

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

**14. IA 5410/2023 in CP(IB) 769(MB)2023**

**CORAM:**

**SHRI ANIL RAJ CHELLAN**  
**HON'BLE MEMBER (T)**

**SHRI KULDIP KUMAR KAREER**  
**HON'BLE MEMBER (J)**

**ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 02.01.2024**

**NAME OF THE PARTIES:- M/s Tejas Tradefin LLP Vs. Hemant  
Nanji Chheda**  
**IN THE MATTER OF**  
**Hemant Nanji Chheda**  
**V/s**  
**M/s Tejas Tradefin LLP**

**Section: 60(5), Rule 11 of NCLT, 2016 u/s 7 of Insolvency and  
Bankruptcy Code, 2016**

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**ORDER**

Though Counsel for the Financial Creditor appeared but not put his appearance in the appearance sheet. Counsel, Prateek Seksaria appeared for the Corporate Debtor.

At the time of the pronouncement of order, it has been pointed out by the ld. Counsel for the Corporate Debtor Mr. Prateek Seksaria that the matter was argued only on the maintainability Application and not the main Company Petition. However, this does not seem to be the correct position. During the course of hearing on 23.11.2023, Counsel for the Corporate Debtor had submitted that he did not wish to file any reply, instead he had filed an Application challenging the maintainability. Therefore, the matter was heard at length on 19.12.2023 with regard to the CP as well as the maintainability Application and reserved for order.

Accordingly, the present matter is taken up for pronouncement of order in respect of IA 5410 of 2023 and CP(IB) 769(MB)2023. Order pronounced vide separate order sheet. **IA 5410 of 2023** is **dismissed** and **CP(IB) 769(MB)2023** is **admitted**.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**Member (Technical)**  
*ANKIT*

**Sd/-**  
**KULDIP KUMAR KAREER**  
**Member (Judicial)**

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

**IA 5410 of 2023 in CP (IB) 769 (MB)2023**

**And**

**CP (IB) 769 (MB)2023**

**IA 5410 of 2023**

Under section 60(5) of the Insolvency and  
Bankruptcy Code, 2016

**M/s Tejas Tradefin LLP**

201, DBR House, Ami Prabha Apartment,  
Devidas Lane, Near MTNL, Borivali  
(West), Mumbai - 400092

**... Applicant**

**And**

**CP (IB) 769 (MB)2023**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016 r/w Rule 4 of the  
Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016

**IN THE MATTER OF**

**Hemant Nanji Chheda**

B/30, Konark Indraprasht Co-operative  
Houseing Society, Sarvodaya Nagar, Jain  
Mandir Road, Mulund (West), Mumbai –  
400080.

**... Financial Creditor**

V/s.

**M/s Tejas Tradefin LLP**

201, DBR House, Ami Prabha Apartment,  
Devidas Lane, Near MTNL, Borivali  
(West), Mumbai - 400092

**... Corporate Debtor**

**Order delivered on :- 02.01.2024**

**Coram:**

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

**Hon'ble Shri Anil Raj Chellan, Member (Technical)**

***Appearances:***

For the Petitioner : Adv. Piyush Raheja a/w Adv. Feroz Patel

For the Corporate Debtor : Adv. Nausher Kohli a/w Adv. Darshan Sahuji

**ORDER**

***Per: - Kuldip Kumar Kareer, Member (Judicial)***

1. The present Petition is filed by the Petitioner/Financial Creditor abovenamed 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 to initiate Corporate Insolvency Resolution Process on account of default on part of the Respondent/Corporate Debtor to repay the loan amount of Rs. 5,00,00,000/- (Rupees Five Crores Only) being the principal amount of the loan and interest accrued thereon inspite of service of the Demand Letter/Notice dated 19th October, 2022 of the petitioner.

**The Submissions by the Financial Creditor: -**

2. The Petitioner/Financial Creditor is an individual having address abovenamed. The Respondent/Corporate Debtor is a Limited Liability Partnership firm incorporated under the provisions of

Limited Liability Partnership Act, 2008 having its office at the address mentioned in the cause title hereinabove.

3. In or around September 2020, the Petitioner/Financial Creditor granted the Respondent/Corporate Debtor a loan of Rs. 5,00,00,000/- (Rupees Five Crores Only) which was repayable on demand alongwith interest at the rate of 12% per annum from the date of payment, till the date of repayment/realization of the loan amount.
4. In terms of the understanding that was arrived at between the parties, on 24th September, 2020 the Petitioner/Financial Creditor advanced the Respondent/Corporate Debtor an amount of Rs. 5,00,00,000/- (Rupees Five Crores Only) in the following manner:

<b>Date</b>	<b>Cheque No.</b>	<b>Account No.</b>	<b>Amount</b>
24.09.2020	000676	15771330003051	1,00,000/-
24.09.2020	000677	15771330003051	49,90,000/-

