

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

CP(IB) No. 88/KB/2020

Petition 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:**

**Prarthna Sales Private Limited**, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, and having Corporate Identification No- U52190WB2011PTC157333 and its registered office at 16, Strand Road, 7<sup>th</sup> Floor, room No. – 709A, Kolkata-700001 in the State of West Bengal.

.....Financial Creditor

-Versus-

**Shiv Sai Metal Products Private Limited**, a company incorporated under the Companies Act, 1956, being a Company within the meaning of the Companies Act, 2013 and having Corporate Identification No- U31908BR2012PTC018540 and its registered office at Shiv Sai metal Pvt. Ltd., Maner, Patna, Bihar 801108

.... Corporate Debtor

**Date of Hearing** : 1<sup>st</sup> April, 2022

**Date of pronouncing the order:** 27<sup>th</sup> April, 2022

**Coram:**

*Mr. Rohit Kapoor, Member (Judicial)*

*Mr. Harish Chander Suri, Member (Technical)*

**Appearances (via video conferencing):**

For the Financial Creditor: 1. Mr. Anirudh Wadhwa, Advocate  
2. Mr. Shaishir Divatia, Advocate  
3. Mr. Rohit Sharma, Advocate

For the Corporate Debtor : 1. Mr. Debraj Sinha, Advocate  
2. Mr. Sayantan Chatterjee, Advocate

3. Ms. Diottima Roy, Advocate

**ORDER**

**Per : Rohit Kapoor, Member (Judicial):**

1. This Court convened through video conferencing.
2. This Company Petition under section 7(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **Prarthana Sales Private Limited** (hereinafter referred to as the Financial Creditor), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Shiv Sai Metal Products Private Limited** (hereinafter referred to as the Corporate Debtor).
3. The case of the Financial Creditor is that the Financial Creditor provided the Corporate Debtor a loan to the tune of Rs.35,00,000/- on 25 April 2017 at an interest rate of 12% per annum, with interest being payable on four monthly basis.
4. The Financial Creditor submits that in the Financial Year 2017-18, the Corporate Debtor deducted TDS on interest which is due and payable by the Corporate Debtor and had filed the same. However, during the Financial Year 2018-19, the Corporate Debtor had deducted TDS on interest dated 31.07.2018, 30.08.2018 and 11.01.2019 which is due and payable by the Corporate Debtor by the same has not been filed with the Income Tax Authorities. Despite deducting the TDS on interest for the period 2018-19, Corporate Debtor has failed and/or neglected to file the TDS amounting to Rs. 42,000/- to the Financial Creditor. Further, it is also to be noted that for the present Financial Year i.e. 2019-20, Corporate Debtor has failed and/or neglected to pay the interest amounting to Rs. 2,45,000/- till 31.10.2019.
5. A Demand Notice dated 02.09.2019 seeking the refund of the debt was sent to the Corporate Debtor. A reply to the demand notice dated 17.10.2019 was sent on behalf of the Corporate Debtor.
6. On 12.12.2019 the Financial Creditor had presented the cheque being No. 025657 dated 11.12.2019 amounting to Rs. 35,00,000/- issued by the Corporate Debtor before the bank but the same got dishonoured stating the reason 'fund insufficient'. The total amount aggregating to Rs. 37,87,000/- is due and payable to the Financial Creditor by the Corporate debtor.

7. In the **Reply-Affidavit** filed by the Corporate Debtor, it has been submitted that the instant petition is incomplete on various aspects and on this ground itself the petition should not be taken on record.
8. Further, it has been submitted that there exists a dispute regarding the alleged claims of the financial creditor and even after knowing the same the financial creditor has move forward and filed the said petition.
9. The Corporate Debtor submits that on 25<sup>th</sup> April, 2017, the corporate debtor took a loan from the Financial Creditor payable quarterly, i.e. after every 4 months in a year. The corporate debtor, till 2018-19, has diligently paid the EMI's of the said loan and never defaulted in paying the same till such period. However, post 2018-19, the corporate debtor suffered huge loss in their business and thereafter due to the pandemic and lockdown situation, the business of the corporate debtor, like many other business organizations, was severely affected and the corporate debtor suffered huge loss financially.
10. In paragraph 5 and 6 of the Reply- Affidavit, the Corporate Debtor has stated that up to 2018-19 he has diligently paid the EMI's of the said loan however, after this the Corporate Debtor suffered huge loss in their business and thereafter due to pandemic and lockdown the business of the Corporate Debtor was severely affected. It has been further stated in the reply affidavit that due to the said financial loss as a result of loss of business opportunity that the Corporate Debtor had to suffer, due to the spread of pandemic and nationwide lockdown, the Corporate Debtor was unable to continue to pay the monthly dues of the financial creditor, as against the said loan account post 31<sup>st</sup> March, 2019 however, the Corporate Debtor never had the intention to deprive the financial creditor of its legitimate claims. It is pertinent to mention here that on repeated occasions the Corporate Debtor requested the financial creditor to provide some extension in the time period of the repayment schedule of the said loan, however, the financial creditor has always been reluctant towards the same.
11. It is submitted that the corporate debtor disputed the interest claimed by the financial creditor @ 12% per annum upon the said loan and on that ground the said petition shall not be entertained by the Hon'ble Tribunal and should be dismissed with cost.
12. The Corporate Debtor, at the same time, denies that Financial Creditor had provided Shiv Sai Metal Products Private Limited, Corporate Debtor, a loan to the tune of Rs.35,00,000/- (Rupees Thirty Five Lakhs) only on 25th April, 2017 at an interest rate of 12% per annum,

