

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

**CP (IB) NO. 568/2023**

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*

**Rajendra Shankarrao Kutte and Other**

Having registered office at: - Flat No.B/302  
Kapil Abhijat Dahanukar Colony , Near  
Cummins factory Kothrud, Pune ,  
Maharashtra-411038

**..... Applicant/  
Financial Creditor**

**Versus**

**Atharva Construction Pune Private Limited**

Having registered office at: - Atharva feriyaz  
Plaza, 15/7/3 Dhankawadi, Pune-Satara Road  
Pune, MH-411043.

**.... Corporate Debtor**

**Order Delivered On : 22.03.2024**

***Coram:***

Hon'ble Member (Judicial) : Justice V.G. Bisht, (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

***Appearances:***

For the Financial Creditor : Mr. Rohit Kulkarni, CS.

For the Corporate Debtor : Pooja Gera, Advocate.

**ORDER**

***Per : Virendrasingh G. Bisht, Member (Judicial)***

1. This Company petition is filed by **Rajendra Shankarrao Kutte (Financial Creditor-1) and Sujay Chandrakant Ladge (Financial Creditor-2)** hereinafter referred as "Financial Creditors" seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Atharva Constructions Pune Private Limited (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and bankruptcy code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Total Financial Debt is owed to both financial Creditor is of Rs. 1,92,01,348.50/- (Rupees One Crore Ninety-Two Lakhs One Thousand Three Hundred and forty-Eight and Fifty Paise Only) the said outstanding amounts are calculated for Mr. Rajendra Kutte till 01.04.2022 and for Mr. Sujay Ladge till 01.04.2016

2. The Segregation of amount amongst two Financial Creditors are as follows:

- Financial Creditor 1-Rs.93,32,495.50
- Financial Creditor 2- Rs.98,68,853/-

**Submissions of the Financial Creditor**

3. The Financial Creditor is a promoter and a Director of the Company.

4. The Financial Creditor 1 was regularly paid interest on the unsecured loan amount @15% p.a, until the default was committed on 31.03.2021

---

for an amount of Rs.93,32,495.50 and accordingly the Corporate Debtor was liable to pay an amount of Rs. 93,32,495.50 along with interest @15% p.a from 31.03.2021 till the date of repayment.

5. Additionally, the Financial Creditor Numbered 2 was also regularly paid interest on the unsecured loan of Rs.98,68,853/- along with interest @15% p.a from 31.03.2021 till the date of repayment.
6. The Petitioner denies the respondent's contention that the application is not meeting the threshold limit of Rs.1 Crore as contemplated u/s 4 of IBC Code 2016 and hence petition is not maintainable, and it is also denied that the said petition is time barred.
7. The Petitioners has also submitted the following vide written submission:
  - a. The objection raised by the Financial Creditor pertains to its purported failure to meet the prescribed threshold of Rs. 1.00 crore as stipulated under Section 4 of the Insolvency and Bankruptcy Code (IBC) of 2016:
    - i. It is to be noted that, that the debt in default at the time of filing the application exceeded Rs. 1,00,00,000/- and remains unpaid to date.
    - ii. The ongoing nature of the long-term debt, which is payable on demand, presented by Financial Creditors 1 & 2, cannot be constrained within the confines of limitation.
    - iii. Hence, the debt amounting to Rs. 1,92,01,348.50, which is due for immediate payment as of the filing date of the application, must be considered for the purposes of Section 4 of the IBC Code, 2016, rather than the debt subject to a continuing default.
    - iv. Consequently, the objection regarding the Petitioners' purported failure to meet the threshold limit of Rs. 1 crore as

stipulated in Section 4 of the IBC Code, 2016, cannot be entertained. It must be recognized that the Petition of both Petitioner No.1 and Petitioner No.2 is independently maintainable.

