



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 335/IBC/MB/2022

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 4 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

Samata Nagari Sahkari

Patsanstha Maryadit

Having registered office at:
Kopargaon, samata Marg, Near
Khandaknala, main road, Kopargaon,
Dist. Ahmednagar, 423 601

.....Financial Creditor

Vs

**M/s. Vikram Kakade Construction
Private Limited.**

(CIN: U45200PN2007PTC130462)

Registered office at: Kakade Capital,
Plot No. 1205, Shirole Road, Off J M
Road, Shivaji Nagar, Pune – 411004.

.....Corporate Debtor

Reserved for Order on: 17.10.2022

Order Pronounced on : 10.11.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt Anuradha S Bhatia, Member (Technical)

For the Applicant: Ms. Seetalaxmi Swamy, Advocate

Per: *Shri H.V. Subba Rao, Member (Judicial)*

The above Company Petition is filed by **Samata Nagari Sahkari Patasanstha Maryadit Kopargaon** hereinafter called as Financial Creditor seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s. Vikram Kakade Construction Private Limited** called as Corporate Debtor by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Financial Debt of Rs **1,35,00,000/-**.

The brief facts of the petition are as under:

1. The Petitioner Submits that the Corporate Debtor approached the Financial Creditor for credit facilities i.e. Working Capital C.C. Loan. Following are detail of the loan for a period of 9 months:

Sr. No.	Date of Sanction as per the Board Resolution of Applicant	Date of Disbursement	Account No. & Amount Sanctioned	Due Date	Remarks
1.	05.08.2012	08.08.2012	A/c 392-2253 & 1,00,00,000/-	17.09.2012	The Corporate Debtor did not make the payment on the due date but subsequently the amount was paid and the account was closed on 28.03.2014
2.	08.03.2014	28.03.2014	A/c 392-2350 & 1,00,00,000/-	06.04.2014	The CD failed to pay the payment and defaulted
3.	29.03.2018	31.03.2018	A/c 412-1000251 & 1,25,00,000/- At 17% per annum	09.04.2018	The Corporate Debtor did not repay the principle or interest on the aforesaid facility. The CD made an application for renewal of the credit facility seeking enhancement with the interest.



2. The Petitioner further submits that as mentioned in the Working Capital C.C. Loan Agreement, the terms of the credit facility included payment of monthly interest within 8 days from the date of debit in the account. Also, that the CD defaulted in the payment of the interest due which was on 09.04.2019 as per Working Capital C.C. Agreement but the payments were subsequently paid though not on regular basis.
3. The Petitioner further submitted that the CD defaulted in the repayment of the credit facilities and interests thereon, whereupon the Financial Creditor herein initiated legal action by filing a case on 28.08.2018 under Section 101, for the recovery amount of Rs. 1,32,58,047 (Rupees One crores Thirty-two lakh fifty-Eight Thousand Forty-Seven Only) plus interest. The CD has not made payment which is due. Hence, Certificate for recovery U/s 101 of the Maharashtra Co-Operative Societies Act 1960 was issued dated 04.12.2018.
4. Petitioner in his submissions further stated that the CD has failed to deposit the said amounts within the stipulated period, in spite of the Certificate issued U/s. 101 of the Maharashtra State Cooperative Societies Act, 1960. Therefore, the Financial Creditor had served Demand notice dated 13.12.2018 to make the payment on an immediate basis. The Financial Creditor had served Attachment notice dated 28.12.2018 to attach the immovable property. Even after the demand notice and attachment notice, payment was not made by the CD.
5. The Petitioner submitted that the CD in its written communication dated 25.01.2019 has requested the Financial Creditor to grant extension for clearing the dues due to liquidity crunch requesting for grace period till 10.02.2019.
6. The Petitioner also submitted the CD vide its correspondence dated 08.07.2019 has issued 15 post-dated cheques for clearing

their total loan accounts. The CD has requested the Financial Creditor for stop-payment of cheques bearing no. 005298 amounting to Rs. 20 Lakh dated 11.10.2019.

7. The Petitioner also stated that under section 7 the IBC, on 12.03.2020, the Financial Creditor herein filed an application being C.P. No. 876 of 2020 u/s 7 of IBC, 2016, read with rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 as a Financial Creditor for initiating CIRP.
8. Subsequently, since the account of the said credit facility being rescheduled, the said Application was withdrawn by the Financial Creditor on 02.09.2021
9. The Petitioner further states that details of the Rescheduling of loan (credit Facilities) provided to the Corporate Debtor by the Financial Creditor, the details of the credit facilities sanctioned and disbursed by the Financial Creditor are as under:

Sr. No.	Date of sanction as per the Board-Resolution of the Financial Creditor	Date of Disbursement	Amount & Interest Payable	Due Date	Amount Outstanding as on 30.11.2021 (including interest in Rs.)
1.	11.03.2021	31.03.2021	1,35,00,000 interest payable at 14% p.a	30.04.2021	1,49,77,068

10. The Petitioner further submitted that the Primary and collateral Securities for the Rescheduled Loan was as below:

Sr. No.	Name of the Owner of the property	Description	Value of the Security	Name of the valuer and date of valuation
1.	Mr.Sanjay Dattatraya Kakade & Mrs. Usha Sanjay Kakade	Residential Area	5,72,80,700	Valuation dated 06.08.2012 by Adv. Vijay Marathe.



