

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

CP (IB) 665/MB/2023

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

Praveen Kumar Agarwal HUF

Through its Karta,

Shri Praveen Kumar Agarwal,
residing at 1001, Darshan Heights, 10th
Floor, Zaobawadi, JSS Road, Mumbai
400004.

Petitioner/Financial Creditor

Versus

**Consumer Marketing (India) Private
Limited,**

Having its registered address at 501, Brahans
Business Park, Near Paper Box, Mahakali
Caves Road, Andheri East, Mumbai 400093.

.....Respondent/Corporate Debtor

Order Delivered on :-11.10.2023

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Financial Creditor: Adv Amir Arsiwala a/w Adv. Nupur Shah

For the Corporate Debtor: Adv. Kunal Kanungo i/b Adv. Dhaval
Deshpande

ORDER

Per:- Anil Raj Chellan, Member Technical

1. This Company petition is filed by Praveen Kumar Agarwal HUF (hereinafter referred to as "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Consumer Marketing India Private Limited. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 1,76,84,392/- (Rupees One Crore Seventy Six lakhs Eighty Four Thousand and Three Hundred and Ninety Two Only) as on 05.04.2023.

The submissions of the Financial Creditor:

2. Allworth Fintrade Private Limited (hereinafter referred to as 'Original Creditor') granted a loan of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs only) in favour of the Corporate Debtor for meeting its working capital requirements under a loan agreement dated 31.03.2019. As per the loan agreement, a moratorium on payment of interest for a period of three years had been granted and the loan amount was to be repaid on or before 31.03.2022 along with interest at the rate of 18% per annum.
3. Pursuant to the loan agreement, the Original Creditor disbursed Rs. 79 Lakhs on 27.03.2019 and Rs. 30 Lakh on 28.03.2019. During the

moratorium period, the Corporate Debtor made certain payments on 13.06.2019, 07.03.2021, 09.03.2021 and 07.06.2021 aggregating Rs. 13,90,000/- (Rupees Thirteen Lakh and Ninety Thousand Only).

4. The Original Creditor, with the intention to wind up its business approached the Corporate Debtor vide its letter dated 03.09.2021 to ensure repayment of the loan amount together with interest on due date i.e. 31.03.2022 as per the terms of the loan agreement. The Corporate Debtor vide its letter dated 06.09.2021 requested the Original Creditor to schedule a meeting in order to discuss the repayment plan for the balance amount.
5. In the meeting with the Original Creditor on 25.09.2021, the Corporate Debtor insisted that due to the global pandemic, the business had suffered losses and would, therefore, require an extension for repayment of outstanding amounts. The Original Creditor expressed that such an extension could not be granted as the Original Creditor intended to wind up its business. Therefore, the director of Corporate Debtor was informed that the loan shall be assigned by an assignment agreement and the Corporate Debtor can approach the assignee for extension or to negotiate the terms of repayment.
6. Subsequently, the Original Creditor assigned the loan asset to the Financial Creditor under an assignment agreement dated 01.10.2021. After such assignment the Financial Creditor vide its letter dated 05.10.2021 intimated the assignment in its favour and requested the Corporate Debtor to approach the assignee with the repayment plan. The said letter was acknowledged by the Corporate Debtor on

05.11.2021 and it requested for some time to put together a viable and reasonable repayment schedule. Thereafter, meetings between the Financial Creditor and the Corporate Debtor were held on 10.02.2022 and on 10.03.2022, and it was mutually agreed to extend and revise the period for repayment in three instalments on 01.04.2023, 01.05.2023 and 01.06.2023. Since the Corporate Debtor defaulted in making the first instalment of Rs.50 lakh on 01.04.2023, the Financial Creditor vide its letter dated 05.04.2023 recalled the entire loan together with interest to be paid within three days from the date of the said letter. Defaults in making payments as per the recall notice resulted in filing of the present petition for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

The Submissions of the Corporate Debtor

7. The Corporate Debtor filed its Affidavit in Reply dated 26.08.2023 through its director Mrs. Lalitadevi Balkishan Adukia and has admitted availing of loan of Rs. 1.50 Crore and other averments made by the Applicant. However, the Corporate Debtor contested the maintainability of the petition on the following grounds- (a) material suppression regarding the sudden demise of Shri. Adukia, the executive director of the Corporate Debtor on 29.03.2023, the global economic scenario due to pandemic, adverse impact on the business of the Corporate Debtor due to the sudden demise of its executive director etc, (b) Non adherence of terms regarding assignment of rights under the loan agreement – the loan agreement provided that the lender may assign all or any portion of this agreement **with prior intimation** to the borrower but no prior intimation had been given to the Corporate Debtor, (c) The loan agreement dated 31.03.2019 is

insufficiently stamped as only a Rs.100/- stamp paper has been used for the borrowing. Insufficiently stamped loan agreement and subsequent assignment agreement are void and cannot be relied upon, and (d) the record with NeSL in Form C submitted by the Applicant is inadmissible in evidence as it is unauthenticated.

