

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI SPECIAL BENCH, COURT - II**

CP (IB) 4362/MB/2018

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

Hindustan Candle Manufacturing Co. Pvt.
Ltd.

..... Applicant/ Financial Creditor

Versus

Shamik Enterprises Private Limited

..... Corporate Debtor

Order Delivered on :- 03.02.2022

Coram:

Smt Suchitra Kanuparthi : Hon'ble Member (Judicial)

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

Appearances:

For the Financial Creditor: Mr. Amir Arsiwala, Advocate a/w Priyanka
Shetty

For the Corporate Debtor: Ms. Krishna Baruah, Advocate

ORDER

Per:- Shyam Babu Gautam, Member Technical

- A. This Company Petition is filed by *Hindustan Candle Manufacturing Co. Pvt. Ltd.* (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Shamik Enterprises Private 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 “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- B. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of Rs. 22,72,33,865/- (Rupees Twenty-Two Crores Seventy-Two Lakhs Thirty-Three Thousand Eight Hundred and Sixty-Five Only) together with interest at the rate of 12% p.a. amounting to Rs. 8,98,15,865/- (Rupees Eight Crores Ninety-Eight Lakhs Fifteen Thousand Eight Hundred and Sixty-Five Only) from the date of issuance of each Inter Corporate Deposits till October 31, 2018 and further interest at the rate of 12% p.a. from November 1, 2018 till realization. The total amount claimed to be in default is Rs. 31,70,49,730/- (Rupees Thirty-One

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Crores Seventy Lakhs Forty Nine Thousand Seven Hundred and
Thirty Only).

The Submissions of the Financial Creditor are as follows: -

1. The Financial Creditor submits that from February, 2013 till February, 2014 the Financial Creditor advanced an amount of Rs. 1,75,00,000/- (Rupees One Crore Seventy Five Lakhs Only) to the Corporate Debtor by way of Inter Corporate Deposits (ICDs). The said ICDs were repayable after one year with Interest @ 12% p.a. Out of the aforesaid amount, the Corporate Debtor made payment of Rs. 36,00,000/- (Rupees Thirty Six Lakhs Only) thus an amount of Rs. 1,39,00,000/- (Rupees One Crore Thirty Nine Lakhs Only) remained unpaid as on 31.03.2014.
2. The Financial Creditor submits that however, the interest accrued in the year 2013-2014 was capitalized in the next Financial Year. As on, 01.04.2014, the outstanding amount due from the Corporate Debtor was Rs. 1,39,99,999/- along with Interest for the previous Financial Year amounting to Rs. 11,43,391/-. The Corporate Debtor has admitted the said liability to pay in respect of the same through the balance confirmation/renewal letters issued by the Corporate Debtor.
3. The Financial Creditor states that in addition to the above mentioned outstanding amounts due and payable by the Corporate Debtor in the Financial Year 2014-2015, the Financial Creditor advanced an amount of Rs. 5,07,50,000/- to the Corporate Debtor. Further the Corporate Debtor in the Financial Year 2014-2015 made payment of Rs. 21,00,000/- to the Financial Creditor out of the total outstanding amount.