- with interest being payable on four monthly basis, as alleged or at all. It is further denied that during the Financial Year 2018-2019, Corporate Debtor has deducted TDS on interest dated 31.07.2018, 30.08.2018 and 11.01.2018 which is due and payable by the Corporate Debtor but the same has not been filed with the Income Tax authorities, as alleged or at all.
13. The Corporate Debtor further denies that despite deducting TDS on interest for the period 2018-19, Corporate Debtor has failed and/or neglected to file the TDS amounting to Rs.42,000/- to Financial Creditor, as alleged or at all. It is again denied that further, it is also to be noted that for the present Financial Year, i.e., 2019-2020, Corporate Debtor has failed and/or neglected to pay the Interest amounting to Rs.2,45,000/- till 31.10.2019, as alleged or at all. It is submitted that the corporate debtor has paid the TDS for the financial year 2017-2018 and 2018-2019.
14. It is denied that a Demand Notice dated 02.09.2019 demanding/seeking the refund of the debt amount was sent to the Corporate Debtor, as alleged or at all. It is denied that a reply to the demand notice was sent on behalf of the Corporate Debtor stating frivolous and baseless issue, as alleged or at all. It is denied that the total amount aggregating to Rs.37,87,000/- is due and payable to the Financial Creditor by the Corporate Debtor, as alleged or at all.

***Analysis And Findings:***

15. This is an application under Section 7 of Insolvency and Bankruptcy Code, 2016 wherein the reply affidavit has been filed by the respondent / Corporate Debtor. The following dates and particulars will be relevant for decision in the matter:

SI No.	Date	Particulars	Details
1.	25.04.2017	The Applicant/Financial Creditor entered into a verbal agreement with the Respondent/Corporate Debtor and disbursed a loan of Rs. 35,00,000/- (Rupees Thirty Five Lakhs Only) on 25.04.2017, at an interest rate of 12% per annum with interest being payable on four monthly basis. The said loan was repayable on demand as agreed between the parties.	The bank statement evidencing such disbursement is marked as <b>Annexure I Exhibit-C</b> and is annexed at <b>Pg- 32</b> .

2.	<b>2018-19</b>	<i>Date of receipt of interests and amounts:</i>  10.05.2017 - Rs. 1,26,000/- 16.09.2017 – Rs. 1,26,000/- 03.01.2018 – Rs. 1,01,850/- 19.04.2018 – Rs. 1,26,000/- 31.08.2018 – Rs. 1,26,000/- 11.01.2019 – Rs. 1,26,000/-	The bank statement evidencing such disbursement is marked as <b>Annexure I Exhibit-C</b> and is annexed at <b>Pg- 32</b> . The ledger is marked as <b>Annexure I Exhibit F</b> and is annexed at <b>Pg 49 and 50</b> .
3.	-	Ledger acknowledgement for the period 01.04.2017 to 31.03.2018 and 01.04.2018 to 31.03.2019	Ledger acknowledgement is marked as <b>Annexure I Exhibit F</b> and is annexed at <b>Pg 49 and 50</b> .
4.	<b>2019-20</b>	The Corporate Debtor failed to repay the amount of Rs. 35,00,000/- or any interest payable on the amount so disbursed after the last date of payment of interest being 11.01.2019.	-
5.	<b>02.09.2019</b>	Notice demanding payment of the outstanding amount of Rs. 35,00,000/- towards principal along with interest and outstanding TDS amount payable to the Applicant/Financial Creditor till date.	The notice dated 02.09.2019 is marked as <b>Annexure I Exhibit- H and is annexed at Pg 52-53</b> of the petition.
6.	<b>05.09.2019</b>	Date of maturity of the loan disbursed along with interest @12% apropos to the notice demanding the re-payment of loan dated 02.09.2019	
7.	<b>06.09.2019</b>	Date of default	The default sheet is marked as <b>Annexure I Exhibit-B</b> and is annexed at <b>Pg 31</b> of the petition.
8.	<b>17.10.2019</b>	The Respondent/Corporate Debtor replied to the afore stated notice dated 02.09.2019 wherein it has expressly admitted such dues to be outstanding and had sought time to repay the principal amount along with outstanding interest. Further, the Respondent chose to raise frivolous issues <i>qua</i> the interest component.	The reply of the Respondent/Corporate Debtor is marked as <b>Annexure I Exhibit- I</b> and is annexed at <b>Pg 54</b> of the petition.