5. The loan was received by the Respondent/Corporate Debtor and the Respondent/Corporate Debtor duly recorded the principal amount and the interest accrued thereon to the account of the Petitioner/Financial Creditor in its books of accounts under the heading "Loans Taken". As on 31st March 2021, the amount payable by the Respondent/Corporate Debtor to the Petitioner/Financial Creditor as reflected in its balance sheet was Rs. 5,30,90,411/-.
6. From a perusal of the amounts shown as payable to the Petitioner/Financial Creditor herein, it is abundantly clear that the Respondent/Corporate Debtor has acknowledged and confirmed its liability towards the Petitioner/Financial Creditor and that the loan

was repayable along with interest at the rate of 12% per annum.

7. The Petitioner/Financial Creditor by its letter/demand notice dated 19th October, 2022 addressed to the Respondent/Corporate Debtor, inter alia, called upon the Respondent/Corporate Debtor to repay the Petitioner/Financial Creditor an amount of Rs. 6,30,58,229/- (Rupees Six Crores Thirty Lakhs Fifty-Eight Thousand Two Hundred and Twenty-Nine Only) which included an amount of Rs. 5,00,00,000/- (Rupees Five Crores Only) towards principal and an amount of Rs. 1,30,58,229/- (Rupees One Crore Thirty Lakhs Fifty-Eight Thousand Two Hundred and Twenty-Nine Only) towards interest as on 30<sup>th</sup> September, 2022.
8. The said letter/demand notice dated 19th October, 2022 was served upon the Respondent/Corporate Debtor through email and by R.P.A.D. The said email was received by the Respondent/Corporate Debtor on 19th October, 2022 and the said letter/ demand notice sent by RPAD was received by the Respondent/Corporate Debtor on 27th October, 2022.
9. Despite the receipt of the said letter/demand notice, the Respondent/Corporate Debtor has defaulted in payment of the aforesaid amounts. The claim amount is undisputed and is an admitted liability.
10. The Respondent/Corporate Debtor has even failed and neglected to respond to the letter/demand notice dated 19th October, 2022.
11. There is no bonafide dispute with regards to the claim amount. Hence, the inability of the Respondent/Corporate Debtor to pay the debt of the Petitioner/Financial Creditor is established. Thus, this

application may be admitted and the Hon'ble Tribunal may be pleased to pass an order for the commencement and initiation of the insolvency resolution process against the Respondent/Corporate Debtor under the Insolvency and Bankruptcy Code 2016 in the interest of justice. Hence the present Company Petition.

12. Upon notice the Corporate Debtor appeared through Counsel but no reply was filed by the respondent. Instead, the respondent preferred to file an application challenging the maintainability of the petition on the following grounds;
  - a. Financial Creditor was not a registered money lender as on the date of the alleged loan transaction and, therefore, the alleged loan advanced by the Petitioner is not a legally recoverable debt and further that the Application filed by the Financial Creditor under Section 7 of the IBC Code is not maintainable and deserves to be dismissed with penalty as prescribed under the provisions of the IBC Code.
  - b. It is further submitted that the alleged loan advanced is not legally recoverable debt and, therefore, Petition is not maintainable under the provisions of the IBC Code. On this ground also the Petition deserves to be dismissed with penalty of Rs. 1,00,00,000/- (Rupees One Crore Only) as prescribed under the provisions of the IBC Code.
  - c. The Petitioner was not a registered money lender as on the date of the loan transaction and, therefore, the alleged financial debt in the Petition is not a legally recoverable debt and consequently the aforesaid loan does not fall under the definition of the 'debt' or 'claim' as defined under the provisions

of the IBC Code. Further, the Applicant has failed to produce any document recording the agreement/ understanding between the parties to substantiate the existence of a legally recoverable debt.

- d. The Petition filed by the Petitioner amounts to fraudulent and malicious initiation of proceedings which is liable to be rejected with a penalty of Rs. 1 crore as prescribed under the provisions of the IBC Code. The Petitioner is guilty of abusing the provisions of the IBC Code for the purpose of recovering amounts which are not legally recoverable. It is settled law that any application to commence CIRP shall be denied when the creditor is using IBC Code as a substitute to a recovery forum. The Petition is nothing but an attempt by the Petitioner to misuse the process of law, the legal provisions and machinery. It is further submitted that the Petitioner has miserably failed to make out any case to evince the maintainability of the Petition under the provisions of Section of 7 of IBC Code.

### **Finding**

13. We have heard the Counsel for the parties and have gone through the records.
14. During the course of arguments, it has been contended by the Counsel for the Corporate Debtor that the Petition is not maintainable as the Petitioner has miserably failed to prove the nature of the transaction nor has it been established that the alleged loan advanced to the Corporate Debtor was a financial debt. In this regard, it has been pointed out that the Petitioner has not proved on record any loan agreement whereby the terms and conditions of the

loan might have been set out and on this ground alone the Petition is liable to fail.

