

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT NO. II)**

CP(IB) 64 Of 2021

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

In the Matter of:

Vidhata Machinery Private Limited

...Applicant/Financial Creditor

Versus

Aditya Prints Private Limited

...Respondent/Corporate Debtor

Order Pronounced On: 10/05/2022

Coram:

**DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**

MEMO OF PARTIES

Vidhata Machinery Private Limited

Registered Office at:
P-5, Pratik Bunglow,
2nd Floor, Vesu, Surat,
Gujarat- 395007.

...Applicant/Financial Creditor

Versus

Aditya Prints Private Limited

Registered Office at:
Heritage Creation,
P. No. A-11 Central Park,
GIDC Pandesara, Surat,
Gujarat-394221.

.... Respondent/Corporate Debtor

Present:

For the Applicant: Learned Counsel Mr. Monaal Davawala.
For the Respondent:

ORDER

1. This Application is filed by the Vidhata Machinery Private Limited, (“Applicant”), claiming to be a Financial Creditor, through Director Mr. Rajat Aggarwal, who is duly authorized vide Board Resolution dated 20.03.2021 to file this Application against the Corporate Debtor, Aditya Prints Private Limited (“Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the

Corporate Insolvency Resolution Process (CIRP), pursuant to default in repayment of inter corporate loan availed by the Corporate Debtor to the Applicant.

2. The Applicant is a private limited company incorporated under the provisions of the Companies Act, 1956 as on 23.06.2011 with CIN No. U29100GJ2011PTC066028 and its registered office is located at P-5, Pratik Bunglow, 2nd Floor, Vesu, Surat, Gujarat- 395007.
3. The Corporate Debtor is a private limited company incorporated under the provisions of the Companies Act, 1956 on 29.03.2007 with CIN No.- U17299GJ2007PTC050363 and the registered office is located at Heritage Creation, P. No. A-11 Central Park, GIDC Pandesara, Surat, Gujarat-394221. The authorized share capital of the Corporate Debtor is Rs. 1,50,00,000/- and paid-up share capital of the corporate debtor is Rs. 1,48,16,270/- as per the information available on Master Data. The Corporate Debtor is engaged in business of manufacturing and trading cotton textile industries.
4. The Applicant submitted that the corporate debtor was in need of funds for its bonafide business purposes relating to general corporate requirements and has approached the applicant for grant of financial assistance in this regard. Further, the applicant submitted that it had agreed to extend the financial facility to the corporate debtor on the agreed terms and conditions.

5. The applicant submitted that the applicant and corporate debtor entered into an Inter Corporate Loan Agreement (“Facility Agreement”) dated 23.06.2011 and the applicant provided finance of 2,69,70,000/- as per the terms and conditions of the agreement with 12% interest chargeable from the date of the first disbursement.
6. As per the Inter Corporate Loan Agreement dated 23.06.2011, except upon the occurrence of an event of default, entire loan amount with interest shall be repayable in full, on or before the 31.03.2015 by the corporate debtor to the applicant. Demand promissory note was also signed by the corporate debtor towards the applicant, and it is annexed with the present application.
7. The applicant further submitted that the applicant sent the letter dated 01.04.2015 to the corporate debtor for repayment of loan, along with interest. The corporate debtor replied vide letter dated 13.04.2015 and requested the applicant for granting additional period of two years for repayment of loan along with interest. The applicant and corporate debtor agreed and entered into Supplementary Inter Corporate Loan Agreement dated on 18.04.2015 and extended the period of repayment of entire loan alongwith interest for further two years from 31.03.2015 which is on before 31.03.2017. The Supplementary Inter Corporate Loan Agreement is also annexed with the present application.

