



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

**CP (IB) No. 1144/MB-IV/2021**

Under Section 7 of the I&B Code, 2016

In the matter of:

**HMTD Textiles Private Limited**

[CIN: U17120MH1967PTC013885]

...Financial Creditor/Applicant

V/s

**Kashish Park Realty Private Limited**

[CIN: U45201MH1996PTC164537]

...Corporate Debtor/Respondent

Order Dated: 24.03.2023

*Coram:*

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Anil Agarwal, Advocate.

For the Respondent(s) : Mr. Rohit Gupta i/b Mr. Girish  
Thanvi, Advocate.

***Per: Prabhat Kumar, (Member Technical)***

1. This is an Application being C.P. (IB) No. 1144/MB/C-IV/2021 filed on 23.10.2021 by HMTD Textiles Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Kashish Park Realty Private Limited,



Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Financial Creditor has filed Board Resolution dated 21.09.2021 in support of authorization in favour of signatory of this Application authorising him to file the present company application on behalf of the Financial Creditor.
3. The Financial Creditor granted an Inter Corporate Deposit/Loan (“ICD”) to the Corporate Debtor in furtherance of its business activities. The Corporate Debtor issued two post-dated cheques, dated 30.06.2018 bearing No.001569 for Rs.2,00,00,000/- and cheque No.001570 for Rs.50,00,000/- towards repayment of the said ICD, however later on, at the request of Corporate Debtor, the ICD was rolled over and the said cheques were not deposited for encashment. The Corporate Debtor paid interest to the Financial Creditor, on the said ICD, from time to time up to 31.12.2019. The Financial Creditor submits that it received part payment of Rs.50,00,000/- towards principal amount on 04.12.2020, leaving a principal balance of Rs.2,00,00,000/-.
  - 3.1 The Financial Creditor further submits that on 20.10.2021, it received part payment by two demand drafts aggregating to a sum of Rs.1,31,88,904/- from the Corporate Debtor, out of which Rs.1,00,00,000/- is appropriated towards Principal due and Rs.31,88,904/- towards part of accrued interest. The Financial Creditor therefore claims that a principal sum of Rs. 1,00,00,000/- (Rupees One Crore Only) along with overdue interest of Rs.16,93,286/- aggregating to a sum of Rs.1,16,93,286/- remained due and payable by the Corporate Debtor to the Financial Creditor for the said ICD account as on 21.10.2021. Further interest @ 12% p.a. on Rs.1,00,00,000/-



i.e. the balance principal amount from 21.10.2021 is also due and payable by the Corporate Debtor to the Financial Creditor till payment or realisation thereof.

3.2 The Financial Creditor further submits that the Corporate Debtor has deducted the TDS amount on the said interest paid up to 31.12.2019 and submitted the TDS certificates with respect to the same.

4. The Corporate Debtor has filed an Affidavit in Reply dated 04.01.2022 whereby it opposes all the contentions and allegations made by the Financial Creditor.

4.1 The Corporate Debtor further submits that a mutually acceptable settlement was entered into, after detailed deliberations and negotiations at Rs.1,31,88,904/- (Rupees One Crore Thirty-One Lakhs Eighty-Eight Thousand Nine Hundred and Four only) towards full and final settlement of the dues. Accordingly, a draft of One Time Settlement Letter, Affidavit cum Indemnity Bond came to be prepared by the Corporate Debtor and shared with Financial Creditor and draft for intimation to the police station regarding misplacing the security cheques held by Financial Creditor were also drafted and shared with Financial Creditor's Director. Pursuant to such understanding, Pay Order Nos. 123864 and 124194 on 09.08.2021 and 13.10.2021 were prepared by Corporate Debtor through its banker i.e. HDFC Bank, Talaopali Thane branch for Rs.1,08,75,004/- and Rs.23,13,900/- respectively aggregating to a sum of Rs.1,31,88,904/- (Rupees One Crore Thirty-One Lakhs Eighty-Eight Thousand Nine Hundred and Four only) on the basis of the written understanding between the parties.



