IN THE NATIONAL COMPANY LAW TRIBUNAL,

COURT-V, MUMBAI BENCH

C.P.(IB) /196/MB/2021

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 **Alka Prakash Agarwal** having its residence at A-6 Ganga Sagar, 83 Canal Road, Ramdaspeth, Nagpur: 440010, Maharashtra, India.

......Financial Creditor/Petitioner

V/s

Bazargoan Paper & Pulp Mills Pvt. Ltd, having its registered office at a - 404, Twin Tower CHS Ltd, 2nd Cross Lane, Lokhandwala Complex Nr. Andheri (West), Mumbai: 400 053

......Corporate Debtor/Respondent

Order Reserved on: 14.12.2022

Order Pronounced on: 03.02.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via video conferencing)

For the Petitioner: Ms. Fatima Barodawalla , Advocate.

For the Respondent: None Appeared.

Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above Company Petition is filed by **Alka Prakash Agarwal** (hereinafter referred as "**Petitioner/Financial Creditor**") seeking to initiate Corporate Insolvency Resolution Process ("**CIRP"**) against **Bazargaon Paper & Pulp Mills Pvt. Ltd,** (hereinafter referred as "**Corporate Debtor**") by invoking the provisions of Section 7 of Insolvency and Bankruptcy Code (hereinafter referred "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016, for a resolution of an unresolved Financial Debt of **Rs. 1,17,76,398/-.**

2. The Corporate Debtor has never appeared before this Bench. It is seen that no one appeared on behalf of the Corporate Debtor on 11.03.2022, 21.04.2022, 12.07.2022 and 14.12.2022. No reply has been filed to the Present Company Petition, although notice was validly served by the Petitioner on the Corporate Debtor on 24th August 2021 and 18th April

2022. Therefore, the Corporate Debtor was set ex-parte on 29.07.2022. Affidavits supporting the service of notice was placed before this Bench The counsel for the Petitioner brought the attention of this Bench to the paper publication carried out by the Petitioner in two local newspaper i.e. Free Press Journal (English newspaper) and Navshakti in (Marathi newspaper). Due to repeated non-appearance by the Corporate Debtor, the Corporate Debtor was set ex-parte.

3. The Petitioner has attached the following documents to demonstrate the existence of Debt:

i. The Ledger Statement of the Corporate Debtor for the period beginning from 1st April 2010 to 30th November 2020.

ii. Form 26AS which is Tax Statement under Section 203AA of the Income Tax Act, 1961 for the Financial Years 2008-09 to 2019-20 reflecting payments made by the Corporate Debtor towards the payment of the TDS amount on interest payment under section 194A of the Income Tax Act, 1961.

iii. Form 26AS for the Financial Year 2015-16 reflecting payments made by the Corporate Debtor towards the TDS amount deducted on interest payment.

iv. Copy of Bank Statement of the Petitioner for the period of 01st April 2011 to 30th November 2020.

v. Copy of Audited Financial Statement of Corporate Debtor for the Financial Year 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

vi. Copy of the Working for Debt Default.

vii. Copy of Ledger for loan, Unpaid TDS Ledger & the ledger account reflecting Interest Payment.

FACTS OF THE CASE:

4. The Corporate Debtor is engaged in the business of manufacturing paper and paper products. As the Corporate Debtor was facing financial crisis, it approached the Petitioner for an unsecured loan of Rs. 70,00,000/- to be repayable on demand, at interest rate varying from 15% to 24% p.a. As orally agreed, the sum of Rs. 70,00,000/- was disbursed in tranches as under:

   i. 16th October 2010- Rs. 50,00,000/-

   ii. 5th May 2011- Rs. 5,00,000/-

   iii. 12th May 2011- Rs. 5,00,000/-

   iv. 10th April 2012- Rs. 10,00,000/-

5. The Petitioner states that, without any demur, the Corporate Debtor paid the interest, as agreed, and the same interest amounts are reflecting in the Ledger Accounts of the Petitioner along with the corresponding entries in the Bank Statement of the Petitioner.

