



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.3195/MB-IV/2019**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Ganak Technologies Private Limited**

[CIN: U72900PN2006PTC021874]

...Financial Creditor/Applicant

V/s

**Vaishvik Foods Private Limited**

[CIN: U15490PN2008PTC131298]

...Corporate Debtor/Respondent

**Order Dated: 21.03.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Avinash Khanolkar, a/w  
Ms. Surekha Yadav,  
Advocates.

For the Respondent(s) : None.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is an application bearing C.P. (IB) No. 3195/MB/C-IV/2019 filed by Ganak Technologies Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency

Resolution Process (CIRP) against Vaishvik Foods Private Limited, Corporate Debtor.

2. The Application is filed by Mr. Sham Sadashiv Wagh, Director of the Financial Creditor duly authorised vide its Board Resolution dated 08.08.2019 passed by the Board of Trustees, claiming total default of Rs.22,56,000/- (Rupees twenty-two lakh fifty-six thousand only) which includes Rs.15,00,000/- as the principal amount and Rs.7,56,000/- as the interest amount.
3. The Date of Default is stated to be 30.05.2019 in the Petition. The Petition is filed on 26.08.2019 which is within the period of three years from the Date of Default.
4. The case of the Financial Creditor is that:
  - 4.1. The Financial Creditor had advanced inter corporate loan of Rs.15,00,000/- to the Corporate Debtor repayable within 6 months at the interest rate of 16% p.a. The amount was disbursed to the Corporate Debtor in two tranches through Cheques on 14.03.2013 and 15.03.2013 respectively.
  - 4.2. The Financial Creditor extended the time for repayment from time to time on same interest rate. The Corporate Debtor has paid interest @ 16% p.a. on the said loan till 31.12.2014. Thereafter, from 01.01.2015 till date no interest is paid to the Financial Creditor. however, till 31.12.2018, TDS on the interest of the Financial Creditor has been deducted and paid by the Corporate Debtor.
  - 4.3. The Financial Creditor issued a letter dated 12.10.2017 demanding the repayment of loan amount, but the Corporate

Debtor has not responded to the said letter. Thereafter, the Financial Creditor issued a Legal Notice dated 30.01.2019 through its Advocate for demanding the said outstanding loan amount. However, the Corporate Debtor has replied to the said Notice vide its letter dated 02.02.2019 whereby the Corporate Debtor has acknowledged the amount due and promised to repay the same to the Corporate Debtor by the end of March 2019.

- 4.4. However, failure to pay the dues till 30.03.2019, the Financial Creditor issued another letter dated 22.04.2019 for outstanding and again the Corporate Debtor responded that the dues will be cleared in the month of 2019.
5. The Corporate Debtor has not appeared in the matter after giving several opportunities in the matter. hence, vide order dated 24.11.2022, the Corporate Debtor was set ex-parte.

*Findings/Observations:*

6. We have heard the arguments of the Learned Counsel for both the parties and perused the records.
7. It is observed by the Bench that the Financial Creditor had advanced inter corporate loan of Rs.15,00,000/- to the Corporate Debtor repayable within 6 months at the interest rate of 16% p.a. The amount was disbursed to the Corporate Debtor in two tranches through Cheques on 14.03.2013 and 15.03.2013 respectively.
8. From the material on records, it is observed that, the Corporate Debtor has not appeared in the matter. The Corporate Debtor has acknowledged its liability vide its letter dated 02.02.2019 and 22.04.2019 to the Financial Creditor. It also observed from the ledger

filed by the Financial Creditor that the Corporate Debtor had made part payments on 30.07.2013, 23.10.2013, 15.02.2014, 25.07.2014, 03.01.2015, 04.08.2015, 03.03.2016, 15.04.2016 and 10.10.2016. The Corporate Debtor has made last payment of Rs.10,800/- on 10.10.2016. Further, the Corporate Debtor has also paid TDS on the interest of the Financial Creditor on 30.06.2017, 30.09.2017, 31.12.2017, and 31.03.2018. The Financial Creditor has filed the Financial Statement for F.Y. 31.03.2018 wherein the inter corporate deposits of Rs.15,00,000/- is reflecting.

9. Further, vide order dated 31.01.2020, the Company Petition was Dismissed as Withdrawn in view of Consent Term entered between the parties. The Consent Terms were defaulted, and the matter was restored in view thereof vide order dated 23.12.2022. The Financial Creditor submitted on that day that as agreed as per the Consent Terms, out of Rs.28,00,000/-, Rs.20,00,000/- has been paid by the Corporate Debtor and Rs.8,00,000/- is still pending to be paid.
10. It is noticed that the Applicant, in the Application under section 7 of the Code, had claimed default of Rs.15,00,000/- on account of principal amount and the balance amount was claimed on account of interest thereon. In other words, upon payment of Rs.20,00,000/-, the whole of principal amount of Rs.15,00,000/- stands paid. Accordingly, the amount of Rs.8,00,000/- remaining to be paid in terms of consent terms is on account of balance interest.
11. We find that the objective of the Code is to resolve the default of the Corporate Debtor and not recovery. The NCLAT, New Delhi in the case of "*Rohit Motawat Vs. Madhu Sharma Proprietor Hind Chem Corporation & Anr.*" NCLAT (PB) New Delhi Comp. App (AT) (Ins) No.

*1152 of 2022*, expounded that when the principal amount had already been paid by the Appellant and the issue was only regarding the recovery of interest, a Section 9 Application under the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as "IBC") could not have been maintainable as the Code envisages 'resolution of debt' and not 'recovery'. Following this proposition, we find that the application cannot be allowed in the present case in case the Corporate Debtor has undertaken to pay the principal amount of financial debt.

12. In view of this, the Present Application is liable to be dismissed.

**ORDER**

13. This Application being C.P. (IB) No. 3195/MB/C-IV/2019 filed under Section 7 of I&B Code, 2016, filed by Ganak Technologies Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Vaishvik Foods Private Limited, Corporate Debtor is hereby **Rejected**.
14. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present Petition.

Sd/-

Prabhat Kumar  
Member (Technical)

21.03.2023

Sd/-

Kishore Vemulapalli  
Member (Judicial)