

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

CP No. 4310/IBC/NCLT/MAH/2019

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 4 of
the Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016

In the matter of

**Tapi Sahakari Patapedhi Ltd.
.. Financial
Creditor
(Petitioner)**

V.

**IBRIDGE Solutions Private Limited.
.. Corporate Debtor
(Respondent)**

Order delivered on:- 12.08.2022

Coram:

Hon'ble Member (Judicial) : Justice Pradeep N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Shyam Babu Gautam

Appearances:

For the Petitioner : Mr. Prakhar Tandon, Advocate

For the Respondent : None Present

ORDER

Per:- Shyam Babu Gautam, Member Technical

1. The Petition is filed by the Petitioner, 'Tapi Sahakari Patapedhi Ltd.'(hereinafter as **Financial Creditor**) by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code(hereinafter as **Code**) against 'M/s IBRIDGE Solutions Pvt. Ltd. ' (hereinafter as 'Corporate Debtor') for initiating Corporate Insolvency Resolution Process for total claim of Rs. 1,94,58,212/-. The Date on which the default occurred is 25.03.2017 when the Loan Account No. 170/32 and 170/33 was recalled and the Corporate Debtor did not pay the same.
2. On perusal of the Company Petition it reveals that the Corporate Debtor passed a Board Resolution in its Board meeting dated 03.01.2006 and availed a loan facility up to Rs. 5,00,00,000/- and authorized Mr. Prakash Sopanrao Patil to act on behalf of the Corporate Debtor. Further, the Corporate Debtor availed Personal Surety Loan amounting to Rs. 1,00,00,000 from the Financial Creditor on 20.01.2007 and the Loan demand Application was submitted on 20.01.2007 bearing Application No. 603. The Corporate Debtor availed another Personal Surety Loan amounting to Rs.

1,00,00,000 from the Financial Creditor for expansion of Business BPO services and the Loan demand Application was submitted on 29.01.2007 bearing Application No. 658.

3. The Financial Creditor sanctioned the Loan facility pertaining to the Loan Application No. 658 in its Board meeting dated 15.02.2007 and also sanctioned the Loan facility pertaining to the loan Application No. 603 in its Board meeting dated 15.03.2007. The Financial Creditor vide its Loan Sanction letter dated 20.03.2007 sanctioned the loan pertaining to the Loan Application No. 603 vide Account No. 170/33 and also sanctioned the loan through its Loan Sanction letter dated 20.03.2007 pertaining to the Loan Application No. 658 vide Account No. 170/32.
4. The Financial Creditor disbursed the loan for the Account No. 170/32 and 170/33 to the Corporate Debtor on 29.03.2007 and acknowledged the receipt of loan amount by signing the receipt dated 29.03.2007. The Deed of Hypothecation continuing Security Letter dated 02.07.2007 and Letter of Lien and set off dated 29.03.2007 was executed between the Financial Creditor and the Corporate Debtor each for the Hypothecation of movable property for the due repayment of advance.

5. The Corporate Debtor acknowledged the Outstanding liability towards the Financial Creditor in various Financial Statements from FY 2006-2007 to FY 2010-2011.

6. The Financial Creditor issued Loan Recall Notices dated 02.04.2014 and 25.03.2017 to the Corporate Debtor demanding the outstanding amount towards the Loan Account No. 170/32 amounting to Rs. 1,27,15,411 along with interest @ 16%. The Financial Creditor also issued Loan Recall Notices dated 02.04.2014 and 25.03.2017 to the Corporate Debtor for demanding the outstanding amount towards the Loan Account No. 170/33 amounting To Rs. 1,27,64,017 and Rs. 1,27,65,764 along with interest @ 16%. The Corporate Debtor vide letters dated 05.04.2014 and 29.03.2017 acknowledged their indebtedness towards the Financial Creditor for both the Personal Surety Loans and requested to extend the time period for repayment.

7. The Financial Creditor received few ad-hoc payments pertaining to the Loan Account No. 170/33 during the year July 2008-March 2018 totalling to Rs. 78,73,317/- from the Corporate Debtor. The Financial Creditor also received ad-hoc payments pertaining to the Loan Account No. 170/32 during the year November 2007 – November 2009 totalling to Rs. 29,51,569/-.

8. The Financial Creditor further states that the said credit facilities/loans were granted to the Corporate Debtor were repayable along with the interest as per the agreed terms from the date of disbursement of money to the date of payment in full with the monthly rate or at such rates as revised by the Bank from time to time.
9. The Financial Creditor states that the Corporate Debtor failed to observe the terms and conditions on which the credit facilities/loans. In spite of regular request of the Financial Creditor, the said accounts became irregular and the Corporate Debtor failed to regularize the accounts. The Corporate Debtor failed and neglected to pay the overdue loan amount.
10. Thereafter, the Financial Creditor was constrained to initiate proceedings under SARFAESI Act, and issued Notice u/s 13(2) of the said Act on 02.03.2015. In spite of the said Notice, the Corporate Debtor failed to repay the due amount within the specified period. Considering the said default, possession of Factory 7 Building was taken on 26.06.2015.
11. Further in consideration and in acknowledgment of granting the said enhanced credit facilities/loans, the Corporate Debtor has been periodically confirming the debit balance in the account. The

Financial Creditor has produced the letter of Acknowledgment of Debt and Security in Form L 44C dated 17.01.2017 in favour of the Financial Creditor.

