

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

CP (IB) 59/MB/2020

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Mr. Pradeep Devichand Agrawal

Plot No 387; Sector No. 24, Near Bank of
Maharashtra, Nigdi Pradhikaran, Pune - 411044

... Financial Creditor

Versus

Dreams Construction (Pune) Private Limited

[CIN: U45200PN2011PTC140416]

Office No. 301, 3rd Floor, City Mall, University Road,
Ganeshkhind, Pune - 411007.

... Corporate Debtor

Order Delivered on : 03.02.2023

Coram:

Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)
Hon'ble Member (Technical) : Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Gaurav Gadodia, Counsel.
For the Corporate Debtor : None present.

ORDER

Per: Justice P.N. Deshmukh, Member (Judicial)

1. This Company Petition is filed under section 7 ("the Petition") of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Mr. Pradeep**

Devichand Agrawal ("the Financial Creditors or the Petitioner"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Dreams Construction (Pune) Private Limited** ("the Corporate Debtor or Respondent").

2. The present Petition was filed on 06.01.2020 before this Adjudicating Authority claiming a sum of Rs. 5,26,70,291/- (Rupees Five Crore Twenty-Six Lakh Seventy Thousand Two Hundred and Ninety-One Only) including gross accrued interest up to 31.03.2019 at the rate of 9 % p.a. simple interest amounting to Rs. 1,20,96,247/- (Rupees One Crore Twenty Lakh Ninety-Six Thousand Two Hundred and Forty-Seven Only) and interest for defaulting period i.e. 01.04.2019 to 30.09.2019 amounting to Rs. 22,74,044/- (Rupees Twenty-Two Lakh Seventy-Four Thousand and Forty-Four Only) at the rate of 9 % p.a. simple interest on the default amount of Rs. 5,03,96,247/- (Rupees Five Crore Three Lakh Ninety-Six Thousand Two Hundred and Forty-Seven Only) to the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same.
3. The total amount claimed to be in default by the Financial Creditors is Rs.5,26,70,291/- (Rupees Five Crore Twenty-Six Lakh Seventy Thousand Two Hundred and Ninety-One Only). The date of default stated to be is 31.03.2019.
4. The Corporate Debtor is a private company limited by shares incorporated on 09.08.2011 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Pune. Its registered office is at Office No. 301, 3rd Floor, City Mall, University Road,

Ganeshkhind, Pune - 411007. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions advanced by the Financial Creditor:

5. The Financial Creditors submits that loan was extended to the Corporate Debtor from the period of 24.03.2015 to 16.05.2017 for financial accommodation for business expansion. Thereafter, the Financial Creditors transferred a sum of Rs. 3,83,00,000/- (Rupees Three Crore Eighty-Three Lakh Only) in various tranches detailed as under:

i) Amount disbursed by Financial Creditor

Sr. No.	Date	Amount (in Rs.)
1.	March 2015	65,00,000/-
2.	April 2015	50,00,000/-
3.	May 2015	60,00,000/-
4.	August 2015	50,00,000/-
5.	December 2015	50,00,000/-
6.	January 2016	15,00,000/-
7.	February 2016	20,00,000/-
8.	March 2016	25,00,000/-
9.	April 2016	10,00,000/-
10.	August 2016	10,00,000/-
11.	September 2016	18,00,000/-
12.	May 2017	10,00,000/-
	Total	3,83,00,000/-

