



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT NO. II**

**Inv. P.03/AHM/2021
In
CP (IB) 96/AHM/2021**

(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 Inv. P.03/2021:

**LOGANMOY LIMITED
MATHE SAN TRUST COMPANY (BVI) LIMITED**

...Applicant/ Intervenor

AND

In the Matter of CP (IB) 96/AHM/2021:

AYODHYA ORCHARDS LLP

...Applicant / Financial Creditor

Versus

SAFECO HYGIENE FILMS PRIVATE LIMITED

...Respondent / Corporate Debtor

Order Pronounced On: 01/08/2022

Coram:

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
Mr. AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**



Inv. P.03/AHM/2021
MEMO OF PARTIES

LOGANMOY LIMITED
MATHESAN TRUST COMPANY (BVI) LIMITED
P.O. No. 36, Sommer Ville House,
Philips Street, Jersey JE49NU, Channel Island

...Applicant/Intervener

CP (IB) 96/AHM/2021
MEMO OF PARTIES

AYODHYA ORCHARDS LLP
R/O: Ayodhya, 3rd Floor, Plot No. 119,
Bajaj Nagar, Nagpur, Maharashtra- 440010

...Financial Creditor

Versus

SAFECO HYGIENE FILMS PRIVATE LIMITED
708, GIDC Industrial Estate (Savli)
Post- Manjusar, Vadodara-391775

... Corporate Debtor

Present:

For the Applicant : Mr. Gursharan Virk, Adv.
Mr. Nakul Mehta

For the Respondent: Mr. Dhruvit Shah, Adv.

For the Intervenor : Mr. Ravi Pahwa, Adv.



ORDER

1. The present main Application CP(IB) No. 96/AHM/2021 is filed by Ayodhya Orchards LLP (for brevity 'Financial Creditor') through its designated partner Mr. Kapil Vijay Chandak, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as a financial creditor for initiation of Corporate Insolvency Resolution Process ('CIRP') against the SAFECO Hygiene Films Private Limited ('Corporate Debtor').

The Intervention Application bearing Inv. P. No. 03/AHM/2021 is filed by Loganmoy Limited Mathesan Trust Company (BVI) Limited ('Applicant/ Intervenor') a non-resident Indian shareholder holding 66% of shares in the Corporate Debtor. This Intervention Application is filed under Section 65 of the Code, through Mr. Bijalkumar J. Gandhi authorized by board resolution dated 10.08.2021, seeking following reliefs:

- a) *That this Hon'ble Adjudicating Authority may be pleased to allow the present application, in the interest of justice;*
- b) *That this Hon'ble Adjudicating Authority may be pleased to dismiss CP (IB) no. 96 of 2021, in the interest of justice;*
- c) *That this Hon'ble Adjudicating Authority may be pleased to impose penalty on the Financial Creditor to the tune of Rs. 1 Crores as per Sec.65 of the IB Code, in the interest of justice;*
- d) *That this Hon'ble Adjudicating Authority may be pleased to grant any ancillary or consequential directions or such other and further reliefs as may be deemed fit and proper by this Hon'ble Tribunal, in the interest of justice;*

Both Applications are disposed of by this common order.

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2. The Financial Creditor is a Limited Liability Partnership, incorporated under the provisions of the Limited Liability Partnership Act, 2008 and duly registered with the Registrar of Companies, Mumbai, with LLPIN: AAL-1413. The registered office is located at Ayodhya, 3rd Floor, Plot No. 119, Bajaj Nagar, Nagpur, Maharashtra- 440010. The Applicant is in the business of accounting, taxation and financial consultancy.
3. The Corporate Debtor is a company limited by shares, incorporated under the provisions of the Companies Act, 1956 on 11.02.2012, duly registered with Registrar of Companies, Ahmedabad with CIN: U25200GJ2012PTC068993 and its registered office is located at 708, GIDC Industrial Estate (Savli) Post- Manjusr, Vadodara-391775. The authorized share capital of the Corporate Debtor is Rs. 19,00,00,000/- and the Issued, Subscribed and Paid-up share capital of the Corporate Debtor is Rs. 18,59,72,490/-.
4. It is the case of the Financial Creditor that during the year 2018-19, the Corporate Debtor approached Applicant for financial assistance. In financial year 2019-20 the Financial Creditor advanced unsecured loan of Rs. 10,50,00,000 to the Corporate Debtor at 18% p.a. compound interest repayable on demand. The Corporate Debtor had repaid an amount of Rs. 2,13,78,936/- toward interest. Copies of statement of account and Form 26AS of the Financial Creditor reflecting disbursement and payment of interest is annexed. The Corporate Debtor had assured that it will repay the entire loan by 31.03.2021 but no payment has been made. Thus, Applicant issued recall notice dated 12.04.2021 which was delivered on 30.04.2021 and