12. Due to persistent failure on the part of the Corporate Debtor to repay the loan, the Financial Creditor issued a Recall Notice dated 29.05.2017 to the Corporate Debtor and all the guarantors on 03.06.2017. Even after the said notice, the Corporate Debtor failed and neglected to repay the entire dues to the Financial Creditor.
13. The Financial Creditor states that the debt was duly disbursed. The Corporate Debtor failed to repay the loan amount and there are numerous dates of defaults because the Corporate Debtor has not honoured the commitments given for timely payment of EMI's. Hence, the date of default is to be treated as 25.03.2017 when the loan account No. 170/32 and 170/33 was recalled.
14. The Financial Creditor has produced on record the ledger entries for the period from 01.04.2005 to 16.08.2019 of the Corporate Debtor which reflect the debt payable to Financial Creditor.
15. The Petitioner draws the attention of this Bench towards the Bank Statement of Account of the Corporate Debtor to corroborate the amount claimed. Relevant certificates under section 2(a) of the Bankers' Book Evidence Act, 1891 has also been produced on record.

16. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

NO SUBMISSIONS BY THE CORPORATE DEBTOR

17. It is seen from the records that the Financial Creditor had taken several efforts to serve the Corporate Debtor. The Financial Creditor had also undertaken publication in Financial Express (English Edition) and Loksatta (Marathi Edition) on 11.11.2021. Despite of publishing public notice in two newspaper, none appeared for the Corporate Debtor and the Corporate Debtor was set ex-parte vide Order dated 17.12.2021.

FINDINGS

18. On perusal of the Petition on record, it is seen from the MCA Master Data that the name of Corporate Debtor Company is struck off by the Registrar of Companies in exercise of the powers conferred under Section 248 of the Companies Act, 2018. Now the issue before this bench arises for consideration is whether an Application under

Section 7 or 9 of the Code for initiating CIRP is maintainable against a Corporate Debtor Company if the name of the Corporate Debtor is struck-off from the Register of the Companies.

19. Similar issue fell for consideration before Hon'ble NCLAT in the matter of *Mr. Hemang Phophalia vs. The Greater Bombay Co-operative Bank Limited* wherein it was held that the Company which is struck off under Section 248 of the Companies Act, 2013 can be restored for the purpose of initiation of CIRP under Section 7 and 9 of the Code. The relevant portion of the said Order is as follows :-

“23. In view of the aforesaid provisions, we hold that the Adjudicating Authority who is also the Tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of ‘Corporate Insolvency Resolution Process’ under Sections 7 and 9 of the I&B Code based on the application, if filed by the ‘Creditor’ (Financial Creditor or Operational Creditor) or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of Section 248. In the present case, application under section 7 having admitted, the Corporate Debtor and its

Directors, Officers etc. deemed to have been restored in terms of Section 252(3) of the Companies Act.”

In view of the above the name of the Corporate Debtor Company is restored.

20. Further, the Financial Creditor has placed on record the Loan Demand Application for the Loan Account Nos. 170/32 and 170/33 from the Corporate Debtor along with Deed of hypothecation continuing the Security for the Loan. Further, the recall notices sent by the Financial Creditor and the acknowledgement as given by the Corporate Debtor for the said recall notices itself establishes that the Corporate Debtor had availed the Loan facility.

21. The Financial Creditor has produced satisfactory evidence to prove the debt and default. The Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. V. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 OF 2017]*, order dated 31.08.2017, has been very clear that to admit a petition under section 7 of the I&B Code, the Adjudicating Authority's scope is restricted only to the ascertainment of 'debt', 'default', and whether the petition is complete or not.

22. In this case, all the three pre-requisites for admission of this petition have been met, the debt is supported by substantive evidences and the evidences corroborate to the amount claimed.
23. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case.
24. As a consequence, keeping the said facts in mind, it is found that the Financial Creditor has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner. We are of the conscientious view that this Petition deserves ‘**Admission**’.
25. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

26. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Shashant Sudhakar Yeola having registration No. IBBI/IPA-001/IP-P00310/2017-18/10574, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

27. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

28. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

29. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform the progress of the CIRP and the compliance of the directions of this Order within 30 days to this Bench.
30. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
31. Ordered Accordingly.

Sd/-

SHYAM BABU GAUTAM
MEMBER TECHNICAL

Sd/-

JUSTICE P.N. DESHMUKH
MEMBER JUDICIAL