

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

CP (IB) 3863/MB/2019

Item 02 of Cause List dated 02.05.2022

U/S 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

Mr. Rajendra Shah

301/2, Salsa Society Ratilal R., Thakkar Marg,
Walkeshwar, Mumbai- 400006

...Financial Creditor/Petitioner

Versus

Varsha Corporation Limited

Varsha, 13 Adarsh Society, Ramchandra Lane
Extention, Malad (West), Mumbai- 400064
(CIN: U24134MH2000PLC130217)

.....Corporate Debtor

Order Delivered on 10.06.2022

Coram:

Hon'ble Member (Judicial)	:	Justice P.N. Deshmukh (Retd.)
Hon'ble Member (Technical)	:	Mr. Kapal Kumar Vohra

Appearances:

For the Financial Creditor	:	Adv. Kunal Kanungo a/w Adv. Tanushree Sogani and Adv. Atishay Jain
For the Corporate Debtor	:	None present

ORDER

Per: K.K. Vohra, Member (T)

1. This Petition originally filed by Mr. Rajendra Shah, Financial Creditor (hereinafter referred to as the "FC") u/s 7 of the

Insolvency and Bankruptcy Code, 2016 (IBC) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against Varsha Corporation Limited, the Corporate Debtor (hereinafter referred to as “CD”) for non-payment of outstanding dues by the CD.

2. CD was incorporated on 26-10-2000, having its registered office in Mumbai. This Bench has jurisdiction to deal with this petition.
3. The FC has drawn the attention of the court to the promissory note dated 23-02-2012 wherein CD had promised to repay the loan of Rs.50,00,000 at 15% interest p.a. **on demand** (Pg 15 of the Petition).
4. Further, the FC has submitted **confirmation of accounts** provided by CD as on 01-04-2015 (Pg 33) confirming the principal amount of debt of 50 Lakh and Interest accrued thereon totalling debt of Rs. 56.84 Lakh.
5. By a letter dated **07-06-2016**, **CD acknowledged** that a loan of Rs.50,00,000 was advanced to CD and also handed over a cheque bearing no. 964293 dated 22-10-2016 for Rs. 50,00,000 drawn on The Greater Bombay Co-operative Bank Ltd., Malad Branch in favour of FC in discharge of the liability towards the repayment of the loan, annexed as Exhibit D and E (Pg. 16-17).
6. On 22-10-2016, CD handed over two more cheques to FC i.e. cheques bearing nos. 964332 & 958801 dated 22-10-2016 for an amount of Rs. 1,72,500 & Rs. 3,41,250 respectively drawn on The Greater Bombay Co-operative Bank, Malad Branch in favour of

FC for the repayment of interest on money advanced by the FC, annexed as Exhibit E.

7. The said cheques were deposited by the FC with his bank, Central Bank of India, Pedder Road Branch on 14-12-2016 for realisation. The said cheques were dishonoured and the same was communicated by his bankers vide three separate returned instruments advise dated 16-12-2016 with remark "Account closed", annexed as Exhibit F.
8. The FC had sent a **demand notice** to CD through an e-mail dated 30-12-16 (Pg 22). The CD replied to the same through a letter dated 16-01-17 wherein CD claimed that the cheques were handed over with a clear understanding that the same had to be deposited in the month of March, 2017, however there is no supporting document in this regard.
9. It is a well settled law that the limitation period begins from the date when the cause of action arises. Hence, the cause of action arises on **16.12.2016, which is the date of default. Thus, the present petition is within limitation.**
10. As on the **date of filing Petition (25-10-19)** an amount of Rs.90,39,584 is due and outstanding from CD towards the loan along with the interest as availed from the FC as annexed in Exhibit J.
11. As per Petitioner, the CD was convicted on 21-02-2019, under Sec. 138 r/w Sec. 141 of the Negotiable Instruments Act, 1881 by the court of Learned Metropolitan Magistrate, Mazgaon, Mumbai. The same has been annexed in Exhibit K.

12. It is observed from the records that CD has been given multiple opportunities to appear before this tribunal and plead his case including vide order dated 22-03-2022. In compliance of the order of this Tribunal dated 22-03-2022, FC had issued a notice to CD intimating the next date of hearing that is 02-05-2022 annexed as Exhibit B to Affidavit of Service (Pg 5). However, The CD chose not to appear and plead the case though the CD had filed his reply on record on 15-02-2020. Hence, the matter is taken on merits as is to be decided ex-parte.
13. We observe that there was debt, there was default and the petition has been filed within the period of limitation.
14. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP (IB) 3863/MB/2019** filed by **Rajendra Shah**, the FC, u/s 7 of the IBC for initiating CIRP against **Varsha Corporation Limited** the CD, 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 CD 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 CD 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 CD 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 CD.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) The provisions of Section 14 (1) 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 Section 31 (1) of the IBC or passes an order for liquidation of CD 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) **Mr. Vinodkumar Pukhraj Ambavat**, Registration No. IBBI/IPA-001/IP-P00420/2017-18/10743 , having address at Room No. 40, 9/15 Morarji Velji Bldg, 1st Floor, Dr. M.B. Velkar Street, Kalbadevi Road, Mumbai-400002, Maharashtra email: - vinod.ambavat@ajallp.com is hereby appointed as Interim Resolution Professional (IRP) of the CD 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 and other relevant provisions of law and regulations.
- (g) During the CIRP Period, the management of the CD 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 CD 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.3,00,000 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, Mumbai, for updating the Master Data of the CD. 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/-

KAPAL KUMAR VOHRA
Member (Technical)

Sd/-

JUSTICE P.N.DESHMUKH
Member (Judicial)

10.06.2022
DSB