

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

CP (IB)/472/2023

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

Krishkan Investment Private Limited,
Having registered office at :- 7/1A Grant
Lane, 2nd Floor Chambers,
Room No.2, Kolkata.

..... Applicant/ Financial Creditor

Versus

**Rajat Commercial Enterprises Private
Limited .** Having registered office at :-
401/A, Pearl Arcade, Opp.P.K Jewellers,
Dawood Baug Lane, Off J.P Road,
Andheri (West), Mumbai 400 058.

.....Corporate Debtor

Order Delivered on :- 12.09.2023

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Financial Creditor: Adv. Nikhil Runte

For the Corporate Debtor: Adv. Devakinandan

ORDER

Per:- Anil Raj Chellan, Member Technical

1. This Company petition is filed by Krishkan Investment Private Limited (hereinafter referred as "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Rajat Commercial Enterprises Private Limited. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and bankruptcy code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 1,39,80,229/- (Rupees One Crore Thirty Nine lakhs Eighty Thousand and Two Hundred and Twenty Nine Only) as on 07.07.2021.

The submissions of the Financial Creditor are as follows:

2. The Financial Creditor is a Non- Banking Financial Corporation engaged in the business of lending financial assistance to businesses.
3. The Corporate Debtor is a company engaged in the business of investment activities.
4. The Financial Creditor in the usual course of business sanctioned an unsecured business loan of Rs.1,10,00,000/- (Rupees One Crore and Ten Lakhs Only) (hereinafter referred to as "**Loan**") to the Corporate debtor on the terms and conditions contained in the Sanction Letter bearing No.KIPL/APR/21/01 dated 29.04.2021 ("**Sanction Letter**") and the Loan Agreement dated 29.04.2021 ("**Loan Agreement**") on

the terms and conditions contained therein. As per the said documents, the Loan together with interest and other charges were to be repaid by the Corporate Debtor in 60 equal monthly installments of Rs.2,25,682/- (Rupees Two Lakhs Twenty Five Thousand Six Hundred and Eighty Two Only) with effect from 07.05.2021. The loan was to carry interest at the rate of 8.50% p.a. The Financial Creditor disbursed full amount of the Loan on 29.04.2021.

5. The first instalment of the Loan for the month of May 2021 was repaid by the Corporate Debtor on 07.05.2021 as per the schedule of repayment. However, the cheque no.031977 dated 07.06.2021 was dishonoured and returned unpaid on account of the insufficient funds in the account of the Corporate Debtor. Thus, the Corporate Debtor defaulted on 07.07.2021 for payment of instalment of the Loan.
6. As per the terms of the Loan Agreement, any non-compliance by the Corporate Debtor of the terms and conditions of the Loan Agreement, including default in repayment of the Loan, constitute an “Event of Default” which entitles the Financial Creditor to recall the Loan together with interest and other charges. Accordingly, the Financial Creditor vide his letter dated 18.06.2021 called upon the Corporate Debtor to rectify the Event of Default on or before the expiry of seven days from the receipt of the said notice. The Financial Creditor again sent a remainder mail dated 29.06.2021. The Corporate Debtor acknowledged receipt of the letter of default dated 18.06.2021 and stated that the Corporate Debtor was undergoing financial hardship on account of lockdown and restrictions due to second wave of the Covid pandemic and requested the Financial

Creditor to grant it an extension of a period of six months for resuming repayment of the Loan.

7. In as much as the Financial Creditor was not agreeable to the request of the Corporate Debtor to revise the repayment schedule, the Financial Creditor, through its Advocates, issued a demand notice dated 07.07.2021 to the Corporate Debtor recalling the entire loan amount together with interest and other monies and called upon the Corporate Debtor to pay entire amount of Rs. 1,39,80,229/- (Rupees One Crore Thirty-Nine Lakh Eighty Thousand Two Hundred and Twenty-Nine Only) within a period of 10 days from the expiry of the receipt of the said demand notice. Since the payment was not made by the Corporate Debtor despite notice, this necessitated the filing of the petition.

The Reply filed by the Corporate Debtor is as follows :

8. The Corporate Debtor filed its reply affidavit dated 03.07.2023 thereby admitting disbursement of the Loan in three instalments (Rs.4500000/- on 29.04.2021, Rs.5500000/- on 03.05.2021 and Rs.1000000/- on 06.05.2021) and payment of first instalment of Rs.2,25,682/- in May 2021. The Corporate Debtor admitted the defaults thereafter and stated the financial difficulties on account of the covid pandemic. While admitting the default the Corporate Debtor stated that all the lenders including public sector banks and reputed financial institutions granted a moratorium period to its customers as regards repayment of the loan but the Financial Creditor refused to show any leniency and grant six months time for

resumption of repayment of the Loan. The Corporate Debtor also pleaded for repayment in instalments over a period of two years.

FINDINGS

9. We have heard the Counsel for the parties and have gone through the records.

10. It is an admitted fact that a loan was granted by Financial Creditor to the Corporate Debtor which was not repaid. The Corporate Debtor had in its reply also admitted its liability of Rs.1,39,80,229 (Rupees One Crore Thirty-Nine Lakhs Eighty Thousand Two Hundred and Twenty-Nine Only) as on July 2021. The financial debt as defined under Section 5(8) of the Code means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes, inter alia, money borrowed against the payment of interest. In view of the above definition, there is no need for any elaboration with respect to the nature of liability as financial debt as per Section 5 (8) of the Code.

11. The only objection raised by the Corporate Debtor was on recalling the entire loan by accelerating all the instalments of the Loan on 07.06.2021 when Corporate Debtor was undergoing severe financial stress due to the after effects of the Covid-19 pandemic. In this connection, it is observed that the Loan Agreement entered into between the Financial Creditor and the Corporate Debtor provided for acceleration of loan instalments and recall of the Loan. Hence, the entire amount of the Loan together with interest had fallen due as per the Notice of Demand of the Financial Creditor on 07.07.2021.

12. In this context it is also observed that Section 10 A of the Code which provided that no application shall ever be filed for initiation of corporate insolvency resolution process for the default which occurred during the period from “25th March 2020 to 25th March 2021” has no application in the present case as the Loan was availed by the Corporate Debtor after the above-mentioned period.
13. During the course of arguments, the learned Counsel for the Corporate Debtor also admitted the financial debt and default. No ground or objection was raised by Corporate Debtor during the hearing other than pointing out the financial stress being faced by the Corporate Debtor as fall out of the Covid-19 pandemic.
14. From a perusal of the record and the documents relied upon by the Applicant, it stands proved that there has been a financial debt in respect of which default has been committed by the Corporate Debtor and further that the Application has been filed within the period of limitation. Therefore, the Application u/s 7 of the Code, deserves to be admitted. It is ordered accordingly in the following terms:

ORDER

- a. **The above Company Petition No. (IB) 472/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) ordered against Rajat Commercial Enterprises Limited.**

b. This Bench hereby **appoints Ms. Mona Laxmichand Vora, Registration No: IBBI/IPA-002/IP-N00938/2019-20/12997** as the **Interim Resolution Professional** having her office at A-1, Vineet Apartment, Majithia Nagar Compound, Near PVR Milap Cinema, Kandivali (West) Mumbai 400 067, **email :- advmonavora@gmail.com** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. Three 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.

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.

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/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**