IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-I

CP (IB) 1238/MB/2019

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

Mr. Dinesh S Shetty,

403, Janki Center, Veera Desai Road, Andheri West, Mumbai - 400053

…Petitioner /Financial Creditor

Versus

Smit Hotels Private Limited

[CIN:U55101PN2010PTC137053]

1507, Padmashraddha Nursary Road, Dapoli, Ratnagiri - 415712

… Respondent/Corporate Debtor

Order Delivered on 10.02.2023

Coram:

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

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

Appearances:

For the Petitioner : Mr. Manoj Harit, Advocate

For the Respondent : Mr. Yogesh B Dandekar, Advocate

ORDER

Per : Shyam Babu Gautam, Member,(Technical)

1. The present petition is filed by **Dinesh S Shetty**, (hereinafter referred to as "the Financial Creditor") under Section 7 of the Insolvency &

Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process **("CIRP")** against **Smit Hotels Private Limited,** (hereinafter referred to as "the Corporate Debtor").

2. The Corporate Debtor was incorporated on 05.08.2010 under Companies Act, 1956. Its registered office is situated at 1507, Padmashraddha Nursary Road, Dapoli, Ratnagiri - 415712. Hence, this Tribunal has the jurisdiction to entertain this petition.

3. The total amount of debt alleged to be in default is Rs.32,98,678 (Rupees Thirty Two Lakh Ninety Eight Thousand Six Hundred and Seventy Eight Only). Out of this, the Principal amount is Rs.30,00,000/- and Rs.2,98,678 is the amount of interest calculated at the rate of 14.35% per annum. The date of default is 01.08.2018.

Submissions of the Financial Creditor by the way of Petition:

4. The Corporate Debtor is running a hotel named 'Sun Star' at Mal Naka, Opp. Government Rest House, Ratnagiri.

5. In or around June 2018, the Corporate Debtor was facing recovery action for defaults in loan under the provisions of SARFAESI Act initiated by its lender Bank.

6. In pursuance thereof, the Bank had sought to take physical possession of the hotel property which was mortgaged and leased to Crystal Hospitality & Foods.
7. Upon the request of the Director, Corporate Debtor and Partners of the Corporate Debtor, the Petitioner got involved in finding a solution/resolution of the said debt.
8. All the Directors of the Corporate Debtor requested to the Petitioner to lend Rs.30,00,000/- for temporary period of 20 to 30 Days so that the loan amount will be out of NPA. It was also assured to the Petitioner that the Corporate Debtor will pay interest @14.35% p.a. (i.e. Bank Lending Rate for Term Loan) as the Corporate Debtor was expecting funds from sale of their Personal Property.
9. Accordingly, the amount has been advanced by the Petitioner to the Corporate Debtor on dates as per shown in the Part IV of the Application.
10. In the month of August, 2018, when the Petitioner demanded repayment of the loan the Corporate Debtor has requested for some more time for repayment as the expected funds were getting delayed.
11. Even after that, the Corporate Debtor has failed to keep its promise and repay the said loan. Thereafter, several intimations, orally and

telephonic, were given to the Corporate Debtor regarding repayment of the loan taken by him from the Petitioner.

12. Eventually, the Petitioner sent a Legal Notice dated 07.02.2019 to the Corporate Debtor and also to all the Directors for repayment of the said loan.

13. On 01.03.2019, the Corporate Debtor has replied to the Legal Notice dated 07.02.2019. The Corporate Debtor has denied all the contentions of the said Legal Notice and had also denied the loan taken by him.

14. Therefore, the Petitioner has left with no option but to take the legal recourse by virtue of this present Petition.

Submissions of the Corporate Debtor by the way of Affidavit in Reply:

15. The Corporate Debtor submits that the present Petition filed by the Petitioner u/s 7 of the Code is not maintainable as the Petitioner does not fall into the category of Financial Creditor.

16. The Corporate Debtor never requested the Financial Creditor to lend Rs.30,00,000/- (Rupees Thirty Lakh Only) as a loan for a temporary period of 20 to 30 days. Additionally, no assurance to pay the Financial Creditor 14.35% interest per annum was given.

17. The Financial creditor is the Chartered Accountant of Crystal Hospitality & Foods. Corporate Debtor has leased the premises to Crystal Hospitality & Foods for running the Sun Star Hotel and the

Financial Creditor is nowhere concerned with Corporate Debtor in the above transaction.

18. Crystal Hospitality & Foods is running the business of Corporate Debtor's Sun Star Hotel at the agreed monthly compensation payable to the Corporate Debtor. There has been irregularity on the part of Crystal Hospitality & Foods in paying the monthly compensation to the Corporate Debtor.

19. The Corporate Debtor was facing the recovery action under SARFAESI, Act, 2002 in respect of its hotel property which was mortgaged by the Corporate Debtor to Bank of India.

20. Such recovery action faced was due to irregularity of the monthly compensation paid by Crystal Hospitality & Foods. The Corporate Debtor informed Crystal Hospitality & Foods about initiation of such recovery order pursuant to which it was asked to pay the defaulted monthly compensation so as to regularise the Loan Account.

21. Accordingly, Crystal Hospitality & Foods had arranged the funds and paid the Outstanding Loan Amount in order to save the Business of Hotel which was leased out to Crystal Hospitality & Foods.

22. The Corporate Debtor submits that it had never requested the Financial Creditor to lend money to them nor there is any contract entered between the Corporate Debtor and the Financial Creditor.

23. The Corporate Debtor has never promised the Financial Creditor to pay back the said amount of Rs.30,00,000/- nor it had requested for an extension of time to pay back in August 2018.

Findings:

24. We have heard both the parties and perused the records.

25. We note that the Financial Creditor has solely based this petition on the fact that an amount of Rs.30,00,000/- was disbursed by it to the Corporate Debtor. The Financial Creditor has placed on record copies of the bank statement which prove the disbursal of the said amount.

26. The Corporate Debtor in his reply has although not contested the disbursal of such amount however, it has contested the purpose of such disbursal. The Corporate Debtor has claimed that the amount disbursed was not a loan transaction.

27. Hence, the burden to prove the purpose of such disbursal and the whether the same was disbursed against time value of money lies upon the Financial Creditor. However, the Financial Creditor has not placed on record any document which indicates the nature of such disbursal.

28. In the light of the above facts, this Tribunal is of the view that the Financial Creditor has failed to satisfy the debt and default which are the main essentials under Section 7 of the Code. Hence, this petition deserves to be dismissed.

29. It is, accordingly, hereby ordered as follows:

The petition bearing **CP (IB) 1238/MB/2019** filed by **Mr. Dinesh S Shetty,** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Smit Hotels Private Limited**, Corporate Debtor is hereby **rejected**.

Sd/-	**Sd/-**
SHYAM BABU GAUTAM	**JUSTICE P.N. DESHMUKH**
Member (Technical)	**Member (Judicial)**

10.02.2023
Priyal