- v. Moreover, pursuant to Section 7 of the IBC Code, 2016, a Financial Creditor, either individually or jointly with other Financial Creditors, may file the present petition. Hence, the cumulative amount of both Petitioners exceeds Rs. 1 crore, validating the submission.
- b. The objection raised regarding Petitioner No. 2's classification as an Operational Creditor, thus rendering the petition under Section 7 non-maintainable, warrants careful examination:
- i. The tribunal to acknowledge that both petitioners are designated as Financial Creditors, having extended unsecured loans to the Corporate Debtor. Hence, the Corporate Debtor's contention that Petitioner No. 2 is an Operational Creditor lacks merit.
  - ii. Furthermore, a demonstrated history of disbursing a 15% interest on the amount advanced as a financial debt until 31.03.2021 unequivocally refutes any notion of the Company's intention to treat Petitioner No. 2 as an operational creditor. Clearly, Petitioner No. 2 maintains the status of a Financial Creditor.
  - iii. There exists no documentation indicating that Financial Creditor No. 2 transitioned into an operational creditor. From the inception until the present, the funds provided to the Corporate Debtor by Financial Creditor No. 2 have consistently been categorized and recorded under the label "LOAN" in the creditor's books. Moreover, the Corporate Debtor has not furnished any evidence supporting its claim or any understanding to designate Petitioner No. 2 as an

Operational Creditor. Consequently, the Corporate Debtor's objection holds no weight and ought not to be entertained by this Hon'ble Tribunal.

- c. The objection raised concerning the alleged time-barred nature of the debt and consequently the non-maintainability of the petition necessitates careful consideration:
- i. It is necessary to consider that the Corporate Debtor has filed its balance sheets and as per the Balance Sheet for the financial year 31.03.2021 the Petitioners are shown as unsecured creditors by the Corporate Debtor.
  - ii. The Debt was payable on demand and hence when the copy of petition in compliance of Section 7 of the IBC (which requires no formal notice to the Corporate Debtor) should have been read as a demand and the said amount should have been paid.
  - iii. For the sake of academic interpretation even if it is to be considered that, the balance sheet of 31.03.2019 be considered for the purpose of computing the limitation period, still the present petition is said to be within limitation as the last date for filing the Petition would fall on 31.02.2024, in view of the order of the Hon'ble Supreme Court of India passed on 10.01.2022 in Suo Moto WP No. 3/2020 wherein the Hon'ble Apex Court has excluded the period of limitation from 15.03.2020 to 28.02.2022 i.e. period of 23 months.
- d. Thus, it is submitted by the Financial creditor to consider the aforesaid facts and circumstances and pray before this Tribunal may kindly admit the Application and initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

**The Reply of the Corporate Debtor**

8. The collusion of Petitioners in this case is completely contrary to the

---

objective of the Insolvency and Bankruptcy Code,2016(IBC) and should not be countenanced.

9. The said Application in any event is not maintainable under Section 7 of IBC. The conditions of Section 7 are not met in the present case. The Corporate Debtor also submits that there are no documents, correspondence, agreement etc. have been produced to prove the exact nature of the purported debt or the terms and conditions of the same.
10. The Corporate Debtor contest that from the bare perusal of the synopsis and accompanying exhibits to this application and the amount claimed by Creditor-2 the said purported loan was taken in 2009-2010.The Petitioner claims that he has not received any amounts whatsoever from the Respondent since March 2016, the documents accompanying the Petition show that the amounts payable to Creditor-2 were not treated as long-term borrowings with effect from 31 March 2016.The Creditor-2 has not demonstrated nor relied on any specific acknowledgement to the claim an extension of the limitation period and, therefore the claim in the capacity of a Financial Creditor is time-barred in view of his own documents.
11. The Respondent submits that the claim of Petitioner (Creditor No.2) do not constitute a financial debt, it is necessary that the same is accompanied by interest payment or with the time value of money for consideration as per section 5(8) of the IBC proceedings .This means that an amount i.e. merely given to a corporate debtor cannot be termed as financial debt unless it is accompanied by a document or written contracts or any interest payment on the same hence which doesn't constitute a financial debt.
12. The Counsel appearing for the Corporate Debtor Submits that the Counsel for the Applicant during the oral arguments submits that Petitioner (Creditor No.-2) claim was reflected as Trade Advances in the

---

Balance Sheets of the Company without pointing out any entry from the statements. Therefore, is not a financial Creditor.