thereafter reminder notice dated 12.05.2021 was also sent to the Corporate Debtor and its directors and shareholders. Certain shareholders including Intervener in Inv. P. 03/AHM/2021 replied to the notice through letter dated 14.05.2021 and stated that the Financial Creditor had granted loan to the Corporate Debtor on the basis of friendly relation with directors of the Corporate Debtor Mr. Subhash Chawra and Mr. Hiren Chawra and no loan agreement was executed for grant of such alleged loan. The Financial Creditor responded to the reply vide letter dated 16.05.2021 and stated that the disbursement of loan was never denied by the shareholders and until the issuance of demand notice said shareholders had not raised any dispute in relation to the debt. Copy of all letters are annexed. It is also stated that the said loan was disbursed from bank account of the Financial Creditor to the bank account of the Corporate Debtor and also the debt has been admitted and acknowledged in the audited balance sheet of the Corporate Debtor for the year ended 31.03.2020 as well as TDS forms for financial year 2019-20 and 2020-21. Copies of Bank Statement of Financial Creditor bank account, TDS and Balance Sheet of the Corporate Debtor are annexed.

5. Thus, the Financial Creditor filed an Application under Section 7 of the Code. As per Form-I of the Application, total amount claimed by the Applicant is Rs. 10,50,00,000/- including compound interest @ 18% p.a. and the date of default is stated as 11.05.2021.
6. The Corporate Debtor has filed its reply and submitted as under:
 - a) The designated partners of the Financial Creditor Mr. Vijay Chandak and Mr. Kapil Chandak ('Chandak family') and directors of the Corporate Debtor Mr. Subhash Chawra and Mr.



Hiren Chawra were good friends since last 30 years. All the finance and taxation work of the Corporate Debtor and its other entities and / or associates are handled by the Chandak family.

- b) When Corporate Debtor was facing crises, Mr. Jagdish D. Shah through M/s Loganmoy Limited Matheson Trust Co. (BVI) Ltd. ('Shah Group') Intervenor in Inv. P. 03/AHM/2021 offered to invest in Corporate Debtor. Pursuant thereto, M/s SBPL Polymers LLP, whose designated partners are the directors of the Corporate Debtor, signed Joint Venture Agreement (JVA) with M/s Loganmoy Limited Matheson Trust Co. (BVI) Ltd. for investment in Corporate Debtor, wherein it was agreed that both the parties shall have equal shareholding in the Corporate Debtor. Also Mr. Jagdish D. Shah had provided funds to the Corporate Debtor against the consideration of shares by which, the shareholding of Chawra Group through M/s SBPL Polymers LLP got reduced to 34% and Shah Group shareholding went to 66% (Intervenor herein). It was also agreed that on repayment of funds advanced the shareholding pattern shall be restored. However, when the Respondent's sale/ turnover increased by 300%, Chawra group proposed for buyback, but the Shah Group, i.e. Intervenor, refused.
- c) Mr. Jagdish D. Shah through Intervenor sent a requisition notice for calling of the Extra Ordinary Meeting (EoGM) with agenda to appoint four (4) persons as the directors of the Corporate Debtor. In 2018, Shah Group through Intervenor filed an application against the Corporate Debtor before this Tribunal for not holding the EOGM which was subsequently settled mutually. Thereafter Intervenor filed petition for oppression and mismanagement against the Corporate Debtor and vide order



dated 27.07.2019 following directions in favour of the Intervenor was passed:

- i. To set aside notice of the company dated 12.01.2018.
- ii. To call EOGM as per the requisition notice dated 20.12.2017.
- iii. The Joint Venture Agreement dated 22.03.2013 was held not enforceable.

