

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301
C.P.(IB)/113(AHM)2022

Order under Section 7 IBC

IN THE MATTER OF:

Shirijay Infra Pvt Ltd

.....Applicant

V/s

Trans Polyurethane Pvt Ltd

.....Respondent

Order delivered on: 15/12/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH - COURT-I**

CP(IB)/113/NCLT/AHM/2022

(An application 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:

Shirijay Infra Pvt. Ltd.

Registered office at:
Unit No. C-190, Hind Saurashtra
Industrial Estate,
Andheri East, Mumbai- 400059.

...APPLICANT/FINANCIAL CREDITOR

VERSUS

M/s. Trans Polyurethane Private Limited

Registered office at:
23, Bharat Industrial Estate,
Bhimjore Daman, DD-396210,
India.

...RESPONDENT/CORPORATE DEBTOR

Order Pronounced On: 15.12.2023

CORAM:

SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE

For the Applicant : Ms. Mily Ghoshal, Ld. Adv.
For the Respondent : Ex-parte.

ORDER

1. This petition is filed on 22.04.2022 by the Financial Creditor **M/s. Shirijay Infra Private Limited** (hereinafter referred to as "**Applicant**") against the Corporate Debtor **M/s. Trans Polyurethane Private Limited** (hereinafter referred to as "**Respondent**") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as "**IRP**") and declare the moratorium for having defaulted payment of its outstanding dues **Rs.3,68,20,072/-**. The date of default is stated to be **08.01.2022**.
2. On perusal of Part-I of the Form-1 reveals that the Applicant/Financial Creditor is a private limited company incorporated on 24.12.2019 having CIN No.U45202MH2019PTC334923. The registered office of the

Applicant is situated at Unit No. C-109, Hind Saurashtra Industrial Estate, Andheri East, Mumbai-400059.

3. On perusal of Part-II of the Form-1 reveals the Respondent/Corporate Debtor is a private limited company incorporated on 01.08.1996 having CIN No.U24132DD1996PTC002145. The registered office of the Company is situated at 23, Bharat Industrial Estate, Bhimpore Daman, DD-396210, India.
4. Part-III of the Form-1 reveals that the Applicant has proposed the name of the Interim Resolution Professional (**'IRP'**) **Mr. Dhanshyam Patel**, having registration No. IBBI/IPA-001/IPP01373/2018-2019/12155, Address: 322, Zest Business Spaces, M.G. Road, Ghatkopar (East), Mumbai-400077. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations.
5. Part-IV of the Form-1 reveals that total dues as claimed by the Applicant is Rs.3,68,20,072/- (Three Crores Sixty Eight Lakhs Twenty Thousand and Seventy Two only.). The date of default is stated to be 08.01.2022.

6. The averments made by the Applicant in its application are summarized hereunder:-

- a) One M/s. Satec Envir Engineering (India) Pvt. Ltd. (alleged original lender) had provided financial assistance amounting to Rs.3,68,20,072/- to the Respondent. The said alleged original lender on various occasions requested the Respondent to make payment however, their requests got turn down on some or the other pretext.
- b) The said alleged original lender was in need of funds and had failed to realize the dues payable from the Respondent therefore, approached the Applicant with an intention to assign the debt of Rs.3,68,20,072/- to the Applicant.
- c) The Deed of Assignment dated 15.05.2021 was executed between alleged original lender and Applicant for transferring the debt amounting to Rs.3,68,20,072/- to the Applicant. The Applicant intimated the said fact to the Respondent through notice dated 01.01.2022 and called upon the Respondent to make the payment within 7 days from the receipt of the notice.
- d) The Respondent failed to make the payment hence, the present application for initiating Corporate

Insolvency Resolution Process against the Respondent.

e) The Applicant has relied upon below-mentioned documents to prove its case:

- i. Copy of Deed of Assignment notarised by Mr. Udai Prakash. (which is undated)
- ii. Copy of Board Resolution dated 14.05.2021 of Applicant for executing said Deed of Assignment.
- iii. Copy of Demand Notice dated 01.01.2022.
- iv. Record of default. **[Form C]**
- v. Copy of Financial Statements of Respondent as on 31st March, 2021.
- vi. Master Data of Respondent.
- vii. Computation of Claim.
- viii. Certificate received from Bank relating to non-receipt of financial debt from the Respondent.

