

IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK

CP (IB) No. 60/CB/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016;

And

In the matter of:

Iskcon Strips Private Limited, through its Director Mr. Ankush Bansal, Having its registered office at Gram Guma Hirapur Road Raipur-Chhattisgarh -492 001;

... **Financial Creditor**

-Versus-

Shri Shyam Iron and Power Private Limited, having its registered address at Plot No. – 103 (Part), 104 Siltara Phase -11 Raipur – Chhattisgarh- 492 001;

... **Corporate Debtor**

Appearances (via video conference):

For the Applicant

Mr. Ankush Bansal, Adv.

For the Respondent

Mr. Vinay Kumar Jain, Adv.

Order Reserved on: 23.03.2022.  
Order Pronounced on: 04.04.2022.

***Coram:***

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Sd

Sd

ORDER

*Per P. Mohan Raj, Member, (Judicial)*

1. This petition is filed to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of Insolvency and Bankruptcy Code 2016 R/w Rule 4 of Insolvency and bankruptcy (Application to Adjudication Authority) Rules 2016.

Brief contents of petition are as follows: -

2. The corporate debtor approached the financial Creditor for seeking financial assistance in the form of short-term loan for an aggregate amount of Rs.1,81,00,000/- which was repayable on demand of the financial creditor along with accrued interest. The total amount due with interest as on 22.09.2021 was Rs. 2,06,73,063/-The financial creditor sent several letters dated 16.02.2021, 24.03.2021, 31.05.2021 and 02.07.2021 there by apprising the corporate debtor about due of the interest. The petitioner sent notice dated 16.08.2021 to the corporate debtor requesting to repay the due amount of Rs. 2,04,15,118/- but the corporate debtor failed to pay the amount.

Brief contents of the reply of respondent are as follows: -

3. The petitioner has not paid any short-term loan. The petitioner and respondent had been in transaction of purchase and sale of plant. Even according to the petitioner amounts were disbursed between 08.08.2020 and 10.08.2020, therefore the petition is not maintainable in view of section 10A of IBC, 2016.

Sd

Sd

The points for determination are:

1. Whether the debt alleged in the petition is financial debt?
2. Whether the petition is hit by section 10A of IBC, 2016?

Point No.1

4. On the petitioner side stated that on 08.08.2020 and 10.08.2020 short term loans were disbursed to the respondent to the extent of Rs.1,81,00,000/-, the said loan amount is repayable on demand with 12% interest. It is admitted that there is no written agreement in this regard. On the petitioner side relies upon the bank statements to show that the amounts were disbursed to the respondent and also the TDS paid to the interest payable by the respondent. The point is whether the loan advanced in the absence of any written agreement amounts to financial debt under IBC? This question is no more integra because of Rule 3(1)(d) of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016. There it defined financial contract means a contract between the corporate debtor and financial creditor setting on the terms of the financial debt, including the tenure of debt, interest payable on loan, and date of repayment. In the absence any such an agreement the loan cannot be considered as financial debt. The TDS payment will not alter the position. In a similar case Pawn Kumar vs Utsav securities and anr CA No. 251 of 2020 NCLAT – Delhi where it is held that in absence of any agreement of loan and interest and no document to stipulate the period of repayment it cannot be considered as financial debt. In these circumstances it is answered that the debt alleged in the petition is not a financial debt.

Sd

Sd

Point No.2

5. As per proviso to section 10A of IBC 2016 and of extension notifications.S.O.3265 (E) dated 24.09.2020 & S.O.4638 (E) dated 22.12.2020 no application shall ever be filed for initiation of CIRP of a corporate debtor where the default arose between 25.03.2020 and 24.03.2021. In our case the petitioner disbursed the loan amount of Rs. 81,00,000/- on 08.08.2020 and loan amount of Rs.1,00,00,000/- on 10.08.2020, both the payments were made during the exempted period. The contention of the petitioner is Section 10A speaks about only default in this case default occurred after the notice dated 16.08.2021 hence petition is maintainable. On the petitioner side it is admitted in the petition the loan amount is payable on demand. According to the petitioner in the cases of loan advanced repayable on demand mean the cause of action/right sue accrue only when the respondent failed to pay the amount after the demand made by the petitioner. This contention is not acceptable according to Article 21 of Limitation Act, 1963 when the loan is payable on demand, the right to sue begin from the date of loan is made. Further default is defined in Section 3(12) of IBC, 2016 by which non-payment of debt of whole or any part or any instalment is default when it became due and payable. In this case the petitioner sent letters dated 16.02.2021 & 24.03.2021 both the dates fall within the exempted period. In the letter dated 16.02.2021 the petitioner demanded interest amount, but the amount called for in the letter is not paid, accordingly the default was occurred during the exempted period. Thus, the petition is hit by Section 10A of IBC, 2016.

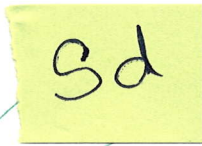
Sd

Sd

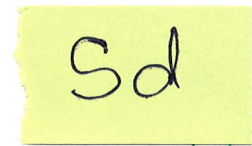
6. In view of an answer arrived to the above points the petition is **DISMISSED**.

7. The registry is directed to send e-mail copies of the order forthwith to all the parties and their counsels for information.

8. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



**Satya Ranjan Prasad**  
**Member (Technical)**



**P. Mohan Raj**  
**Member (Judicial)**

Signed on this the 4<sup>th</sup> of April, 2022.

Kaushal