

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

CP (IB)2547/MB/C-IV/2019

Under section 7 of the I&B Code, 2016

In the matter of

Sajjan Kumar Agarwal

...Financial Creditor

v/s.

Shree Sai Industries Private Limited

[U27300MH1995PTC090450]

...Corporate Debtor

Order Delivered on: 20.12.2019

Coram: Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.
Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner: Mr. Kunal Kanungo a/w Ms. Tanushree Sogani.

For the Respondent: Ms. Uma Parmar i/b Saffron Law Firm

ORDER

***Per:* Rajasekhar V. K. Member (Judicial)**

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Sajjan Kumar Agarwal** ("the Financial Creditor"), an Individual, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Shree Sai Industries Private Limited** ("the Corporate Debtor").
2. The Corporate Debtor is a Private Company limited by shares and incorporated on 11.07.1995 under the Companies Act, 1956, with the

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Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U27300MH1995PTC090450. Its registered office is at 127-A, Masjid Bander, Darukhana, Ray Road, Mumbai-400010 within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 24.06.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹ 92,25,000/- (Rupees ninety-two lakh twenty-five thousand only) as the total claim amount i.e. ₹ 75,00,000/- (Rupees seventy-five lakh only) as principal and ₹17,25,000/- (Rupees seventeen lakh twenty-five thousand only) as the interest as stated at p. 5 of the Petition. Date of default is 09.10.2018, as stated at p. 6 of the petition.
4. The Financial Creditor had provided an amount of ₹ 1,00,00,000/- (Rupees one crore only) to the Corporate Debtor as financial assistance and by way of unsecured loan along with interest @ 12% which was due & payable on monthly basis. The said loan of ₹ 1,00,00,000/- (Rupees one crore only) was disbursed by the Financial Creditor to Corporate Debtor in following tranches:

Sr. No.	Date of Disbursement	Amount provided in rupees
1.	21.07.2014	25,00,000.00
2.	23.07.2014	25,00,000.00
3.	30.07.2014	25,00,000.00
4.	30.07.2014	25,00,000.00
5.	04.08.2014	25,00,000.00
	TOTAL	1,00,00,000/-

The proof of the above disbursement of amount is attached at **Exhibit '14'** pp.14-15.

5. The Financial Creditor submitted that from 01.06.2017, the Corporate Debtor failed to pay the agreed interest on the principal and the interest component have been continuously adding and the outstanding is reflected in the ledger accounts of Corporate Debtor at **Exhibit 'D'** pp. 16-21 of the Petition, maintained in the books of the Financial Creditor for the Accounting year 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19. (at p. 4 of the Petition)
6. The Financial Creditor also submitted the copy of email dated 17.08.2018 demanding the outstanding interest amount which is at **Exhibit 'E'** p. 22 of the Petition. The copy of Interest Calculation Sheet showing the computation of total amount due and payable is at **Exhibit 'H'** at p. 66 of the Petition.
7. The Financial Creditor stated that the Corporate Debtor issued cheques which are at **Exhibit 'F'** at p. 23 of the Petition towards debt amount which was dishonoured. Thereafter the Financial Creditor sent three Demand Notices dated 01.11.2018, 13.11.2018 and 29.12.2018 under section 138 of Negotiable Instruments Act, 1881 and subsequently initiated criminal proceedings. (at p. 5 of the Petition)
8. The Financial Creditor further stated that the Corporate Debtor has also admitted its liability, which is evident from the fact that TDS on interest has been deposited with the tax authorities by the Corporate Debtor and same is been reflected in Form 26AS of the Financial Creditor is at **Exhibit 'G'** p. 41-65 of the Petition. (at p. 5 of the Petition)