7. On issuance of notice, no one appeared on behalf of the Respondent therefore, this Adjudicating Authority Vide order dated 16.11.2022 passed an ex-parte order against the Respondent.

8. It was observed that the Applicant is the one to whom the loan was claimed to be assigned by the alleged original

lender. However, the details with regards to loan disbursed to the Respondent by the alleged original lender are not provided. This Adjudicating Authority was of the view that there has to be a justification with regards to whether the loan was not time-barred before the debt was assigned to the present Applicant. Therefore, vide order dated 08.05.2023 the Applicant was directed to provide relevant documents through affidavit.

9. In Compliance of order dated 08.05.2023, the Applicant filed an affidavit dated 03.07.2023 before this Tribunal on 05.07.2023 vide diary no. D2448 to place on record below mentioned documents:

- i. Ledger account of Trans Polyurthane Pvt. Ltd. (Respondent) in the books of Satec Envir Engineering (India) Pvt. Ltd. (Alleged original lender) for the period from 2017 to 2022.
- ii. Accounts payable confirmation letter dated 13.04.2021 addressed to Satec Envir Engineering (India) Pvt. Ltd (Alleged original lender) by Trans Polyurthane Pvt. Ltd. (Respondent).
- iii. Copy of letter dated 23.06.2023 addressed to M/s. Shirijay Infra Pvt. Ltd. (Applicant) by Satec Envir Engineering (India) Pvt. Ltd. (Alleged original lender) providing clarification with regards to amount of Rs. 3,68,20,072/- receivable from Trans Polyurethane Pvt. Ltd. (Respondent).

- iv. Copy of the NCLT website showing filing details.
10. The Applicant on 02.08.2023 sought further time to file relevant documents and filed an affidavit dated 17.08.2023 before this Tribunal on 23.08.2023 vide diary no. D3140 to place on record below mentioned documents:
- i. Copy of deed of assignment dated 15.05.2021 notarized by Mr. Syed Amanulla.
 - ii. Ledger account of Trans Polyurthane Pvt. Ltd. (Respondent) in the books of Satec Envir Engineering (India) Pvt. Ltd. (Alleged original lender) for the period from 2014 to 2022.
 - iii. Accounts payable confirmation letter dated 13.04.2021 addressed to Satec Envir Engineering (India) Pvt. Ltd. (Alleged original lender) by Trans Polyurthane Pvt. Ltd. (Respondent).
 - iv. Copy of Statutory Auditors certificate, certifying that an amount of Rs. 3,68,20,072/- is receivable by Satec Envir Engineering (India) Pvt. Ltd. (Alleged original lender) from Trans Polyurthane Pvt. Ltd. (Respondent) as on 31.03.2021.
 - v. Copy of letter dated 23.06.2023 addressed to M/s. Shirijay Infra Pvt. Ltd. (Applicant) by Satec Envir Engineering (India) Pvt. Ltd. (Alleged original lender) providing clarification with regards to amount of Rs. 3,68,20,072/- receivable from Trans Polyurethane Pvt. Ltd.

- vi. Copy of the NCLT website showing filing details.
11. During the hearing held on 13.09.2023, the Ld. Counsel for the Applicant was not able to convince this Adjudicating Authority on disbursement of loan amount to the Respondent as no bank statement of alleged original lender was annexed. Further, no record of Information utility (NeSL Certificate) was filed qua the debt and default in terms of Regulation 20(1A) of IBBI (Information Utilities) Regulations, 2017. Therefore, Applicant was directed to file proof of payment of consideration to assignor as well as copy of NeSL Certificate in the shape of Form-D being record of default in terms of Regulation 20(1A).
12. The Applicant in compliance of order dated 13.09.2023, has filed an affidavit dated 10.10.2023 before this tribunal on 12.10.2023 vide diary no. D3992 and placed on record following documents:-
- i. Form C
 - ii. Ledger account of Satec Envir Engineering Pvt. Ltd. (Alleged original lender) in the books of Shirijay Infra Private Limited.(Applicant).
 - iii. Letter dated 26.09.2023 of ICICI Bank addressed to Applicant certifying that payments are made by Applicant on behalf of M/s. Satec Envir Engineering (India) Pvt. Ltd. (Alleged original lender).

