



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 1258/MB-IV/2022

Under **Section 7** of the I&B Code, 2016

In the matter of:

A.V. Corporation

...Financial Creditor/Applicant

V/s

Marut Creative Infra Private Limited,

[CIN: U45400MH2012PTC238157]

...Corporate Debtor/Respondent

Order Dated: 10.08.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Intervenor/Applicant(s) : Mr. Akshay Shetty i/b Ms. Archana
Pandey, Advocates.

For the Respondent(s) : None present.

Per: Kishore Vemulapalli, Member Judicial

1. This is an Application being C.P. (IB) No. 1258/MB/C-IV/2022 filed on 21-10-2022 by Mr. Alok M Chaubey, Partner of the Financial Creditor under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for

initiating Corporate Insolvency Resolution Process (CIRP) in the case of, Marut Creative Infra Private Limited, the Corporate Debtor.

- 1.1. The Financial Creditor has filed Authority letter dated 13.10.2022 in support of authorization in favour of Mr. Alok M Chaubey, Partner of the Financial Creditor authorising him to file the present company application on behalf of the Financial Creditor.
- 1.2. The total amount claimed by the Financial Creditor in the Part IV of the Company Petition is Rs.1,85,00,000/- as on 15.10.2022. The Financial Creditor has mentioned the first date of default as 01.04.2018 in the Part IV of the Application, i.e. one year from the date of disbursement of the loan as per the term laid down in the Loan Agreement dated 25.03.2017.
2. The Financial Creditor is a Partnership Firm registered under the Indian Partnership Act, 1932 on 19.06.2018 and the Corporate Debtor is a company incorporated on 22.11.2012.
 - 2.1 In and around 2016, the Corporate Debtor approached to the Financial Creditor with a request for financial help in the form of interest-bearing loan, which culminated in a written Loan Agreement dated 25.03.2017. The Corporate Debtor also executed a Demand Promissory Note dated 31.03.2017 in the favour of the Operational Creditor.
 - 2.2 The Financial Creditor extended the loan in a single tranche repayable after one year with interest from its banking account Punjab National Bank, S.P.M. Road Branch in Mumbai. The

Financial Creditor states that the Corporate Debtor also promised to provide personal guarantee but it never came forth.

- 2.3 The Financial Creditor issued first demand letter dated 02.04.2018 demanding the loan money back alongwith interest at simple rate of interest @13%, but the same was not repaid by the Corporate Debtor. The Corporate Debtor replied to the said demand letter on 10.04.2018 requesting time to repay the outstanding amount and sought waiver for issuance of personal guarantee in favour of the Financial Creditor.
 - 2.4 The Financial Creditor sent another demand letter dated 10.04.2019 for repayment of the said loan amount and further on 06.05.2022 and 17.08.2022 issued legal notices to the Corporate Debtor for the same.
 - 2.5 The Corporate Debtor provided Confirmation of Accounts in the books of the Financial Creditor for the period of 01.04.2018 to 31.03.2019 on 02.04.2019 and for the period of 01.04.2021 to 31.03.2022 on 25.06.2022.
 - 2.6 The Financial Creditor states that it followed rigorously through phone calls and even visiting office of the corporate debtor but to no avail.
3. The Corporate Debtor has failed to file reply in the present petition and the Counsel for the Corporate Debtor appeared on two occasions, i.e. hearing held on 09.02.2023 and 17.05.2023 and requested for time to settle the matter amicably between the parties. No settlement has been agreed

between the parties till date and hence, the matter was reserved for orders on 11.07.2023.

4. We have carefully gone through the pleadings available on records and considered the arguments of the parties.

4.1 This Bench finds that Loan Agreement dated 25.03.2017 entered into and signed by both the parties stipulates that *“the Company hereby agrees and undertakes to return the loan of Rs, 1,85,00,000/- within the aforesaid period of one year and gives them personal guarantee for the same.”*. The Financial Creditor first demanded the repayment of loan alongwith agreed interest vide letter dated 02.04.2018.

4.2 After perusal of the documents on record and arguments advanced by both the parties, this Bench is of the considered view that there is no dispute as regards the existence of the debt and the Corporate Debtor has admitted its liability vide letter dated 10.04.2018 and requested for some time from the Financial Creditor to arrange the amount due by them. The Corporate Debtor gave confirmation of its accounts in the books of the Financial Creditor on 02.04.2019 and 25.06.2022.

4.3 We find that there exists a “financial debt” as defined under Section 5(8) of the IBC and default of the said debt on the part of the Corporate Debtor, however, the present petition is filed beyond the period of limitation prescribed u/s 18 and Article 137 of the Limitation Act. The present petition is filed on 21.10.2022 i.e. after a period of 3 years from the date of default which in the present case is 01.04.2018. The limitation u/s 18 of the Limitation Act expired on 31.03.2021, however, there is a confirmation of Confirmation of

Accounts provided by the Corporate Debtor in the books of the Financial Creditor for the period of 01.04.2018 to 31.03.2019 on 02.04.2019 and for the period of 01.04.2021 to 31.03.2022 on 25.06.2022. Considering the confirmation of accounts on 02.04.2019, the limitation stood refreshed and thereby extended till the period 01.04.2022. Hence, the present petition is barred by limitation as applicable to the provisions of the Code.

- 4.4 The Hon'ble Supreme Court in *Laxmi Pat Surana vs Union Bank of India & Anr. [Civil Appeal No. 2734 of 2020]* reiterated and held that *"Indeed, the purport of amendment in the Code was not to reopen or revive the time barred debts under the Limitation Act. At the same time, accrual of fresh period of limitation in terms of Section 18 of the Limitation Act is on its own under that Act. It will not be a case of giving new lease to time barred debts under the existing law (Limitation Act) as such."*
- 4.5 This Bench is therefore of considered view that the present Petition filed under section 7 of the Code to initiate the CIRP in the matter of the Corporate Debtor deserves to be **Dismissed**.

ORDER

This Application being **C.P. (IB) No. 1258/NCLT/MB/C-IV/2022** filed under Section 7 of I&B Code, 2016, by Mr. Alok M Chaubey, Partner of the Financial Creditor under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Marut Creative Infra Private Limited, the Corporate Debtor, is **Dismissed**.

We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the Applicant before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

Prabhat Kumar
Member (Technical)
//LRA-Akshata Shah//

Sd/-

Kishore Vemulapalli
Member (Judicial)