

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V NEW DELHI BENCH**

**COMPANY PETITION IB (IBC) NO. 341/ND/2023**

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

**IN THE MATTER OF:**

**M/S HY LINK OVERSEAS PRIVATE LIMITED**

Registered Address: 27 km stone,  
Tikri Kala, Mundka, Delhi-110041

...Applicant/Financial Creditor

*Versus*

**M/S APEX ISPAT PRIVATE LIMITED**

Registered Address: DSM, 4<sup>th</sup> Floor,  
DLF Tower, Shivaji Marg,  
Delhi- 110015

...Respondent/Corporate Debtor

**Order Delivered on: 12.03.2024**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant: Adv Mohit Nandwani in IB-341/ND/2023

For the Respondent: Adv Deepak Biswas, Adv Harshit Gupta, Adv Mohit Nandwani in IA-5311/2023, IA-5323/2023

## **ORDER**

### **PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

1. This is a Company Application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by M/s HY Link Overseas Private Limited (hereinafter referred to as ‘Financial Creditor’), through its Authorised Representative Mr. Vijay Kumar Gulati, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Apex Ispat Private Limited (“Corporate Debtor”). The Financial Creditor was incorporated on 12.11.1998, having CIN: U51103DL1998PTC097050.
2. The Corporate Debtor was incorporated on 04.12.1992, having CIN: U74899DL1992PTC051244 under the Companies Act, 1956. Its registered office is at DSM 408, 4<sup>th</sup> Floor, DLF Tower, Shivaji Marg, Delhi- 110015. Therefore, this Bench has jurisdiction to deal with this petition. The Authorized Share Capital of the Corporate Debtor is Rs. 50,00,000 (Rupees Fifty Lakhs). The Paid-Up Capital of the Corporate Debtor is Rs. 38,87,000 (Rupees Thirty-Eight Lakh Eighty-Seven Thousand).
3. The present application was filed on 10.05.2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 5,50,00,000/- ((Rupees Five Crore Fifty lacs only) as on 01.04.2019 (date of default).

#### **Submissions of Learned Counsel appearing for the Applicant are as under: -**

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
  - a) In the present application, the Financial Creditor on 01.09.2017, sanctioned a loan facility of Rs. 7.25 Cr to the Corporate Debtor, for a period of 18 months i.e. till 31.03.2019. Out of sanctioned amount, Rs. 7.05 Cr was disbursed to

Corporate Debtor on various dates. The Corporate Debtor repaid a sum of Rs. 4.75 Cr and the balance sum of Rs. 2,30,00,000/- is outstanding.

- b) The Financial Creditor states that the amount of financial debt of Rs. 2.30 Cr was never paid to the Financial Creditor and the said amount is still due and payable by the Corporate Debtor to the Financial Creditor, as the Corporate Debtor through its director Mr. Som Dutt Sharma, and management of Laxmi Pipes colluded to cheat and defraud the Financial Creditor and Mr. Som Dutt Sharma was earlier an employee of Financial Creditor. After receiving the reply of Corporate Debtor, the Financial Creditor realised that Mr. Som Dutt Sharma, who was now a Director of the Corporate Debtor, had stolen the letter heads of the Financial Creditor and created a false and fabricated communication chain which is being relied upon by the Corporate Debtor to defend the present petition.
- c) The Financial Creditor never instructed the Corporate Debtor to allegedly pay Rs. 2.1 Cr to a third party. Hence any payment made to third party by the Corporate Debtor cannot be set-off/adjusted from the amounts due and payable to the Financial Creditor. The Corporate Debtor relies on physical letters allegedly from the Financial Creditor asking it to transfer the outstanding to Laxmi Pipes. It becomes clear that the letters so relied upon by the Corporate Debtor are fabricated and an afterthought. It is evident from the letters dated 25.03.2020 & 31.03.2020, which are discussed below, that there was collusion and fabrication on part of the Corporate Debtor: -
- i) On 31.03.2020, allegedly Financial Creditor has written to Corporate Debtor to transfer a sum of Rs. 35.19 lacs to Laxmi. Pertinently there is no mention of another company Tribhuvan Markplus Pvt. Ltd. by the Financial Creditor.
  - ii) Again on 31.03.2020, allegedly Corporate Debtor has written to Laxmi asking them to credit Rs. 35.19 lacs be in the account of Financial Creditor or Tribhuvan. When Financial Creditor has not referred to Tribhuvan, how can Corporate Debtor ask Laxmi to do so.
  - iii) Again on 31.03.2020, allegedly Laxmi wrote to Corporate Debtor, that it has received instructions from Financial Creditor to receive Rs. 35.19 lacs from Corporate Debtor. Same is the case with letters dated 25.03.2020.