13. We have heard the Ld. Counsel for the Applicant and perused the documents available on record.
14. It is claimed that the alleged original lender had provided financial assistance amounting to Rs.3,68,20,072/- to the Respondent which the Respondent failed to repay. Thereafter, the alleged original lender was in need of funds and hence, assigned the said debt to the Applicant who then demanded the outstanding amount from the Respondent. The Respondent has failed to make the payment. Hence, the present application seeking initiation of CIRP.
15. The amount claimed to be in default is Rs.3,68,20,072/- which is above the threshold limit. Further, the Respondent has acknowledged the debt vide letter dated 13.04.2021. However, in order to establish 'debt' and 'default' it is necessary to see whether the amount was disbursed to the Respondent.
16. The letter dated 23.06.2023 addressed by alleged original lender to Applicant provides clarification with regards to amount of Rs.3,68,20,072/- outstanding from the Respondent. On perusal of said letter it is observed as follows:

Sr. No.	Amount disbursed	Details of Transaction	Document substantiating the

			disbursement
1.	Rs. 8,53,297/-	Satec Envir Engineering Pvt. Ltd. paid on behalf of the Corporate Debtor.	Bank Statement (the bank statement does not reflect any entry of payment made on behalf of Respondent)
2.	Rs. 3,59,66,775/-	Corporate Debtor was initially liable to pay the said amount to M/s. Micronet Real Estate Pvt. Ltd. which got merged into M/s. Abbie Infraventures Pvt. Ltd. and which later got merged into M/s. Satec Envir Engineering (India) Pvt. Ltd.	No document provided

At page no. 10 and 11 of the application a table appears wherein details of payment amounting to Rs.8,53,297/- made by alleged original lender on behalf of Respondent are provided. The said payments were made by alleged original lender for the various services. However, no proof such as invoices or bills are annexed to show that services were availed nor the figures appearing in the table are reflected in the bank statement annexed at page no. 12 to 20. Further, no document is placed on record which suggests that an

amount of Rs. 3,59,66,775/- was actually disbursed to the Respondent.

17. Despite directions the Applicant has failed to place on record document to suggest that the amount was actually disbursed to the Respondent. Hence, the Applicant has failed to establish that the amount was disbursed to the Respondent. Therefore, the question of default on the part of the Respondent does not arise. Reliance is placed on Judgment of the **Hon'ble National Company Law Appellate Tribunal in Dr. B.V.S Laxmi Vs. Geometrix Laser Solution Private Limited [2018] 142CLA321:**

“30. In the present case, the Appellant has failed to bring on record any evidence to suggest that she disbursed the money has been made against 'consideration for the time value of money'. There is nothing on the record to suggest that the Respondents borrowed the money. In absence of such evidence, the Appellant cannot claim that the loan if any given by the Appellant comes within the meaning of 'financial debt' in terms of sub-section (8)(a) of Section 5 of the 'I & B Code’.

18. Further, the debt in question was assigned by alleged original lender to the Applicant through deed of assignment. The deed

of assignment annexed with the application is undated and the same is notarised by one Mr. Udai Prakash. Later on, the Applicant filed an affidavit dated 17.08.2023 stating that the deed of assignment annexed to the application is the office copy of the Applicant and the improved copy of deed of assignment dated 15.05.2021 wherein the date is handwritten and is notarized by Mr. S. Syed Amanulla was annexed to the affidavit. Such discrepancies in the deed of assignment placed on record by the Applicant cast serious doubt on the genuineness of deed of assignment. Hence, we do not find the said document to be reliable.

19. In view of the above, the **C.P. No. 113 of 2022** filed by the Applicant for initiating Corporate Insolvency Resolution process against the Respondent is rejected and dismissed.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

Arati-LRA