

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - V**

CP (IB) 1139/MB/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

Shivani Movers

**Through its Proprietor - Mr. Jairam
Nandkishor Bhasin & Ors.**

..... Applicants/ Financial Creditor

Versus

**Bhasin Properties and Developers Private
Limited**

..... Corporate Debtor

Order Reserved on :- 06.01.2023

Order Delivered on :- 17.03.2023

Coram:

Hon'ble Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

(Appearances)

For the Petitioner: Mr. Chaitanya Nikte, (Advocate)

For the Respondent: None appeared

Per:- Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The under-consideration Company Petition is filed by Shivani Movers, through its Proprietor Mr. Jairam Nandkishor Bhasin being Applicant No. 1, Ms. Ritika Bhasin being Applicant No. 2 and Laxman Transport through its Proprietor Mrs. Chanchal Nandkishor Bhasin (Financial Creditor) is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against Bhasin Properties and Developer Private Limited , ("**the Respondent**") alleging default in payment of a Financial Debt.
2. The Respondent is a Private Limited Company incorporated under Companies Act, 1956/2013 having authorized capital of Rs. 1,00,00,000/- and paid up capital of Rs. 1,00,00,000/-. The Respondent is engaged in the business of development of real estate projects.
3. The Financial Creditors had advanced funds as and by way of loans and advances to the Respondent for meeting its working capital requirements for smooth functioning of the Respondent. An amount of Rs. 2,17,25,000/- has been collectively advanced by all the Applicants to the Respondent. Details of the amounts payable by the Respondent to the Applicants is as follows :-

Sr. No.	Loan Advanced by	Amount
1.	Shivani Movers (through its Proprietor Mr. Jairam Nandkishor Bhasin)	75,00,000/-

2.	Mrs. Ritika Bhasin	19,50,000/-
3.	Laxman Transport (through its Proprietor Mrs. Chanchal Nandakishor Bhasin)	1,22,75,000/-
Total		2,17,25,000/-

4. The Applicants issued a Demand Notice dated 12.07.2021 thereby calling the Respondent to pay and clear the loans advanced within 7 days from the receipt of the Demand Notice. The said Demand Notice was duly received by the Respondent on 14.07.2021. As is the Demand notice, it was specifically and categorically mentioned that the repayment be made within 7 days of the receipt of the Notice, the date of default occurred upon the expiry of the 7 days period i.e. around 21.07.2021.
5. The Respondent replied to the said notice dated 02.08.2021 and never disputed about the loans as advanced by the Applicants. It is stated by the Applicants that the Respondent has duly acknowledged and admitted the loans and advances as granted by the Applicants and this fact is further corroborated through the audited Financial Statements of the Respondent for the Financial Year 2017-2018 wherein it records the loans availed from the Applicants 1 and 3 are recorded under the heading "Unsecured Loans from Related Parties". Further, as regard to the loan from Applicant No. 2, the said had been granted after finalization of the Financial Statement for the year 2017-2018 and the Respondent has not filed the Financial Statements after the year 2017-2018.
6. The Applicants hence prays for the initiation of the Corporate Insolvency Resolution Process against the Respondent Company.

7. The Respondent filed its counter reply dated 16.03.2022, denying the averments and allegations contained in the Petition and submitted that that they are not liable to pay the amount of Rs. 2,17,25,000/- to the Applicants.
8. The Respondent submits that the Applicant No. 1, the founder and director of the Respondent Company along with his wife, borrowed huge sums of monies from various third parties in their personal capacity and infused the same in the Respondent Company under the pretext of related party transactions and in the form of loans routing the same through proprietary concerns. The Applicant No. 1 also prepared false Balance Sheet of the Respondent Company in order to deceive the new management.
9. The Applicants have deliberately not disclosed the sources of funds. The said loans and advances as claimed by the Applicants are not supported or backed with any Loan Agreement and or MoU, or any Sanction letter thereto. There is no declaration in writing to that effect that the monies infused by the Applicants are not acquired by borrowing or accepting loans and deposits from others. The Applicant No. 1 and his wife were disqualified from acting as directors due to non-compliance of the provisions of the Companies Act and as a consequence, they were rendered ineligible to continue as directors. Resignation letters to that effect are annexed with the reply.
10. Despite having being disqualified, the Applicant No. 1 and his wife continued to act as authorized signatories of the Respondent Company. The Applicant issued cash receipts in the name of the Respondent by accepting cash in his personal capacity towards sale of flats owned by the Respondent. The Applicant fraudulently issued and endorsed its signature on cheques dated 07.09.2020 drawn on Standard Chartered Bank to the tune of Rs. 2,05,55,000/- in favour of Mr. Bharat Shyamji Dedhia much after his retirement from the Respondent Company and the said cheques were subsequently dishonored. The copy of cheques and cash receipts are being produced on record.
11. The Applicant No. 1 and his wife intentionally manipulated and fudged the Financial Statements and Balance Sheet of the Respondent Company. The

