

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

I.A. No. 1046/KB/2021

CP (IB) NO. 1874/KB/2019

In the matter of:

An application under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

and

In the matter of:

Consolidated Infracon Private Limited, a private non-government company, limited by shares, registered under the provisions of the Companies Act, 1956 bearing CIN: U45400WB2008PTC130650 and having its registered office at 75, G.T. Road, (N), Howrah, West Bengal – 711106

... **Financial Creditor**

Versus

Mayur Ply Industries Private Limited, a private non-government company, limited by shares, registered under the provisions of the Companies Act, 1956 bearing CIN: U20101WB1988PTC130655 and having its registered office at 46C, Rafi Ahmed Kidwai Road, 3rd Floor, Kolkata, West Bengal – 700016

... **Corporate Debtor**

Order reserved on: 13/07/2022

Order pronounced on: 18/07/2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearances:

Mr. Shaunak Mitra, Adv. : For Financial Creditor

Mr. Sayantak Das, Adv.

Mr. Ankit Garg, PCA.

Mr. Sidhartha Sharma, Adv. : For Corporate Debtor

Mr. Arjun Asthana, Adv.

Mr. Aman Kataruka, Adv.

ORDER

Per: Harish Chander Suri, Member(Technical)

1. The Court is convened by hybrid mode today.
2. This petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Consolidated Infracon Private Limited** (hereinafter referred to as the Financial Creditor) for initiation of Corporate Insolvency Resolution Process in respect of **Mayur Ply Industries Private Limited**, CIN: U20101WB1988PTC130655, having its registered office at 46C, Rafi Ahmed Kidwai Road, 3rd Floor, Kolkata, West Bengal – 700016 (hereinafter referred to as the Corporate Debtor).

3. It is contended by the Financial Creditor that a total sum of Rs. 50,00,000/- (Rupees Fifty Lakh only) was extended as loan to the Corporate Debtor by way of Inter Corporate Deposit on 1st September 2018 with date of maturity of such Inter Corporate Deposit as 2nd December 2018. It has been further contended by the Financial Creditor that the parties agreed that the said inter corporate deposit shall carry an interest component of 9% per annum. It is pertinent to note that the Inter Corporate Deposit was repayable along with interest on 3rd December 2018. However, the Corporate Debtor defaulted in making repayments. Hence, the total amount in default towards the unsecured loan, as mentioned by the Financial Creditor in its application under Section 7 of the Insolvency and Bankruptcy Code, 2016 amounts to Rs. 53,72,329/- (Rupees Fifty Three Lakh Seventy Two Thousand Three Hundred and Twenty Nine only), inclusive of Principal amount of Rs. 50,00,000/- (Rupees Fifty Lakh only) and accrued interest amounting to Rs. 3,72,329/- (Rupees Three Lakh Seventy Two Thousand Three Hundred and Twenty Nine only). Copy of the bank statement showing payments made along with security cheques issued by the corporate debtor are annexed by the Financial Creditor towards the Inter Corporate Deposit.

4. The Financial Creditor has placed on record various documents in support of its case, which are as under: -
 - a. Inter-Corporate Deposit Acceptance Letter dated 1st September 2018 issued by the Corporate Debtor;

- b. Copy of the record maintained with NeSL with respect to the Financial Debt;
 - c. Copy of the cheque bearing number 225090 dated 3rd December 2018 amounting to a sum of Rs. 50,00,000/- (Rupees Fifty Lakh only) issued by the corporate debtor along with return memo issued by the Bank dated 6th December 2018;
 - d. Copy of the TDS report evidencing deposit of TDS towards interest paid by the corporate debtor; and
 - e. Legal Notice dated 31st December 2018 issued by the advocate of Financial Creditor to the Corporate Debtor.
5. In reply to the petition, the Corporate Debtor in its affidavit-in-reply, without disputing the existence of loan amount, *inter alia* submitted that the application is not maintainable and there is a bona fide dispute regarding the alleged default amount of debt as allegedly claimed by the Financial Creditor. It is noteworthy to mention here that the Corporate Debtor has also filed an interlocutory application being I.A. (IB) No. 1046/KB/2021 for *inter alia* seeking dismissal of the insolvency application under Section 7 of the Insolvency and Bankruptcy Code, 2016 in light of the amicable settlement between the parties wherein, the Corporate Debtor proposed to pay to the Financial Creditor the entire sum claimed in its application under Section 7 of the Insolvency and Bankruptcy Code, 2016 in installments.

6. While the application was pending adjudication before this Tribunal, the Corporate Debtor has paid the entire sum claimed by the Financial Creditor, being the cumulative sum of Rs. 53,72,329/- (Rupees Fifty Three Lakh Seventy Two Thousand Three Hundred and Twenty Nine only) in the following manner:

S. No.	Date	Amount (in INR)
1.	17.02.2021	5,00,000/-
2.	07.04.2021	6,10,000/-
3.	12.08.2021	3,47,694/-
4.	08.09.2021	3,47,694/-
5.	03.11.2021	3,47,694/-
6.	23.01.2022	3,47,694/- and 3,47,694/-
7.	21.02.2022	4,00,000/-
8.	07.04.2022	26,165/- and 17,50,000/-
TOTAL		53,72,329/-

7. It is pertinent to note here that the Corporate Debtor has also filed a Supplementary Affidavit dated 21st May 2022, wherein, the Corporate Debtor has placed on record receipts of all the payments made to the Financial Creditor.
8. It is an undisputed fact that the Financial Creditor has accepted all the instalment payments received from the Corporate Debtor. However, the

Counsel for the Financial Creditor submits that such instalment payments were accepted with protest and objections.

