BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. 5

CP No. 575/IBC/NCLT/MB/MAH/2020

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

1. Kishore Laxmichand Rathod.
2. Pramila Kishore Rathod.
3. Rakhee Dhiraj Rathod.

93, Indraprasth, opposite Apolo Theatre, 589, Rasta Peth, Pune City, Kasba Peth, Pune – 411 011

….. Financial Creditor

V/s

Leela Trade Steel and Commodities India Private Limited
Office No. 215/16/17, 2nf Floor, Kohinoor Arcade, Sector 24, Pune-Bombay Road, Tilak Chowk, Nigdi, Pune - 44

….. Corporate Debtor

Order pronounced on: 18.02.2021

Coram :

Hon’ble Smt. Suchitra Kanuparthi, Member (J)

Hon’ble Shri. Chandra Bhan Singh, Member (T)

For the Petitioner : Mr. Avinash Khanolkar, Advocate.
For the Respondent : Mr. Swapan Pradhan, Advocate.

Per: Chandra Bhan Singh, Member (T)

ORDER

1. The Petitioners/Applicants viz. 'Kishore Laxmichand Rathod and 2 others' (hereinafter as Financial Creditors) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Leela Trade Steel and Commodities India Private Limited' (hereinafter as 'Corporate Debtor').

2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 1,80,00,000/-, and the amount claimed to be in default is Rs. 2,03,03,562/- including interest. The date of default is stated to be 31.12.2019.

BRIEF HISTORY OF THE CASE

3. Mr. Kishore Laxmikant Rathod (FC 1), Mrs. Pramila Kishore Rathod (FC 2), Mrs. Rakhee Dhiraj Rathod (FC 3) have been collectively referred to as Petitioners.

4. The Petitioners entered into a Loan Agreement with the MSM Steel Corporation (proprietorship ship firm), Borrower and the Corporate Debtor on 27.04.2018 for availing loan amounting to Rs. 1,80,00,000/- @24% p.a., accruing on daily basis, in order to meet Corporate Debtor's working capital requirements and business expansion plan.

5. Thereafter FC 3 started the disbursement of the said loan with the first tranche amounting to Rs. 20,00,000/- on 03.05.2018.

6. The manner of disbursement of the said loan facility with interest @24% p.a. by the Petitioners to the Borrower is as tabulated below:

Sr. No.	Type of Loan/Credit Facility	Date of disbursements	Amount of Loan/Credit Facility (Rs.)
1	Loan (FC 3)	03.05.2018	20,00,000
2	Loan (FC 1)	11.05.2018	10,00,000
3	Loan (FC 1)	24.05.2018	10,00,000
4	Loan (FC 1)	02.08.2018	20,00,000
5	Loan (FC 3)	04.08.2018	30,00,000
6	Loan (FC 3)	10.10.2018	20,00,000
7	Loan (FC 1)	24.04.2019	20,00,000
8	Loan (FC 2)	02.12.2019	20,00,000
9	Loan (FC 2)	03.12.2019	30,00,000
	TOTAL		1,80,00,000/-

7. As per the loan agreement, the payment of interest on the balance amounts fell due and payable on 31.05.2019, which was not paid on time by the Borrower.

8. Thereafter, FC 1 sent the first reminder letter dated 13.06.2019 to the Corporate Debtor for amount due towards interest on the outstanding principal amount as on 31.05.2019.

9. After various follow ups the Borrower paid the interest amounting to Rs. 20,00,000/- in the month of August 2019 to FC 1.

10. Thereafter FC 1 on 16.09.2019 communicated to the Corporate Debtor for delayed payment of interest on the outstanding principal amount and requested the payment.

11. In reply to the said communication the Corporate Debtor sent a letter dated 26.09.2019 requesting for extension of time from Petitioners stating that they will repay the total amount of loan disbursed to the Borrower along with interest thereon by 31.12.2019 and security cheques are also provided by the Corporate Debtor.

12. The Corporate Debtor, in spite of the grant of extension by the Petitioners again failed to repay the total disbursed loan amount and interest thereon by 31.12.2019.

13. Thereafter the Petitioners deposited the cheque no. 187229 dated 13.01.2020 of Rs. 25,00,000/- and cheque no. 000880 dated 13.01.2020 of Rs. 25,00,000/- are dishonoured due to insufficient balance and returned back by their respective banks.

14. Thereafter the Petitioner issued the loan recall notice dated 15.01.2020 to the Corporate Debtor demanding to repay the outstanding principal along with unpaid interest. The loan recall notice further stated that if the Corporate Debtor fails to repay the outstanding dues along with interest thereon by 31.12.2019, then the Petitioners shall have the right to take appropriate legal proceedings against the Borrower and the Corporate Debtor for recovering the aforesaid outstanding loan dues with interest, cost and expense.

15. The details of the outstanding Financial Debt is as follows:

Name	Principal Amount	Interest @24% p.a. on Principal Amount	Total outstanding Debt
Rakhee Dhiraj Rathod (FC 3)	70,00,000.00	24,09,205.00	94,09,205.00
Kishore Laxmichand Rathod (FC 1)	60,00,000.00	17,96,384.00	77,96,384.00
Pramila Kishore Rathod (FC 2)	50,00,000.00	97,973.00	50,97,973.00

TOTAL AS ON 31.12.2019	1,80,00,000.00	43,03,562.00	2,23,03,562.00
LESS: INTEREST RECEIVED 1. 23.08.2019 2. 29.08.2019 3. 30.08.2019		 10,00,000.00 5,00,000.00 5,00,000.00	
TOTAL		20,00,000.00	
NET RECEIVABLE AS ON 31.12.2019	1,80,00,000.00	23,03,562.00	2,03,03,562.00

SUBMISSIONS BY THE CORPORATE DEBTOR:

16. The Corporate Debtor paid the interest amounting to Rs. 20,00,000/- in the month of August 2019 to FC 1.

17. The Corporate Debtor was facing constant losses at that point of time but somehow managed to pay the interest.

18. Pursuant to the same, the business of the Corporate Debtor was seriously impacted. Therefore, there were constant delays on the part of Corporate Debtor in the payment of interest to the Petitioners.