8. The applicant submitted that the corporate debtor on various occasions acknowledged the debt vide letters dated 08.04.2017 and 10.01.2018 and further stated that corporate debtor is facing financial crisis and had incurred huge losses. Corporate debtor further made assurances to repay the amount of loan, along with interest, as soon as it recovers from such huge losses.
9. The applicant further submitted that the applicant, through letter dated 10.05.2019, requested the corporate debtor to repay the outstanding debt amount.
10. The corporate debtor has filed reply through its Director Mr. Pankaj Chugh, authorised vide Board Resolution passed by the Board of Directors dated on 26.10.21 and submitted that applicant and the corporate debtor entered into an Inter Corporate Debtor Agreement dated 23.06.2011 and as per the terms of the agreement, applicant had sanctioned loan amount of Rs. 2,95,00,000/- out of which corporate debtor had re-paid Rs. 25,30,000/- (Rs. 25,00,000/- on 10.04.2012 and Rs. 30,000/- on 29.05.2012). However, Rs. 5,88,26,229/- is required to be paid, including interest at the rate of 12% per annum from 23.06.2011 to 31.03.2015.
11. The corporate debtor submitted that applicant and the corporate debtor had mutually decided and signed Supplementary Inter-Corporate Loan Agreement on 18.04.2015 wherein the corporate

debtor has agreed to repay its loan within further period of 2 years from 31.03.2015, and assured repay in full on or before 31.03.2017.

12. The corporate debtor further submitted that due to financial crunches faced by corporate debtor and due to instability in market, unexpected demonetization, due to formation of new tax policies imposed by the Central Government and several waves of Covid-19 pandemic and lockdown imposed by the Government, the business of corporate debtor was badly hampered, leading to corporate debtor's inability to repay the loan amount. Corporate debtor admits that as per timeliness framed in agreement, corporate debtor was required to pay an amount of Rs. 5,88,26,229/- (Rs. 2,69,70,000/- principal amount and Rs. 3,18,56,229/- interest amount) till 01.04.2021, however, same is not paid.

13. The corporate debtor submitted that considering the business relation with applicant and prevailing market situation, corporate debtor humbly pleads that corporate debtor may be granted some reasonable time and opportunity to fully repay the entire amount of loan as per terms of agreement.

14. During hearing of the matter, when the query was raised with regard to limitation, the learned counsel for the applicant stated that he shall file affidavit with respect to the extension of limitation in view of the order of the Hon'ble Supreme Court considering pandemic lockdown from 24.03.2020. Learned Counsel for the Applicant further

undertook to file the last available balance-sheet of the corporate debtor. In compliance of the order dated 01.04.2022, the applicant filed the latest balance-sheet of corporate debtor of year 2020-21 and also filed copy of the order passed by the Hon'ble Supreme Court of India related to limitation in "*In Re: Cognizance for Extension of Limitation (Suo Motu Writ Petition(C) No. 3 of 2020) dated 10.01.2022*" wherein the following observation is made:

"5...

I. ... it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022."

15. We have considered the submissions and perused documents on record. In view of admission made in the reply, it is apparent that the payment of claim amount to the Applicant has been defaulted by the Corporate Debtor. In these circumstances the claim stands established and prima facie there is default in payment of the amount due to the Applicant.

16. The Registered Office of the Corporate Debtor is situated in Surat, Gujarat and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application.
17. The date of default as mentioned in the Form 1 Part IV of the application is 31.07.2017. In view of order of the Hon'ble Supreme Court in *In Re: Cognizance for Extension of Limitation (Suo Motu Writ Petition(C) No. 3 of 2020)* the application is filed within the limitation and is not barred by law.
18. The Applicant has proposed the name of Mr. Gordhanbhai Ratnabhai Godhani to be appointed, who is hereby appointed as Interim Resolution Professional (IRP), having Registration No. IBBI/IPA-001/IP-P01201/2018-2019/11921 and address at 16, Sakarta Society, Kargil Chowk, Punagam, Surat, Gujarat-395010, Email id-rgodhani@gmail.com. The written consent of IRP in Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 is filed.
19. As a consequence of the Application being admitted, the moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate Debtor prohibiting all of the actions mentioned under Section 14(1)(a) to (d). However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

20. We direct the Applicant to deposit a sum of Rs. 2,00,000/- with the Interim Resolution Professional, Mr. Gordhanbhai Ratnabhai Godhani to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor.
21. Copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP appointed herein, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records and also to RoC for updating the Master Data. RoC shall send compliance report to the Registrar, NCLT.
22. Application is allowed and disposed of.

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**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

-sd-

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**

Abhishek Singh