

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

**C.P. (IB) 852/MB/2023**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**Creative Industries Unit 11**

Having its address at- 7501, Embassy Centre,  
Nariman Point, Mumbai- 400021

**..... Petitioner/ Financial Creditor**

**Versus**

**S S Collection LLP**

Having its address at- 1st Floor; 8/34,  
Grants Building, Arthur Bunder Road,  
Colaba, Mumbai - 400005

**..... Respondent/Corporate Debtor**

**Order Delivered on :- 17/01/2024**

***Coram:***

**Mr. Anil Raj Chellan  
Member (Technical)**

**Mr. Kuldip Kumar Kareer  
Member (Judicial)**

*Appearances:*

For the Financial Creditor : Adv. Gyanika Kochar a/w Mrs. Salima Siddiqui Katriya

For the Corporate Debtor : Though present through VC but not put his appearance in the chat box

**ORDER**

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

1. The present petition has been filed by **Creative Industries Unit 11** (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s S S Collection LLP** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "the Code") for resolution of an unresolved Financial Debt of Rs. 1,40,75,974/- as on 01.02.2022.

**The submissions of the Financial Creditor are as follows:**

2. The Financial Creditor advanced a sum of Rs. 2,00,00,000/- to the Corporate Debtor on 28.08.2018 at the rate of 12% p.a. payable quarterly repayable within a period of 1 year.
3. The Corporate Debtor repaid a sum of Rs. 1,00,00,000/- to Financial Creditor on 24.12.2018.

4. The Corporate Debtor continued to service the loan and made the last interest payment of a sum of Rs. 2,72,219/- for the quarter ended 31.12.2019 paid on 10.01.2020.
5. The Corporate Debtor issued Confirmation of Accounts Statement 01.03.2021 to 31.03.2021 on 01.04.2021 admitting and acknowledging that they were liable to pay to the Financial Creditor a sum of Rs. 1,00,00,000/- being the principal amount and thereafter on 01.08.2021, they issued Confirmation of Accounts Statement for the F.Y. 01.04.2020 to 31.03.2021 admitting and acknowledging that they were liable to pay to the Financial Creditor a sum of Rs. 13,76,795/- towards the interest component totalling to a sum of Rs. 1,13,76,795/- (Rupees One Crore Thirteen Lakhs Seventy-Six Thousand Seven Hundred and Ninety-Five Only).
6. The Corporate Debtor failed to pay a single farthing to the Financial Creditor despite undertaking to clear the dues.
7. Without prejudice to whatever is stated hereinabove, it is submitted that the Financial Creditor had filed Company Petition No. 1256/MB/2022 which was dismissed on 12.03.2023. However, it is important to mention here that the said Petition was filed in respect of the default committed by the Corporate Debtor on 31.03.2020.
8. The Corporate Debtor issued Confirmation of Accounts on 01.04.2021 in respect of the Principal Amount agreeing and undertaking to repay the loan within 6 months. Thereafter, the Corporate Debtor issued Confirmation of Accounts on 01.08.2021 in respect of the Principal Amount agreeing and undertaking to pay the total principal and interest dues of the Financial Creditor within period of 6 months therefrom i.e. on or before 01.02.2022 but to no avail.

9. The Corporate Debtor has deposited TDS upto the A. Y. 2021-22 admitting and acknowledging its liability towards the Financial Creditor.
10. The Corporate Debtor is clearly not in a position to service its debts. Hence the Petition.

**Reply filed on behalf of the Corporate Debtor**

11. It is submitted that that an amount of Rs. 2,00,00,000/- (Rs. Two Crore only) was received by the Corporate Debtor as a friendly loan from the Financial Creditor. It is further stated that a sum of Rs. 1,02,00,000/- (Rs. One Crore and Two Lakhs Only) is due and payable to the Financial Creditor and not Rs. 1,13,76,795/- (Rs. One Crore, Thirteen Lakhs, Seventy Six Thousand, Seven Hundred and Ninety Five Rupees Only) as reflecting in the Statement of Confirmation dated 01.08.2021. In the said confirmation, there is a typographical error by the staff of the Corporate Debtor, and if the said confirmation is perused, the same is not confirmed by any of the Designated Partners of the respondent. However, the Corporate Debtor is unable to pay the same as there is not much demand in the markets, thereby putting a lot of financial crunch on the day to day working of the Corporate Debtor.
12. It is further submitted that that the Corporate Debtor has, in the past, fulfilled its commitments which is evident by the fact that upon receiving the friendly loan of Rs. 2,00,00,000/- (Rupees Two Crore only), the Corporate Debtor had instantly repaid the sum of Rs. 1,00,00,000/- (Rupees One Crore Only) within four months.
13. It is further submitted that the even during the Covid-19 pandemic, the Corporate Debtor repaid unsecured loans amounting to RS. 50,00,000/- (Rupees Fifty Lakhs Only), which shows the Corporate Debtor's willingness

and commitment towards repaying its debts. Further, during the Financial Year 2022-23, the Corporate Debtor has reduced its Creditor for Goods by Rs. 47,16,329.11/- (Rupees Forty Seven Lakhs, Sixteen Thousand, Three Hundred and Twenty Nine and Eleven Paise Only) so as to reduce its burden and streamline its operations. Even today, the Corporate Debtor is ready and willing to fulfil its commitments. However, looking at the bad condition of the market, the Corporate Debtor submits that it would need some time between eight to twelve months to clear the dues of the Financial Creditor.

