

**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 1256/IB/MB/2022

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

In the matter of

Creative Industries Unit II

501, Embassy Centre, Nariman Point,
Mumbai – 400021, Maharashtra

**..... Financial Creditors/
Petitioners**

Vs

S S Collection LLP

1st Floor, 8/34, Grants Building, Arthur
Bunder Road, Colaba, Mumbai – 400005,
Maharashtra

..... Corporate Debtor

Order Pronounced On: 12.05.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearances: -

For the Petitioner: Adv. Gyanika Kochar

For the Respondent: Adv. Auroma Law

Per: Shri. Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The above Company Petition is filed by **Creative Industries Unit II** hereinafter called as the ("**Financial Creditors**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **S S Collection LLP** hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Financial Debt of Rs. 1,32,80,357/- including interest.
2. The Financial Creditor advanced a sum of Rs. 2,00,00,000/- to the Corporate Debtor on 28.08.2018 at the rate of 12% p.a. payable quarterly repayable within a period of 1 year.
3. The Corporate Debtor repaid a sum of Rs. 1,00,00,000/- to Financial Creditor on 24.12.2018.
4. The Corporate Debtor continued to service the loan and made the last interest payment of a sum of Rs. 2,72,219/- for the quarter ended 31.12.2019 paid on 10.01.2020. Pursuant thereto, they neither serviced the interest payments nor repaid the loan amount.
5. In April, 2021, when the Financial Creditor informed the Corporate Debtor that they would be initiating legal proceedings against them. However, the Corporate Debtor informed the Financial Creditor that they were facing financial difficulties and thus requested the Financial Creditor for a period of 6 months to clear the outstanding dues.
6. In order to prove their bona fides, the Corporate Debtor issued Confirmation of Accounts Statement on 01.04.2021 admitting and acknowledging that they were liable to pay to the Financial Creditor a sum of Rs. 1,00,00,000/- being the principal amount and thereafter on 01.08.2021, they issued Confirmation of Accounts

Statement for the F.Y. 01.04.2020 to 31.03.2021 admitting and acknowledging that they were liable to pay to the Financial Creditor a sum of Rs. 13,76,795/- towards the interest component totalling to a sum of Rs1,13,76,795/- (Rupees One Crore Thirteen Lakhs Seventy Six Thousand Seven Hundred and Ninety Five Only).

7. Despite undertaking to repay the loan within a period of 6 months from April, 2021, the Corporate Debtor has failed to pay a single farthing to the Financial Creditor till date.
8. As and by way of a last chance, the Financial Creditor sent Notice dt. 18.10.2022 calling upon the Corporate Debtor to repay a sum of Rs. 1,31,78,439/- being the outstanding dues as on 30.09.2022 but to no avail. Hence this Petition.

Reply filed by the Corporate Debtor: -

9. The Corporate Debtor has submitted in the reply that an amount of Rs. 2,00,00,000/- (Rs. Two Crore only) was received by the Corporate Debtor as a friendly loan from the Financial Creditor. It is further stated that a sum of Rs. 1,02,69,260/- (Rs. One Crore, Two Lakhs, Sixty Nine Thousand, Two Hundred and Sixty Only) is due and payable to the Financial Creditor and not Rs. 1,13,76,795/- (Rs. One Crore, Thirteen Lakhs, Seventy Six Thousand, Seven Hundred and Ninety Five Rupees only) as reflecting in the Statement of Confirmation dated 01.08.2021. In fact, in the said confirmation, there is a typographical error by the staff of the Corporate Debtor, and if the said Confirmation is perused, the same is not confirmed by any of our Designated Partners.
10. The Corporate Debtor has further submitted that the Corporate Debtor has, in the past, fulfilled its commitments and which is evident by the fact that upon receiving the friendly loan of Rs. 2,00,00,000/-, the Corporate Debtor had instantly repaid the sum of Rs. 1,00,00,000/- within four months. Even today, the Corporate Debtor is ready and willing to fulfil its commitments. Thus, looking at the bad condition of the market, the Corporate Debtor would need some time between eight to twelve months to clear the dues of the Financial Creditor.

FINDINGS:-

11. We have heard the Counsel for the Parties and gone through the record.
12. It has been candidly admitted by the Corporate Debtor in the reply that an amount of Rs. 2 Crores was received as friendly loan from the Financial Creditor. It has also been admitted in the reply that a sum of Rs. 1,02,69,260/- was due and payable to the Financial Creditor though in the Petition an amount of Rs. 1,13,76,795 has been claimed as per the statement of confirmation dated 01.08.2021. It has been claimed that there is a typographical error in the said statement. It has also been stated in the reply that due to bad conditions prevailing in the market, the Corporate Debtor needed some eight to twelve months time to clear the dues of the Financial Creditor.
13. From a perusal of the reply filed by the Respondent/Corporate Debtor, absolutely no defence has been raised, rather the existence of the Financial Debt has been candidly admitted. Apart from this, the Respondent has admitted its liability in the confirmation of accounts dated 01.04.2021 and 01.08.2021 which are Exhibit B and C respectively. It is further evident from the record that the loan of Rs. 2 Crores was advanced on 28.08.2018 out of Rs. 1 Crore was repaid on 24.12.2018 and further that the Corporate Debtor paid interest up to 31.12.2019 and thereafter, did not pay any interest. The last payment of interest amount of Rs. 2,72,219/- was paid on 10.01.2020.
14. The Financial Creditor has claimed the date of default on 31.03.2020 from when onwards, no payment either on account of interest or principal was made by the Corporate Debtor. In part IV of the Petition also, the Petitioner has claimed the date of default to be as 31.03.2020 which falls within the period covered under Section 10A of the Code which provides that no application under Section 7, 9 or 10 shall be filed for any default arising on or after 25.03.2020 for a period of 6 months or for further period not exceeding from 1 year from such date. That being so, in our considered view, the Petition is barred under Section 10A of the Code as it is the admitted case of the Petitioner itself that the default took place on 31.03.2020 which is covered under the period excluded under Section 10A of the Code. On this short ground, the Petition deserves to be dismissed.

15. As a result of the above discussion, the Petition is dismissed being barred under Section 10A of the Code.

**Sd/-
MADHU SINHA
MEMBER (TECHNICAL)**

**Sd/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**