15. The Counsel for the Corporate Debtor has further argued that the present Petition is barred under the provisions of the Maharashtra Money Lending (Regulation) Act, 2018. In this regard, it has been argued by the Counsel for the Corporate Debtor that the Petition in this case is an individual and there is evidence on record that the Petitioner has been carrying on the business of money lending and since the Petitioner does not possess a valid license under the Money Lending Act, the present Petition is barred in terms of Section 13 of the said Act as the Petitioner is not a licensed money lender. The Counsel for the Corporate Debtor has referred to the balance sheets of the Petitioner for the year ending March 2017, March 2021 and March 2022 wherein the Petitioner is shown to have advanced loans to various persons which, according to the Counsel for the Corporate Debtor, clearly indicate the Petitioner is a money lender.
16. In support of his arguments the Counsel for the Petitioner has relied upon *Fauzan Shaikh vs. State of Maharashtra (Criminal Public Interest Litigation ST No. 41 of 2019 decided on 11.12.2019)* whereby it has been held that as per the provisions of section 13 of the Maharashtra Money Lending (Regulation) Act, the claims of unregistered money lenders are not legally enforceable and the unregistered money lenders would be precluded from availing the remedies of legally enforceable debt under the Negotiable Instruments Act, 1881, Insolvency and Bankruptcy Code, the Code of Civil Procedure 1908, Specific Relief Act, 1963, the Contract Act, 1872. The Counsel for the Corporate Debtor has further relied upon *Motilal Prabhulalji Vyas vs. Jayantilal Tulsidas Thanawala 2008 SCC Online Bombay 771*

whereby also it has been held that if the Plaintiff was carrying on the business of money lending and as part of money lending business, he had advanced loan to the defendant and in case the Plaintiff was not holding money lending business license, the suit was liable to fail. In the light of the law laid down in the above referred cases, it has been urged by the Ld. Counsel for the Corporate Debtor that the Petition is liable to be dismissed being not maintainable.

17. On the other hand, the Counsel for the Petitioner has argued that the present Petition cannot be said to be barred under the provisions of the Maharashtra Money Lending (Regulation) Act, 2014 as the Petitioner is not covered under the definition of money lender nor has he ever engaged in the business of money lending covered under the said Act. The Counsel for the Petitioner has referred to Section 4 of the said Act which provides that the no money lender carrying on the business of money lending except in the area for which he has been granted a license and except in accordance with the terms and condition of the such license. According to the Counsel for the Petitioner, few transactions of advancing loan on the part of the individual here and there would not make him a money lender nor can it be said that he has been carrying on the business of money lending. To establish that a person is engaged in the business of money lending, some concrete and consistent evidence is required which is altogether missing in this case. It has not been even properly pleaded in the IA filed by the Corporate Debtor challenging the maintainability of the Petition u/s 7 of the Code, 2016 that the Petitioner has been engaging in the business of money lending. To fortify his contentions, the Counsel for the Petitioner has relied upon *Mahesh P Raheja and another vs. Base Industries Group and others 2018*

*SCC Online Bombay 21322* whereby it was held that to prove that the person is carrying on a business of money lending, the burden of proof lies on the party alleging so. It was further held that a single or solitary lending transaction does not constitute the business of money lending. It was further held that the giving one or even a hand full of loans does not make it a business of money lending. It was further held that the debtor cannot escape his liability under a loan merely by asserting that the creditor is in the business of money lending without a license. It was further held in this very case that the phrase business connotes a systematic, repetitive and continuous activity. For a person to be money lender, he must in the regular course of his business, advance loans and isolated transactions are not covered under the Act. It was further held that every loan does not amount to engaging in the business of money lending. No one becomes a money lender because he gives the odd loan to his relations, friends or acquaintances nor does he become a money lender merely because on one occasion or even several isolated occasions, he may have lent money with interest to strangers.

18. The Counsel for the Petitioner has further relied upon *Tradelink Exim (India) Pvt. Ltd. vs. Tulip Land and Developers Pvt. Ltd. (Commercial Suit No. 188 of 2017 decided on 31.10.2017)* whereby it has been held by the Hon'ble High Court of Bombay that merely because the balance sheet shows that there are certain loans and advances granted by the plaintiff to four or five parties does not by itself, without anything more, make the plaintiff a money lender as contemplated under the MML Act, 2014.
19. In the light of the law laid down in the afore cited cases, it has been urged by the Counsel for the Petitioner that the Petitioner cannot be

held to be a money lender, nor the Petition can be said to be barred under the provisions of the Maharashtra Money Lending (Regulation) Act, 2014.