**Analysis and Findings:**

14. We have heard the Counsel for the parties and gone through the record.
15. During the course of arguments, Counsel for the Petitioner has argued that the Financial Creditor had advanced a loan of Rs. 2 crores to the Corporate Debtor which was disbursed on 28.08.2018. It has further been pointed out that the Corporate Debtor returned a sum of Rs. 1 crore on 24.12.2018, as can be manifested from the account statements annexed with the Petition. Counsel for the Petitioner has further pointed out that as per the account statement, the Corporate Debtor paid an interest of Rs. 5.20 lakhs on 01.01.2019 and last payment of interest of an amount of Rs. 2,72,219/- was made on 10.01.2020. Counsel for the Petitioner has further pointed out that though the interest of the subsequent period was not paid by the Corporate Debtor the latter has been deducting income tax and depositing the same with the Income Tax Department which is evident from (Form-26 AS) which have also been annexed with the Petition. Counsel for the Petitioner has further referred to the notice dated 18.10.2022 which was served upon the Corporate Debtor asking it to repay the outstanding amount of Rs. 1 crore along with interest. However, despite the notice, the Corporate Debtor has not repaid

the financial debt. Counsel for the Petitioner has further referred to NeSL report (Exhibit- G) which shows that the date of default is 01.02.2022. According to the Counsel for the Petitioner, the factum of existence of financial debt and its default stands proved on the basis of the above referred documents and, therefore, the Petition deserves to be admitted.

16. On the other hand, Counsel for the Corporate Debtor has argued that the Petitioner has failed to make out a case under Section 7 of the Code as the nature of the debt has not been established since there is no loan agreement executed between the parties. According to the Counsel for the Corporate Debtor, as a matter of fact, on the basis of oral terms and conditions, a friendly loan of Rs. 1 crore was granted to the Corporate Debtor for a period of 7 years. Even otherwise, it has not been established that the loan was granted only for a period of one year. There is no proof as to when the loan was to be repaid. Counsel for the Corporate Debtor has further contended that in the given circumstances, the CIRP cannot be initiated against the Corporate Debtor merely on account of non-payment of interest by the Corporate Debtor as the amount of the interest falls below the threshold limit of Rs. 1 crore because the repayment of the principal amount of Rs. 1 crore has not become due which is repayable after 7 years. Counsel for the Corporate Debtor has, thus, prayed for the dismissal of the Petition.
17. We have weighed the contentions raised by the Counsel for the parties and carefully gone through the record.
18. It is the admitted case of the Petitioner that previously Company Petition no. 1256/MB/2022 was filed which was dismissed on 12.05.2023. It is also not disputed that in the said Petition the date of default claimed by the Petitioner was 31.03.2020. Though the copy of the order dated 12.05.2023 has not been

annexed with the Petition but as a matter of caution, we checked the said order on the web portal of NCLT and found that the previously filed CP No. 1256/MB/2022 was dismissed on the ground that the same was barred u/s 10A of the Code, 2016 as the date of default was 31.03.2020.

19. Now the question arises whether a second Petition under section 7 lies when the first Petition filed on the same set of facts has been dismissed on merits. It cannot be disputed that the previous Petition was filed by the Petitioner on the same set of facts and in respect of the default allegedly committed by the Corporate Debtor in respect of the same loan transaction. Admittedly, in the previous Petition the date of default was claimed as 31.03.2020 whereas in the instant Petition the date of default has been claimed as 01.02.2022 which, in our considered view, is not permissible under the law. In this regard, reference can be made to law laid down in *Ramdas Datta (Suspended Director of Saraju Flour Mill Pvt. Ltd. vs. IDBI Bank and another 2023 SCC Online NCLAT 1306*, whereby it has been held that date of default cannot be changed. In this very case, a reference has been made to the law laid down in *Ramesh Kymal vs. Siemens Gamesa Renewable Power Pvt. Ltd. 2021 (3) SCC 224* whereby also it was held that date of default cannot be changed or shifted. Apparently, the instant Petition has been filed in respect of the same financial debt by changing the date of default which, as per the law laid down in the afore-cited cases, cannot be changed or altered at the will of the Petitioner. Therefore, in our considered view, the Petition deserves to be dismissed on this score alone. In this context a reference can further be made to *Small Industries Development Bank of India vs. Sambandh Finserve Pvt. Ltd. MANU/NC/3256/2023* whereby it was held that once the date of default falls within the period set out in section 10A of the Code, 2016, the initiation of CIRP is totally barred forever. In the cited case also, the previous Petition

was filed in respect of the same debt as is the case in the instant Petition and it was held that the Petitioner cannot be permitted to circumvent the situation by adopting the novel method of fixing/shifting the date of default on its own to suit its convenience which is not permissible under the law.

20. It is therefore, evident that the date of default cannot be changed at the whim and fancy of the Petitioner. Even otherwise the Petitioner is barred under the provisions of order 2 Rule 2 CPC as well as under Section 11 CPC as the matter on the same set of facts in respect of the same financial debt has already been finally decided in the previous Petition and the Petitioner is barred from taking any new plea in the subsequent litigation which was available to him in the first bout of litigation.
21. As a result of above discussion, we find that the Petition is not maintainable and deserves to be dismissed. It is ordered accordingly. File be closed and consigned to records.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**

*Sushil/Ankit*

**Sd/-**  
**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**