9.	<b>12.12.2019</b>	The Applicant/Financial Creditor presented a cheque dated 11.12.2019 bearing no. 025657 of Rs. 35,00,000/- (Rupees Thirty Five Lakh Only) to the bank, which was subsequently dishonoured.	Details of cheque dishonoured upon presentation is marked as <b>Annexure I Exhibit-J</b> and is annexed at <b>Pg 56</b> to the petition.
10.	<b>19.12.2019</b>	Letter to the Respondent/Corporate Debtor intimating about the cheque being dishonoured and demanding payment within 3 days from the receipt of this letter.	Letter demanding payment and intimation about dishonoured cheque along with track report of delivery is marked as <b>Annexure I Exhibit-K</b> and is annexed at <b>Pg 58</b> of the petition.
11.	<b>06.01.2020</b>	The instant petition was filed before the National Company Law Tribunal, Kolkata Bench at Kolkata.	<b>Prayer (Pg: 8 &amp; 9)</b>
12.	<b>25.11.2020</b>	The present petition was e-filed bearing diary no. 1908131003302020	-
13.	<b>09.01.2021</b>	Affidavit in Reply of the Respondent/Corporate Debtor was served upon the Applicant/Financial Creditor.	The said Affidavit in Reply contains clear admissions by the Respondent/Corporate Debtor of the debt owed to the Applicant/ Financial Creditor ( <b>refer Paras 4, 5 and 6 at Pg. 5 of the Reply</b> ).

16. In the petition an amount of Rs. 35,00,000.00/- has been claimed as Principal Default plus Rs. 2,45,000.00/- as interest @ 12% per annum plus Rs. 42,000.00/- towards TDS on the aforesaid amount for the period starting from the date on which the date of principal default till 31.10.2019.
17. In the reply affidavit filed by one Mr. Saurav Keshri as the Director of the Corporate Debtor. The stand taken in the affidavit is that there was a pre-existing dispute with respect to the claims as raised in the petition. In view of the dispute the present application could not have been filed by the Financial Creditor.
18. Further, the instant petition was filed on 06.01.2020. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default surpasses the

threshold amount stipulated under section 4(1) of the Code, *i.e.*, Rupees one lakh, at the relevant time.

19. Further, it has been stated that there was no written contract for the sanction of the loan and that the loan was given on the basis of a verbal agreement. In this regard, we would like to rely on the stance taken in **Narendra Kumar Agarwal and ors v Monotrone Leasing Private Limited and Ors.** (Company Appeal (AT) (Insolvency) No. 549 of 2020 (NCLAT; Order dated 19.01.2021) wherein the NCLAT held that written contract cannot be treated as an essential element or pre-requisite to prove the existence of Financial Debt (Para 11)

20. We are of the view:-

- i. The plea of pre existing dispute if any is not available in an application under Section 7 of IBC, 2016.
- ii. There is a clear admission on the part of the Corporate Debtor regarding the debt. The stand taken by the Corporate Debtor is mentioned above and is contained in paragraph 5 and 6 regarding inability to pay the amount of claim in the petition for the reasons of loss suffered by him due to the lockdown pandemic etc. is not tenable and this plea is not available to the Corporate Debtor while contesting application under Section 7 of the IBC.
- iii. The default of the Corporate Debtor is more than the minimum amount stipulated under section 4(1) of the Code, *i.e.*, Rupees one lakh, at the relevant time.

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

- a) The application bearing **CP (IB) No. 88/KB/2020** filed by Prarthana Sales Private Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Shiv Sai Metal Products Private Limited, CIN: U31908BR2012PTC018540, the Corporate Debtor, is **admitted**.
- b) There shall be a moratorium under section 14 of the IBC.
- c) 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.

- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Mr. Aditya Kumar Tibrewal**, registration number **IBBI/IPA-001/IP-P00743/2017-2018/11249**, email: **adityatibre@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions 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 Code.
- f) 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) The Financial Creditor shall deposit a sum of Rs. 3,00,000/- (Rupees three lakh only) 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) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Bihar by all available means 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.

22. **CP (IB) No. 88/KB/2020** to come up on 16/06/2022 for filing the Progress report.

23. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Harish Chander Suri**  
Member (Technical)

**Rohit Kapoor**  
Member (Judicial)

**Signed on the 27<sup>th</sup> day of April, 2022**

SM[LRA]