IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURTI-II

CP(IB) 77 MB 2023
Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Rules, 2016)

IN THE MATTER OF

M/s J M Cotton Ginning and Pressing Company Private Limited
7, Shivaji Nagar, Jalgaon – 425001, Maharashtra.

... Financial Creditor

V/s.

M/s Khandesh Builders Private Limited
B 110, Damji Shamji Corporate Square, Lakshmi Nagar, Ghatkopar Andheri East Link Road, Mumbai, Mumbai City – 400075, Maharashtra.

... Corporate Debtor

Order delivered on :- 20.10.2023

Coram:

Hon’ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon’ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Financial Creditor : Adv. Prakhar Tandon
For the Corporate Debtor : Adv. Avinash R Khanolkar

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by M/s J M Cotton Ginning and Pressing Company Private Limited (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s Khandesh Builders Private Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**") on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 25,78,69,681/-.

The submissions by the Operational Creditor: -

2. The Corporate Debtor requested the Financial Creditor to grant Inter Corporate Loan (ICL) to the Corporate Debtor up to the tune of Rs. 12,00,00,000/- (Rupees Twelve Crore Only) during the year 2004.

3. The board of directors of the Financial Creditor vide Board Resolution dated 02.04.2004 approved the request of the Corporate Debtor to grant Inter Corporate Loan (ICL) upto

the tune of Rs. 12,00,00,000/- (Rupees Twelve Crore Only) to the Corporate Debtor subject to approval of members in the extraordinary general meeting of the Company.

4. The Corporate Debtor made various payments to the Financial Creditor towards the Inter Corporate Loan from year 2005 to 2010. The Inter Corporate Loan outstanding as on 31.03.2010 was Rs. 7,81,55,726/-.

5. Therefore, the Financial Creditor and Corporate Debtor executed an Inter Corporate Loan Agreement on 31.03.2010 in order to lay down the terms and conditions of the outstanding Inter Corporate Loan amount to Rs. 7,81,55,726/-

6. As per the Inter Corporate Loan Agreement, the Inter Corporate Loan amounting to Rs. 7,81,55,726/- was to be repaid by the Corporate Debtor to the Financial Creditor on 31.03.2011 along with interest @ 10% per annum.

7. The Corporate Debtor defaulted in the repayment of the Inter Corporate Loan along with the interest. Therefore, the Financial Creditor sent various letters to the Corporate Debtor from year 2011 to year 2021 requesting the Corporate Debtor to repay the Inter Corporate Loan along with interest.

8. The Corporate Debtor vide various letters from year 2011 to 2021 sent to the Financial Creditor acknowledged that the Inter Corporate Loan amounting to Rs. 7,81,55,726/- is outstanding towards the Financial Creditor and also

requested the Financial Creditor to grant some more time to the Corporate Debtor to repay the said loan.

9. The Corporate Debtor has acknowledged the outstanding Inter Corporate Loan towards the Financial Creditor under the head 'Long Term Borrowings' in various financial statements form FY 2010-11 to FY 2021-22 filed in Form 23AC/ACA/AOC-4 with the Registrar of Companies (ROC), Mumbai.

10. The Corporate Debtor failed to repay the Inter Corporate Loan to the Financial Creditor in spite of repeated assurances. Hence, the Financial Creditor sent a Demand Notice dated 15.10.2022 to the Corporate Debtor demanding the Corporate Debtor to pay an amount of Rs. 25,78,69,618/- towards the Inter Corporate Loan and interest within 7 days from the receipt of the demand notice.

11. The Corporate Debtor failed to repay the Inter Corporate Loan along with interest within 7 days from receipt of the Demand Notice on 18.10.2022. Hence, committed default. Hence, the present Company Petition.

12. No reply was filed on behalf of the Corporate Debtor despite granting ample opportunity and vide order dated 03.10.2023 the right to file reply was forfeited.

Findings:-

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

14. The Counsel for the Petitioner has argued that this case the factum of existence of financial debt and the default committed by the Corporate Debtor is not disputed and therefore, it is a fit case for admission.

15. On the other hand, the Counsel for the CD has argued that the Financial Creditor had agreed to advance a loan of Rs. 12 crores whereas a sum of Rs. 7 crores only was disbursed which caused financial hardships to the Corporate Debtor. Therefore, the Petition deserves to be dismissed.

16. We have considered the contentions raised by the Counsel for the parties.

17. In this case we have noticed that the Inter Corporate Loan agreement was executed on 31.03.2010 for a sum or Rs. 7,81,55,726/-. The loan was repayable by 31.03.2011 along with interest. According to the Financial Creditor, the Corporate Debtor issued various letters from the year 2011 to 2021 whereby the loan of Rs. 7,81,55,726/- was acknowledged from time to time. In this regard, the Financial Creditor has relied upon the said letters which are annexed in Annexure-13 with the Petition. As per the said Annexure, the first letter issued by the Corporate Debtor is dated 22.04.2011 followed by letters dated 24.05.2013, 23.06.2016, 18.09.2020, 22.09.2020 and 30.06.2021. No doubt, through these letters the Corporate Debtor acknowledged the Inter Corporate Loan from time to time. However, in between, the letter dated 24.05.2013 and 23.06.2016, there is no acknowledgment for a period of more than three years. It is well settled that an

acknowledgement of the debt has to be made before the expiry of the period of limitation. If the letter dated 24.05.2013 is to be considered an acknowledgment, the subsequent acknowledgment should have been made on or before 23.05.2016 whereas after 24.05.2013, the next acknowledgment was made as per letter dated 23.06.2016 which was after a period of three years from the acknowledgment made on 14.05.2013. Therefore, the acknowledgments made on 23.06.2016 and thereafter on 18.09.2020, 22.09.2020 and 30.06.2021 cannot be taken into consideration for the purposes of computing the period of limitation. That being so, if the acknowledgments made after 24.05.2013 are not valid, it has to be held that the Petition has not been filed within time and is barred by limitation.

18. The Petitioner has averred in the Petition that the Corporate Debtor has also been acknowledging the outstanding loan amount due towards the Financial Creditor under the head 'Long Term Borrowings' in its financial statements from 2010-11 to 2021-22 filed in Form 23 AC/ACA/AOC-4 filed with the Registrar of Companies, Mumbai. However, the Petitioner has not placed on record the said statements. The Petitioner has placed on record only one such statement as Annexure-14 which pertains to the period from 01.04.2021 to 31.03.2022. Therefore, even this contention cannot be taken into consideration to hold that the Petition is within the period of limitation specially when the financial statements from 2010-11 to 2020-21 have not been produced on record.

19. As a result of the above discussion, we hold that the Petition is not proved to have been filed within the period of limitation and is liable to be dismissed on this ground alone. It is ordered accordingly.

Sd/-	**Sd/-**
ANIL RAJ CHELLAN	**KULDIP KUMAR KAREER**
Member (Technical)	**Member (Judicial)**