



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 736/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

**Devkinandan Shankarlal Agarwal And
Another**

...Financial Creditor/Applicant

V/s

M/s Mangalmurti Mats Private Limited

[CIN: U36935MH1996PTC102502]

...Corporate Debtor/Respondent

Order Dated: 24.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Shrey Fatterpekar, Advocate.
For the Respondent(s) : None Present

Per: Prabhat Kumar, Member Technical

1. This is an Application being C.P. (IB) No. 736/MB/C-IV/2021 filed on 07/07/2021 by Mr. Devkinandan Shankarlal Agarwal And Mrs. Sunita Devkinandan Agarwal, the Financial Creditors/Applicants, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against M/s Mangalmurti Mats Private Limited, Corporate Debtor,



for seeking initiation of Corporate Insolvency Resolution Process (CIRP). This Application has been signed by Mr. Devkinandan Shankarlal Agarwal stating in the Form 3 his relationship with the Applicant Financial Creditor(s) as co-director.

2. It is stated in the Application that the Financial Creditors are also co-directors of Corporate Debtor; and had advanced loan in favour of the Corporate Debtor amounting to Rs. 92,98,407/- (Rupees Ninety-Two Lacs Ninety-Eight Thousand Four Hundred and Seven Only) and Rs.42,11,528/- (Rupees Forty-Two Lacs Eleven Thousand Five Hundred and Twenty-Eight Only) respectively as short-term loan from time to time amounting to a total of Rs. 1,35,09,935/- (Rupees One Crore Thirty-Five Lacs Nine Thousand and Nine Hundred and Thirty-Five Only); and also extended guarantee to the credit facility enjoyed by the Corporate Debtor disbursed on different dates in parts beginning form 2014-2019. The date of default as mentioned in Part 4 of the Form 1 is 31.03.2021.
3. The Applicants have annexed the Statement Of Account and Ledger account of the Financial Creditor(s) showing the disbursement of the loan amount. However, the statement of account with the Bank submitted by the Financial Creditor(s) alongwith the application belongs to one M/s Pioneer Steels and the application does not specify any relation of the Financial Creditors with this firm.
4. No copy of Agreement has been filed setting out the terms of the said loan. It is submitted that the said loan was provided from time to time to avoid slippage of the loan account of the Corporate Debtor to the NPA category.



5. The Corporate Debtor has neither filed any reply to the present Application nor appeared before the Bench despite notices sent to it on various occasions and was set *ex-parte* on 23.11.2022.

Findings

6. We have carefully gone through the pleadings available on records and considered the arguments of both the sides.
7. In the present case, there is no dispute on the amount advanced by M/s. Pioneer Steels. However, in the absence of any document evidencing relationship of the Financial Creditor with the said firm, it cannot be concluded that the Financial Creditor has a right to claim these amounts. Accordingly, on the basis of documents annexed to the Application, the Bench is of the view that the Financial Creditor has no locus to file the present Application.
8. Nonetheless, these amounts were advanced without any stipulation of repayment date and accordingly are in nature of amounts repayable on demand. The Applicant Financial Creditor has not filed any communication seeking repayment of debt, if any, from the Corporate Debtor. Even if it is considered that the amounts paid from the account of M/s. Pioneer Steels belong to the Applicant, the amounts so paid cannot be said to have become due. Since the amount has not fallen due, there can-not be question of any default having taken place. The Applicant has filed Record of the default with the Information Utility i.e NeSL Certificate dated 07.05.2021 in accordance with Section 7(3) of the code. However, on perusal it is seen that the filed document does not contain the certificate of NeSL, in absence of which it is not clear how the Corporate Debtor responded to this. The



cause under Section 7 only on occurrence of default. Hence, this petition is not maintainable on this ground also.

9. In view of the above facts, this Bench is of the view that this petition is therefore not maintainable under Section 7 of the Code for initiation of CIRP against the Corporate Debtor and deserves to be Dismissed.

ORDER

10. The petition bearing CP (IB) 736/MB-IV/2021 filed by Mr. Devkinandan Shankarlal Agarwal and another, the Financial Creditor(s), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s Mangalmurti Mats Private Limited, the Corporate Debtor, is **Dismissed**.
11. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

Prabhat Kumar
Member (Technical)
/Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)