IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-I

CP (IB) 93/MB/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016.

Archisha Steels Private Limited

[CIN: U27205MH1981PTC025930]

509-510, Navratan Premises Co-op Society, 69, P D Mello Road, Carnac Bunder, Mumbai -400009

…Petitioner/Financial Creditor

Versus

AJS Impex Private Limited

[CIN: U74900MH2006PTC161680]

Office No. 211, 2nd Floor, Hubtown Solaris, Saiwadi N.S. Phadke road, near Hotel Regency, Andheri (e) Mumbai- 400069

…Corporate Debtor/Respondent

Order Delivered on 15.07.2022

Coram:

Hon'ble Member (Judicial)	:	Justice P.N. Deshmukh (Retd.)
Hon'ble Member (Technical)	:	Shyam Babu Gautam

Appearances:

For the Financial Creditor	:	Ms. Geeta Lundwani, Advocate
For the Corporate Debtor	:	Ms. Pragya Khaitan, Advocate

ORDER

Per: Shyam Babu Gautam, Member (T)

1. This Company Petition (hereinafter referred to as "Petition") is filed by **Archisha Steels Private Limited** (hereinafter referred to as the "Financial Creditor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against **AJS Impex Private Limited** (hereinafter referred to as the "Corporate Debtor").
2. The Corporate Debtor is a Private Limited Company incorporated under Companies Act, 1956 having its registered address at 509-510, Navratan premises Co-op society, 69, P D Mello Road, Carnac Bunder, Mumbai -400009. Its Company Identification Number (CIN) is U74900MH2006PTC161680. Therefore, this Bench has the jurisdiction to deal with this Petition.

Submissions made by the Ld. Counsel of the Financial Creditor by the way of Petition:

3. The total amount of debt granted towards principal amount is Rs.7,71,04,962/- (Rupees Seven Crores Seventy One Lakh Four Thousand Nine hundred and Sixty Two Only) and interest due and outstanding as on 30.11.2021 is Rs.84,79,197/- (Rupees Eighty Four Lakh Seventy Nine Thousand One Hundred and Ninety Seven Only). Thus the **total amount of liability is Rs.85,584,159** (Rupees Eight Crore Fifty Five Lakh Eighty Four Thousand One Hundred and Fifty Nine

Only) and the **date of default as per the loan agreement entered between the parties is 30.06.2021.**

4. It is the case of the Petitioner that in the usual course of business, the Corporate Debtor approached the Financial Creditor for supply of Hot Rolled Coil & Sheets (hereinafter to be referred as "The Goods") and as per requirements raised by the Corporate Debtor, the goods were supplied, to the satisfaction of the Corporate Debtor. Pursuant to the delivery of the goods, the Financial Creditor raised necessary invoices in respect thereof.
5. However, despite providing quality goods in a timely manner, the Corporate Debtor failed to honour the amount raised under the said invoices. The Ledger Account of the Corporate Debtor after giving credits to the amounts received, an amount to the tune of Rs.7,71,04,962.61/-(Rs. Seven Crore Seventy One Lakh Four Thousand Nine Hundred and Sixty Two Rupees Only) was still due and outstanding.
6. The Corporate Debtor vide its letter dated 02.12.2020 approached the Financial Creditor and expressed its inability to pay the entire amount. The Corporate Debtor further requested the Financial Creditor to consider the said balance amount of Rs.7,71,04,962.61/- to be treated as an unsecured loan given the Corporate Debtor which will carry a rate of interest of 12% p.a.
7. Owing to the long-lasting relationship with the Corporate Debtor, the Financial Creditor agreed to consider the said balance amount of Rs.7,71,04,962.61/- as unsecured loan granted to the Corporate Debtor for a period six months along with interest @ 12% pa. Accordingly, a

loan agreement dated 30.12.2020 was executed between the Financial Creditor and the Corporate Debtor on the terms and conditions as explicitly stated therein. The said Loan Agreement inter alia stipulated the terms on which the said Loan was to be repaid by the Corporate Debtor and its rate of interest.

8. As per the terms agreed between the parties, the said loan was to be repaid within six months by the Corporate Debtor. However, the Corporate Debtor failed to repay the said loan within stipulated time. The Financial Creditor vide its letter dated 06.07.2021 has also formally recalled the entire loan along with the applicable interest.

9. Despite the regular follow ups and accommodating the Corporate Debtor on various occasions, the Corporate Debtor has defaulted in payment of said loan. As there exists a clear case of debt and default and Financial Creditor has filed the instant petition before the Adjudicating Authority for initiating Corporate Insolvency Resolution Process u/s 7 of Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.

10. The Petitioner has attached the following documents in support of his submissions :

Sr. No.	Particulars	Exhibit
1.	Copy of letter of acknowledgement dated 02.12.2020 given to the Financial Creditor	Exhibit- D1 to the Petition

2.	Copy of Loan Agreement dated 30.12.2020	Exhibit- E to the Petition
3.	Copy of demand promissory note dated 30.12.2020 issued in favour of the Financial Creditor	Exhibit- F to the Petition

<u>Submissions made by the Ld. Counsel of the Corporate Debtor</u>:

11. Counsel appearing on behalf of the Corporate Debtor, upon the instructions of the Corporate Debtor made a statement across the bar that they admit the liability as claimed by the Petitioner and are unable to re-pay the same.

<u>Findings:</u>

12. We have heard the arguments of Financial Creditor and Corporate Debtor and perused the records.
13. We also consider the facts of the case in the lights of the Order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil)No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the Petition.

14. Upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the Corporate Debtor owes money to the Financial Creditor.
15. The Financial Creditor has proposed the name of Mr. Atul Jain, Registration No. IBBI/IPA-001/IP-P00307/2017-2018/10571, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
16. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
17. It is, accordingly, hereby ordered as follows: -
    (a) The petition bearing CP (IB) 93/MB/2022 filed by Archisha Steels Private Limited, the Financial Creditor, under Section 7 of the IBC read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against AJS Impex Private Limited [CIN: U74900MH2006PTC161680] the Corporate Debtor, **is admitted**.

(b) There shall be a moratorium under Section 14 of the IBC, in regard to the following:

  (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

  (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

  (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

  (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:-

  (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

  (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(f) Mr. Atul Jain, Registration No. IBBI/IPA-001/IP-P00307/2017-2018/10571, having address at 3rd, 4th Floor, Vaastu Darshan, B-Wing, Azad Road, Above Central Bank of India, Mumbai – 400008 [email:atuljainca@hotmail.com] [Mobile: +919821119041], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18,19, 20 and 21 of the IBC.

(g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

(h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors

(i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

(j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-	**Sd/-**
SHYAM BABU GAUTAM	**JUSTICE P.N. DESHMUKH**
Member (Technical)	**Member (Judicial)**

15.07.2022
DSB