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4. Thereafter, by letter 20.03.2015, the Corporate Debtor renewed the ICD's of Principal amount of Rs. 6,25,50,000/-. As of 31.03.2015, the total unpaid amount of the ICD's including interest outstanding for the previous Financial Year was Rs. 6,36,93,391/-. However, on 01.04.2015, the outstanding amount due and payable by the Corporate Debtor was Rs. 6,36,93,391/- along with the interest capitalized for the Financial Year 2014-2015 amounting to Rs. 23,50,780/- aggregating to Rs. 6,60,44,168/-.
5. Further, in the Financial Year 2015-2016, the Corporate Debtor sought for advances from the Financial Creditor. As requested by the Corporate Debtor, the Financial Creditor advanced an additional sum of Rs. 8,14,60,000/-. During the Financial Year 2015-2016, the Corporate Debtor once again made payment of Rs.5,82,302/- to the Financial Creditor with an assurance that all the outstanding amounts will be returned/repaid with interest. Thereafter the ICD's of the principal amount of Rs. 14,34,27,698 were renewed. Thus, as on 31.03.2016, the total unpaid amount of the ICD's including interest outstanding for the previous Financial Year was Rs. 14,69,21,869/-.
6. However, as on 01.04.2016, the outstanding amount due and payable by the Corporate Debtor was Rs. 14,69,21,869/- plus the interest capitalized for the Financial Year 2015-2016 amounting to Rs. 1,06,34,153/-, aggregating to Rs. 15,75,56,019/-. The Corporate Debtor by its own letter confirmed that an amount of Rs. 15,75,56,019/- was due and payable by the Corporate Debtor to the Financial Creditor.
7. During the Financial Year 2016-2017, the Financial Creditor advanced an additional sum of Rs. 9,58,60,000/-. After repeated requests and

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reminders to return the amounts advanced to the Corporate Debtor, the Corporate Debtor made a payment of Rs. 1,09,53,833/- with an assurance that the balance outstanding amounts would also be returned within a short period. As of 31.03.2017, the total unpaid amount of ICD's including interest outstanding for the previous Financial Years was Rs 24,24,62,189/-.

8. The Financial Creditor states that however as 01.04.2017, the outstanding amount due and payable by the Corporate Debtor to the Financial Creditor was Rs. 24,24,62,189/- plus interest capitalized for the Financial Year 2016-2017 amounting to Rs. 2,31,11,844/- aggregating to Rs. 26,55,74,033/-.
9. In the Financial Year 2017-2018, in spite of repeated assurances of the Corporate Debtor to pay the outstanding due amount, the Corporate Debtor made a payment of Rs. 11,00,000/- to the Financial Creditor and further no payments were made till date.
10. The Financial Creditor submits that the annual Tax statement of the Financial Creditor evidencing the payments made by the Corporate Debtor towards interest amount for the Financial Years 2013-2014, 2014-2015, 2015-2016 and 2016-2017. The non-payment by the Corporate Debtor constitutes breach on its part.
11. The Financial Creditor states that copy of Bank Statements for the period from 01.04.2017 to 31.03.2018 of the Financial Creditor evidencing the last payment made by the Corporate Debtor is on record. The Financial Creditor has also annexed the Bank Statements of the Financial Creditor for the years 2012-2017.

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12. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

13. The Corporate Debtor filed its Reply dated 19.07.2019 in their defence. The Corporate Debtor has raised the issue of maintainability. The Respondent states that the Financial Creditor has not complied with the requirements of Section 7 of the Code. The authorization given in the form of Board Resolution is of general nature and does not expressly refer to initiation of the CIRP against the Respondent under the code. The Board Resolution passed at the meeting was on 01.02.2008 that is much prior to the Code being brought in force. Further, the Respondent states that at the foot of the said Board Resolution the date is written by hand i.e. 10.11.2018 only to show that the resolution was passed after the Code. Therefore, the said document is therefore tampered. The date at the foot of the page is 3 days prior to the Petition being notarized i.e. 13.11.2018.

14. The Corporate Debtor states that the Respondent vide its letter dated 12.12.2018 requested the Financial Creditor to provide inspection of the original documents. However, the Advocates for the Financial Creditor vide its letter dated 03.01.2019 refused to give inspection of the documents.

15. Further the Respondent states that the Petition is filed by a Director/Shareholder, who does not represent the majority

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shareholding of the Applicant Company, as he holds 48% of the shares in the Applicant Company.