6. The Petitioner further states that, although the interest amount was paid to the Petitioner, after the deduction of the TDS (as reflected in TRACES), the Corporate Debtor for some years, failed to deposit the said TDS

amount to the Income Tax Department. Therefore, the Petitioner paid the TDS amount, along with the penal interest/ penalty imposed by the Income Tax Department, on behalf of the Corporate Debtor. The necessary entries/monies paid by the Petitioner to the Income Tax Department is reflected in Form 26AS.

7. Further, in the year financial 2016-2017, the Corporate Debtor had deposited the TDS amount with the Income Tax Department which is reflecting in the Form 26AS.

8. The Petitioner also submits that as on date of filing the Petition, although the Corporate Debtor had repaid the principal amount in part, it is still liable to pay the Principal Amount of Rs. 41,28,021/- along with an interest component of Rs. 70,62,226/-, (for the period August 2011 until November 2020). Also, the Corporate Debtor has to pay Rs. 1,26,000/- towards the TDS amount which ought to have deposited by the Corporate Debtor and Rs. 4,070,151/- towards the interest on delayed TDS amount, calculated for the period from April 2011 until November 2020.

9. The Petitioner states that the Corporate Debtor on several occasions admitted its liability by reflecting the name of the Applicant/Financial Creditor under the head “unsecured loan” from other parties in its audited financial statements till 31st March 2014 and in the balance confirmation statement for the financial year ending 31st March 2018.

10. Considering the present scenario and failure of the Corporate Debtor to make the repayment towards the outstanding balance amount, the Petitioner has filed the present Company Petition.

FINDINGS:

11. We have heard the Learned Counsel appearing for the Petitioner and perused the record. The Present Petition is filed under Section 7 of the Code, wherein the Petitioner contends that the Corporate Debtor had failed to repay the total debt amount of Rs. 1,17,76,398/-. On the basis of an Oral Agreement, the Petitioner had disbursed the loan amount of Rs. 70,00,000/- to the Corporate Debtor, in tranches, starting from 2010 to 2012, to be repayable on demand, at the interest rate varying from 15% to 24% per annum.

12. The Petitioner further contended that the Corporate Debtor had admitted its liability by the last payment made by the Corporate Debtor on 13th June 2017 and also had acknowledged its debt vide the document annexed as "Confirmation of Accounts" dated 31st March 2018 which is duly signed by both the parties. Further, the Corporate debtor had also paid a part payment of principal amount, along with the interest, which is evident from the document annexed as "Working Of Default" to the Company Petition.

13. After hearing the submissions of the Learned Counsel appearing for the Financial Creditor and upon perusing the above documents relied by the Financial Creditor, this Bench is of the considered opinion that the "**debt**

and default” in this case are proved beyond doubt. Since the Corporate Debtor remained ex-parte, the claim of the Financial Creditor remained unchallenged.

14. The Financial Creditor has also proposed the name of **IRP Mr. Amit Chandrashekar Poddar**, having registration no. IBBI/IPA-001/IP-P00449/2017-18/10792 and thus the Company Petition satisfies all the legal requirements for its admission.

15. Accordingly, the above Company Petition is admitted by passing the following order:

ORDER

a. The above Company Petition No. 196 of 2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Bazargaon Paper & Pulp Mills Private Limited.**

b. The Petitioner has proposed the name of Mr. Amit Chandrashekar Poddar,Insolvency Professional, Registration No IBBI/IPA-001/IP-P00449/2017-18/10792, e-mail id: **amitpoddar.ca.@gmail.com**, residing at Flat No. ‘Akshat’ Durga Mata mandir, Opp. NCC Office, Nagpur- 440013, Maharashtra, India. as the Interim Resolution Insolvency Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of **Rs. 3 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. The IRP shall spend the above amount only towards expenses and not towards fee till his fees is decided by CoC.

d. 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.

e. 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.

f. 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.

g. 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.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. 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.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, C.P.(IB)/196/MB/2021 is **admitted**.

l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

ANURADHA SANJAY BHATIA
(TECHNICAL MEMBER)

SD/-

KULDIP KUMAR KAREER
(JUDICIAL MEMBER)