9. The Financial Creditor submitted in its Additional Affidavit that the Corporate Debtor on 23.07.2018 furnished a copy of Ledger Accounts maintained by the Corporate Debtor for F.Y. 2017-18, which is signed and acknowledged by the Corporate Debtor where the amount due to the Financial Creditor is reflecting. (p. 5 of Additional Affidavit). The copy of the Ledger Accounts is at **Exhibit 'A'** p. 5-7 of the Additional Affidavit
10. Further the Corporate Debtor through emails dated 18.07.2018 and 19.07.2018 sent to Financial Creditor the TDS certificate obtained by Corporate Debtor for the tax deducted by the Income Tax. (p. 5 of Additional Affidavit). The copy of the TDS certificate is at **Exhibit 'B'** p. 8-12 of the Additional Affidavit.
11. Ms. Uma Parmar i/b Saffron Law Firm, Advocate, appeared on behalf of the Corporate Debtor and made submissions.
12. The case of Corporate Debtor is as follows that:
 - i) The Corporate Debtor has taken certain debt/loan to fulfill certain requirements during the course of the business from the Financial Creditor on monthly interest basis without making any fixed interest agreement and the Corporate Debtor has also paid interest and principal amount on it from time to time without any dispute/default /delay on part of Corporate Debtor. (para 8 p. 3 of the reply)
 - ii) Financial Creditor has also sent legal notices to Corporate Debtor for dishonour of cheques (which has not been issued in favour of the financial creditor but was kept with financial Creditor as

security) through their advocates. The Corporate Debtor also replied to the said legal notices and denied the liability towards the Financial Creditor but disputed the claim and sought some time to look out the actual debt amount and to pay liability due to the financial creditor, but the Financial Creditor misused the power of the rules made under the Negotiable Instruments Act, 1881. Further without going on merit, the Financial Creditor has obtained the order from Metropolitan Court, Andheri. (para 9 p. 3 of the reply)

iii) The interest at the rate of 12% p.a. was never agreed between Financial Creditor and Corporate Debtor. (para 12 p. 4 of the reply)

iv) The Corporate Debtor stated that the Corporate Debtor was regularly paying interest and principal amount to the Financial Creditor till the position of the Corporate Debtor's Company was good but today company's position is very bad. (para 13 p. 5 of the reply)

13. We have heard the arguments of the Learned Counsel for the Financial Creditor and perused the records. It is seen from the records that the Corporate Debtor has availed loan of Rs. 1,00,00,000/- (Rupees one crore only).

14. The Corporate Debtor is alleging that there is pre-existing dispute of section 138 of Negotiable Instruments Act, 1881 pending at Metropolitan Court, Andheri. However, that proceeding has been initiated against the Corporate Debtor by the Financial Creditor. Further, there is a presumption in law that if a cheque has been issued,

it is towards payment of a lawful debt. It is strange that Corporate Debtor is considering the cheque bouncing case initiated by the Financial Creditor as pre-existing dispute wherein the default is from the side of Corporate Debtor. This cannot be said that there is a 'dispute' within the meaning of section 5(6) of the IBC. Therefore, this line of argument on the part of the Corporate Debtor is rejected.

15. It is noticed from the petition that-
 - a) There is unequivocal admission of liability on the part of the Corporate Debtor in its reply dated 09.10.2019 at para 13 p. 4.
 - b) The date of default is 09.10.2018.
16. The Financial Creditor has proposed Mr. Vinod Kumar Ambavat, Registration No. **IBBI/IPA-001/IP-P00420/2017-18/10743** as Interim Resolution Professional (IRP) in the matter.
17. This Petition reveals that there is a debt as defined in section 3(11) of IBC; there is a default within the meaning of section 3(12) of IBC; the application of the Financial Creditor is complete; an amount of more than Rupees One Lakh is due and payable and in default and no disciplinary proceedings are pending against the proposed resolution professional. Therefore, this petition deserves to be admitted.
18. The application made by the Financial Creditor is complete in all respects as required by law, and it clearly shows that the Corporate Debtor has not paid the dues, and this has also been confirmed by the Corporate Debtor.
19. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP(IB) 2547/MB-IV/2019** filed by **Sajjan Kumar Agarwal**, the Financial Creditor, under section 7 of the IBC of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Shree Sai Industries Private Limited [CIN: U27300MH1995PTC090450]**, 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 Financial Creditor 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 Financial Creditor 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 Financial Creditor in respect of its property including any action under the Securitisation and Reconstruction of Operational 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 Financial Creditor, 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 Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Financial Creditor 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. Vinod Kumar Ambavat, Registration No. IBBI/IPA-001/IP-P01144/2017-17/10743, residing at Room No. 40, 9/15, Morarji Velgi Bldg, 1st Floor, Dr. M.B. Velkar Street, Kalbadevi Road, Mumbai-400002, as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

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- (g) During the CIRP Period, the management of the Financial Creditor 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.1,00,000/- (Rupees one 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) 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) A copy of this Order be sent 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/-

RAVIKUMAR DURAISAMY
Member (Technical)

20.12.2019

SD/-

RAJASEKHAR V.K.
Member (Judicial)