20. We have weighed the contentions raise by the Counsel parties and have also carefully gone through the records as well as the case law cited by them.
21. It is the definite case of the Petitioner that in the month of September 2020, a loan of Rs. 5 crores were advanced to the Corporate Debtor which was repayable along with interest at the rate of 12% per annum. The loan is duly reflected in the balance sheet of the Corporate Debtor for the year ending 2021 which is annexed with the Petition as Annexure D. Therefore, the question of advancement of loan has not been seriously disputed by the Corporate Debtor. Apart from this, the Corporate Debtor has not chosen to file a regular reply to the Petition u/s 7 of the Code, 2016. Instead, the Corporate Debtor has filed only a maintainability application claiming that the alleged loan is not a legally recoverable debt as no document to demonstrate that the Petitioner held a valid money lending license under the MML Act, 2014 has been placed on record. The Corporate Debtor has further claimed in the Application that in the light of the bar imposed under the provisions of the MML Act, 2014, the Petition is liable to be rejected with a penalty of Rs. 1 crore.
22. Since the loan has duly reflected in the balance sheet of the Corporate Debtor there cannot be any doubt with regard to effect that it was a financial debt which was recalled vide demand notice dated 19.10.2022. The date of default has accordingly been claimed as the Corporate Debtor failed to repay the loan within 15 days of the said

notice. The Petitioner has further placed on record NSCL report (Exhibit H) which also shows the date of default as 03.11.2022. In the absence of any serious rebuttal on the part of the Corporate Debtor, it can be safely held that the Corporate Debtor availed a financial debt of Rs. 5 crores from the Petitioner and committed default in its repayment on 03.11.2022.

23. So far as the primary defence taken by the Corporate Debtor in the maintainability application that the Petitioner is a money lender but has not obtained any license under the MML Act, 2014 and therefore, he is not entitled to maintain the present Petition nor the debt in question can be considered as a legally enforceable debt is concerned, in this regard, it has rightly pointed by the Counsel for the Petitioner and has also been unequivocally held in the case law cited by him that the burden to prove that the Petitioner is a money lender in terms of the provisions of the MML Act, 2014 is on the Corporate Debtor. Now it has to be seen whether the Corporate Debtor has been able to discharge this onus or not.
24. The Counsel for the Corporate Debtor argued that the Petitioner even did not personally know the Corporate Debtor and further that the Petitioner has been habitually lending money to different persons as reflected in the balance sheets which were placed before this bench during the course of the argument though not otherwise referred to in the pleadings wherein the Petitioner is shown to advanced loans to four/five persons. Even if all this is taken into account, even then, in our considered view, there is not enough evidence to record a finding that the Petitioner is a money lender and has been carrying on the business of money lending. In *Tradelink Exim (India) Pvt. Ltd. vs. Tulip Land and Developers Pvt. Ltd. (Supra)* as well as *Mahesh P*

*Raheja and another vs. Base Industries Group and others (Supra)*, it has been held that giving loan to one or a handful of loans to few persons would not tantamount to engaging in the business of money lending without a license and further that for a person to be a money lender, he must in regular course of business advance loans in a real, substantial, systematic and organize course of activity carried on continuously by application of his labour or skill with a view to earning an income. These ingredients are not met with in this case as no substantive evidence has been brought on record by the Corporate Debtor. No detail of the persons referred to in the balance sheets of the Petitioner have been provided though the Counsel for the Petitioner has pointed out that they are close relatives and business associates of the Petitioner, one of them being the real son of the Petitioner. Therefore, in our considered view, the Corporate Debtor has miserably failed to discharge the onus in proving that the Petitioner is a money lender and has been engaged in the business of money lending.

25. There is no dispute with regard to the case law laid down in *Fauzan Shaikh vs. State of Maharashtra (Supra)* and *Motilal Prabhulalji Vyas vs. Jayantilal Tulsidas Thanawala* relied upon by the ld. Counsel for the Corporate Debtor, but, in our considered view, the same cannot be applied to the facts and circumstance of the present case for the reasons stated in the forgoing part of this order.
26. As a result of above discussion, we hold that the Petitioner has been able to establish the existence of a financial debt and its default committed by the Corporate Debtor and further that the Petitioner is well within time and, therefore, the instant Petition is a fit case for admission u/s 7 of the Code, 2016. It is ordered accordingly in the

following terms.

**ORDER**

- a. **The above Company Petition No. (IB) - 769(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Tejas Tradefin LLP.**
- b. This Bench hereby appoints Mr. Dhanshyam Kantilal Patel, Registration No: IBBI/IPA-001/IP/IP-01373/2018-19/12155 as the Interim Resolution Professional having registered office at 322, Zest Business Spaces, M G Road, Ghatkopar East, Mumbai - 400077, email :- [dpatel@ckpatel.com](mailto:dpatel@ckpatel.com), to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 3 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, while IA 5410 of 2023 is dismissed.**

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)**

*ANKIT*