

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3, MUMBAI BENCH**

C.P. (IB)-3542/MB/2019

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

Amit Kumar Mehta
301 Jasmine Tower
Green Valley
Sector 41-42
Faridabad
Haryana 121003

.....Financial Creditor

Vs

New Steel Trading Private Limited
304 Arihant Iron Market
Ahmedabad Street
Masjid East
Mumbai 400009.

.....Corporate Debtor

Order delivered on : 16.12.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

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For the Applicant: Dr. S.K. Jain, Authorised Representative of the Financial Creditor, a/w Ms Uma Chatterjee, Advocate.

For the Respondent: Counsel Mr. Aditya Ajgaonkar.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This Petition CP(IB)-3542/MB/2019 has been filed under Section 7 of the IB Code on 01.10.2019 by the Petitioner Mr. Amit Kumar Mehta, (Financial Creditor) in Form I, seeking to initiate Corporate Insolvency Resolution Process against M/s New Steel Trading Company, Mumbai 400009, (Corporate Debtor) for an outstanding amount of Rs.25 lakhs.

Brief facts of the case:-

2. **Submissions by the Petitioner/ Financial Creditor :-**
 - 2.1. The Petitioner/ Financial Creditor submits that an unsecured loan of Rs. 25 lakh was transferred through RTGS from NRE Account with Bank of Baroda on 16.02.2015 to the Operational Creditor. Bank statement providing the details of the transfer to the Corporate Debtor is attached in Annexure 'A' with the Petition.
 - 2.2. The Petitioner recalled the said loan amount vide his First recall notice dated 20.07.2019. The Petitioner submits, no reply has been received for the same from the Corporate Debtor.
 - 2.3. Thereafter, the Financial Creditor again sent another email dated 15.08.2019 calling upon the Corporate Debtor to repay the outstanding unsecured loan amount which was due and

payable by the Corporate Debtor. As per the Petitioner, the Corporate Debtor did not reply to this 2nd recall notice too.

2.4. As per the Petitioner, the date of default had occurred on 23.08.2019.

3. **Submissions by the Respondent/ Corporate Debtor :-**

- 3.1. The Corporate Debtor/ Respondent in its defense submits that the amount was received in the form of 'quasi-equity' and being in the nature of a Shareholder's activity, the Creditor is not a 'Financial Creditor' of the Corporate Debtor.
- 3.2. The respondent Debtor further submits that even if the said Creditor is considered as a 'Financial Creditor', the amounts were not due as on the date of issue of notice on demand and, therefore, there has been no default.
- 3.3. The Respondent/ Corporate Debtor also submits that the letter dated 20.07.2019 of the Financial Creditor does not mention any interest rate neither does it state about consideration for the time value for money on amount so allegedly claimed by the Financial Creditor. Therefore, the Respondent contends that the said transaction is not a 'loan transaction' as the same is interest free and is not repayable on demand.
- 3.4. According to the Respondent, even if the said Creditor could be considered as a 'Financial Creditor', the sums were not due as on the date of issue of notice on demand and, therefore, there has been no 'default'. The Respondent further submits that the said sum was received as a part of the shareholder's activity and was to be maintained at 'estimated/ projected levels' during the currency of the banks advance.

- 3.5. The Respondent submits that the alleged Financial Creditor, requested Mr. Dinesh Mehta, a family member, to form a Company in UAE in the name of Omkar International. The family consented and incorporated a company in the name of Omkar International registered with Hamriyah Free Zone in UAE. It is stated that the family then decided to handover the management and day to day business to the Financial Creditor, as the Financial Creditor was insisting to reside in UAE. The Respondent alleges that the Financial Creditor had misappropriated the funds of the Dubai Company viz. Omkar International in UAE when the Financial Creditor was in control of this Company. The Respondent submits that on realizing the fraud, a law suit was filed in the HE Judge of Sharjah Federal Court of First Instance. The Respondent therefore submits that the Petitioner/ Financial Creditor is attempting to arm twist the Corporate Debtor by filing false litigations to harass and extort money from Corporate Debtor and these proceedings are a shrewd attempt to avoid compliance of the Orders of Hon'ble Dubai Court wherein the Financial Creditor has been directed to deposit AED 2,185,089 and AED 6,128,682.
- 3.6. The Respondent also submits that the Financial Creditor is a shareholder holding more than 20% share and thus the Financial Creditor was the shareholder and relative of the promoters at the time of availing the loan.
- 3.7. The Respondent further submits that the Corporate Debtor had availed credit facilities from the Oriental Bank of Commerce. The Oriental Bank of Commerce has in their sanction letter

inter alia put a condition precedent of maintaining deposits by family members, friends and relatives or directors/ partners at estimated/ project level during the currency of the banks advance for availing the credit facilities. Thus, the Promoters/ Directors either by themselves or through their friends/ relatives had to mandatorily bring in funds shown in the projections either by way of equity or unsecured interest free loan which shall not be withdrawn so long as the bank facility is continued.