- iv) All these letters were allegedly sent on the same date, which cannot be practically possible and are nothing but fabricated as an afterthought, to escape the liability to pay the financial debt due and payable to the Financial Creditor. Shockingly, in the time of digital age, physical letters were allegedly sent to communicate such important matters.
  - v) There is no receiving on any of the letters which goes to show that these letters were never actually delivered. There is no name of the person signing the letter on behalf of the Financial Creditor. There is no mention of any authority or Board Resolution allegedly authorising the person to sign the letters allegedly on behalf of Financial Creditor. Pertinently, the Corporate Debtor has miserably failed to show the delivery of letters sent by it to the Financial Creditor. Such communication, without any proof of delivery have been created to escape the liability legally owed by the Corporate Debtor.
- d) The Corporate Debtor claims that it has paid Rs. 20 lacs to the Financial Creditor, but careful perusal of the Ledger would show that even this 20 lacs was not paid to the Financial Creditor but a third party. No instruction/direction has been shown by the Corporate Debtor by the Financial Creditor to transfer 20 lacs to another party.
- e) In the present case, admittedly an amount of Rs. 2.30 Cr is due and payable to the Financial Creditor and the Corporate Debtor has not paid the said amount to the Financial Creditor. The alleged payment to third parties cannot be used to set-off the amounts due and payable to the Financial Creditor. Hence, the instant application.

**Submissions of Learned Counsel appearing for the Corporate Debtor are as under:**

5. The details of the submissions made by the Corporate Debtor are as follows:

- a) The Corporate Debtor in the instant case states that the Directors/ Representatives of the Petitioner Company have suppressed material information and categorically lied on oath as the Respondent Company has duly repaid the

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entire amount of Rs. 7.05 Cr to the Petitioner and no amount whatsoever is due and payable by the Respondent Company to the Petitioner. Thus, the Petitioner is not a Financial Creditor of the Respondent Company in terms of the I&B Code and is misusing prime objective and provisions of the I&B Code to its advantage while causing great prejudice to the Respondent Company.

- b) It is the case of the Petitioner that the Petitioner had extended an interest-free loan facility for a sum of Rs. 7.05 Cr. to the Respondent during the period from 22.09.2017 to 30.06.2018 whereas the Respondent failed to repay the same. However, an amount of Rs. 7.05 Cr. was extended by the Petitioner company to the Respondent Company on the basis of mutual understanding and friendship, and the same was duly repaid by the Respondent Company to the Petitioner in two tranches wherein an amount of Rs. 4.95 Cr. was paid directly to the Petitioner and further an amount of Rs. 2.1 Cr. was paid to M/s Laxmi Pipes Ltd. (being a creditor of Petitioner) on directions and for and on behalf of the Petitioner Company. Therefore, in the absence of any amount due and payable, there exists no debt or default qua the Petitioner and consequently there's no right available with the Petitioner to initiate CIRP in respect of the Respondent Company.
- c) The Respondent states that they had issued seven cheques dated 30.03.2018 and 31.03.2018 to the Petitioner for a total amount of Rs. 3.20 Cr. in pursuance of partial repayment of the money extended by the Petitioner, and the same were duly encashed by the Petitioner Company. Further, an amount of Rs. 1.7 Cr. and Rs. 5,00,000/- was paid by the Respondent Company to the Petitioner through RTGS in FY 2018-19 and 2019-20, respectively.
- d) Subsequently, in order to settle the entire outstanding dues, the Petitioner company vide communications dated 25.03.2019 and 31.03.2020 requested the Respondent to pay an amount of Rs. 1,74,80,419/- and Rs. 35,19,581/- to one M/s Laxmi Pipes Ltd. (being a creditor of the Petitioner) for and on behalf of the Petitioner in pursuance of realization of the balance outstanding amount owed by the Respondent to the Petitioner. Copies of communications dated 25.03.2019

and 31.03.2020 addressed by the Petitioner to the Respondent Company along with the Respondent's reply is placed on record as Annexure A-5.

