



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

CP (IB) 957/MB/2020

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.

Gateway Leasing Private Limited

[CIN: U6519MH1996PTC247986]

6W, Merchant Chamber, 41, New Marine Lines Opposite
Patkar Hall, Mumbai 400 020.

...Financial Creditor/Petitioner

Versus

R M Bhuther & Company Limited

[CIN: U45201MH2001PLC32232]

104, Bajaj Bhawan, Nariman Point, Mumbai 400 021

...Corporate Debtor/Respondent

Order Delivered on 03.03.2023

Coram:

Hon'ble Member (Judicial) : Mr. H. V. Subba Rao

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

Appearances:

For the Financial Creditor : Mr. Gaurav Shrawat, Advocate a/w

Meet Pandya, Advocate

For the Corporate Debtor : Mr. Raval Shah, Advocate

ORDER

Per Coram:

1. The present petition is filed by Mr. Piyush Ranjan, Senior Vice President of YES Bank, on behalf of **Gateway Leasing Private**



Limited (CIN :U65191MH1996PTC247986) (hereinafter referred to as “the Financial Creditor”) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against **R M Bhuther & Company Ltd, (CIN :U45201MH2001PLC132232)** (hereinafter referred to as “the Corporate Debtor”).

2. The Corporate Debtor was incorporated on 04.06.2001 under Companies Act, 1956. Its registered office is situated at 104, Bajaj Bhawan, Nariman Point Mumbai - 400021. Hence, this Tribunal has the jurisdiction to entertain this petition.
3. The total amount of debt alleged to be in default is Rs.1,15,88,470/- (Rupees One Crore Fifteen Lakhs Eight Thousand Four hundred and Seventy Only). Out of this, the Principal amount is Rs.1,00,00,000/- and Rs.9,23,334/- is the amount of interest and Rs. 6,65,136/- towards loan processing Sanction Charges and out of pocket expenses. The date of default is 29.02.2020.



Submissions of the Financial Creditor:

4. The Financial Creditor provided two (2) inter corporate deposits to the Corporate Debtor on (i) 18th October, 2019 of an amount of Rs. 50,000,000/- (Rupees Fifty Lakh only) being ICD 1; and (ii) 19th October, 2019 of an amount of Rs. 50,00,000/- (Rupees Fifty Lakh only) being ICD 2, pursuant to issuance of covering letters, Demand Promissory Notes and Inter Corporate Deposit Receipts dated 18th October, 2019 with respect to ICD 1 and 19th October, 2019 relating to ICD 2. The financial Creditor disbursed the entire amount of ICD 1 on 18th October, 2019 and ICD 2 on 19th October, 2019.
5. In accordance with the terms of Demand Promissory Note dated 18th October 2018 issued with respect to ICD 1 (*please refer to Exhibit B*), the principal amount of ICD 1 along with interest till the date of repayment was required to be repaid by the Corporate Debtor on 28th February 2020.
6. The Corporate Debtor issued cheques to the Financial Creditor for (i) repayment of principal amount of ICD 1 and ICD 2; and (ii) payment of interest on ICD 1 and ICD 2 until 28th February 2020.
7. The abovementioned cheques were deposited by the Financial Creditor however both cheques were dishonoured stating “Fund Insufficient”.



8. The Corporate Debtor issued two cheques to the Financial Creditor towards payment of Financial Loan (ICD) processing and Sanction Charges and Out of Pocket Expenses. Both the abovementioned cheques were deposited by the Financial Creditor however both cheques have been dishonoured as is evidence from the bank statement of the Financial Creditor for the month of March 2020 (annexed with this Application).
9. Accordingly, a default was committed by the Corporate Debtor with respect to repayment of the principal amount and interest payable under ICD 1 and ICD 2 and payment of financial Loan (ICD) Processing and Sanction Charges and out of Pocket expenses.

Submissions of the Corporate Debtor:

10. The Financial Creditor has wrongfully claimed that a default has occurred. The transaction with the Financial Creditor had commenced from the year 2015-2016 and as such is continuing till date. From time to time the Financial Creditor used to lend monies as loans to the Corporate Debtor, who used to repay the same as per the agreed terms and conditions. Effective from the period 29th October, 2015 till 31st March 2020 amount of Rs. 8.5 Crores was received from Financial Creditor on various occasions out which the Corporate Debtor has