Analysis and findings

8. We have heard the counsels appearing for the parties and gone through the records.
9. The Counsel appearing for the Applicant argued that the documents and copy of correspondence exchanged between the Financial Creditor and the Corporate Debtor clearly establishes a financial debt and default. The Counsel appearing for the Corporate Debtor, in addition to the points raised in the reply affidavit, argued that the Application is a motivated litigation initiated with intent to make it a recovery proceeding and the Financial Creditor has no *locus standi* to file this application.
10. The submissions regarding sudden demise of Shri. Adukia, the executive director of the Corporate Debtor on 29.03.2023, the global economic scenario due to pandemic, and adverse impact on the business of the Corporate Debtor due to the sudden demise of its executive director do not have any direct relevance for determination of the present petition.
11. The counsel appearing for the Corporate Debtor vehemently argued that as per the loan agreement, the lender may assign all or any portion of this agreement only with prior intimation to the borrower and the present assignment is without **prior intimation** to the

Corporate Debtor and hence the same is invalid. While examining the above aspect, the following materials are considered relevant:

- (a) The Minutes¹ of the meeting held on 25.09.2021 between the Original Creditor and the Corporate Debtor (Annexure 9 to the application) state as under:

“Therefore, Director of CMIL is informed that the Loan shall be assigned by an Assignment Agreement and CMIPL can approach the Assignee for extension or negotiate the terms of repayment.”

- (b) The Financial Creditor vide its letter dated October 5, 2021² intimated the assignment of debt in its favour which was acknowledged by the Corporate Debtor vide its letter dated 05.11.2021³

From the above, it is observed that the Original Creditor had informed the Corporate Debtor regarding the proposed assignment, though without the name of the proposed assignee, before the date of assignment i.e., 01.10.2021 and Assignee/Financial Creditor intimated Corporate Debtor of the assignment immediately after the assignment in its favour. No objection had been raised by the Applicant on the process followed for assignment. In the above circumstances, we do not find any merit in the Corporate Debtor contending now that no prior intimation regarding assignment had been given.

11.1 The next issue raised by the Corporate Debtor is that the loan agreement dated 31.03.2019 as well as the assignment agreement dated 01.10.2021 is insufficiently stamped/unstamped and

¹ Annexure 9 of the Petition.

² Annexure 13 of the Petition.

³ Annexure 14 of the Petition.

insufficiently stamped documents are void and cannot be relied upon. To buttress the above argument, the Corporate Debtor relied on the following decisions of the Hon'ble Supreme Court:

- (i) Omprakash v. Laxminarayan (Civil Appeal No.9032 of 2013) wherein it was held that an authority to receive evidence shall not admit any instrument unless it is duly stamped; and
- (ii) Javer Chand And Others vs. Pukhraj Surana (1962) 2 SCR 333 wherein it was held that the Court had to judicially determine the matter as soon as the document was tendered in evidence and before it was marked as an exhibit.

11.2 On the other hand, the counsel for the Petitioner relied on a decision in Praful Nanji Satra vs. Vistra ITCL⁴ wherein the Hon'ble NCLAT observed that the issue of debt being due and payable in the present case is not interdicted by any law but only a technical deficiency of their stamping has been raised which can be cured. With the above observation, admission of application under Section 7 of the Code was upheld.

11.3 It is observed that the admissibility of a document in evidence was in consideration in the case of Omprakash (Supra) and Javer Chand (Supra). The proceedings under the Code being summary in nature, the Adjudicating Authority does not have to receive or record evidence in such proceedings in accordance with the Evidence Act. Therefore, the admissibility of such document is not supposed to be the consideration before this Tribunal while dealing with application u/s.7 or 9 of the Code. In the case of Koncentric Investments Limited

⁴ NCLAT Delhi (Company Appeal (AT) (Ins.) No.713 of 2020 (decided on 02.08.2022)

vs. Standard Chartered Bank & anr⁵, with respect to the contention that unstamped facility agreements cannot be looked into for any purpose and could not be admitted in evidence, the Hon'ble NCLAT held that it is true that in the present case the facility agreements dated 22.05.2013 and 19.08.2013 were not duly stamped but there were other materials on record which could be relied on for coming to the conclusion that default has been committed by the Corporate Debtor in paying the debt. Thus, we are of the considered view that whole transaction and all materials on record are to be considered by the Adjudicating Authority to satisfy the existence of debt and default as per the Code.

14. The unequivocal admission of the Corporate Debtor in the reply affidavit as also the various materials on record sufficiently establish “debt” and “default” as defined in the Code. It is also relevant to state here that when the debt and default are admitted, even in accordance with Section 58 of the Indian Evidence Act, 1872, there is no need to prove the above fact. When the debt and default are admitted, mere technicality of insufficiency of stamping cannot preclude admission of the application. Further, the correspondence and minutes of the meetings establish that financial debt is due and payable by the Corporate Debtor to the Financial Creditor as recognized by him. The Application has also been filed within the period of limitation. In the above circumstances, the Application u/s 7 of the Code deserves to be admitted. It is ordered accordingly in the following terms:

⁵ Company Appeal (AT) (Insolvency) No. 911 of 20219 (decided on 27.01.2022)

ORDER

a. **The above Company Petition No. (IB) 665(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Consumer Marketing India Private Limited.**

b. This Bench hereby **appoints Ms. Jovita Reema Mathias, Registration No: IBBI/IPA-002/IP-N00337/2017-2018/10941 as the Interim Resolution Professional having her address at 306, A wing, Rustomjee Central Park, Andheri Kurla Road, Andheri East, Mumbai 400069, email :- ip.reemajm@gmail.com** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. Three Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

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

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**