

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. V, MUMBAI BENCH**

Company Petition No. 699/(IB)-MB-V/2021

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

MetroGlobal Limited

101, 1st Floor, Mangal Disha, Near Guru
Gangeshwar Temple, 6th Road, Khar
(West), Mumbai – 400052

... Petitioner/Financial Creditor

V/s

Mundara Estate Developers Limited

7B 11 Ami Ramkrishna Building, Happy
Home Society, Nehru Road, Ville Parle
(East), Mumbai- 400057

... Respondent/Corporate Debtor

Order Reserved on: 14.12.2022

Order Pronounced on: 12.01.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Video Conferencing):

For the Petitioner : Mr. Salil Thakore, Advocate

For the Corporate Debtor : Mr. Dev Patel, Advocate

Per: Shri Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This Company Petition is filed by MetroGlobal Limited (hereinafter called "**Financial Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Mundara Estate Developers 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 "**IBC**") 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 has failed to make payment of an **aggregate amount of Rs. 89,76,41,443/-** comprising of the **Principal amount of Rs. 19,63,71,657/-** and **interest of Rs. 70,12,69,786/-** (calculated at 1.5% per month on the unpaid amount up to 31.05.2021) and additional interest at 1.5% per month on above outstanding amount from 31.05.2021 till the date of repayment.
3. The Corporate Debtor was earlier a partnership firm named M/s. Mundra Developers (**the Firm**), engaged in the business, sale and

development of immovable properties which was later, on 11.01.2011, converted into a Public Limited Company named Mundra Estate Developers Limited. A copy of the Certificate of Incorporation is annexed to the Company Petition.

4. For the construction of building named Amikrupa Apartment, the Corporate Debtor had sought finance from Metrochem Industries Limited (**MIL**) (*which was later **Merged into the Applicant Company i.e. MetroGlobal Limited** vide order dated 10.06.2011 passed by Hon'ble Bombay High Court and vide order dated 31.01.2011 passed by Gujrat High Court*) vide agreement dated 21.05.2010 for a total advance of Rs. 5,00,00,000/- and over the next 7 months sought an additional loan of Rs. 19,00,00,000/-. Therefore, the total Principal advanced by the Financial Creditor to the Corporate Debtor is Rs. 24,00,00,000/-.

5. On 27.01.2011, The Corporate Debtor and the Petitioner i.e. Metrochem Industries Limited (**MIL**) had entered into a loan agreement wherein the Corporate Debtor had agreed to repay the Principal amount of Rs. 24 Crores by issuing 11 post dated cheques, and interest of Rs. 13,50,00,000/- by issuing 5 post dated cheques, failing which further interest at 1.5% per month would be levied on outstanding principal and interest amount in favour of the Petitioner. Under the same loan agreement, Mr. Girish Rajnikant Shah and Rajesh Ramniklal Shah, being majority individual shareholders of the Corporate Debtor, agreed to act as guarantors and agreed to be held jointly and severally liable to repay the outstanding amount to Metrochem Industries Limited (MIL) which was merged into the **MetroGlobal Limited** (the Petitioner). In addition to the above, Mr. Girish Rajnikant Shah and Rajesh Ramniklal Shah, holding 100% shares of "Parag Kunj Finvest Private Limited" had pledged their entire shareholding in favour of MIL as security for due repayment of debt.

6. On request of the Corporate Debtor, the Petitioner had not deposited the post-dated cheques. Despite several reminders/requests by the Petitioner, the Corporate Debtor has failed to repay the debt and has made only the following payments from 2011 till date to the Petitioner:

Date of Payment	Amount (in Rs.)
04.06.2011	94,98,083/-
03.05.2012	25,00,000/-
17.05.2012	10,00,000/-
22.05.2012	1,00,00,000/-
23.05.2012	1,00,00,000/-
25.05.2012	1,47,00,000/-
26.05.2012	1,53,00,000/-
01.01.2013	2,00,00,000/-
03.01.2013	1,50,00,000/-
06.01.2013	1,50,00,000/-
11.03.2016	1,00,000/-
26.06.2018	2,00,000/-
Total	11,32,98,083/-

Though the payments were made as agreed, the Corporate Debtor issued ledger confirmations to the Petitioner acknowledging in writing its admitted liability to pay the outstanding debt. The details of the acknowledgements are reproduced below:

Financial Year	Date with respect to which acknowledgement of liability made
2013-14	01.04.2014
2014-15	01.04.2015
2015-16	01.04.2016
2016-17	01.04.2017

2017-18	12.06.2018
2018-19	16.04.2019
2019-20	01.06.2020
2020-21	27.04.2021

Each of the above acknowledgement by the Corporate Debtor was made before the expiration of the prescribed period of limitation and last acknowledgement was made on 27.04.2021. Hence, the Petition is within the period of limitation.

