IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

C.P. NO. 1331/I&BP/2017

Under Section 7 of the I&B Code, 2016

In the matter of

Mr. Satyaprakash Agarwal, P1

Mr. Rishi Aggarwal, P2

Mrs. Kamlesh Aggarwal, P3

.... Financial Creditors

v/s.

Vistar Metal Industries Pvt Ltd.

.... Corporate Debtor

Order delivered on: 15.02.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)

Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Bhushan B. Chavan, Advocate

For the Respondent: Mr. Dikshat Mehra, Pooja Vasandani i/b Rajani Associates a/w Mani Ravi Director of Vistar Metal Industries Pvt. Ltd.

Per V. Nallasenapathy, Member (Technical)

ORDER

1. Mr. Satyaprakash Agarwal and two others filed this joint Petition for initiating CIRP against the Corporate Debtor Vistar Metal Industries Pvt Ltd. alleging that the Corporate Debtor failed to make a payment of ₹2,01,00,001/- towards principal and ₹19,51,742/- as interest, under section 7 of the I&B Code, 2016 (the Code) read with Rule 4 of Insolvency & Bankruptcy (Adjudicating Authority) Rules, 2016.

2. Part IV of Form -1 filed by the Petitioners is as below:

PART IV

PARTICULARS OF FINANCIAL DEBT		
1.	Total amount of Debt granted Date(s) of Disbursement	Financial Creditor 1: ₹3,60,00,000/- Financial Creditor 2 : ₹1,50,00,000/- Financial Creditor 3 : ₹50,00,000/-
2.	Amount claimed to be in default and the date on which the default occurred (attach the working computation of amount and days of default in tabular form)	Total amount of Debt due ₹2,01,00,000/- (break up given below) Debt due as on 15.12.2015 Financial Creditor 1 : ₹1,31,00,000/- Interest 18% p.a. (from 16.12.2016 to 09.08.2017) = ₹15,31,585/- Debt due as on 15.03.2017 Financial Creditor 2 : ₹40,00,000/- Interest 18% p.a. (from 15.3.2017 to 09.08.2017) = ₹2,91,945/- Debt due as on 15.05.2017 Financial Creditor 3 : ₹30,00,000/- Interest 18% p.a. (from 15.05.2017 to 31.08.2017) = ₹1,28,712/-. *Total amount of Debt due from financial Creditors: ₹2,01,00,001/-* *Total interest : ₹19,51,742/-*

3. The above table clearly reveals that the date of default is not specifically mentioned, however, it was simply mentioned as the debt due as on 15.12.2015, 15.3.2017 and 15.05.2017 in respect of three claims of the Financial Creditors.

4. In the above table it is merely stated that the amount of debt due on a particular date, which cannot be taken as date of default because date of default is something else, which is explained in the following paras.

5. The Petitioners enclosed three letters, all dated 15.12.2015, addressed by the Corporate Debtor (formerly known as Shree Vaishanav Wire And Rod Pvt. Ltd.) to the Financial Creditors regarding the full and final settlement of loan of ₹1,60,00,000/-, ₹40,00,000/- and ₹30,00,000/- payable to the Financial Creditors 1, 2 & 3 respectively. These three letters are the only document shown as proof of debt of the Petitioners. Neither pronote nor any other document executed by the Corporate Debtor in support of the debt is enclosed.

6. The above stated letters dated 15.12.2015 addressed by the Corporate Debtor to the Petitioners regarding the repayment of loan as full and final settlement stated that there will be no interest obligation on the repayment schedule as mentioned below as the steel sector is reeling under tremendous loss and hence there is no viability in their company to serve interest component on the said outstanding dues as they are under too much pressure to stay solvent. It is further stated that they undertake that there will be no dishonouring of the cheque as per the due date mentioned and will try to pre-inform the creditor in case of any discrepancies. The following three tables shows the repayment schedule for the three loans.

(A) Satyaprakash Agarwal : Loan ₹1,60,00,00/-

Date	Cheque No.	Repayment of Loan ₹	Loan Balance Amount in ₹
			1,60,00,000
15.12.2015	488556	4,50,000	1,55,50,000
15.01.2016	488557	4,50,000	1,51,00,000
15.02.2016	488558	4,50,000	1,46,50,000
15.03.2016	488559	4,50,000	1,42,00,000
15.04.2016	488560	5,50,000	1,36,50,000
20.04.2016	488561	5,50,000	1,31,00,000
15.05.2016	488562	5,50,000	1,25,50,000
20.05.2016	488563	5,50,000	1,20,00,000
15.06.2016	488564	5,50,000	1,14,50,000

20.06.2016	488565	5,50,000	1,09,00,000
15.07.2016	488566	5,50,000	1,03,50,000
20.07.2016	488567	5,50,000	98,00,000
15.08.2016	488568	5,50,000	92,50,000
20.08.2016	488569	5,50,000	87,00,000
15.09.2016	488570	5,50,000	81,50,000
20.09.2016	488571	5,50,000	76,00,000
15.10.2016	488572	5,50,000	70,50,000
20.10.2016	488573	9,50,000	61,00,000
15.11.2016	488574	7,50,000	53,50,000
20.11.2016	488575	7,50,000	46,00,000
15.12.2016	488576	7,50,000	38,50,000
20.12.2016	488577	7,50,000	31,00,000
15.01.2017	488578	7,50,000	23,50,000
20.01.2017	488579	7,50,000	16,00,000
15.02.2017	488580	8,00,000	8,00,000
20.02.2017	488581	8,00,000	NIL
Total		1,60,00,000	

(B) Rishi Agarwal : Loan ₹40,00,000/-

Date	Cheque No.	Repayment of Loan ₹	Loan Balance Amount in ₹
			40,00,000
15.3.2017	488582	10,00,000	30,00,000
20.03.2017	488583	10,00,000	20,00,000
15.04.2017	488584	10,00,000	10,00,000
20.04.2017	488585	10,00,000	NIL
Total		40,00,000	

(C) Kamlesh Agarwal : Loan ₹40,00,000/-

Date	Cheque No.	Repayment of Loan ₹	Loan Balance Amount in ₹
			30,00,000
15.3.2017	488586	7,50,000	22,50,000
20.03.2017	488587	7,50,000	15,00,000
15.04.2017	488588	7,50,000	7,50,000
20.04.2017	488589	7,50,000	NIL
Total		30,00,000	

7. The above said three tables reveals the date of payment for each and every instalment, agreed by the Corporate Debtor, which is relied by the Petitioners.

8. In respect of the debt due to the first Petitioner, according to the repayment schedule provided by the Corporate Debtor, a sum of ₹1,31,00,000/- (principal debt due shown in the Petition) would be due on 20.4.2016, the next EMI falls due on 15.5.2016, hence the date of default obviously would be 15.5.2016 not 15.12.2015. The Petitioners contend that due date of payment is the default date, which could not be, but even if the contentions is accepted for argument sake, the date of default mentioned as 15.12.2015 is wrong. To prove the date of default as 15.10.2015, no other document such as finance contract or pronote or any other document is enclosed. So it is clear that the date of default (shown as due on) is not correct.

9. Since the date of default of first loan itself is wrong, this being a joint Petition, the merit of other two debts were not discussed.

10. In the light of the above discussion, this Petition is dismissed with liberty to the Petitioners to proceed in accordance with law.

11. The Registry is hereby directed to communicate this order to the Financial Creditors and the Corporate Debtor.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S.V. PRAKASHKUMAR
Member (Judicial)