repaid an amount of Rs. 7.5 Crores and as such there is a balance of an amount of Rs. 1.00 Crores only. Further say that the Corporate Debtor has on all such amounts paid an interest calculated @ 12% p.a, which interest amounts were also paid regularly to the Financial Creditor and the TDS on such interest amounts were also paid by the Corporate Debtor accordingly. The Corporate Debtor used to issue cheques as security for that amounts lent by the financial Creditor, which cheques were replaced from time to time. It was agreed that the Corporate Debtor was to replace the said 'Cheques' (defined hereinbelow) and issue fresh cheques with a mutually agreed date of payment as was done in previous years. The said amount of Rs. 1 Crore was actually to be paid after a period of 5 years, and the transaction was to continue. In light of the aforesaid understanding to replace the cheques issued towards security, the said Cheques (defined herein below) on the basis of which the default is alleged had become redundant and therefore the Corporate Debtor has issued stop payment instructions for the same. Considering the aforesaid there is no default and therefore no cause of action has arisen for the Financial Creditor to file the captioned petition and therefore the captioned petition deserves to be dismissed on this ground alone.



11. Further, assuming without admitting the action to seek payment was on 28 February 2020 by virtue of the Financial Creditor seeking to encash cheques on 27 May 2020 and the same having begin not honoured, the alleged date of default, if any, would be 28 May 2020 and not 28 February 2020. The aforesaid is asserted by the Financial Creditor itself in its advocates notice dated 24 June 2020. In view of the aforesaid and without prejudice to all the rights and contentions of the Corporate Debtor, on account of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, the Financial Creditor could not have initiated the Corporate Insolvency Resolution Proceedings ('CIRP') against the Corporate Debtor. Section 2 of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 has led to insertion of Section 10 (A) which reads as follows

“Notwithstanding anything contained in Sections 7, 9 and 10 no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, or not exceeding one year from such date, as may be notified in this behalf:



Provided that no application shall ever be filed for initiation of Corporate insolvency resolution process of a corporate debtor for the said default occurring the said period.

Explanation – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020”.

12. Further MCA Notifications dated 24th September 2020 and 22nd December 2020 notified that the suspension of initiation of corporate insolvency resolution process was extended for a further period for three months each on 25th September 2020 and 25th December 2020, respectively.

In light of the aforesaid amendment and MCA notifications and the fact that the Financial Creditor has itself in its advocates letter dated 24th June 2020 asserted that the default occurred on 28th May 2020, the ‘default’ if any does not give the Financial Creditor any cause of action and further claim as alleged by it becomes un-enforceable under IBC. On this ground along the captioned Petition deserves to be dismissed.

13. At the further outset, without any manner admitting the financial debt claimed by the Financial Creditor. The Financial Creditor has erroneously included an amount of Rs.6,65,136/- (Rupees Six Lakhs



Sixty-five thousand One hundred and Thirty Six only) under the head of 'Financial Loan (ICD) Processing and Sanction charges and out of Pocket Expenses' relying on the cheques issued by partnership firm R.M.Bhuther & Co. and therefore the same cannot be considered as a debt of the Corporate Debtor as alleged or otherwise or at all. Further any amount under the head of 'Financial Loan (ICD) Processing and Sanction Charges and out of Pocket Expenses' by any stretch of imagination, cannot be considered as debt and much less 'financial debt' under the provisions of the IBC and therefore the 'financial debt' claimed by the Financial Creditor is erroneous and in light of the aforesaid captioned petition deserves to be dismissed on this ground alone.

14. The Financial Creditor acceded to the request of the Corporate Debtor and agreed to advance amounts as inter corporate deposit. In view of the arrangement since October 2015, the Financial Creditor once again advanced a sum of Rs. 50,00,00/- (Rupees Fifty Lakhs Only) on 18th October, 2018 ("**ICD 1**") and a sum of Rs. 50,00,00/- (Rupees Fifty Lakhs Only) on 19th October, 2019 ("**ICD 2**"). Against both ICD 1 and ICD 2, the Corporate Debtor issued demand promissory notes, inter corporate deposit receipts and also issued for security purposes following post -dated cheques:



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Sr No.	Cheque No.	Cheque Date	Amount (In Rs.)	Issued Towards
1.	001041	28.02.2020	50,00,000/-	Principal of ICD 1
2.	001276	28.02.2020	3,12,000/-	Interest of ICD 1
3.	001042	28.02.2020	50,00,000/-	Principal of ICD 2
4.	001277	28.02.2020	3,12,000/-	Interest of ICD 2

15. On the basis of the revised agreement and at the backdrop of the dishonour of the said Cheques Towards security on 28th May, 2020, the Financial Creditor through its advocate Mr. Yogesh R. Israni addressed Notice dated 24th June 2020 under Section 138 of the Negotiable Instruments Act *inter alia* calling upon the Corporate Debtor to repay the amounts of the said Cheques. A copy of the Notice dated 24th June 2020 addressed by the advocate Mr. Yogesh R. Israni is annexed and marked as **Exhibit – “A”**. It is pertinent to note that in the said Notice dated 24th June 2020 the Financial Creditor has categorically admitted that the said Cheques were to be replaced and that in spite of the aforesaid the said Cheques were deposited on 27th May 2020.