FINDINGS


4. CP(IB)-3542/2019 has been filed on 01.10.2019 by Mr. Amit Kumar Mehta, Financial Creditor against New Steel Trading Pvt Ltd, Corporate Debtor, u/s 7 of the IBC for an unsecured loan of Rs.25 lakhs which has been given to the Corporate Debtor through RTGS on 16.02.2015 in the Bank account maintained by the Corporate Debtor with Bank of Baroda. A copy of the bank statement reflecting the details of the disbursement of the unsecured loan of Rs.25 lakhs has been attached to the Petition and is as under:-

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ANNEXURE A



बैंक ऑफ बड़ौदा
Bank of Baroda
India's International Bank

BARODA CONNECT
Retail eBanking

Account Statement							
Account Name		AMIT KUMAR MEHTA					
Account Number		01080100006095					
Currency Code		INR					
Branch Name		NEHRU GROUND, FARIDABAD					
IFSC Code		BARB0FARIDA					
From Date 01/02/15 to Date 28/02/15							

S.No	Date	Description	Cheque No	Debit	Credit	Balance	Value Date
1	16/02/15	RTGS-BARB201502165000783202-NEW STEEL TRADING PV	624148	25,00,000.00		3,39,297.50Cr	16/02/15
2	16/02/15	RTGS-CHGS-BARB201502165000783202-NEW STEEL TRADI		61.00		3,39,236.50Cr	16/02/15

[Signature]

5. The Bench notes that the unsecured loan is also reflected in the audited balance sheet of the Corporate Debtor for the Financial Year ending 31.03.2018 under the Heading “Loans From Others”. A snap shot of the same is as under:-

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M/S NEW STEEL TRADING PVT LTD
NOTES TO AND FORMING PART OF BALANCE SHEET AS AT 31/03/2018
(IN RUPEES)

NOTE NO.	S.N	PARTICULARS	CURRENT REPORTING PERIOD		PREVIOUS REPORTING PERIOD	
2	a	UNSECURED LONG TERM BORROWINGS:				
		LOANS FROM OTHERS				
		JYOTI MEHTA	1,657,775.00		1,460,000.00	
		AMIT MEHTA	2,600,000.00		2,600,000.00	
		ASHA MEHTA	100,000.00		100,000.00	
		CHARANJEET H MEHTA (HUF)			41,000.00	
		DCB BANK LTD	24,588,200.00		27,657,495.00	
		EDELWEISS RETAIL FINANCE LTD	840,459.00		2,361,312.00	
		HDFC BANK	989,307.98		1,522,844.83	
		KOTAK MAHINDRA PRIME LTD	1,062,196.40		2,763,181.00	
		MADHU VERMA			250,000.00	
		MAGMA FINCORP LTD	113,877.08		1,197,334.16	
		SHRIRAM CITY UNION FINANCE LTD	172,354.00		913,716.00	
		DIHL	(40,800.00)		651,175.00	
		BAJAJ FINANCE LTD	221,073.00	32,204,412.44	979,801.00	42,417,856.99
	b					
				32,204,412.44		42,417,856.99
		GRAND TOTAL		32,204,412.44		44,491,378.21

[Signature]

6. The Bench further notes that the Financial Creditor has sent a loan recall notice on 20.07.2019 and again sent another notice to

the Corporate Debtor through email on 15.08.2019. The Bench observes that the Petition is within 'limitation'. The loan was disbursed on 16.02.2015 and as on 31.03.2017 and also on 31.03.2018 the debt is reflected in the balance sheet of the Corporate Debtor. Therefore, within three years of the disbursement of the debt, it is reflected in the balance sheet of the Corporate Debtor and, therefore, as per Section 18 of the Limitation Act amounts to acknowledgment of debt. The Bench also notes that on 01.10.2019 the Company Petition was filed by the Financial Creditor u/s 7 of the Code which is well within the expiry of the limitation period.