Applicants are relying on the Balance Sheet of 31.03.2018 which was prepared under the instructions of the Applicant No. 1 and his wife. A bare reading of the Balance Sheet indicates that huge sum of monies were swindled and were advanced to the third parties to defraud the Respondent Company.

12. The Applicant No. 1 have falsely prepared the Balance Sheet and has wrongly shown false work in progress of a project known as Riviera which was highly inflated wherein an inflated amount of Rs. 6,48,10,536, which was fictitious and non-existent asset, was found to have been debited to the account of the Applicant No. 1 and his wife. There are various instances wherein it appears that the Applicant No. 1 has purportedly advanced loans and the same has been adjusted and transferred to the personal account of the Applicant No. 1.
13. Further, the Applicants do not come under the definition of a Financial Creditors. The Applicant No. 1 and its family members have devised dubious plans of borrowing monies in to personal accounts and later have been transferred in to the accounts of the Respondent to meet the working capital requirements of the Respondent.
14. The Financial Statements for the year ended 2017-2018 has been prepared by the Applicant No. 1 and his wife and there is no material document in the form of loan agreement, Board Resolution on record to corroborate that the monies have been advanced by way of loans to the Respondent. The purported loans and advances under the head "unsecured loans from Related Parties" have been transferred to the Account of the Applicants. there is no liability and obligation in respect of the alleged claim of the Applicants.
15. The Respondent denied its obligation in respect of the alleged claim and has also denied that an amount of Rs. 2,17,25,000/- have been collectively advanced by the Applicants to the Respondent out of their funds. The Respondent have nowhere acknowledged or confirmed of any loans and advances. The Audited Financial Statements for the year ended 2019,2020 and 2021 do not reflect any monies that are due and payable to the Applicants and the Respondent have vehemently denied about any loans being settled. There

were no loans and advances granted for a short term basis and is also denied about the repayment of the same on demand as there is no demand for repayment made raised from 2014. Therefore, the Corporate pleads that the present Petition be dismissed with compensatory costs.

Rejoinder: -

16. The Applicants have filed rejoinder dated 06.05.2022 to the reply filed by the Respondent and have denied the contentions, submissions made in the reply. The Applicants have stated that the Respondent have only made personal allegations on one of the Applicant which is the ex-director of the Respondent Company which has no relevance.
17. The Financial Statements of the Respondent Company have been filed with the RoC hence cannot be disputed. Further, the Applicants are distinct and separate entity and ought to be dealt separately. The Respondent in utter violation have annexed fabricated and concocted Financial Statements which are prepared in the month of January, 2022 as signed by CA, Riddhi Murarka on 24.01.2022. The Respondent have manipulated the respective ledger accounts and the loan account of the Applicants has been adjusted against other account without any shred of confirmation. The said loans and advances have been adjusted in the personal account of the Applicant No. 1
18. Further, there exists three separate Applicants who are distinct and separate from the ex-directors being the Applicant No. 1 and his wife. The money has actually been transferred by the Applicants in the account of the Respondent and the Respondent have defaulted the same.
19. The unsecured loans as advanced by the Applicants have been duly documented in the Books of Accounts and hence there was no requirement of any written agreement as the Applicants had cordial relationship with the Respondent Company. The loans and advances as granted by the Applicants have been deposited in the Bank Account maintained by the Respondent Company and the Respondent Company have never denied the receipt of the

loans. The Respondent Company has only made an attempt to raise feeble dispute.