13. The Respondents submits that Petitioner (Creditor-1) is a signatory to the Financial Statements of Respondent and is, therefore, well aware of this position. Yet, he appears to have deliberately sought assistance of Petitioner (Creditor-2) to somehow meet the threshold as either of them individually could not meet the mandatory threshold of Rs.1 Crore, it is the law that for an application under section 7 of the IBC to be admitted debt has to be above Rs.1 Crore threshold. Both the claims of the Petitioners are not maintainable as the same is below the threshold of Rs.1 Crore.
14. The Respondent submits that Part IV of Form I where the amount of default and date of default is to be stated as per the IBC also does not indicate any specific date of default.
15. The counsel for the Corporate Debtor submits that only financial creditors or creditors can initiate proceedings. In this case there is no document or evidence to show that the Petitioner (Creditor-2) is indeed a financial creditor of Corporate Debtor.
16. The Corporate Debtor submits that the Applicant's (Creditor No.2) own admission, the purported loan was taken in 2009-10, and from the documents submitted by the Financial Creditor it is clear that claim was not shown as long-term borrowings with effect from 31.03.2016, and evidently therefore the Petition was filed on 03.10.2022 would be time-barred.
17. The Counsel for the Corporate Debtor Submits that the application is not meeting the prescribed threshold limit, Petitioner No.1 has collaborated with Petitioner no.2 to file a joint claim even though Petitioner No.1 is fully aware that Petitioner No.2 is not Financial

---

Creditor in the books of the Company since 31.03.2016 and any claims that Petitioner No. 2 may have is time-barred.

**Findings**

18. We have heard learned Counsel for the parties and have gone through the records.
19. We note that Corporate Debtor had borrowed money from 2 lenders who are applicants in the present case. The amount borrowed from financial creditor 1 amounting to Rs. 93,32,495.50 is clearly a financial debt having been acknowledged so in the financial statement year ended 2020-21.
20. Borrowing from Financial Creditor 2 is evidence by the record produced by the applicant, however the Applicant has produced acknowledgment of debt dated 31.03.2016 by the corporate debtor. There is no payment by the corporate debtor since then. Further, financial statement does not reflect the debt of the Financial Creditor No.2 specifically. The Present Petition has been filed on 03.10.2022 accordingly the debt of Financial creditor 2 is time barred and no action can lie against the corporate debtor in relation to debt, if any, owed to Financial Creditor No.2.
21. Accordingly, this petition can be considered only on the basis of debt owed to Financial Creditor No.1. Since the debt owed to Financial Creditor No.1 is less than one crore the present petition of is not maintainable in terms of section 4 of the code accordingly this application is dismissed.
22. From a perusal of the record and the documents relied upon by the Applicant, it stands proved that Corporate Debtor owes money to Financial Creditor -1 in respect of which default has been committed by the Corporate Debtor Nonetheless the debt owed to Financial Creditor No.1 has no due date accordingly the same is in the nature of debt

---

repayable on demand. The applicants the Financial creditors has not placed on record any documentary evidence indicating the demand for repayment having been made by Financial Creditors upon Corporate Debtor. Therefore, the Application u/s 7 of the Code, is to be dismissed. It is ordered accordingly in the following terms:

23. We therefore, pass following order.

**ORDER**

24. The above CP(IB) No. 568/2023 filed by Rajendra Shankarrao Kutte and others under Section 7 of the Code to initiate the Corporate Insolvency Resolution Process against Atharva Construction Pune Private is hereby dismissed.

25. Certified copy of this Order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

SD/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

SD/-

**JUSTICE V. G. BISHT**  
**MEMBER (JUDICIAL)**