IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI

IBA/60/2020 filed 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 M/s. Srirangam Priya Promoters Private Limited

M/s. Sri Ganapathi Financiers,
No.66. MVM Towers, 2nd Floor
West Pradhakshanam Road,
Karur-639 001

---Financial Creditor

Vs.

M/s. Srirangam Priya Promoters Private Limited
Priya's Sundharasana Melur Road,
Srirangam, Trichy-620006

---Corporate Debtor

CORAM:
R. SUCHARITHA, MEMBER (JUDICIAL)
B. ANIL KUMAR, MEMBER (TECHNICAL)

For the Petitioner	:	Shri. K. Surendar, Advocate
For the Respondent	:	Shri. Abhinav Parthasarathy, Advocate

O R D E R

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on: 23.02.2021

Under Consideration is an application filed by M/s. Sri Ganapathi Financiers, represented by its Partner Mr. M. Natesan (in short, ("**Financial Creditor**") against M/s. Srirangam Priya Promoters Private Limited (in short, "**Corporate Debtor**") under section 7 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**'). The Financial Creditor has prayed for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. Brief averments of the application are that the Applicant is a partnership firm. The Applicant had lent loan to the tune of Rs.50,00,000/- (Rupees Fifty Lakh) on 20.10.2015 to the Corporate Debtor and the Interest payable at the rate of 25.2% per annum on the principal amount. The Corporate Debtor has failed to repay the principal and interest dues. The Applicant claims a sum of Rs.76,53,969.10 as outstanding debt due. According to the Applicant, the date of default of loan is 19.08.2019. The Applicant further states that as per the unregistered Memorandum of Understanding (in short, "**MOU**") dated 05.07.2019, the entire

amount ought to be repaid by the Corporate Debtor within a period of 45 days from the date of MoU. Since the Corporate Debtor did not repay the loan. The loan amount became due and payable on 19.08.2019. This application is filed under Section 7 seeking initiation of CIRP against the Corporate Debtor for commercial inability to repay the amount.

3. The Respondent has filed its counter on 05.10.2020. The Respondent represented by its Managing Director Mr. A. Francis states that the Applicant/Financial Creditor relies on the unregistered MoU dated 05.07.2019 as the basis for claim. However, no loan has been availed by the Corporate Debtor. The alleged loan is availed by Mr. A. Francis, Managing Director of Corporate Debtor in his personal capacity. The Corporate Debtor is not connected with this loan transaction. There is no Bank transaction of loan amount from applicant to respondent/Corporate Debtor.

4. Financial debt (including Debt & Default Clause) as defined under Section 7 is given under:

Section 7. Initiation of corporate insolvency resolution process by financial creditor.

> *"(1) A financial creditor either by itself or jointly with 1 [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*
>
> *Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent of the total number of such creditors in the same class, whichever is less:*
>
> *Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:*
>
> *Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second*

provisos as the case may be within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.

Explanation. - For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) *The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*

(3) *The financial creditor shall, along with the application furnish –*

(a) Record of the default recorded with the information utility or such other record or evidence of default as may be specified;
(b) Name of the resolution professional proposed to act as an interim resolution professional; and
(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3):

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

(5) Where the Adjudicating Authority is satisfied that –

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings

pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate-

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

***Section 3 (11) "debt"** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*

***Section 3 (12) "default"** means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not 1 [paid] by the debtor or the corporate debtor, as the case may be;*

5. We have heard and perused the documents, affidavits, written statements and oral submissions by both the Counsels. As discussed above, debt and default to be proved for admission of an application under Section 7. The Applicant has filed statement of account of State Bank of India (SBI) for the period from 01.04.2015 to 01.03.2017 (Page No.26) along with the application. As per the above statement of account, a sum of Rs.50,00,056/- was paid into the account of Mr. A. Francis on 20.10.2015 through RTGS. Subsequently, another statement of account (SBI) for the period from 02.04.2018 to 31.08.2019 (Page No.46) reflects that on 17.08.2018, a sum of Rs.76,250/- was paid by Mr. A. Francis and again on 12.11.2018 another sum of Rs.75,000/-was paid by Mr. A. Francis to the Applicant. The name of the Corporate Debtor does not reflect in any of the bank transactions. The Applicant ought to file bank statements to prove that loan was paid to the Corporate Debtor. From the documents filed along with the application, it is seen that the amount was paid to the Managing Director in his

individual capacity. The Applicant has not filed any bank statement to prove that loan was paid to the Corporate Debtor.

6. Further, the applicant has filed unregistered MoU dated 05.07.2019 (in Page No.34). In this MoU, there are five creditors who have alleged to have paid various loans to the Corporate Debtor. Totally, the amount outstanding as per the MoU is a sum of Rs.1,00,00,000/- (One Crore). This agreement shows that first lender in the MoU i.e., the applicant herein, has given loan of Rs.50,00,000/- on 20.10.2015. No proof has been filed to satisfy this Adjudicating Authority that this amount of Rs.50,00,000/- was paid into the account of the Corporate Debtor. Hence, the unregistered Memorandum of Understanding (MoU) dated 05.07.2019 is rejected. The Applicant has also filed Deed of Mortgage dated 20.10.2015 registered as document No.3034/2015 on the file of the Sub-Registrar, Srirangam executed between Mr. A. Francis in his individual capacity and the Applicant herein. In this registered Deed of Mortgage, the said Mr. A. Francis has mortgaged his individual property as a security to the loan availed by him from

the applicant. It is clearly mentioned that Mr. A. Francis has obtained loan and towards that loan he has offered his property as mortgage to the applicant herein. There is no Privity of Contract between the applicant and the Corporate Debtor. The Applicant failed to satisfy this Adjudicating Authority regarding disbursement of loan into the accounts of the Corporate Debtor. The loan alleged to have been availed by the Corporate Debtor is not reflected in the statement of accounts filed along with the application.

7. The entire transaction was on 20.10.2015. The argument of counsel for Applicant solely relies on the unregistered Memorandum of Understanding (MoU) dated 05.07.2019 wherein he states that since the Corporate Debtor has executed the above MoU, the Corporate Debtor owes a total outstanding amount of Rs.1,00,00,000/- (One Crore) to the Applicant and 4 other creditors. However, proof of payment/disbursement into the account of the Corporate Debtor has not been submitted by the applicant. Further, no interest has been serviced from the accounts of the Corporate

Debtor. It is clear that the Applicant has failed to prove debt and default.

8. For the reasons discussed *supra,* the application **IBA/60/2020** stands **dismissed.** No cost.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

KNP