The Corporate Debtor went in appeal and the matter is sub-judice.

- d) The representative of Financial Creditor has attended each and every meeting of the Corporate Debtor held with Shah Group. The representative of Financial Creditor is aware of ongoing dispute of the Corporate Debtor with the Shah Group.
- e) The account of the Corporate Debtor was classified as NPA on 31.05.2019. Between April-November 2019 the Financial Creditor has funded Rs. 5 crores for purchase of raw material from M/s Elegant Impex, an entity belonging to representative of the Applicant Mr. Kapil Chandak. After Nov, 2019 the raw materials were directly supplied by the Applicant.
- f) After the EOGM held on 27.11.2019, representative of Financial Creditor had meeting with Mr. Jagdish Shah and after the meeting Financial Creditor informed to the Corporate Debtor that Mr. Jagdish Shah has agreed to settle the dispute and sell 66% stake in the Corporate Debtor for Rs. 25 crores. On consistent effort, representative of Financial Creditor Mr. Kapil Vijay Chandak shared draft settlement agreement through whatsApp messenger on 29.01.2020. The Corporate Debtor was shocked to see that instead of two parties, namely, Loganmoy Limited Matheson Trust Co. (BVI) Ltd. and M/s SBPL Polymers LLP and the purpose of the same being M/s SBPL Polymers LLP buying



out/ acquiring the stake of M/s Loganmoy Limited Matheson Trust Co. (BVI) Ltd., the agreement was tripartite involving i.e., one, M/s. Ayodhya Commerce Private Limited (in which the authorised representative of the Financial Creditor i.e., Mr. Kapil Chandak is shown to be a director), being the party to buy out / acquire the stake of Intervenor M/s Loganmoy Limited Matheson Trust Co. (BVI) Ltd. for an amount of Rs. 25 Crores which was never discussed. Hence, the director of the Corporate Debtor i.e., Mr. Hiren Chawra refused such kind of proposal of the authorised representative of the Financial Creditor i.e., Mr. Kapil Chandak through WhatsApp. Copy of WhatsApp communication is annexed.

- g) Thus, either the authorised representative of the Financial Creditor i.e., Mr. Kapil Chandak is working for his sole benefit with mala fide intentions and / or working with Mr. Jagdish D. Shah to corner the Corporate Debtor as well as the Chawra Group from different ways to achieve individual and / or joint goals i.e., to acquire the company/business created, nurtured and established by the Chawra Group in order to have maximum benefits which shall be totally detrimental to the Chawra Group.
- h) In demand letter dated 12.04.2021, the Financial Creditor had arbitrarily imposed 18% interest on the claimed amount.
- i) There cannot be any date of default when there is no default in repayment of any debt which has rendered the present application as defective and hence not maintainable.

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7. It is the case of the applicant intervenor that through requisition notice dated 20.12.2017, the Applicant Intervenor requested to call EoGM



for appointment of four directors from its side. Thereafter Applicant Intervenor filed CP No. 15 of 2018 before this Tribunal under Section 98 of the Companies Act, 2013 for calling of EoGM and the same was allowed vide order dated 26.07.2019. The Corporate Debtor being aggrieved went in Appeal and Hon'ble National Company Law Appellate Tribunal (NCLAT) vide judgment dated 09.08.2021 confirmed the order of NCLT dated 26.07.2019. It is thus clear that just to oust this intervenor, who is majority shareholder of the Corporate Debtor and has succeeded up to Hon'ble NCLAT, the Financial Creditor has filed the captioned insolvency petition u/s 7 of the Code in collusion with the Corporate Debtor. It is further stated that the Corporate Debtor is a going concern and a profit-making company and has sufficient funds to repay to the Financial Creditor but the Corporate Debtor is deliberately not repaying the same. Copy of balance sheet of the Corporate Debtor as at 31.03.2019 is annexed.

