

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

C.P. No. 1394/IBC/MB/2020

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

In the matter of

**Samata Nagari Sahkari Patsanstha
Maryadit, Kopargaon**

Having registered office at:

Samata Marg, Khandaknal, Main Road,
Kopargaon Dist. Ahmednagar, Pin-
423601

.....Financial Creditor/Petitioner

Vs

**Komal Kakade Constructions Private
Limited**

(CIN: U45402PN2007PTC130515)

Registered office at:

Kakade Capital, 1205, Shirole Road, Near
P. Jog Class Opp. Sambhaji Park, JM
Road, Shivajinagar, Pune – 411 005

.....Corporate Debtor

Order Reserved on : 29.07.2022

Order Pronounced On: 10.08.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Ms. Seetalaxmi Swamy, Advocate

For the Corporate Debtor/ Respondent: Mr. Akshay Petkar a/w
Aniket Malu, Advocates

Per: H.V. Subba Rao, Member (Judicial)

Order

1. The above Company Petition is filed by Samata Nagari Sahkari Patsanstha Maryadit, Kopargaon, hereinafter called as “Petitioner” seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against Komal Kakade Constructions Private Limited hereinafter called as “Corporate Debtor” by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “Code” read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 1,10,17,026.93/-.
2. The Petitioner is a Co-operative Credit Society registered under the Maharashtra Co-operative Societies Act, 1960. The Corporate Debtor approached the Financial Creditor for renewal of existing credit facilities i.e. Working Capital Cash Credit Loan of Rs. 1,25,00,000/- for expansion of the Corporate Debtor business. The Petitioner agreed to renew the existing Working Capital Cash Credit Loan to the Corporate Debtor and has sanctioned and disbursed the credit facilities for a period of 9 months from 31.03.2018 to 31.12.2018 from the date of disbursement. The details of the Credit facilities taken by the Corporate Debtor is reproduced below;-

Sr. No	Date of sanction as per the Board Resolution of the Applicant	Date of Disbursement	Amount	Due Date/ Date of debit in the Working Capital Cash Credit Loan	Remarks
1.	05-08-2012	08-08-2012	1,00,00,000/-	29-09-2012 (Date of debit in the Working Capital Cash Credit Loan)	The Corporate Debtor did not make the payments on the due dates but subsequently the amount was paid and the account was closed on 28-03-2014 as the same was renewed.
2.	08-03-2014	28-03-2014	1,00,00,000/-	29-03-2014 (Date of debit in the Working Capital Cash Credit Loan)	The Corporate Debtor failed to pay the payment and defaulted.. 
3.	29-03-2018	31-03-2018	1,25,00,000/-	09-04-2018	The Corporate Debtor did not repay the principal or interest on the aforesaid facility. The Corporate Debtor made an application for renewal of the credit facility seeking enhancement with the interest. 

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3. As per the terms of the Renewal Loan Application, the interest is required to be paid within the 8 days from the date it is debited to the Working Capital Cash Credit Loan account. The Corporate Debtor defaulted in the repayment of the credit facilities and interest due thereon from the month of March 2018 onwards.
4. The Financial Creditor initiated legal action by the preferring an application through its Special Recovery Officer to the Assistant Registrar, Co-operative Societies, Pune for recovery of the outstanding amount of Rs. 1,32,58,047/-. After giving several opportunities to the parties to present their case, the Assistant Registrar Co-operative Societies, Pune issued a Recovery Certificate under section 101 of the Maharashtra Co-Operative Societies Act. 1960 dated 04.12.2018 directing the Corporate Debtor to pay an amount outstanding as on the date of issuance of the Recovery Certificate.
5. Pursuant to the order, the Financial Creditor issued a Demand notice to the Corporate Debtor dated 13.12.2018 directing to make the payment within the specified period mentioned in the said notice, else the property against which the loan was secured shall be attached.
6. However, the Corporate Debtor failed to make the payment of the arrears outstanding despite receiving the Recovery Certificate by the Assistant Registrar, Co-operative Societies, Pune and several attachment orders dated 23.01.2019, 23.05.2019 and 24.09.2019 and attachment notice dated 28.12.2018 issued by the Financial Creditor.
7. The Counsel appearing for the Petitioner submits that there have been several written communications by the Corporate Debtor dated 29.03.2018, 25.01.2019 and 08.07.2019

respectively wherein they have requested for extension of time and issued post-dated cheques to enable timely payment. The Corporate Debtor vide its letter dated 11.10.2019 requested the Financial Creditor not to deposit the cheque dated 10.10.2019 which they have issued.

8. The Working Capital Cash Credit Loan Account of the Corporate Debtor indicates a pattern of irregular payments made, despite the fact that they have issued the Post-dated cheques to the Financial Creditor. The Details of the Credit Facilities sanctioned and disbursed by the Petitioner were reproduced as under;

S r N o	Date of the Board Resolution sanctioning the credit facility	Particulars	Amount in (Rs.)	Interest Rate (p.a.)	Amount Outstanding as on 06-02-2020 (including interest) in Rs.)
1	29-03-2018	Working Capital Cash Credit Loan (Renewed Loan)	1,25,00,000	17% p.a.	1,10,17,026.93

9. The Petitioner enclosed the following details of documents, records and evidence of default in respect of sanctioning the term loan facilities to the Corporate Debtor:
- i. Copy of the Board Resolution dated 05.08.2012 sanctioning the loan
 - ii. Copy of Mortgaged deed dated 06.08.2012
 - iii. Sanction letter dated 07.08.2012
 - iv. Copy of the Board Resolution of the Financial Creditor dated 29.03.2018 approving the loan

Findings:

10. Heard both the sides and perused the records. the counsel appearing for the petitioner invited the attention of this bench to the various loan documents executed by the Corporate Debtor in proof of availment of loan facilities by the Corporate Debtor. He has also invited the attention of this Bench to the recovery certificate bearing No. 200/2018-19 dated 04.12.2018 issued under Section 101 of the Maharashtra State Cooperative Societies Act in favour of the Financial Creditor herein against the Corporate Debtor and three others directing them to pay an amount of Rs. 1,32,58,047/- with interest @ 17% per annum from 01.08.2018 till recovery.
11. It is the submission of the Counsel appearing for the Petitioner that in spite of issuing the above recovery certificate against the Corporate Debtor they could not recover the amount from the Respondent and the above recovery certificate attained finality. In view of the above recovery certificate issued by the Registrar, the existence of date and default stands proved. The above recovery certificate being dated 04.12,2018, the above Company Petition being filed on 12.03.2018 is within limitation. The Petitioner also suggested the name of IRP in this case.
12. Despite granting number of adjournments, the Corporate Debtor did not choose to file any reply and thus the claim of the Financial Creditor remains unchallenged.
13. After hearing the submissions on both sides and upon perusing the material available on record, this Bench is of the opinion that the above Company Petition satisfies all the legal requirements for admission and there are no valid reasons to reject the same. Accordingly, the above Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. 1394/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Komal Kakade Constructions Private Limited.
- b. This Bench hereby appoints Mr. Vinit Gangwal, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00091/2017-2018/10235 having address at Office No. 305, Om Chambers, above Hotel Panchali, J. M. Road, Shivjinagar, Pune- 411 005 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 towards expenses and not towards 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, C.P. No. 1394/IBC/MB/2020 is **admitted**.

1. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)