16. The aforesaid Notice was replied by the Corporate Debtor's advocate Mrs. Manisha Chandawani vide Reply dated 1st July 2020 *inter alia* putting on record the correct facts of the matter. A copy of the reply dated 1 July 2020 addressed by advocate Mrs. Manisha Chandawani is annexed and marked as **Exhibit "B"** of the reply.
17. It is evidence from the aforesaid correspondence that the Financial Creditor has admitted the fact that the said Cheques were to be replaced and therefore no cause of action can be claimed on the basis of such cheques which were to be replaced. Further it is also evident that the Financial Creditor has admitted the date of default as 28th May 2020 and not 28th February 2020 as alleged in the captioned petition.

Submissions of the Financial Creditor by way of Rejoinder:

18. The Corporate Debtor has clearly committed a default of the outstanding debt owed to the financial Creditor. The Corporate Debtor has stated incorrect factual position by mentioning in the Reply that the outstanding debt referred to in the Petition is a part of lending/financing transaction between the Financial Creditor and the Corporate Debtor which has commenced in the 2015-2016 and in continuing till date. There were no agreed terms and conditions or any understanding apart from the one mentioned in the Inter Corporate



Deposit Receipts and Demand Promissory Notes. As wrongly alleged by the Corporate Debtor, the lending transactions in no way continuous transactions as mentioned by the Corporate Debtor and no such understanding and agreement prevailed between the parties at any time.

19. The actual position is that the outstanding debt referred to in the Petition is a fresh and independent lending transaction between the Financial Creditor and Corporate Debtor pursuant to which the Financial Creditor disbursed an amount of Rs. 50,00,000/- (Rupees Fifty Lakhs only) on 18th October, 2019 (“ICD 1”) and another amount of Rs. 50,00,000/- (Rupees Fifty Lakhs only) on 19th October, 2019 (“ICD 2”) to the Corporate Debtor.
20. The above mentioned factual petition is evident from the record the copies of the covering letter, Demand Promissory Note and Inter Corporate Deposit Receipt all dated 18th October, 2019 relating to ICD 1, and dated 19th October, 2019 with respect to ICD 2 annexed with the Petition. Both these Demand Promissory Notes and Inter Corporate Deposits contain clear language wherein the Corporate Debtor has confirmed receipt of amounts of ICD 1 and ICD 2 i.e. agreement sum



of Rs. 1,00,00,000/- (Rupees One Crore only) on such terms and conditions relating to interest and repayment as referred to therein.

21. The financial Creditor does not deny loans were given to the Corporate Debtor on previous occasion, however, it is reiterated that disbursal of ICD 1 and ICD 2 is a fresh, separate and independent lending transaction between the Financial Creditor and Corporate Debtor. The Corporate Debtor has made up an imaginary set of facts in its Reply in order to mislead to this Tribunal and has not submitted any documents to substantiate the wrongly alleged position that the outstanding debt referred to in Petition is a part of larger lending transaction between the Financial Creditor and Corporate Debtor. In fact, the Financial creditor has submitted Demand promissory Note and Inter Corporate Deposit Receipt relating to ICD 1 and ICD 2 to provide that the outstanding debt is a separate and independent lending transaction.
22. It is submitted that the Demand Promissory Notes relating to ICD 1 and ICD 2 both mention the following details relating to interest and repayment.

(i) **ICD 1:**

“We M/s. R.M. Bhuther & Co. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at 104, Bajaj-Bhavan,



*Nariman Point, Mumbai – 400021 on demand promise to pay M/s Gateway leasing Pvt. Ltd. having their corporate officer at 6 w, Merchant Chambers, 6th floor, New Marine Lines, opp. Patkar Hall, Mumbai – 400 020 or order at Mumbai a sum of Rs. 50,00,000/- (Rupees Fifty Lakh only) with interest @ 12.00 % per annum till repayment for value received & **Due date 28/02/2020** vide cheque no. 001041 date 28/02/2020 Rs. 50,00,000/”*

(ii) ICD 2 :