8. The Respondent herein, the Corporate Debtor has filed its reply and submits that the allegation of collusion of the Corporate Debtor with the Financial Creditor is completely incorrect, vague and without any substantial evidence.
9. The Financial Creditor has also filed its reply to the Intervention Application and submits that Intervenor is neither necessary nor proper party in the present proceedings and also it is a settled law that no third person should be heard at the admission stage of Section 7 Application. The Financial Creditor further submits that since the Corporate Debtor has defaulted in repayment of entire due amount, the Financial Creditor was constrained to file Section 7 Application. The intervenor has no role to state that the Corporate Debtor has funds



or not to repay. It is submitted that the Intervenor is acting in collusion with the Corporate Debtor to delay the Section 7 Application filed by the Financial Creditor.

10. Heard the submissions, liberty was granted to file written submissions. The Intervenor filed written submission and relied on judgment dated 30.06.2021 passed by Hon'ble NCLAT in ***Hytone Merchants Pvt. Ltd. versus Satabadi Investment Consultants Pvt. Ltd. (CA (AT) (Insolvency) No. 258/2021)***:

“45. Based on the above discussion, we believe that even if the petition complied with all requirements of Section 7 of the Insolvency and Bankruptcy Code, 2016 it is filed collusively, not with the intention of Resolution of Insolvency but otherwise. Therefore, it is not mandatory to admit the application to save the Corporate Debtor from being dragged into Corporate Insolvency Resolution Process with malafide”

11. The Financial Creditor also has filed its written submissions and submits that the documents annexed with the Application being proofs of disbursement of loan by the Financial Creditor to the Corporate Debtor are neither denied in pleading nor in oral arguments. In fact, at the time of arguments, counsel for the Corporate Debtor admitted the disbursal of loan and outstanding debt. It is further stated that the written agreement is not sine qua non to prove financial debt. It is well settled law that when no time of repayment is specified the loan is repayable on demand and hence there is debt and default on part of the Corporate Debtor. The Financial Creditor relied on the order passed by Hon'ble NCLAT in ***Shailesh Sangani vs. Joel Gardoso & Anr, Company Appeal (AT) (Ins) No. 616 of 2018*** wherein Hon'ble NCLAT allowed Section 7 Application filed by a shareholder who gave unsecured loan with no fixed time period for repayment.



With respect to Inv. P. 03/AHM/2021 the Financial Creditor submits as under:

- a) The Hon'ble NCLAT has time and again held that intervention is not permissible as no third person can be heard at the stage of admission of Application under Section 7 of the Code.
- b) Hon'ble NCLAT in ***Jagmohan Bajaj vs. Shivam Fragrances Private Limited [CA (AT) (INSL) No. 428 of 2018 dated 14.08.2018]*** observed that the statutory right of a Financial Creditor satisfying the requirements of Section 7 of the Code to trigger Insolvency Resolution Process cannot be made subservient to adjudication of an application under Section 241 and 242 of the Companies Act, 2013. Code is supreme so far as triggering of Insolvency Resolution Process is concerned and same cannot be eclipsed by taking resort to remedies available under ordinary law of the land.
- c) Relying on order passed by Hon'ble National Company Law Appellate Tribunal in ***Monotrone Leasing Private Limited vs. PM Cold Storage Pvt. Ltd.*** (CA(AT)(Insolvency) No. 99 of 2020) dated 16.07.2020 which lays down that for the purpose of Section 65, fraudulent intent must be shown explicitly based on documentary evidence which in the pleadings of the Intervener are completely lacking.
- d) In Section 241 proceedings the Intervenor was directed to appoint 3 out of 5 directors on the Board of Corporate Debtor which the intervener has appointed to the best of Financial Creditor's knowledge. This order is still in operation and not stayed by the Hon'ble Supreme Court. Therefore, the intervener has made false submission that it is not aware of affairs of Corporate Debtor due to non-representation on Board of the Corporate Debtor.