16. Hence, the Corporate Debtor submits that the present Company Petition is to be dismissed.
17. The Financial Creditor vide its Affidavit in rejoinder stated that the debt of the Financial Creditor is duly admitted by the Corporate Debtor. In the reply of the Corporate Debtor, there is a mere bare and evasive denial of the liability of the Corporate Debtor.
18. The Financial Creditor further submits that on several occasions the Corporate Debtor was directed to file reply but the Corporate Debtor chose not to reply but instead filed three Miscellaneous Applications with an intention to delay the proceedings under the Code. It is only a day before the hearing of the matter, the Corporate Debtor filed its reply.
19. The Financial Creditor states that the inspection as sought by the Corporate Debtor was not denied but only a clarification was asked by the Financial Creditor as to under which provision the Corporate Debtor were asking for the inspection of the documents. There is no provision under the Code for the inspection of the documents and the said inspection is a mere tactics on the part of the Corporate Debtor to delay the proceedings.
20. Further, the Financial Creditor states that no part of the claim is barred by limitation. The Inter Corporate Deposits were extended on a yearly

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basis and the receipts for the same have been annexed to the main Petition. The Financial Creditor states that though the ICD's were granted in the year 2013 and extended further by a period of one year, the Corporate Debtor has further addressed letters dated 20.03.2015 thereby extending the limitation. Further on 01.04.2016, the Corporate Debtor addressed a letter to the Financial Creditor for confirmation of the accounts.

21. Further the Financial Creditor states that the Board Resolution is not tampered, and the said allegation is not substantiated by the Corporate Debtor. The Board Resolution produced is a genuine and valid authorization.

FINDINGS

22. We have heard the submissions of the Counsel appearing for the Financial Creditor and Counsel appearing for the Corporate Debtor.
23. This Bench observes that the Corporate Debtor has received the ICD's from the Financial Creditor which is evident from the receipts of ICD's issued by the Corporate Debtor. Further the ICD's were renewed for further period of one year which is evident from the loan extension letter dated 20.03.2015 and 21.03.2016 addressed by the Corporate Debtor to the Financial Creditor. It is also seen that the Corporate Debtor has also made part payments towards interest which were adjusted against the total outstanding balance which was due and payable by the Corporate Debtor.

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24. Further it is an well settled law that a general authorization issued by the Financial Creditor in favour of officers is sufficient to initiate CIRP against the Corporate Debtor. The Hon'ble NCLAT in *Palogix Infrastructure Private Limited v/s ICICI Bank Limited* has held that if the officer was authorized to sanction loans and had done so, the application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 cannot be rejected on the ground that no separate specific authorization letter has been issued by the Financial Creditor in favour of such officer. In such cases, the Corporate Debtor cannot take the plea that while the officer has power to sanction the loan, such officer has no power to recover the loan amount or to initiate corporate insolvency resolution process, in spite of default in repayment.

25. We hereby approve the view taken by the NCLAT in *Palogix Infrastructure* (Supra).

26. Hence, it is seen from the records available that the Financial Creditor has established that the various term ICD's facilities were duly disbursed to the Corporate Debtor but there is no payment of Debt on the part of the Corporate Debtor. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the I&B Code.

Hence, accordingly We, have perused this Petition/Application filed under Section 7 of the Code r.w. Rule 4 of the Rules and come to conclusion that, pursuant to S. 7 (7) (5) (a) of the Code this Application is complete under sub-section (2) of S. 7 of the Code.

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27. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential ingredients, i.e. existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case.
28. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘**Admission**’.
29. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

ORDER

- a. **The above Company Petition No. (IB) - 4362(MB)/2018 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Shamik Enterprises Private Limited.
- b. This Bench hereby appoints Mr. Kinjalkumar Madhubhai Chaudhary, Registration No: IBBI/IPA-001/IP-P02196/2020-21/13463 as the Interim

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Resolution Professional having address at 9B, Vardan Complex, Nr. Vimal House, Lakhudi Circle, Navrangpur, Ahmedabad - 380015, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. Five Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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 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.

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- e. 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.
- f. 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.
- g. 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.
- 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 suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

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j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

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

Sd/-

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

Sd/-

**SUCHITRA KANUPARTHI
(MEMBER JUDICIAL)**