



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA No. 2947/2021

IN

CP (IB) No.664/MB-IV/2020

In the matter of

IA-2947/2021

CeO Creative Powertech Private Limited

... Applicant

V/s.

Sachin Bhattad

[GM Samta Nagari Sahakari Patsanstha Ltd.]

...Accused

IN

CP (IB) No.664/MB-IV/2020

Under Section 7 of the IBC, 2016

In the matter of

Samta Nagari Sahakari Patsanstha Ltd.

...Original Applicant

V/s.

Creative Powertech Private Limited

...Corporate Debtor

Order Pronounced on: **09.06.2023**

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)



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Appearances (via videoconferencing):

For the Applicant: None.
For the Respondents: CA. Raghunath Sarangpani a/w
Adv. Seetalaxmi Swamy.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Interlocutory Application IA-2947/2021 is filed on 13.12.2021 by Mr. Lalit Palwe (Applicant) CEO of M/s. Creative Powertech Pvt. Ltd., the Corporate Debtor, in CP/IB/No.664/MB/2020 seeking initiation of proceeding under Section 340 of Cr PC against Mr. Sachin Bhattad (Respondent), who is GM of Samta Nagari Sahakari Patsanstha Ltd. (the Financial Creditor), the Applicant in CP/IB/No.664/MB/2020, for falsely claiming the Financial Creditor as a Commercial Bank and to have granted working capital to camouflage an individual loan against mortgage of land; falsely stating the amount of loan disbursed; fake entries in the book of accounts qua loan amount; misleading the Registrar of Cooperative Society; and invoking IBC to avoid rigors of Usurious Loans Act.
2. The Applicant in the IA has contended that the Financial Creditor is not a bank; that it further claims to have granted working capital cash credit against hypothecation of stocks/raw materials/book debts while there is no mention of such security in the loan agreement; that the said loan is nothing but a camouflage to an individual/Sopan Kamble against mortgage of land; that the filing application under IBC is to drag the Corporate Debtor into CIRP endangering the actual working loan account of Central Bank classified as performing assets.



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA No. 2947/2021
IN
CP (IB) No.664/MB-IV/2020

3. The Respondent has filed reply dated 13.03.2023 submitting that the unsubstantiated accusations of the Applicant are a feeble attempt by it to mislead this Tribunal and to evade the corporate insolvency resolution process.
4. This Bench heard the Counsel and perused the material available on record as well as decisions of Courts cited by both the parties to support their contentions.

4.1. The Section 340 of Cr.PC reads as under:

340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;*
- (b) make a complaint thereof in writing;*
- (c) send it to a Magistrate of the first-class having jurisdiction;*
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and*
- (e) bind over any person to appear and give evidence before such Magistrate.*

(2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be



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MUMBAI BENCH-IV

IA No. 2947/2021
IN
CP (IB) No.664/MB-IV/2020

exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

4.2. The Applicant has submitted that such falsity was exposed while the Chartered Accountant Shri. Raghunath representing the Financial Creditor in the proceeding in CP/IB/No.664/MB/2020 on 16.07.2021, submitted that he offered no answer when this Bench asked him to clarify whether the Financial Creditor is a bank. On perusal of the application under Section 7 of Insolvency & Bankruptcy Code, 2016 (IBC) this Bench notices that in Sr. No. 3, Part-I of Form-1, the Financial Creditor has stated that *Samta Nagari Sahkari Patsanstha Maryadit, Kopargaon, is a Co-operative Society registered under the Maharashtra Co-Op. Societies Act, 1960 (Rule No.24 of the Maharashtra Societies Rules 1961 Section 9(1) dated 20.03.1986* and has referred itself as a Financial Creditor in the said application. This fact is borne from the certificate of registration issued by Assistant Registrar Co-Operative Societies, Kopargaon, which is enclosed with the said application u/s 7 IBC. The Applicant's contention that the Financial Creditor's webpage reads "*Banking Anywhere Anytime With Security*" suggest that Financial Creditor claims as a bank, cannot be a ground for initiation of proceeding U/s.340 Cr.PC, because the Financial Creditor case is not based upon such statement on its webpage. Even if there is any violation in this respect, as suggested in the application, such violation has to be dealt with by the RBI who is regulator for the banking and non-banking business. Accordingly, this Bench finds no falsity in this relation.