20. Further, one of the Applicant being the ex-director has filed suit before the Hon'ble High Court of Bombay, and the High Court vide its Order dated 01.12.2021 was pleased to grant ad-interim reliefs in favour of the Applicant No. 1. The issue is sub-judices before Hon'ble High Court.
21. The Respondents have never denied the existence and liability of the debt. There exists a settlement agreement dated 13.03.2019 executed between the Applicant No. 1 and the Respondent Company wherein the Corporate Debtor has duly admitted the liability owed to the Applicant No. 1. Further, even if the amount of the Applicant No. 1 to be excluded as it is below the threshold limit, the claim of Applicant Nos. 2 & 3 has no nexus with the Applicant No. 1 as the amount of their loan is beyond threshold limit.

Findings: -

22. We have heard the Counsel for the Petitioner whereas none has appeared on behalf of the Corporate Debtor.
23. During the course of arguments, the Counsel for the Petitioner has confined his arguments to the claim of Rs. 1,22,75,000/- raised by Applicant No. 3, i.e. M/s Laxman Transport which is proprietary concern of Ms. Chanchal Nandkishor Bhasin. According to the Counsel for the Petitioner, the Applicant No. 3 disbursed the loan of Rs. 1,22,75,000/- between 21.01.2014 and 19.12.2015, as reflected in Annexure-A3 attached with the Petition. The Counsel for the Petitioner has further argued that the Corporate Debtor has admitted/acknowledged the loans advanced by Applicant No. 3 in the Audited Financial Statements for the year 2017-18 which is part of Annexure-C attached with the Petition.
24. It has further been pointed out by the Counsel for the Petitioner that in the reply dated 02.08.2021 sent by the Corporate Debtor in response to the

demand notice dated 12.07.2021, it has been claimed that all debts created by Jay Ram Bhasin and Ms. Divya Bhasin were settled by way of execution of a settlement deed and, therefore, nothing is due to be paid by the Corporate Debtor. In this regard, it has further been pointed out that Applicant No. 3 is an independent entity which has nothing to do with Mr. Jairam Bhasin and Ms. Divya Bhasin. Therefore, any settlement made with Mr. Jairam Bhasin and Ms. Divya Bhasin by the Corporate Debtor does not absolve it of its liability towards Applicant No. 3. Besides, there is no consent or confirmation given by Applicant No.3 nor any such document has been produced by the Corporate Debtor whereby Applicant No. 3 might have agreed or accepted the alleged understanding arrived at between Mr. Jairam Bhasin and the Corporate Debtor. In addition to this, Applicant No. 3 has not been a party to the alleged settlement deed dated 13.03.2019 referred to in the reply dated 02.08.2021 of the Corporate Debtor.

25. It has also been pointed out by the Counsel for the Petitioner that in the reply, the Corporate Debtor has claimed that there is no loan agreement to prove the existence of a Financial Debt and even otherwise, the alleged loans have been adjusted against various payments made by the Corporate Debtor under the instructions of Mr. Jairam Bhasin, as depicted in the ledger account (Exhibit-D) attached with the reply. According to the Counsel for the Petitioner, the aforesaid defence raised by the Corporate Debtor is flimsy and misconceived considering the fact that as per the accounting standards no ledger can be drawn nor any loan can be adjusted without the confirmation/consent of the Party. Since Applicant No. 3 has not given any confirmation of adjustment of its loan to the account of any third-party or that of Mr. Jairam Bhasin, the liability of the Corporate Debtor cannot be said to have been discharged unilaterally by making entries in the ledger which are nothing but fictitious entries.
26. No arguments were advanced on behalf of the Corporate Debtor to counter the contentions of the Counsel for the Petitioner.

27. Having gone through the record and thoughtfully considering the contentions raised on behalf of the Petitioners, more particularly, Petitioner No. 3, it emerges that as per the books of account of the Corporate Debtor itself a sum of Rs. 1,22,75,000/- was advanced as loan to the Corporate Debtor between 21.01.2014 and 19.12.2015. It is further evident from Annexure-3 attached with the Petition that the loan was disbursed as under: -