- e) The Respondent on directions of the Petitioner, paid the said amount to M/s Laxmi Pipes Ltd., thereby successfully repaying the entire amount as extended by the Petitioner. Copy of the acknowledgement receipts issued by M/s Laxmi Pipes along with the copy of ledger account indicating the payment made by the Respondent to said M/s Laxmi Pipes are placed on record as Annexure A-6 and A-7, respectively. Further, correspondence exchanged between the Petitioner, Respondent and M/s Laxmi Pipes is placed on record as Annexure A-8.
- f) The provisions of the I&B Code cannot be used as a mechanism to extract undue amounts and the captioned petition is nothing but an abuse of the process of law, filed with the malafide intention to coerce and arm twist the Respondent in order to extract monies.

### **Analysis and Findings**

- 6. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and written submission. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
- 7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a "debt" owed to the Financial Creditor and whether there is a "default" with respect to such debt.
- 8. In the present case, the Financial Creditor on 01.09.2017, sanctioned a loan facility of Rs. 7.25 Cr to the Corporate Debtor, for a period of 18 months i.e. till 31.03.2019. Out of sanctioned amount, Rs. 7.05 Cr was disbursed to Corporate Debtor on various dates. However, as per the contention of the Corporate Debtor, the entire

amount was paid by the Respondent Company in two tranches, wherein an amount of Rs. 4.95 was duly repaid by the Respondent Company to the Applicant directly, and further an amount of Rs. 2.1 Cr was paid to M/s Laxmi Pipes Ltd. (a creditor of the Applicant) on directions and for and on behalf of the Petitioner Company. The amount of Rs. 4.95 crores were repaid by the Respondent company and the same can be evidenced from the bank statements and the ledger statement which is placed on record as Annexure 1- Annexure 4 of the Reply filed by the Respondent.

9. Further, vide communications dated 25.03.2019 and 31.03.2020 the instant Applicant had requested the Respondent to pay an amount of Rs. 1,74,80,419/- and Rs. 35,19,581/- respectively to M/s Laxmi Pipes Ltd. on its behalf. This amount totals to Rs. 2.10 crores. Copies of communications dated 25.03.2019 and 31.03.2020 addressed by the Petitioner to the Respondent is placed on record as Annexure A-5 of the Reply. Moreover, the receipt of the amounts was duly confirmed by M/s Laxmi Pipes Ltd. and the amounts were adjusted to the account of the Petitioner. The copy of acknowledgements given by M/s Laxmi Pipes Ltd. is placed on record as Annexure A-6 and Copy of ledger account which shows the payment made by the Respondent Company to M/s Laxmi Pipes Ltd. is placed on record as Annexure A-7. Therefore, on the basis of the document filed by the Respondent, it emerges that the amount was already paid to the Applicant and to M/s Laxmi Pipes Ltd. on the instruction of the Applicant.
10. In the instant case, the Applicant states that the Respondent has created a false a false and fabricated communication chain i.e. with respect to the letters exchanged between Applicant, Respondent and M/s Laxmi Pipes Ltd. However, with respect to allegations pertaining to fabrication of document, since the proceedings under the IBC are summary in nature, this Adjudicating Authority is not inclined to adjudicate upon the genuineness of the document. Therefore, in light of the documents placed on record i.e. the ledger and the bank statements by the Respondent, the fact that the debt amount was duly repaid by the Respondent Company stands substantiated. Hence, this Adjudicating Authority is of the view that there was no “default” on part of the Respondent Company and the instant application is liable to be dismissed.

11. In the light of the above, this Adjudicating Authority concludes that, the instant petition bearing **COMPANY PETITION IB (IBC)/341 (ND) 2023** being devoid of merit cannot be admitted and is hereby **dismissed**.
12. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**  
**(DR. SANJEEV RANJAN)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**