- 4.2 The Corporate Debtor further states that the Financial Creditor's directors, with the intention to invite the Corporate Debtor into a mutually agreed settlement coaxed the Corporate Debtor to fulfil its part of contractual obligations and when its time came for performance of contractual obligations, it took help of muscleman stationed in the premises of Petitioner Company to avoid such performance.
- 4.3 The Corporate Debtor further submits that aggrieved by this, on 22.10.2021, it filed a police complaint against the Directors of Financial Creditor for Physical Assault and Financial Fraud done by them with the Cuffe Parade Police Station.
- 4.4 The Financial Creditor issued the Demand Notice under Rule 5 of Insolvency and Bankruptcy Rules, 2016 dated 21.10.2021 claiming a sum of Rs.1,16,93,286/- as due and payable by the Corporate Debtor and the same is contradicted by the Corporate Debtor in view of the apparent mutually agreed settlement between the parties.
- 4.5 The Corporate Debtor further alleges that even before the expiry of ten days as mentioned in the notice dated 21.10.2021, the Financial Creditor filed the present Petition before this Hon'ble Tribunal under the provisions of Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor on 23.10.2021.
- 4.6 The Corporate Debtor states that despite having made a payment of Rs.1,31,88,904/- on 20.10.2021, the Financial Creditor was ready with the Demand Notice on the next day i.e. on 21.10.2021 and immediately (without expiry of stipulated 10 days) filed Petition before this Hon'ble Tribunal on 23.10.2021. The Corporate Debtor filed reply to the said



demand notice on 29.10.2021 stating all the facts and illegalities committed by Financial Creditor and urged it to immediately withdraw the demand notice dated 21.10.2021 and the present petition filed before this Hon'ble Tribunal.

- 4.7 The Corporate Debtor filed a Complaint under Section 156(3) of Criminal Procedure Code for seeking direction to concerned police station for registering FIR against the directors of Petitioner Company under section 352, 379, 384, 385, 406, 414, 417, 420, 426, and 506 read with section 120-B under Indian Penal Code, 1860 for committing Criminal Conspiracy, Assault, Theft, Criminal Intimidation, Criminal Breach of Trust and Cheating etc., which is pending consideration.
- 4.8 The Corporate Debtor further submits that the moment parties crystallized a sum of Rs.1,31,88,904/- as a final settlement, any amount claimed beyond this sum, is not a "debt" within the meaning of Section 3(11) of Insolvency And Bankruptcy Code, 2016.
5. The Financial Creditor has filed Rejoinder dated 18.01.2022 and stated that the Corporate Debtor tried to coerce the Financial Creditor to sign the draft of Affidavit/Undertaking/Indemnity on Rs.100 stamp paper, the draft of which was prepared by the Corporate Debtor itself but the Financial Creditor denied to sign the same and further submits that on 13.10.2021, the Corporate Debtor prepared one more pay order for Rs. 23,13,900/- and requested the Financial Creditor not to initiate legal proceedings.
6. We have carefully gone through the pleadings available on records and considered the arguments of both the sides.
- 6.1 The Corporate Debtor has placed on record Whatsapp chats between Rinku Bakshi and Saurabh Agarwal, whereby the



documents of OTS and understanding between the two agreed in October, 2021 was shared and from perusal of the print it is seen that these are correspondences but bears no signature. However, these cheques are corroborated by acknowledgement of draft for Rs. 23,13,900/- paid on 13.10.2021. We also note that both the parties were engaged into filing of police complaints in this connection.

- 6.2 We note that the Applicant has issued a notice in Form 3 prescribed under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 21.10.2021 by speed post which came to be delivered on 22.10.2021 to the Corporate Debtor asking it to pay the unpaid financial debt within 10 days of the receipt of this notice. Though Form-3 notice is prescribed for Operational Creditors u/s 9 of the Code, we consider it a notice of demand calling upon the Corporate Debtor to pay as the loan was in nature of demand loan. Based on this the amount of debt became due on 31.10.2021. We notice that the Applicant has paid the fee for filing an Application on 23.10.2021, which is prior to the date on which the debt came into default. This fact leads us to a conclusion that the present application has been filed with pre-meditated mind to initiate proceeding under the code. Accordingly, we feel that this application is not for resolution of the Corporate Debtor, which is the intent of the Code, but for the recovery of the amount claimed to be due.
- 6.3 The Hon'ble Supreme Court in "*Swiss Ribbons Pvt. Ltd. & Anr vs. Union of India & Ors.*", WRIT PETITION (CIVIL) NO. 99 OF 2018;



*“12. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor’s assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.”*

7. In view of the above, we find that the present case under Section 7 of the Code for initiation of CIRP against the Corporate Debtor deserves to be dismissed.

### **ORDER**

This Application being C.P. (IB) No. 1144/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by HMTD Textiles Private Limited, Financial Creditor/ Applicant against Kashish Park Realty Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **Dismissed**.

We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner



before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

Prabhat Kumar  
Member (Technical)  
/LRA-Akshata/

Sd/-

Kishore Vemulapalli  
Member (Judicial)