*“We M/s. R.M. Bhuther & Co. Ltd., a company incorporated under the Companies Act, 1956 having its registered office at 104, Bajaj-Bhavan, Nariman Point, Mumbai – 400020 on demand promise to pay M/s Gateway leasing Pvt. Ltd. having their corporate officer at 6 w, Merchant Chambers, 6th floor, New Marine Lines, opp. Patkar Hall, Mumbai – 400 020 or order at Mumbai a sum of Rs. 50,00,000/- (Rupees Fifty Lakh only) with interest @ 12.00 % per annum till repayment for value received & **Due date 28/02/2020** vide cheque no. 001042 date 28/02/2020 Rs. 50,00,000/”-*

It is therefore, evident from the above Demand Promissory Notes that the due date for repayment of both ICD 1 and ICD 2 was 28th February, 2020.

a. Further, as such it is clear from the language of Demand Promissory Notes that the Corporate Debtor when signing the Demand



Promissory Notes clearly stated that the cheques nos. 001041 and 001042 mentioned above are repayment cheques and not merely cheques handed over as a security as wrongly alleged by the Corporate Debtor.

- b. It is submitted that the Corporate Debtor has made incorrect submissions in the Reply without submitting any evidence to corroborate the claim that the Corporate Debtor to replace the cheques handed over to the Financial Creditor and that fresh cheques were to be handed over with a mutually agreed date of repayment. As is evident from the Demand Promissory Notes that the due date for repayment of both ICD 1 and ICD was 28th February, 2020 and cheques were handed over by the Corporate Debtor to Financial Creditor both as security in relation to the outstanding debt and to enable the Financial Creditor to recover the outstanding debt on the due date i.e. 28th February, 2020 or at any time thereafter. The Financial Creditor was well within its rights to deposit the cheques and recover the outstanding debt amount on the due date.
- c. It is submitted that the statement of the Corporate Debtor that the outstanding debt was repayable after a period of 5 years is false and



baseless and contrary to the documents on record. The Corporate Debtor has not submitted any evidence to corroborate this claim and its submission is entirely contradictory to the documents relating to the outstanding debt submitted by the Financial Creditor along with the Petition and this Affidavit.

- d. Further, the Corporate Debtor has made a misleading submission in its Reply by stating that it had issued “stop payment instructions” with respect to the above mentioned cheques for repayment of the outstanding debt. As per the communications/return memos all dated 29th February, 2020 received from HDFC Bank with respect to cheques no’s 001041 and 001042 (relating to the principal amount of the outstanding debt), the reason for repayment of return/cheque bouncing is “Funds Insufficient”. Thereafter, the Corporate Debtor informed the Financial Creditor that they were in some financial constraints and mentioned to the Financial Creditor that they will replace the above mentioned four cheques with fresh new cheques of another bank as they were expecting money in some other bank account, which was never done by the Corporate Debtor previously. As the validity of the mentioned four cheques was expiring and the corporate Debtor had till that date failed to make the payment nor gave new payment cheques of another bank, the Financial Creditor



re-deposited the cheques in respect of which stop payment instructions were issued by the Corporate Debtor.

Findings:

23. Heard both sides. It is the case of the Corporate Debtor that they have made some payments after filing of the Company Petition till filing the Restoration Application by the Operational Creditor for restoration of the above Company petition 957/2020. Ld. Counsel appearing for the Corporate Debtor admits that the remaining admitted amount due and payable is certainly above one lakh which is enough to admit the above Company petition. In view of the admitted case of debt and default there is no need to keep the above Company Petition pending any longer. Accordingly, the above Company Petition is admitted.
24. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]* upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.



25. The Financial Creditor has proposed the name of **Mr. Sandeep D. Maheshwari**, Registration No. IBBI/IPA-001/IP-P00640/2017-18/11093, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
26. The application made by the Financial Creditor is complete in all respects as required by law. 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.
27. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP (IB) 957/MB/C-I/2020** filed by **Gateway Leasing Pvt Ltd**, the Financial Creditor, 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 **R M Bhuther & Company Ltd**, 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) 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) **Mr. Sandeep D. Maheshwari**, Registration No. IBBI/IPA-001/IP-P00640/2017-18/11093, having address at 1,2,3 ground floor, Shree Ram Laxmi Niwas, Near Old Anthony Bakery, Kolaba Road, Thane (W) 400601 Email: ayunish@yahoo.com, 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/- (Five Lakh 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) 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.



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- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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.
- (k) Ordered accordingly.

Sd/-

SHYAM BABU GAUTAM

Member (Technical)

03.03.2023

SAM/ Jagdish

Sd/-

H. V. SUBBA RAO

Member (Judicial)