7. The Corporate Debtor in its reply mentions that the amount claimed by the Financial Creditor is in the nature of quasi equity and not returnable or repayable unless the credit facility which has been availed by the Corporate Debtor from the Oriental Bank of Commerce are repaid and the said amount is, therefore, not repayable on demand. It is the contention of the Corporate Debtor that vide letter dated 28.12.2016 the Oriental Bank of Commerce had sanctioned credit facilities in favour of the Corporate Debtor whereby the borrower was to give certain undertakings. One such undertaking was "to maintain deposits (unsecured loans) by family members, friends and relatives, directors/ partners at estimated/ projected level during the currency of the Bank advance". The Corporate Debtor mentions that being family member/ Director and Partner, the Petitioner had deposited this amount for meeting the sanction requirement of Bank of Commerce.

8. The Bench in addition notes that the Corporate Debtor has raised frivolous contention about the poor family background of the Financial Creditor and reference to some law suit in Sharjah Federal Court. The Bench feels that such extraneous issues have no bearing in the adjudication of this Company Petition filed u/s 7 of the IB Code by the Financial Creditor.
9. The Financial Creditor is not on the board of the Company and is not involved in any manner with the affairs of the Corporate Debtor Company. In addition, the Bench observes that the sanction letter of Bank of Commerce is dated 28.12.2016 whereas the Financial Creditor had provided the unsecured loan about 2 years prior i.e., on 16.02.2015. Therefore, the bench is of the view that the giving of unsecured loan and the sanction letter of Commerce are totally unrelated activities and do not have any bearing on each other. The Corporate Debtor also mentions that the amount paid by the Financial Creditor does not carry any interest which is the pre-requisite for filing a Petition under section 7. However, this Bench notes that the contention of the Corporate Debtor is unsustainable as there are case laws which clearly mentions that even if there is no interest payable the amount extended would qualify as a “financial debt” u/s 7 of the IB Code. In this regard the Bench would like to refer to the judgment of Hon'ble Supreme Court in the matter of *Orator Marketing Pvt Ltd Vs Samtex Desinz Pvt Ltd* in Civil Appeal No. 2231 of 2021 where the Hon'ble SC had held the following:-

“2. The short question involved in this Appeal is, whether a person who gives a term loan to a Corporate Person, free of interest, on account of its working capital requirements is not a

Financial Creditor, and therefore, incompetent to initiate the Corporate Resolution Process under Section 7 of the IBC.

31. At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. 'Default' means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of 'debt' is also expansive and the same includes inter alia financial debt. The definition of 'Financial Debt' in Section 5(8) of IBC does not expressly exclude an interest free loan. 'Financial Debt' would have to be construed to include interest free loans advanced to finance the business operations of a corporate body."

10. From the above it is clear that the definition of Financial Debt u/s 5(8) of the IBC does not exclude an interest free loan from the definition of Financial Debt and any default in payment of an interest free loan would be squarely covered u/s 7 of the IBC. In view of the above, the Bench is the view that the amount claimed by the Petitioner qualifies as Financial Debt u/s 5(8) of the IBC, 2016 and there is a 'default' in payment as per Section 3(12) of the Code. Therefore, the Petition is liable for 'Admission'.

11. The Financial Creditor has proposed the name of the Interim Resolution Professional, Mr. Manoj Kumar Jain, Registration No. IBBI/IPA-001/IP-P00535/2017-18/10960, Address: 11, Friends Union Premises Co-operative Society, 227, P D'Mello Road, Next to Manama Hotel, Opp: St. George Hospital, Mumbai-400001, Email Id: manojj2102@gmail.com. Accordingly, this

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Bench appoints the said Mr. Manoj Kumar Jain as Interim Resolution Professional in this matter. Upon Admission of the Application and declaration of “**Moratorium**” the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under Section 13 read with Section 15 of the Code. He shall perform the duties as an Interim Resolution professional as defined under Section 18 of the Code and inform the progress of the Resolution process and 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.

12. Having admitted the Petition/ Application the provisions of “**Moratorium**” as prescribed u/s. 14 of the Code shall come into operation. As a result, institution of any suit or parallel proceedings before any Court of Law are prohibited. The assets of the Corporate Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during “**Moratorium**” period. This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process. Accordingly, CP(IB)-3542/MB/2019 stands “**Admitted**”. The Corporate Insolvency Resolution Process shall commence from the date of this Order.

13. Registry is directed to communicate this order to both the parties and the IRP immediately.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
H V Subba Rao
Member (Judicial)