11. The Petitioner further submitted the Additional Affidavit of the Highest officer of the Financial Creditor who is dealing with the corporate debtor's restructuring, explaining the circumstances under which the earlier company petition filed before Court IV, Mumbai bench was withdrawn despite existence of default as on date of withdrawal as per clarification sought by this bench.
12. Mr Sachin Bhattad, General Manager of the Financial Creditor by way of Affidavit submitted and placed on record the reasons for withdrawal of the Company Petition being C.P. 876 of 2020 and filing of the New Company Petition being C.P. No. 335 of 2022 against the same Corporate Debtor.
 - a. That the CD availed of a loan in the nature of Working Capital cash credit Loan (C.C Loan) for an amount of Rs. 1,25,00,000/- vide Board Resolution dated 29.03.2018 and the same was disbursed on 31.03.2018 to the account no. being 4121000251. However, the CD defaulted in the repayment of the said credit facility on 09.04.2018 being the date on which the first monthly interest payment fell due.
 - b. Consequently, under section 7 of IBC, 2016 an application was filed by the FC on 12.03.2020
 - c. The liability of the CD towards the FC was Rs. 65,84,145/- as on 31.03.2020 and same is reflected in the Balance Sheet of the CD for the year ending 31.03.2021.
 - d. The Petitioner further submitted that the CD paid off the said outstanding liability on 31.03.2021. A copy of the Customer Ledger Account evidencing the CD having debt due to the FC is annexed herewith and marked as Exhibit "B".
13. The Petitioner in his submission stated that since the CD paid off the outstanding amount on 31.03.2021, the FC filed an application on 25.08.2021 under Rule 8 of the Insolvency and



- Bankruptcy (Adjudicating Authority) Rules, 2016, to withdraw the Company Petition being C.P. No. 876 of 2020 and the same was allowed by this Bench on 02.09.2021.
14. The Petitioner further submitted that at the request of the CD, the FC resolved to extend another loan for an amount of Rs. 1,35,00,000/- wherein the nature of the loan being a C.C Loan, and the same was disbursed on 31.03.2021 to the account number being 41200001000524.
15. The petitioner in his submission also stated that even after restructuring the loan amount the CD defaulted in the repayment of the new Credit facility availed by it on 30.04.2021 as a consequence of which the FC filed an application being C.P. No. 335 of 2022 i.e the present Petition before this bench on 23.02.2022.
16. It was further clarified by the Petitioner that with regards to why the Company Petition being C.P No. 876 of 2020 was withdrawn in September 2021 despite the existence of a default on 30.04.2021, i.e., before the date of filing of the IA praying for withdrawal, to which it was further clarified by the Petitioner in his statement that the Company Petition was withdrawn on account of the entire outstanding liability being paid by the CD. Hence, no default existed in respect of the claim for which the Company Petition being C.P. No. 876 of 2020 was filed.

FINDINGS

Heard Mr. Raghunath Sarangapani, the learned PCA appearing for the Financial Creditor. Notice in the above Company Petition was duly served on Mr. Vikram Kakade who is one of the Directors of the Corporate Debtor who did not choose to appear before this Tribunal. Since service of Notice on all or any one of the Directors is a deemed service of notice on the Company, the



Corporate Debtor was set ex-parte vide order dated 21.04.2022. As stated above, the above Company Petition is filed for initiating CIRP against Corporate Debtor in respect of default of a Financial debt of Rs 1,49,77,068.71/- (Rupees One Crore Forty-Nine Lakhs Seventy-Seven thousand and Sixty-Eight). It is appropriate to mention here that the Financial Creditor previously filed another Company Petition bearing number 876 of 2020 on 09.03.2020 which was made over to Court number IV. Subsequently the Financial Creditor had withdrawn the said Company Petition on 02.09.2021 on account of restructuring of loan facility and execution of fresh documents by Corporate Debtor. Since the Corporate Debtor committed default on the 1st Instalment itself even after restructuring of the loan, the present company Petition is filed by Financial Creditor for initiating CIRP against the Corporate Debtor.

The Learned PCA appearing for the Financial Creditor invited the attention of this bench to the relevant loan documents including Mortgage Deed, Working Capital C.C. Agreement, along with Guarantor's Agreement executed by the Corporate Debtor/Guarantor in respect of the Restructured loan facilities sanctioned to the Corporate Debtor. The counsel appearing for the Petitioner also invited the attention of this Bench to the recall notice dated 08.09.2021 and also the relevant acknowledgements under which the Respondent has received the recall notice. Since the Corporate Debtor remained ex-parte the claim of the Financial Creditor remained unchallenged.

After hearing the submissions & considering the relevant facts of the present case, this bench is of the view that the debt & default stands proved in this case. Since the loan facilities are of the year 2021 and the above Company Petition being filed on 24/03/2022 is within limitation. The Financial Creditor also suggested the name of proposed IRP along with his consent form thus the above Company



Petition satisfies all the legal requirements and deserves to be allowed. Accordingly, the above Company Petition is admitted.

ORDER

- a. The above Company Petition No. (IB) 335(MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Vikram Kakade construction pvt Ltd.
- b. This Bench hereby appoints **Mr. Srinivas Vaidyanath Subramaniam**, Insolvency Resolution Professional, Registration No: IBBI/IPA-002/IP-N00991/2020-2021/13162 as suggested by Financial Creditor in the Company Petition.
- a. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- b. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



- c. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- d. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- e. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- f. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- g. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- h. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- i. Accordingly, this Petition is admitted.
- j. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

Anuradha Sanjay Bhatia
MEMBER (TECHNICAL)

Sd/-

H.V. Subba Rao
MEMBER (JUDICIAL)