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

IBA/168/2020 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. Spectrum Hi-Style Shoppers Private Limited

M. Rafi
406, 4th Floor, BRIZO Apartments
Vilavankurichi, Coimbatore-6410 35

---Financial Creditor

Vs.

M/s. Spectrum Hi-Style Shoppers Private Limited
Door No. 3, G1, Reddy Palayam Road
Mogappair West, Chennai-600037

---Respondent/Corporate Debtor

CORAM:

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

For the Petitioner	:	*Shri. G. Vairava Subramanian, Advocate*
For the Respondent	:	*None present (ex-parte)*

<u>O R D E R</u>

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on: 23.02.2021

Under Consideration is an application filed by Mr. M. Rafi (in short, ("**Financial Creditor**") against M/s. Spectrum Hi-Style

Shoppers Private Limited(in short, ("**Corporate Debtor**") under section 7 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w 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. The Applicant states that he has given loan to the tune of Rs.1,71,00,000 (Rupees One Crore Seventy One Lakh) on multiple dates, the last date of disbursement of loan was 23.07.2018. The Applicant further states that including interest, the amount due and payable is a sum of Rs.1,96,93,316.74. The Applicant submits that a cheque issued by the Corporate Debtor dated 09.08.2018 for a sum of Rs.1,71,00,000/- has been dishonoured. Hence, this application is filed for initiation of CIRP of the Corporate Debtor.

3. There is no representation on behalf of the Respondents. The Advocate who undertook to file change of vakalath and counter failed to comply with the instructions and hence called absent, exparte on 29.01.2021.

4. Heard and perused the documents, pleading filed herein. In this case, the requirement for admission of application under Section 7 of IBC is that there must be a debt and default committed by the Corporate Debtor. The Applicant is not a Financial Creditor. In the oral submission, counsel for the applicant stated that the payments were made towards purchase of the shares of the Corporate Debtor as given in Page.No.11 of the typed set. The Applicant has given work-sheet details of disbursement of amount from 16.12.2017 to 23.07.2018. As per the disbursement statement, the total amount of Rs.1,71,00,000/- has been paid on various dates to the Corporate Debtor and according to the statement of repayment, the Corporate Debtor paid interest on various dates amounting to tune of Rs.49,27,000/- (Forty Nine Lakh Twenty Seven Thousand). However, no Bank Statement to corroborate is filed. Hence, no proof of disbursement of loan to Corporate Debtor by Applicant is available.

5. In Page No.13 of the typed set, the Applicant has given 5 different amounts from which the payment was transferred to the Corporate Debtor as given under:

S.No.	Amount Debited from	Amount (in Rupees)
1.	SNR Traders – Bank of Baroda A/c. 313406041000004	37,40,000
2.	Standard Traders – City Union Bank A/c.512020010007135	4,00,000
3.	Rumana – 224 – IDBI Bank Ltd. A/c.1141102000006224	77,10,000
4.	Rumana – 449 – IDBI Bank Ltd. A/c.0006102000074449	15,00,000
5.	Fine Traders – IDBI Bank Ltd. A/c.1141102000006798	37,50,000
	Total	**1,71,00,000/-**

6. The name of the applicant is not reflected in any of the above 5 accounts. Moreover, in the statement of accounts filed along with the application, the payment from Applicant to the Corporate Debtor is not reflected. In Page No.17, statement of account (Bank of Baroda) for the period 08.12.2017 to 17.11.2019 of one of the customers SNR Traders situated at No.12A, Perianna Maistry Street, Periamet, Chennai-600 003 is enclosed. In Page No.20, another

statement of account (City Union Bank) for the period 01.04.2017 to 18.11.2019 in respect of one of the customers Standard Traders, 106, West Ramalingam Road, R.S. Puram, Coimbatore-641 002 is filed. In Page No.22, two statement of accounts of IDBI Bank for the period 01.12.2017 to 31.07.2018 & 01.12.2017 to 20.11.2018 in the name of R. Rumana No.71-7 Gowtham Part Apartment, Government Arts College, Road Race Course, Coimbatore are also filed. The above two statement of accounts belonging to the personal account of the customer R. Rumana. In Page No.32, another bank statement is filed. However, name of the Bank and other details are not available. This account stands in the name of Fine Traders. In Page No.34, copy of the Demand Promissory Note dated 09.08.2018 for a sum of Rs.1,71,00,000/- allegedly issued by the Corporate Debtor to the Applicant is enclosed. The details of dishonour by Bank and Memo issued by Bank is not filed.

7. It is seen that the details of presentation of the cheque and the dishonour of the same by the Bank are not enclosed. Further, we do not have any details as to when this cheque was presented for

clearance and dishonoured by the Corporate Debtor. From the above statement of accounts, it is clear that no money has been transferred from this Applicant to the Corporate Debtor. The Applicant relies only on the cheque given by the Corporate Debtor. Hence, the nature of transaction and the purpose of the cheque is not clear. The Applicant failed to satisfy the requirement under Section 7 to the fact that this alleged loan is a financial loan to the Corporate Debtor. In Page No.57, financial statement of the Corporate Debtor for the year ended 31st March 2019 and balance sheet as at March 2019 are filed. Here again, the alleged loan is not reflected. No proof of making payment to the Corporate Debtor has been filed. No details regarding payment of interest has been filed before this Adjudicating Authority.

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;*

8. Hence, we conclude that no document has been filed to satisfy that there is financial loan by applicant to Corporate Debtor, the 'debt' is financial debt and "default" occurred. Neither the debt nor default has been proved.

9. Accordingly, the application **IBA/168/2020** stands **dismissed**. No cost.

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

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