

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

CP (IB) 427/MB/2022

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

**SAMATA NAGARI SAHKARI PATSANSTHA
LIMITED**

Samata Marg, Khandaknal, Main Road, Kopargaon
Dist, Ahmednagar-423601

... Financial Creditor /Petitioner

Versus

**SAMARTH SHRINIWAS INFRA PRIVATE
LIMITED**

Office No. 102, SR 925A, F. C. Road, Shivajinagar,
Pune - 411005.

... Corporate Debtor /Respondent

Order Pronounced on: 10.02.2023

Coram:

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

Appearances:

For the Financial Creditor : Ms. Seetalaxmi Swamy,
Advocate.
For the Corporate Debtor : None present.

ORDER

Per: Justice P. N. Deshmukh, Member (Judicial)

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Samata Nagari Sahkari Patsanstha Limited** ("the Financial Creditor or Petitioner"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Samarth Shriniwas Infra Private Limited** ("the Corporate Debtor or Respondent").
2. The present Petition was filed on 01.04.2022 before this Adjudicating Authority on the ground that a loan for a sum of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) was advanced by the Financial Creditor to the Corporate Debtor and the Corporate Debtor has defaulted in repayment of the same.
3. The total amount claimed to be in default by the Financial Creditors is Rs.1,67,90,160/- (Rupees One Crore Sixty-Seven Lakh Ninety Thousand One Hundred and Sixty Only) along with interest and charges. The date of default stated to be is 30.04.2021.
4. The Corporate Debtor is a private limited company incorporated on 30.01.2015 under the Companies Act, 2013, with the Registrar of Companies, Maharashtra. Its registered office is at Office No. 102, SR 925A, F. C. Road, Shivajinagar, Pune - 411005. Therefore, this Bench has jurisdiction to deal with this petition.

Submissions made by the Financial Creditor by way of petition:

5. The Financial Creditors submits that the application is filed on account of failure on the part of the Corporate Debtor to make payment of the financial debt due and payable to the Petitioner towards refund of monies advanced by the Petitioner in favor of the Corporate Debtor. Disbursement of the debt is through sanction of credit facility for a working capital term loan amounting to Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only). Copy of the loan application is placed at **Pg No. 39-48** of the Petition. Copy of the resolutions authorizing the loan are placed at **Pg. No. 49-50** of the Petition.
6. It is further submitted that the duration of the loan is 60 months from 31.03.2021 to 31.03.2026 with equal monthly installments of Rs 3,49,100/- (Rupees Three Lakh Forty-Nine Thousand One Hundred Only) payable. Copy of the loan agreement is placed at **Pg No. 51-60** of the Petition.
7. The copies of Statement of Bank Accounts for the period of 31.03.2021 to 31.12.2021 of the Financial Creditor are placed at **Page No. 103-104** of the petition. The computation of claim is placed in “**Annexure 2**” of the Petition.
8. The Petitioner submits that the Corporate Debtor was sent the first installment letter on 04.05.2021. Subsequently, two more installment letters were sent by the Petitioner on 02.06.2021 and

05.07.2021 calling upon the Corporate Debtor to repay the loan amount.

9. The Petitioner submits that on 19.07.2021, the Corporate Debtor issued a cheque in favour of the Petitioner for Rs. 10,47,300/- (Rupees Ten Lakh Forty-Seven Thousand and Three Hundred Only) which was returned dishonored with the remarks as funds insufficient.
10. The present application has been filed on the basis of the aforementioned cheques and the Loan Agreement dated 31.03.2021 executed between the Petitioner and the Corporate Debtor.
11. The Petitioner submits that they have initiated legal proceedings under Section 101 of the Maharashtra Cooperative Societies Act, 1960, for the recovery of the claim amount against the Corporate Debtor. Further, a legal notice dated 03.08.2021 has also been served to the Corporate Debtor demanding payment of Rs. 10,47,300/- (Rupees Ten Lakh Forty-Seven Thousand and Three Hundred Only) for cheques which were returned dishonored within 15 days, failing which action under Section 138 of the Negotiable Instruments Act, 1881 along with criminal action shall be initiated. Subsequently the Corporate Debtor has failed to repay the same.
12. The Petitioner has also submitted that considering the date of default to be 30.04.2021, this petition is within the time limit

prescribed under entry 137 to the Schedule of the Limitation Act, 1963.

13. The Petitioner has proposed the name of Insolvency Professional Mr. Vinit Gangwal, Registration No: IBBI/IPA002/IP-N00091/2017-18/10235 for appointment as an Interim Resolution Professional (“IRP”). There is no disciplinary proceeding against the Insolvency Professional whose name is suggested for IRP.
14. Record reveals that on 12.05.2022 last chance was granted to the Corporate Debtor to file affidavit in reply and Financial Creditor was orally directed to reissue notice to the Corporate Debtor in the interest of justice. However, it is submitted that the notice issued is returned back undelivered. In that view of the matter, the Company Petition was proceeded *ex parte* against the Corporate Debtor on 20.10.2022.

Findings:

15. Heard the Ld. Counsel for the Petitioner and perused the records.
16. The Loan Agreement entered into by the Corporate Debtor and the Petitioner. Clause No. 4 and 5 are reproduced as below:
“4) The duration of the loan is 60 months from 31/03/2021 to 31/03/2026 and the principal amount plus interest and expenses shall be paid. I am solely responsible for making payment of the same and we will make payment on time.
5) The duration of this loan is of 60 months and each month an instalment of Rs. 3,49,100/- (Rupees Three lakhs forty-nine thousand one hundred

only) shall be paid. First instalment of this loan shall commence from 30/04/2021 or prior to that and last instalment shall be paid on 31/03/2026 or earlier.

6) In case 3 instalments or amount equal to 3 instalments becomes arrears then there is right to recover the same at total amount due at one stroke and I admit to do the same.”

17. As cited by the Petitioner, the date of default is claimed to be on 30.04.2021, However, it is noticed that subsequent instalments are also in default. Based on the clause 6 of the above-mentioned loan agreement, the Petitioner reserves the right to recall the entire loan amount in one stroke, thereby making the entire claim of the Petitioner due and payable by the Corporate Debtor.

18. The Hon’ble Supreme Court in the case of ***M/S Innoventive Industries Vs ICICI Bank and Anr. (Civil Appeal Nos. 8337-8338 of 2017)*** relevant portion that reads as follows:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed

interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

19. In light of the same, we opine that there is a default of Financial Debt.
20. We have also considered the facts of the case in the light 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.

21. 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 more than 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.
22. It is, accordingly, hereby ordered as follows: -
 - (a) The Petition bearing **CP (IB) 427/MB/2022** filed by **Samata Nagari Sahakari Patsanstha Limited.**, acting in its capacity as Trustee of Invent/1314/P6 Trust, 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 **Samarth Shrinivas Inra Private Limited [CIN: U45204PN2015PTC153866]**, the Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, regarding 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) 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 IB Code.
- (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. Vinit Gangwal, Registration No: IBBI/IPA002/IP-N00091/2017-18/10235**, having address at Office No. 305, Om Chambers, Above Hotel Panchali, J.M. Road, Shivaji Nagar, Pune -411005 Email:vinitaganwal@sudharman.in 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 the RP, as the case may be, 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 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 Lakh 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 (CoC).
- (i) 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/-

SHYAM BABU GAUTAM
Member (Technical)

10.02.2023
Priyal

Sd/-

JUSTICE P. N. DESHMUKH
Member (Judicial)