

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 520/IBC/MB/2020

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 4 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

Steel Investments Private Limited

(CIN: U65990MH1971PTC015044)

Having registered office at: Pushp
Kunk ³/₄, Abdul Gaffar Khan Road,
Worli Sea Face, Mumbai-400025

.....**Financial Creditor**

Vs

**Rajesh Estates and Nirman Private
Limited**

(CIN: U2899AMH1996PTC099089)

139 Seksaria Building 2nd Floor, N.M.
Road Fort Mumbai-400023

.....Corporate Debtor

Order delivered on: 16.07.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Ms. Gyanika Kochar

For the Respondent: Mr. Nausher Kohali

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company petition is filed by M/s Steel Investments Private Limited (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Rajesh Estates and Nirman Private Limited (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Financial Creditor. This petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 3,53,93,917/- (Rs. 2,80,00,000/-, Principal amount + Rs. 79,73,485/-, Interest due 15% as applicable from 01.04.2018 up to 31.01.2020 + Rs. 4,11,417, TDS of which credit has not been received in Form 26 AS.)
3. The brief facts of case are as follows:-
 - a. The Financial Creditor advanced a sum of Rs. 2,80,00,000/- to the Corporate Debtor in following three tranches:
 - i. A sum of Rs. 80,00,000/- was disbursed on 15.10.2015 against which the Corporate Debtor issued Demand Promissory Note and post-dated cheques.
 - ii. A sum of Rs. 90,00,000/- on 16.10.2015 against which the Corporate Debtor issued Demand Promissory note and post-dated cheques.

- iii. A sum of Rs. 1,10,00,000/- on 17.10.2015 against which the Corporate Debtor issued Demand Promissory note and post-dated cheques.
- b. At the request of the Corporate Debtor the said loan was extended from time to time.
- c. The Financial Creditor was desirous of recalling the entire loan and thus called upon the Corporate Debtor to repay the loan. The Corporate asked for extension for the final time and issued the following letters alongwith Demand Promissory Notes and post-dated cheques towards repayment of the principal and loan amount over the course of time.
 - i. Letter dated 25.04.2019 assuring repayment of principal of Rs. 90,00,000/- and interest @ 15% per annum along with Demand and Promissory Note and Post-Dated cheque nos. 536429, 536430 and 536431.
 - ii. Letter dated 08.04.2019 assuring repayment of principal of Rs. 40,00,000/- and interest @ 15% per annum Demand Promissory Note and Post-Dated cheque Nos. 536416, 536417, 536418, 536419.
 - iii. Letter dated 01.08.2019 assuring repayment of principal of Rs. 40,00,000/- and interest @15% per annum along with Demand Promissory Note and Post-Dated Cheque Nos. 536482,536483 and 536484.
 - iv. Letter dated 25.04.2019, assuring repayment of principal of Rs. 35,00,000/- and interest @ 15% per annum along with Demand Promissory Note and post-dated Cheque Nos. 536432, 536433 and 536434.

- v. Letter dated 01.08.2019 assuring repayment of principal of Rs. 35,00,000/- and interest @15% per annum along with Demand Promissory Note and Post-Dated Cheque Nos. 536485, 536486 and 536487.
- vi. Letter dated 08.04.2019 to the Financial Creditor assuring repayment of principal of Rs. 40,00,000/- and interest @ 15% per annum along with Demand Promissory Note and Post-Dated cheque Nos. 536412, 536413, 536414, 536415.
- d. However, when the said Cheques were deposited by the Financial Creditor with its bank, the same were returned dishonoured. Despite repeated reminders to repay the loan amount, the Corporate Debtor has failed to do so.
- e. The Financial Creditor submits that it is entitled to recover a total sum of Rs. 3,53,93,917/- inclusive of principal and interest as on 31.01.2020. Hence this petition.

Findings

1. Heard Ms. Gyanika Kochar, counsel appearing for the Financial Creditor and Mr. Nausher Kohali, counsel appearing for the Corporate Debtor. Even though the Corporate Debtor was set ex-parte due to non-filing of Vakalatnama and reply, Mr. Naushe Kohali, appearing for the Corporate Debtor during the course of the final arguments orally opposed the admission of the above Company Petition on the ground that the claim is barred by limitation. It is the contention of the Corporate Debtor that the alleged financial facilities were disbursed to the Corporate Debtor on 15.10.2015, 16.10.2015 and 17.10.2015 respectively and the above Company Petition being filed on 06.02.2020 is clearly barred by limitation. It

is his further contention that the petitioner did not plead anywhere in the petition nor produced any documents to show that the Corporate Debtor acknowledged the debt for every three years till the filing of the petition.

2. In order to examine the above contention raised by the Corporate Debtor, it is important to look at the documents submitted by the Financial Creditor along with company petition. The Corporate Debtor filed the statement of confirmation of accounts dated 01.04.2019 covering the financial year 01.04.2018 to 31.03.2019 duly stamped and signed by the director of Corporate Debtor under which the Corporate Debtor clearly mentioned and certified an amount of Rs. 2,84,84,312/- as opening balance as on 01.04.2018 i.e. within 3 years from October 2015 as per their own books of accounts which itself is enough to reject the above contention raised by the Corporate Debtor with regard to the limitation. When this Bench confronted the learned counsel appearing for the respondent by inviting his attention to the statement of confirmation of accounts dated 01.04.2019, he has argued that there was no pleading with regard to computation of limitation from the above date by the petitioner in the above application. Applying the same analogy to the Corporate Debtor, there was no pleading on behalf of the Corporate Debtor also in the above company petition by way of a reply raising the plea of limitation and therefore there is no force in the above submission made by the counsel appearing for the Corporate Debtor. Except the above plea of limitation, the counsel appearing for the Corporate Debtor did not raise any other legal pleas during the course of final arguments.

3. The final appeal and request of the counsel appearing for the Corporate Debtor is to grant one more month time for settling the claim of the present petitioner stating that the respondent/Corporate Debtor has obtained loan facility from some bank and he is sincerely interested in settling the claims of all Creditors who have also filed various company petitions against the Corporate Debtor, cannot be considered as the Corporate Debtor has been gaining time since February, 2020 by making the same representation before this Bench.
4. Therefore, for the reason stated above, there are no valid grounds warranting the rejection of the above Company Petition as the debt and default are clearly established and the debt is also within limitation. The petitioner has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Thus, the present Company Petition satisfies all the necessary requirement for admission.
5. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -520(MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Rajesh Estates and Nirman Private Limited.
- b. This Bench hereby appoints **Mr. Kaushik Chandrahas Khona** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01430/2018-19/12191 as the Interim Resolution Professional to carry out the

functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs.5 Lakh 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 Registrar of Companies, Mumbai, 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/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**