12. The Corporate Debtor has also filed its written arguments and reiterated the submissions made in its reply.
13. It is an admitted fact that the Corporate Debtor had borrowed money from the Financial Creditor in financial year 2019-20, as the disbursement of the amount is also reflected in the bank statements annexed by the Financial Creditor. Form-26AS of Financial Creditor for financial years 2019-20 and 2020-21 reflects that the Corporate Debtor had deducted TDS under Section 194A of the Income Tax Act, 1961. Section 194A deals with Interest other than interest on securities. This implies that the Corporate Debtor had been paying interest on the money borrowed from the Financial Creditor. It is the case of the Financial Creditor that the loan availed by the Corporate Debtor is repayable on demand. However, the Corporate Debtor averts, in absence of any agreement or contract, it cannot be said that the loan amount is due and payable. The Audit report of the Corporate Debtor for F.Y. 2019-2020 undoubtedly reflects that an amount of Rs. 10,91,37,372/- is due as an unsecured loan to the Financial Creditor. The extract of the audit report is reproduced below:

SAFECO HYGIENE FILMS PRIVATE LIMITED
Accompanying notes to the financial statements (F.Y. 2019-20)

4 Long Term Borrowings
a. Long term borrowings consists of the following:

Particulars	(Amount in ₹)	
	As at 31st March, 2020	As at 31st March, 2019
Secured Borrowings		
Term Loans		
From Banks	24,629,699	30,390,526
From Others _Daimler	3,157,309	3,190,511
Unsecured Loan (Ayodhya Orchard)	109,137,372	699,706
Unsecured Loan (Baja) Finance)	667,868	
Total	137,592,248	34,280,743



The Corporate Debtor has admitted in its books that a specified amount is due. Though the Corporate Debtor has disputed the fact that the borrowed money is repayable on demand, but has failed to establish that the borrowed money would be due and payable on a date other than a date stated by the Financial Creditor. The Corporate Debtor has nowhere pleaded that the borrowed amount has been repaid to the Financial Creditor either before or after the issuance of recall notice by the Financial Creditor.

14. With respect to Intervention Application filed under Section 65 of the Code, the Applicant Intervenor states that the Financial Creditor and the Corporate Debtor are acting in collusion with each other only on the ground of some disputes between the shareholders of the Corporate Debtor which is not at all relevant to the transactions between the Financial Creditor and the Corporate Debtor giving rise to the filing of instant Section 7 Application. The main ingredient of Section 65 of the Code is fraudulent or malicious intent which the Applicant Intervenor has failed to establish with sufficient documentary proofs. The ingredient of mens rea is must and needs to be proved with documents to fall under Section 65 of the Code. Acquittance between parties or disputes interse cannot form base of arguments under Section 65 of the Code. As a sequel to above discussion, we find no merit in intervention application and the said Application Inv. P. No. 03/AHM/2021 stands rejected and disposed of.
15. The Registered Office of the Corporate Debtor is situated in Vadodara and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application.



16. The date of default is stated as 11.05.2021 and the Section 7 Application is filed on 07.06.2021. Therefore, Section 7 Application is within the period of limitation and not barred by law.
17. In view of the above discussion and Application bearing CP(IB) 96/AHM/2021 being complete in terms of Section 7(5) (a) of the Code, we admit the CP(IB) 96/AHM/2021 and initiate Corporate Insolvency Resolution Process of the Corporate Debtor.
18. The Financial Creditor has proposed the name of Mr. Charudutt Marathe to be appointed as Interim Resolution Professional (IRP), who is hereby appointed as IRP of the Corporate Debtor having Registration No. IBBI/IPA-001/IP-P00350/2017-18/10651 and address at Gomed, 915, Khare Town, Dharampeth, Nagpur, Maharashtra-440010. The written consent of IRP in Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 is filed.
19. As a consequence of the Application bearing CP(IB) 96/AHM/2021 being admitted, the moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate Debtor prohibiting all of the actions mentioned under Section 14(1)(a) to (d).
20. We direct the Financial Creditor to deposit a sum of Rs. 2,00,000/- with the Interim Resolution Professional, namely Mr. Charudutt Marathe to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)



Regulation, 2016. The needful shall be done within one week from the date of receipt this order by the Financial Creditor.

21. Copy of the order shall be communicated to the Financial Creditor, Corporate Debtor, Intervenor as well as to the IRP appointed herein, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records and also to RoC for updating the Master Data. RoC shall send compliance report to the Registrar, NCLT.
22. In view of the foregoing, CP (IB) 96/AHM/2021 is allowed and Inv. P 03/AHM/2021 is rejected and disposed of.

-Sd-

**AJAI DAS MEHROTRA,
MEMBER (TECHNICAL)**

-Sd-

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**

Mansi/LRA