6. Copies of the Bank Statements of the Financial Creditor from 01.03.2015 to 31.05.2017 showing disbursal are placed at Annexure E of the Petition. The Computation of claim is placed at “Annexure-L” of the Petition.
7. The Financial Statements of the Corporate Debtor as on 31.03.2017 reveal the loan amount of the Financial Creditor to be Rs. 3,90,61,378 (Rupees Three Crore Ninety Lakh Sixty-One Thousand Three Hundred and Seventy-Eight Only) which includes Rs. 3,73,00,000/- (Rupees Three Crore Seventy-Three Lakh Only) as principle and interest amount till 31.03.2017. In FY 2017-18, the Financial Creditor did lend an amount of Rs. 10,00,000/- (Rupees Ten Lakh Only) again to the Corporate Debtor. However, the Corporate Debtor has neither prepared nor filed the financial statements with the Registrar of Companies as per Master Data of the Corporate Debtor available on the website of the Ministry of Corporate Affairs.
8. It is submitted that the Corporate Debtor was liable to repay the loan amount of Rs.3,83,00,000/- along with interest at the rate of 9% p.a. on or before 31st March 2019.
9. Owing to the failure of the Corporate Debtor, the Financial Creditors addressed a legal notice dated 01.10.2019 to the Corporate Debtor demanding repayment of the loan advanced cumulatively amounting to Rs. 4,00,61,378/- (**Annexure I at pages 162-181**).

10. Record reveals that by order dated 22.07.2021, the Corporate Debtor is proceeded *ex parte*. Further, no written reply has been filed by the Corporate Debtor.

Findings:

11. Heard the Ld. Counsel for the Financial Creditors and perused the records.
12. It is observed that the amount was disbursed to the Corporate Debtor. The Ld. Counsel for the Petitioner has taken us through bank statements of the Financial Creditor evidencing the same. However, it is noted that there is no written contract for the transaction.
13. In this regard, we would like to rely on the stand taken by the Hon'ble NCLAT in *Narendra Kumar Agarwal and Ors. v Monotrone Leasing Private Limited and Ors. (Company Appeal (AT) (Insolvency) No. 549 of 2020* wherein it was held that the written contract cannot be treated as an essential element or pre-requisite to prove the existence of Financial Debt set out as under:-

“11. Thus, the contention of Financial Creditor is fully authenticated from the Money Receipt and bank transaction statement. The Appellant contends that the transaction may be treated as the ‘Inter-Corporate Deposit’, but it cannot be treated as the Financial Debt. In case the Inter-Corporate Deposit is made for a certain period, which was to be paid back with interest then

such transaction will also fall in the definition of 'Financial Debt'. The interest is the product of instant transaction, which is undoubtedly the time value of money. Thus, such transaction of the inter-corporate deposit is fully covered by the definition of Financial debt as provided under Section 5(8) of the I&B Code. The written contract cannot be treated as an essential element to prove the Financial Debt if the transaction's nature is proved otherwise."

14. Further, the Financial Creditor has placed reliance on the Balance Sheet of the Corporate Debtor for the year ended 31.03.2017 wherein it is reflected that an amount of Rs.3,90,61,378/- is due to Mr. Pradeep Agarwal under the head of loans and advances. Hence, it is evident that the nature of the transaction was a loan advanced to the Corporate Debtor. However, in absence of any written document it cannot be assumed to have been along with interest as claimed.
15. Keeping in view that a default in the payment of a financial debt has occurred and has been acknowledged by the Corporate Debtor, we are of the view that the instant application under section 7 of the Code is complete in all respects.
16. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating

Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

17. The Financial Creditor has proposed the name of **Mrs. Vaishali Arun Patrikar**, Registration No: IBBI/IPA002/IP-N00812/2019-20/12566, as the Interim Resolution Professional of the Corporate Debtor. She has filed her written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
18. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing CP (IB) 59/MB/C-I/2020 filed by **Mr. Pradeep Devichand Agarwal**, the Financial Creditors, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Dreams Construction (Pune) Private Limited [CIN: U45200PN2011PTC140416]**, the Corporate Debtor, is admitted.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) **Mrs. Vaishali Arun Patrikar**, Registration No. IBBI/IPA-002/IP-N00812/2019-2020/12566, having address at, A-22, Shantidoot Society, Parvati Darshan, Pune-411009 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Pune, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

03.02.2023
Priyal

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)