9. The Corporate Debtor thereafter relied upon the application under Form I filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 and showed this Tribunal that the Financial Creditor claimed a total sum of Rs. 53,72,329/- (Rupees Fifty Three Lakh Seventy Two Thousand Three Hundred and Twenty Nine only), inclusive of both principal and interest overdue.

10. The Counsel for the Corporate Debtor further relied upon an order dated 28th April 2022 as passed by the Ld. Metropolitan Magistrate, 14th Court, Calcutta in Case No. 4523 of 2019 titled as Consolidated Infracon Private Limited v/s. Mayur Ply Industries Private Limited & Ors. It was apprised by the Counsel for the Corporate Debtor that the Financial Creditor had instituted a complaint under Section 138 of the Negotiable Instruments Act, 1881 pertaining to the dishonour of the cheque bearing number 225090 dated 3rd December 2018 amounting to a sum of Rs. 50,00,000/- (Rupees Fifty Lakh only). Relying upon the order dated 28th April 2022, it was submitted that the Financial Creditor has categorically stated before the Ld. Metropolitan Magistrate, 14th Court, Calcutta that the dispute has been amicably settled between the parties. Consequently, the proceedings under Section 138 of the Negotiable Instruments Act, 1881 in Case No. 4523 of 2019 has been withdrawn by the Financial Creditor.

11. In light of the aforesaid, it is prayed by the Counsel for the Corporate Debtor that the present insolvency application deserves to be dismissed by this Tribunal, in as much as the entire sums claimed by the Financial Creditor has been paid by the Corporate Debtor and such payments have been duly accepted by the Financial Creditor and also, the Financial Creditor has acted in terms of such payments, as is apparent from the order dated 28th April 2022 as passed in Case No. 4523 of 2019 before the Ld. Metropolitan Magistrate, 14th Court, Calcutta.
12. The Counsel for the Financial Creditor on the other hand submits that the entire principal due has not been repaid by the Corporate Debtor till date. The Counsel for the Financial Creditor submitted that the instalment payments made by the Corporate Debtor have been adjusted by the Financial Creditor towards the outstanding continuing accrued interest, while considerable portion of the principal and interest is still due and payable by the Corporate Debtor. With respect to the amicable settlement between the parties, the counsel for the financial creditor has vehemently opposed any agreement and/ or settlement between the parties.
13. In light of the aforesaid, it has been submitted by the counsel for the Financial Creditor that Corporate Insolvency Resolution Process of Corporate Debtor be initiated by this Tribunal.
14. It is an undisputed fact that the Corporate Debtor has paid a cumulative sum of Rs. 53,72,329/- (Rupees Fifty Three Lakh Seventy Two Thousand

Three Hundred and Twenty Nine only) to the Corporate Debtor. It is also an undisputed fact that the Financial Creditor had claimed a cumulative sum of Rs. 53,72,329/- (Rupees Fifty Three Lakh Seventy Two Thousand Three Hundred and Twenty Nine only) as financial debt in its application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

15. The only dispute which has remains between the parties as on date is with respect to levy of the *pendente lite* interest claimed by the Financial Creditor. The said *pendente lite* interest has not been claimed by the Financial Creditor in its application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

16. It is trite law that insolvency proceedings are not recovery proceedings and the same should not be reduced into a mere recovery proceedings in as much as the entire substratum of the Insolvency and Bankruptcy Code, 2016 would fail if the same is allowed to be misused by creditors to extort money from the Corporate Debtor with the threat of initiation of Corporate Insolvency Resolution Process.

17. It is imperative to note that Corporate Insolvency Resolution Process of a corporate debtor is to be commenced by this Tribunal after observing all the necessary facts and considering the expedience of initiation of CIRP as has been laid down in *Vidarbha Industries Power Limited v/s. Axis Bank Limited (Civil Appeal No. 4633 of 2021)* (refer paragraph 77).

18. It is pertinent to mention here that the Adjudicating Authority has to peruse the contents of the Form filed by the creditor while adjudication of the insolvency application (refer *Innoventive Industries vs ICICI Bank Ltd. (2018) 1 SCC407*).
19. On perusal of the contents of the Form 1 filed by the Financial Creditor and the supplementary affidavit filed on behalf of the Corporate Debtor, it is clear that the Corporate Debtor has paid the entire sums claimed by the Financial Creditor. The fact that such payment has been accepted to the full satisfaction of the Financial Creditor is further apparent from the statements made by the Financial Creditor before the Ld. Metropolitan Magistrate, 14th Court, Calcutta in Case No. 4523 of 2019 titled as Consolidated Infracon Private Limited v/s. Mayur Ply Industries Private Limited & Ors. during the hearing on 28th April 2022 which led to dismissal of the proceedings against the Corporate Debtor under Section 138 of the Negotiable Instruments Act, 1881.
20. In light of the aforesaid, since the entire amounts as claimed by the Financial Creditor in its application under Section 7 of the Insolvency and Bankruptcy Code, 2016 has been paid by the Corporate Debtor, there exists no financial debt within the meaning of Section 5 (8) of the Insolvency and Bankruptcy Code, 2016.
21. In view of the aforesaid facts, I.A. No. 1046/KB/2021 is allowed.

22. In view of the above circumstances, the instant petition C.P. (IB) No. 1874/KB/2019 is dismissed with no order as to costs as no financial debt within the meaning of Section 5 (8) of the Insolvency and Bankruptcy Code, 2016 subsists.

23. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this 18th day of July, 2022

PJ