4.3. This Bench notices that at Sr. No.2, Part-IV of Form-1, the Financial Creditor has claimed the amount as working capital cash credit and it is referred likewise everywhere. It is noted that the audited financial statement



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA No. 2947/2021
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for the year ended 31.03.2019 discloses amount due from the Financial Creditor as “*Working Capital Facilities from Samata Nagari Patsanstha Maryadit against Agricultural Land of Shri. Ajay S. Kamble*”. It is further noted from the loan application given by the Corporate Debtor to the Financial Creditor that the said loan application titles as “*Working Capital C.C. – Loan File*” and the loan amount is stated therein is Rs.150 lakhs. This loan document is duly signed by the Director of the Corporate Debtor namely Mr. Bhagwat Vishwanath Dhundale the Director. Further, the Mortgage Deed dated 19.03.2019, executed by the Directors of the Corporate Debtor that namely Archana Lalit Palwe and Bhagwat Vishwanath Dhundale for a sum of Rs.150 lakhs, duly registered with Sub-registrar Haveli, District Pune, also confirms that a loan of Rs.150 lakhs was sanctioned towards Working Capital C.C. Loan. This Bench further finds that the certificate of charge registered with Registrar of Companies, Mumbai under Companies Act, 2013 also states the creation of charge a sum of Rs.150 lakhs.

4.3.1. This Bench finds no merits in the allegation of the Applicant that the Financial Creditor has falsely stated the amount of loan disbursed. Further, this Bench does not find any merits in the contention of the Applicant that a working capital loan must have underlying securities in the form of stocks/raw materials/books debts, and this cannot alter the character of loan disbursed to the Corporate Debtor.

4.3.2. As regards contention that the Corporate Debtor had received disbursement of Rs.1 Crore only, this Bench notices that the Corporate Debtor loan account has been debited on 25.03.2019 by three sums of Rs.1,00,00,059/-, Rs.14,99,900/- and Rs.34,99,900/- on account of



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA No. 2947/2021
IN
CP (IB) No.664/MB-IV/2020

“AMT TRF BY RTGS”, “for Suraksha Depo and Vadhiv shares” and “to Archana Palve” respectively. Further, audited financial statement for the financial year ended on 31.03.2019 shows a short term borrowing of Rs.1,45,49,368/- from the Financial Creditor. The Customer Ledger for working capital C.C. loan account appearing in the books of Financial Creditor shows a debit of Rs.14549368/- in the name of the Corporate Debtor. This fact confirms that the Corporate Debtor was disbursed Rs.14999929/- on 25.03.2019 and same is accounted for in its books of accounts as due and payable to the Financial Creditor.

4.3.3. In view of these facts, this Bench is of the considered view that the allegation in this respect is frivolous and misleading in the present application.

4.4. In view of facts narrated at para 3.3 and sub paras thereto, this Bench is of the considered view that allegation of fake entries in the book of accounts qua loan amount in the present application is also frivolous and misleading.

4.5. As regards allegation of misleading the Registrar of Cooperative Society on the date of loan approval this Bench finds that intimation dated 19.03.2019 was given to the Registrar of Cooperative Society about the sanction of the loan to the Corporate Debtor by the Financial Creditor in the meeting of Board of Directors of the Financial Creditor held on 10.03.2019 and creation of mortgage in relation thereto. The loan application the Board of the Corporate Debtor passed resolution to borrow in its Board meeting dated 12.03.2019 and filed an application with the Financial Creditor for sanction of said loan vide application dated 15.03.2019. From the copy of resolution annexed with the petition, this Bench finds that the said



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA No. 2947/2021
IN
CP (IB) No.664/MB-IV/2020

resolution passed on 24.03.2019. This Bench is of the considered view that the factum of loan and mortgage communicated to the Registrar of Cooperative Societies is a correct information. Merely because the Financial Creditor intimated to the Registrar on pre-printed form about the resolution having passed on 10.03.2019 it cannot be said that such incorrect information is misleading so as to invite proceedings under Section 340 Cr.PC.

- 4.6. In view of the above finds, this Bench does not find any substance in the allegation that the Financial Creditor has sought to misuse the provisions of IBC by filing application under Section 7 IBC. Also, this Bench finds that the said application cannot be said to have been filed to avoid rigors of Usurious Loans Act, which is an Act to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind, in view of specific provision of 238 IBC giving overriding affect to the provisions of IBC over any other law.
5. In view of the forgoing, this Bench is of the considered view, the present application in IA-2947/2021 is devoid of any merits and rather such application is intended to delay the adjudication in CP/IB/No.664/MB/2020. Accordingly, this Bench is of the considered view that present application deserves to be dismissed.
6. This Bench finds that Applicant has misrepresented on the facts contained in application u/s 7 IBC and has also played with the words to make a case u/s 340 Cr.PC. The present application is nothing but a frivolous attempt to allege what is not true. This Bench considers, it appropriate to imposed a costs of Rs.1 lakh on the Applicant for indulging into such acts. The said amount shall be



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

IA No. 2947/2021
IN
CP (IB) No.664/MB-IV/2020

deposited in Bharat Kosh and proof of payment thereof shall be filed with the Registry of NCLT, Mumbai.

7. In view of the aforesaid discussion, this Bench is of the considered view that, the present IA-2947/2021 deserves to be dismissed with a cost of Rs.1 lakh on the Applicant.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
09.06.2023

Sd/-

KISHORE VEMULAPALLI
MEMBER(JUDICIAL)