

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
CP(IB)/114(AHM)2023

Order under Section 7 IBC

IN THE MATTER OF:

Keta Parth Patel
V/s
Manglam Paper Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 30/01/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.
The order is pronounced in open Court vide separate sheet.

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-2**

C.P. (IB) No. 114 of 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:

Keta Parth Patel

Having Address at:

A-201, Shalin Solitude, S P Ring Road to
Shilaj Road, Shilaj Circle, Shilaj,
Ahmedabad, Gujarat, 380058

.....Financial Creditor

VERSUS

MANGLAM PAPER PRIVATE LIMITED

CIN No. U21019GJ1981PTC004585

Registered office at:

05, Akshat Tower, Near Pakwan Dinning
Hall, S. G. Highway, Bodakdev,
Ahmedabad, Gujarat 380054

.....Corporate Debtor

Order pronounced on: 30.01.2024

Coram: Mrs. Chitra Hankare, Hon'ble Member (J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member (T)

Appearance:

For the Applicant: Mr. Pratik Thakkar, Advocate

For the Respondent: Mr. Vinodkumar S Shah, PCS

JUDGMENT

1. This application is filed by Mr. Keta Parth Patel as a shareholder of the Corporate Debtor- M/s. Manglam Paper Private Limited being a Financial Creditor 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 a Corporate Insolvency Resolution Process against the Corporate Debtor- M/s. Manglam Paper Private Limited.

2. **The brief facts of the case are hereunder:**

The amount of debt as per Form 1 of the application as of 24.03.2023 is Rs.1,12,10,860.00/- and the date of default is 01.12.2021 and is in compliance with the IBC provisions.

The Applicant submitted that the applicant is an individual and shareholder of the Corporate Debtor. He has claimed the status of financial creditor.

It is submitted that the applicant had advanced financial assistance to the Corporate Debtor to the tune of Rs. 1,12,10,860.00 on various dates with a promise from the corporate debtor that the same shall be repaid on 02.08.2021.

Further, it is submitted that the applicant called upon the Corporate Debtor to repay the amount toward financial assistance by letter dated 01.09.2021.

It is submitted that the Corporate Debtor issued a letter dated 18.09.2021 requesting for a meeting to come out with an amicable solution. Thereafter the applicant entered into a Memorandum of Understanding with the Corporate Debtor from 01.10.2021 wherein the Corporate Debtor was to repay the entire amount within the period of 60 days despite that the Respondent failed to repay the amount. Thereafter, the applicant issued another letter dated 31.12.2021 calling upon the Corporate Debtor to repay within a period of 60 days. Further submitted that the applicant made several oral requests to the corporate debtor to make payment of the requisite payment however the corporate debtor has failed to make the payment to the tune of Rs. 1,12,10,860.

Therefore, the applicant has filed the present application for the initiation of the corporate insolvency resolution process against the corporate debtor.

3. The Corporate Debtor/Respondent filed their Affidavit in Reply and submitted that:

The Respondent company which availed financial assistance from the Applicant had been making payment till 3.08.2021 as can be seen from the ledger placed by the Applicant. However, thereafter, due to the financial crunch, no payment could be made. The Respondent company is willing to make outstanding

dues of Rs.1,12,10,860 to the Applicant, however only upon receiving the payment of it owes from other debtors. It is also submitted that the Respondent's debtors are also affected drastically due to Covid-19 economic crisis and are unable to clear their dues. The outstanding yet to be recovered from the Debtors is about Rs. 15,05,00,275 as per the audited financial statements as on 31.03.2022.

The Respondent Company had entered into the Memorandum of Understanding in October 2021 and wherein it was assured to make the payment within a period of 60 days. However, due to the circumstances beyond the control of the Respondent, no effect could be given to the MoU. Thereafter, the parties herein had several meetings to amicably resolve the matter wherein the Respondent company sought more time from the Applicant to make the outstanding payment of Rs. 1,12,10,860/- as presently the Respondent company is not in a financial position to clear its dues due to the reasons mentioned herein above. The Respondent Company undertakes to make the payment of the outstanding dues once the Respondent Company receives the pending dues from its debtors.

4. An Additional Affidavit was filed by the Financial Creditor on 21.012.2023 for proof of disbursement wherein showing the Bank Statement, Certified copy of the Bank Statement for a

period from 01.04.2011 to 31.03.2023 and chart showing Corresponding Dates with relevant transaction with the Corporate Debtor.

5. Heard the submissions made by the Ld. Counsels and perused the document on records.
6. In the present matter before going into the merits of the matter, it is observed that the application is not maintainable under section 7 of the IB Code as the applicant is a shareholder and an individual who has lent without any interest on the amount lent as an accommodation and is not a financial creditor as per the provisions of the section 5 Subsection (8) of the IB Code 2016. Definition of the financial debt under Section 5(8) of the IBC 2016 does not comply with the same.
7. The amount stated to have been disbursed is from the SB account of the applicant and is stated to have been issued on various dates with a promise to be repaid on 02.08. 2021. No such documents were produced on the promise to repay on 02.08.2021 as both the amount of debt stated to be borrowed and the date of repayment schedule has not been stated by way of any agreement and if there is any oral agreement the same cannot be considered to be a debt defaulted under the purview of IBC.

8. The stated demand letter and the stated MOU cannot be considered to be proceeded upon as there was no initial agreement and the respondent has chosen to pay is neither a stamped or a registered document and the relationship and capacity of the applicant as a shareholder is restricted to be the owner of the company who has given an accommodation to the company through some funds transferred.
9. Further, there are no board resolutions produced stating that the company (respondent) has been authorised to borrow from its shareholders. Hence, keeping in view of the facts mentioned above, this application is liable to be rejected. Hence, we pass the following order:

ORDER

Application being CP (IB) No. 114 of 2023 is rejected.

Sd/-

**DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)**

Sd/-

**CHITRA HANKARE
MEMBER (JUDICIAL)**