19. The Petitioners sent repeated communications to the Corporate Debtor for payment of interest on the loan amount.

20. Thereafter, the Corporate Debtor sent a letter dated 16.09.2019 to the Petitioners requesting extension of time to repay the loan along with interest thereon by 31.12.2019 as the Corporate Debtor had incurred huge losses due to the decreasing demand of domestic steel. The Corporate Debtor also provided the security cheques to the Petitioners.

21. The Corporate Debtor was highly indebted and was not in a position to repay the loan of the Petitioners. Hence, it failed to repay the total disbursed loan amount and interest thereon till 31.12.2019.

22. Therefore, the Petitioners deposited the security cheques and the said cheques were dishonoured by the bank due to insufficient funds.

23. After that the Petitioners filed the present petition against the Corporate Debtor.

24. The Corporate Debtor has never denied the default on its part. In fact the books of accounts of the Corporate Debtor reflect the pending payments against the loan to be made to the Petitioners.

25. The Corporate Debtor has faced an uphill battle in raising product prices as steel industry is in doldrums. The dumping of steel into the country has pushed steel industry to the dead-end.

26. Further, the nationwide lockdown in the wake of COVID-19 has aggravated much bigger challenges for the steel industries.

27. The Corporate Debtor has strived very hard to survive in the industry as the situation has been deteriorating day by day. The Corporate Debtor is in serious financial crunch and is not in a position to repay the loan of the Petitioners.

28. The Corporate Debtor has obtained huge loans from the bankers in order to meet its working capital requirements. The Corporate Debtor has even failed to repay the said loans to the bankers due to the financial crisis.

29. The business of the Corporate Debtor is completely shut making it impossible for the Corporate Debtor to clear its loan liabilities. Therefore, the Corporate Debtor is unable to repay the loan obtained from the Petitioners.

<u>FINDINGS</u>

30. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it

is understood that the Corporate Debtor has defaulted in repayment of debt. The Corporate Debtor has acknowledged the disbursement of credit facilities and its liability to repay the same. However, the Corporate Debtor failed to pay. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.

31. The Bench notes that as per a loan agreement arrived between the Corporate Debtor and Financial Creditor on 27.04.2018 a loan facility of Rs.1.80 crore for working capital requirement was extended by the Financial Creditor to the Corporate Debtor. This loan was disbursed to the Corporate Debtor in 9 tranches between 03.05.2017 to 03.12.2018. Copy of both the loan agreement as well as bank statement of financial creditor is attached with the Petition to buttress the claim. The loan facility carried a rate of interest of 24% per annum. As per the loan agreement, the Debt amount including interest was due and payable before 31.05.2019. Similarly, the amount which was disbursed after 01.04.2019 was payable on or before 31.12.2019 including interest.

32. The Bench also notes that when the interest on the balance amount is due and payable on 31.05.2019 the same was not paid by the Corporate borrower. However, after various follow-ups the borrower paid an interest of Rs.20 lakhs in August 2019 to the Financial Creditor. Even after grant of some extension in repayment, the Corporate Debtor failed to repay the total disbursed amount along with interest by 31.12.2019. Post-dated cheques issued by the Corporate Debtor were also dishonoured by the respective bank when presented by the Financial Creditor.

33. A loan recall notice was also given to the Corporate Debtor by the Financial Creditor on 15.01.2020. Therefore, it is very clear to the Bench from the above that the Corporate Debtor has defaulted in the repayment

of loan of Rs.1.80 crores extended to the Corporate Debtor along with applicable interest on the same.

34. The Bench before it has the reply of the Corporate Debtor where it has accepted the loan amount disbursed to it and that he has defaulted in the payment of the same. The Bench for record would like to reproduce the relevant paras from the reply of the Corporate Debtor in this regard.

> *"11. The Corporate Debtor has never denied the default on its part. In fact, the books of accounts of the Corporate Debtor reflect the pending payments against the loan to be made to the Financial Creditors."*
>
> *"16. The business of the Corporate Debtor is completely shut making it impossible for the Corporate Debtor to clear its loan liabilities. Therefore, the Corporate Debtor is unable to repay the loan obtained from the Financial Creditors."*

35. It is considered that the total amount of Debt granted to the Corporate Debtor is stated to be Rs. 1,80,00,000/-, and the amount claimed to be in default is Rs. 2,03,03,562/- including interest. The date of default is stated to be 31.12.2019.

36. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner. During the hearing of this matter by this Bench, the Counsel representing the Corporate Debtor Mr. Swapan Pradhan, accepted the liability as well as default. Hence, it is a fit case for admission.

37. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.

38. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It

has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case.

39. As a consequence, keeping therefore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.

40. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

41. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Shashant Sudhakar Veola, having registration No. IBBI/IPA-001/IP-P00310/2017-2018/ 10574, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

42. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

43. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

44. That the Interim Resolution Professional shall perform the duties as assigned under Section 18and Section 15 of the Code and inform the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

45. The Petition is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

46. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

47. Ordered Accordingly.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)