7. It is further submitted by the Petitioner that upon inquiries, the Corporate Debtor had not utilized the loan amount for the development work of the subject land. Instead, Rs. 5,63,85,000/- had been fraudulently transferred by Mr. Girish Shah into his personal account and a sum of Rs. 16,53,97,501/- was transferred to M/s. Dhanvarsha Finvest Limited, a company owned by Mr. Girish Shah and Mr. Rajesh Shah as loans and advances.
8. In response to this, the Respondent has filed his Affidavit in reply dated 03.08.2022 (**“Reply”**) and submitted that the company named ‘Kava Impex Private Limited’ had invested in the Corporate Debtor and also holds 51% shares of the Respondent, and the three shareholders of the Kava Impex Private Limited are the Key Managerial Personnel (KMP) of the Petitioner. Therefore the Petitioner is having ‘Control’ over the Respondent and the alleged credit facility is only a related party transaction.
9. The Respondent submits that the alleged credit transactions are in violation of provisions of Section 295 of the Companies Act, 1956 which specifically prohibits any loan or guarantee by a company to any Body-

Corporate, the Board of Directors, Managing Director, Managing agent, Secretaries and treasurers, or Manager whereof, is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company. As the Kava Impex Private Limited, which is the majority shareholder of the Respondent, and the Key Managerial Personnel of the Petitioner are also holding a substantial stake in the Kava Impex Private Limited, the alleged loan transaction becomes a related party transaction. Therefore, the alleged loan could not be disbursed without prior approval of the Central Government and the Petitioner has not produced on record any such approval.

10. It is further submitted that the agreement dated 27.01.2011 provides for repayment of dues within one year through postdated cheques which were issued by the Respondent in favour of Petitioner but the said cheques were neither deposited by the Petitioner nor any demand notice was raised for repayment. Therefore, the amount which was never demanded, is not receivable being time barred and, therefore, the present petition is not maintainable. Mere confirmation and acknowledgement of debt by a director of such related party would not amount to any enforceable liability. In fact, present petition is nothing but a tool of oppression and mis-management against the minority stake holders of the Respondent company.

11. In response to the reply, the Petitioner had filed an Affidavit in Rejoinder (**“Rejoinder”**) dated 07.12.2022. With regards to the contention of the Corporate Debtor that the Petitioner is controlling the affairs of the Respondent and the loan is a related party transaction, the Petitioner submits that the Respondent company is in control of Mr. Girish Shah who holds 25% shareholding and who is the guarantor as well as the pledger under the loan agreement dated 27.01.2011.

With respect to the allegation relating to Kava Impex Private Limited, being a related party transaction, the Petitioner submits that more than Rs. 15 crores out of Rs. 24 crores were transferred to the Respondent, even before Kava Impex Private Limited become partner with the Respondent. A copy of partnership deed dated 01.11.2010 of M/s Mundara Developers is annexed to the company petition. The Petitioner further states that the Insolvency and Bankruptcy Code, 2016 nowhere prohibits the filing or admission of a petition where the Corporate Debtor is a related party.

12. The Petitioner submits that the loan transaction is not in contravention of Section 295 of the Companies Act, 1956 and deny that any prior approval of the Central Government was required for the said loan transaction and even if it assumed that there has been some non-compliance of any provision of law, that would not mean that the debt is not legally enforceable or that the petitioner is not Financial Creditor of the Respondent.

13. The Petitioner further submits that the debt is enforceable, recoverable and within limitation. The Respondent had acknowledged the debt and had also made part payments from time to time. The acknowledgement in the balance sheets filed by the Respondent from Financial Year 2010-11 till 2019-20, are made in writing and signed by its directors. Therefore upon each such acknowledgement, a fresh limitation period has begun and the question of debt being time barred does not arise.

FINDINGS:

14. We have heard the counsel for the parties and have also minutely gone through the record. As per the averments made in the petition under Section 7 of the Code, the Petitioner claims that the Corporate Debtor owes a sum of Rs. 89,76,41,443/- as on 31.05.2021. The Petitioner has further claimed that out of this amount a sum of Rs. 19,63,71,657/- is the principal amount and a sum of Rs. 70,12,69,786/- has been claimed on account of interest upto 31.05.2020. It has further been claimed that the Corporate Debtor was earlier a partnership firm named as M/s. Mundra Developers which was later on converted into public limited company. The Corporate Debtor was engaged in the business of sale and development of immovable properties.
15. The Petitioner initially advanced a sum of Rs. 5 crores as loan vide agreement dated 21.05.2010. The relevant loan document are annexed as Annexure-D whereby a sum of Rs. 5 crores was advanced and thereafter a sum of Rs. 19 crores was advanced as additional loan within a period of 7 months following the execution of the agreement dated 21.05.2010. Subsequent to that, the Corporate Debtor executed an agreement dated 27.01.2011 whereby it agreed to repay the principal amount of Rs. 24 crores along with interest and also issued post dated cheques towards interest and principal.
16. The Petitioner has further claimed that the Corporate Debtor committed a default in repayment of loan i.e principal as well as interest from 27.01.2011 onwards and at the time of filing the petition, a sum of Rs. 89.76 crores were outstanding.
17. The Petitioner has further claimed that the petition is within the period of limitation as the Corporate Debtor has been continuously

