**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 135 of 2020**

**IN THE MATTER OF:**

**Sushil Kumar Singh** ...**Appellant**

**Versus**

**Shalini Chaudhary & Ors.** ...**Respondents**

**Present:**
**For Appellant:** **Mr. Anurag Ojha, Advocate.**
**For Respondent:** **Swaralipi Deb Roy, Advocate for R2**
**Ms. Tishampati Sen and G. Karthikeyan, Advocates**

**O R D E R**

**05.08.2022:** This appeal is directed against the order dated 13.11.2019 by which an application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short 'Rule') by Respondent No. 1 to initiate the Corporate Insolvency Resolution Process (in short 'CIRP') against the Respondent No. 2 'Mothers' Pride Dairy India Pvt. Ltd.' has been allowed.

2. Shorn of unnecessary details, the brief facts of this case are that Respondent No. 1, being the Promoter Director and Shareholder, alleged to have infused an amount of Rs. 19,17,48,515 in the Company i.e. 'Mothers' Pride Dairy India Pvt. Ltd.' (Corporate Debtor) and was issued 1,29,42,999 equity shares (Rs. 10 each) of a value of Rs. 12,94,29,990/-. The Respondent No. 1 ceased to be a director of the Corporate Debtor w.e.f. 01.04.2017 and transferred entire shareholding to Respondent No. 3 who is the current director of the Corporate Debtor.

3. It is also alleged that at the time of saying good bye to the Company, the Respondent No. 1 agreed to advance a loan of Rs. 2 Crores to the Corporate Debtor and entered into an agreement on 10.07.2017 that the said loan shall be repaid to her by the Corporate Debtor in four equal tranches of Rs. 50,00,000/- each but the loan amount did not carry any interest. The application under Section 7 of the Code came to be filed with the allegation that Respondent No. 2 did not pay the first and second instalments, due on 10.01.2019 and 30.06.2019, total amounting to Rs. 1 Crore. The Respondent No. 1, alleged to have issued a notice of default dated 19.08.2019, invoking the terms and conditions of the agreement dated 10.07.2017 for the recovery of the whole amount.

4. While contesting the said application, the Respondent, in the application before the Adjudicating Authority raised an issue that the agreement dated 10.07.2017 was later on terminated vide agreement dated 10.12.2018 and therefore, the application filed under Section 7 is not maintainable. However, the Adjudicating Authority admitted the application and hence, the present appeal has been filed.

5. At the outset, Counsel for the Appellant has submitted that the application filed under Section 7 of the Code was not even maintainable before the Adjudicating Authority because the CIRP proceedings were already initiated in another case bearing CP (IB) 60/(PB)/2017 by the Adjudicating Authority vide order dated 27.06.2017 and the moratorium was also imposed. It is also submitted that once the Company is in CIRP, it had no jurisdiction to enter into financial transaction.

6. In reply, Counsel for the Respondent No. 1 has though admitted that application bearing CP (IB) No. 60/(PB)/2017 'M/s Portrait Advertising and Marketing Pvt. Ltd.' was admitted by the Adjudicating Authority as stated by Counsel for the Appellant but the public announcement was made by the IRP on 18.07.2017 much after the execution of the loan agreement on 10.07.2017. It is also submitted that even otherwise the loan amount is reflected in the balance sheet of the Corporate Debtor.

7. Counsel for Respondent No. 2/RP has submitted that Respondent No. 2 has been unnecessarily made a party because no relief is being sought against him.

8. We have heard Counsel for the parties and perused the record with their able assistance.

9. The issue is involved in this case as to whether the loan agreement dated 10.07.2017 could have been executed at the instance of the Corporate Debtor after initiation of the CIRP in another proceedings against it?

10. In this regard, it would be suffice to say that once the CIRP proceedings are initiated and the IRP has been appointed, the Corporate Debtor shall not have any jurisdiction to enter into any financial transaction making the Company liable. The argument raised by Counsel for the Respondent No. 1 that the public announcement was made on 18.07.2017 cuts no ice as it has to be seen on the date on which the CIRP were initiated and in this case the CIRP were initiated in the case of 'M/s Portrait Advertising and Marketing Pvt. Ltd.' against the Respondent No. 2 on 27.06.2017, whereas the loan agreement was executed much thereafter on 10.07.2017.

11. Thus, in view thereof, the entire proceedings initiated, at the instance of Respondent No. 1, by the Adjudicating Authority, by virtue of the impugned order vitiates, the present appeal is hereby allowed and the impugned order is hereby set aside.

**[Justice Rakesh Kumar Jain]**
**Member (Judicial)**

**[Mr. Kanthi Narahari]**
**Member (Technical)**

**[Dr. Alok Srivastava]**
**Member (Technical)**

Sheetal/RR