Date	Particulars	Page No	Vch Type	Payment	Receipt	Closing Balance
21-01-2014	PMC-3579	ST-1- 1	Receipt		2,800,000	2,800,000
10-02-2015	PMC-3579	ST-1- 5	Receipt		5,000,000	7,800,000
06-11-2015	PMC-3579	ST-2- 11	Receipt		1,875,000	9,675,000
19-12-2015	PMC-3579	ST-2- 11	Receipt		2,600,000	12,275,000
Amount Receivable From BPDPL by Laxman Transport						12,275,000

28. The aforesaid liability of Rs. 1,22,75,000/- has been acknowledged by the Corporate Debtor in the financial statements for the year 2017-18 where the said amount is shown to be mentioned as unsecured loan from Applicant No. 3, i.e. M/s Laxman Transport. Though it has been claimed by the Corporate Debtor in its reply dated 02.08.2021 to the notice dated 12.07.2021 that by way of two separate settlement agreement dated 13.03.2019, Mr. Jairam Bhasin and Ms. Divya Bhasin acknowledged that all their claims stood settled and nothing was due or payable to them or any third person of which liability was undertaken by them during the term as Directors. However, the Corporate Debtor has not placed on record any such settlement deed. Rather in the reply by the Corporate Debtor, it has only been claimed that the loans have been adjusted against various payment made by the Respondent/Corporate Debtor under instructions of Mr. Jairam Bhasin and the audited financial statements from the Financial Year 2019 onwards do not reflect any monies that are due and payable to the Petitioners. In this regard, it is worthwhile to refer to the certificate issued by Ms. Riddhi Morarka, Chartered Accountant of the Corporate

Debtor wherein certain adjustments are shown to have been made in the accounts of the Corporate Debtor. In this certificate itself, there is an entry dated 01.04.2014 whereby the loan amount of Rs. 1,12,25,000/- is shown to have been transferred to Mr. Jairam Bhasin's personal account though the amount is shown to be a credit entry in favour of M/s Laxman Transport. Surprisingly, at the end of the Certificate, Chartered Account Ms. Riddhi Morarka has mentioned that the certificate has given on the basis of information, explanation and documents provided by the Directors of the Corporate Debtor and further that the management acknowledges its liability with regard to the accuracy and accounting of the transactions in the aforesaid ledgers (referred to in the Certificate). This clearly shows that the entries in the ledger, which has been referred to in the certificate issued by Chartered Accountant, Ms. Riddhi Morarka have been made on the basis of the information supplied by the management of the Corporate Debtor and are thus not made on the actual entries based on banking transactions. The Chartered Accountant has not vouched for the accuracy or correctness of the entries and the same seems to have been made simply on the asking of the management of the Corporate Debtor which cannot be accepted as genuine entries. Therefore, the Financial Statements prepared by the Corporate Debtor from 2019 onwards, which do not reflect the unsecured loan of Applicant No. 3, cannot be said to be correct nor the same can be made the basis of holding that the unsecured loan advanced by Applicant No. 3 stood adjusted.

29. Another defence raised in the written reply filed by the Corporate Debtor is that there is no loan agreement or any MoU to prove the existence and nature of a Financial Debt availed by the Corporate Debtor from Applicant No. 3. Even this defence is not tenable considering the fact that in the Financial Statements for the year 2017-18, it is unequivocally mentioned that the amount of Rs. 1,22,75,000/- was outstanding on account of unsecured loan from M/s Laxman Transport (Applicant No. 3). In view of the categorical admission in the financial statements, even if there is no separate loan agreement placed on record by

the Petitioner, it cannot be said that the nature of the loan does not stand proved on record.

30. On the basis of the foregoing discussion, we are of the considered view that the Petitioner No. 3 has been able to establish that there has been a Financial Debt of more than Rs. One Crore in respect of which the default has been committed by the Corporate Debtor as the latter has failed to pay the same despite notice dated 12.07.2021 issued by the Petitioner. Even otherwise, the Petition has been filed within the period of limitation.
31. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following: -

ORDER

- a) The above Company Petition No. 1139/IB/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Bhasin Properties and Developers Private Limited**.
- b) The Financial Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition. This Bench hereby appoints **Mr. Vijay Pitamber Lulla**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00323/2017-18/10593, having Email id vijayplulla@rediffmail.com as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c) The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.

- d) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i) During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the

corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k) Accordingly, the above **C.P. 1139/IB/MB/2021** is **admitted**.
- l) The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)