble Tribunal under section 7 of the Code seeking initiation of the Corporate Insolvency Resolution Process ("CIRP") against Corporate Debtor in view of the debt and default committed by the Corporate Debtor. Hence the present Company Petition.

<u>Analysis and Findings:</u>

6. Notice of the Petition was given to the Corporate Debtor, but none has appeared on its behalf to contest the proceedings. In the circumstances, the Corporate Debtor was proceeded against ex-parte vide order dated 19.12.2023.

7. We have heard the Counsel for the Petitioner and have also gone through the record.

8. It has been contended by the Counsel for the Petitioner that a loan of Rs. 1,57,50,000/- which was disbursed to the Corporate Debtor between 10.04.2019 and 24.04.2019 by way of five tranches. Counsel for the Petitioner has further contended that interest of 12% p.a. was payable on the loan and payment of interest was to be made on half-yearly basis. Counsel for the Petitioner has further contended that the loan was repayable within the period of one year from the date of disbursal. It has also been pointed out by the Counsel for the Petitioner that the default took place on 10.10.2019 when the first instalment of half-yearly interest was not paid despite having become due and payable. Counsel for the Petitioner has further pointed out that eventually the demand notice dated 20.07.2020 was issued by the Petitioner recalling the overdue amount. As the payment was not made even after the receipt of notice dated 20.07.2020, the Petitioner served another demand notice dated 25.05.2023 on the Corporate Debtor recalling the entire principal and interest amount. However, no payment was made by the Corporate Debtor and this necessitated the filing of the present Petition. Counsel for the Petitioner has further referred to the NeSL report where the date of default was also mentioned as 10.10.2019.

9. We have considered the aforesaid contentions raised by the Counsel for the Petitioner.

10. Admittedly, no loan agreement was executed between the parties at the time of the advancing of alleged loan. It is not disputed that the loan of Rs. 1,57,50,000/- was disbursed by way of five tranches beginning from 10.04.2019 and the last trench of Rs. 33,00,000/- was disbursed on

20.04.2019. It has been claimed by the Petitioner that the loan was repayable within one year and payment of interest @ 12% p.a. was to be made on half-yearly basis. On the basis of this assertion, the Petitioner has claimed that the first instalment of interest became due on 10.10.2019 which is said to be the first date of default.

11. However, this plea raised on behalf of the Petitioner does not appear to be tenable. In our considered view, the so-called period of six months, if at all, can be counted from 24.04.2019 when the disbursement of the loan was completed and not from 10.04.2019 when only a sum of Rs. 30,00,000/- was disbursed. Apart from this, no action was taken by the Petitioner in respect of the default of first instalment of interest. The Petitioner is shown to have issued a demand/recall notice dated 20.07.2020 and in the said notice, it is clearly mentioned in para 3 that the Corporate Debtor has committed a default in repayment of loan and also in payment of interest and as such the loan was being recalled. Thus, in our considered view, the default, if any, took place when the payment was not made by the Corporate Debtor despite the receipt of the notice dated 20.07.2020 whereby the loan was recalled. In this context, it is pertinent to mention that in the absence of any document or proof with regard to the repayment terms, in our considered view, the date of default has to be considered when the loan was demanded back vide notice dated 20.07.2020 and it was not paid back. Therefore, in our considered view, the correct date of default under the circumstances is 04.08.2020 as the Corporate Debtor failed to repay the loan with interest within the time period of 14 days granted vide notice dated 20.07.2020. If the date of default was 04.08.2020, it clearly falls within the 10A period and as per the provision of the Section 10A, no Petition under Section 7 of the IB Code, 2016 can ever

be filed, if the default has taken place within the 10A i.e. from 25.03.2020 to 24.03.2021.

12. As a result of the above discussion, we are of the considered view that the Petition is barred under Section 10A and is liable to be **dismissed** on this ground. It is ordered accordingly. File be closed and consigned to records.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)

Sushil