acknowledging the outstanding loan amount in the shape of ledger confirmations which are duly signed by the directors of the Corporate Debtor. The said ledger confirmations are Annexed as Annexure-R in the period from 2013-14, 23014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-2020 and 2020-21. Therefore, apparently the present petition seems to have been filed within limitation.

18. In the reply filed by the Corporate Debtor advancement of the loan has not been seriously disputed. Firstly, it has been claimed that the loan transaction is, in fact, a fraudulent and dubious transaction considering the fact that the Key Managerial Personnel of the Petitioner have been holding substantial shares of Kava Impex Private Limited, which is holding 50% majority shares of the Corporate Debtor. In this regard, it has been claimed that the Lalit R. Shah, a director in Kava Impex Private Limited held 25% shares in the October 2010. Mr. Sunil Desai also holds 25% stake in the Kava Impex Private Limited while Mr. Hanuman Chand hold 50% shareholding of Kava Impex Private Limited and all these persons are Key Managerial Personnel of the Petitioner company and, therefore, the loan transaction has been a related party transaction. However, in our considered view, the defence raised by the Corporate Debtor is not sustainable considering the fact that it has not been shown as to how the provisions of Section 7 of the Code cannot be invoked on account of the fact that some of Petitioner's Key Managerial Personnel are holding a stake in a different company/legal entity which further has substantial holding of the Respondent company. Moreover, the Counsel for the Corporate Debtor has not been able to refer to any provisions in the Code which debars the petitioner from filing petition under Section 7 under these grounds.
19. Secondly, the Corporate Debtor has raised the objection that this petition is barred under Section 295 of the Companies Act 1956, as the alleged credit facility was granted to the Corporate Debtor is in contravention of the provisions of Companies Act, 1956. Even this

contention raised on behalf of the Corporate Debtor does not seem to be tenable considering the fact that the receipt of the loan has not been disputed and having availed the credit facility from the petitioner and being itself a party to the loan transaction, the Corporate Debtor cannot now be heard harping that the loan transactions was against some provisions of law or for that matter section 295 of the Companies Act 1956.

20. Thirdly, it has been claimed by the Corporate Debtor that the acknowledgments of loan are not valid, considering the fact that the same has been signed by the Key Managerial Personnel of the Petitioner namely Mr. Hanuman Chand Jain, which cannot be said to be binding on the Corporate Debtor and, therefore, the acknowledgment of debt is not valid, leading to the conclusion that the petition is time barred. Even this contention raised on behalf of the Respondent/ Corporate Debtor is not tenable considering the fact that all the acknowledgments are shown to have been signed under the seal and stamp of the Corporate Debtor and it has not been claimed by the Respondent that the person/directors signing the acknowledgments were not directors of the Corporate Debtor or was not otherwise authorised or competent to sign the same. Therefore, even this contention raised on behalf of the Respondent is not sustainable in the eyes of law.

21. In view of the above discussion it is abundantly clear that the Corporate Debtor owes Rs. 89,76,41,443/- with principal of Rs. 19,63,71,657/- and interest of Rs. 70,12,69,786/-. The Corporate Debtor has failed to repay the aforesaid debt and has committed default in the repayment of the debt and has also acknowledged its liability from time to time. Therefore, giving cause of action to the Petitioner to invoke the provisions of Section 7 of the IBC and therefore this petition u/s 7 deserves to be admitted in the following terms:

ORDER

- a. The above Company Petition No. 699/IBC/MB/2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Mundara Estate Developers Limited**.
- b. The IRP proposed by the Financial Creditor, **Mr. Pinakin Surendra Shah**, having registration No. IBBI/IPA-002/IP-N00106/2017-18/10248, having address at A/201 Siddhi Vinayak Towers, B/H BMW Showroom Next to Kataria House, off S.G. Highway Makaraba, Ahmedabad, Gujarat-380051, having email id: pinakincs@yahoo.com, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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 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.
- f. 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.
- g. 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.
- 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 board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the 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.
- k. Accordingly, C.P. No. 699/IBC/MB/2021 is **admitted**.

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

Sd/-
Anuradha Sanjay Bhatia
Member (Technical)

Sd/-
Kuldip Kumar Kareer
Member (Judicial)