

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH – IV



CP (IB) 407/MB/2023

Under section 7 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Good Fly Distributors Private Limited
[CIN: U23201RJ2000PTC016669]
E-91, Shastri Nagar, Jodhpur, Rajasthan- 342003.

... Financial Creditor/Applicant
Versus

Amoghvarsh Houses Private Limited
(Formerly Known as Arihant Technoinfra Private Limited)
[CIN: U45203MH2010PTC210594]
Arihant Aura, 1101, 11th Floor, B- Wing, Plot No. 13/1
TTC Industrial Area, Thane Belapur Road, Turbhe,
Navi Mumbai Thane MH 400705 IN.

... Corporate Debtor/Respondent

Order Delivered on: 05.01.2024

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)


Appearances:

For the Financial Creditor : Mr. Daryl Lobo, Ld. Counsel
Present

For the Corporate Debtor : Ms. Khushboo Shah a/w Mr.
Ayush Rajani i/b AKR Legal,
Ld. Counsel Present.

ORDER

1. This Company Petition is filed under section 7 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Good Fly Distributors Private Limited** (“the Financial Creditor”), seeking



to initiate Corporate Insolvency Resolution Process (CIRP) against **Amoghvarsh Houses Private Limited (Formerly Known as Arihant Technoinfra Private Limited)** ("the Corporate Debtor").


2. The Corporate Debtor is a private company limited by shares incorporated on 03.12.2010 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at Arihant Aura, 1101, 11th Floor, B- Wing, Plot No. 13/1 TTC Industrial Area, Thane Belapur Road, Turbhe, Navi Mumbai Thane MH 400705 IN. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present Petition was filed on 28.03.2023 before this Tribunal and the total outstanding amount of debt claimed by the Applicant which is due and payable by the Corporate Debtor including the outstanding principal and interest Rs. 4,36,32,487.42 (Four Crore Thirty-Six Lakhs Thirty-Two Thousand Four Hundred and Eighty-Seven Rupees and Forty-Two Paise Only) being Principal Rs. 2,00,00,000/- and Interest Rs. 2,36,32,487/-. The Date of Default as per Part IV was on 18.04.2021.

Submissions made by the Financial Creditor:

4. The Financial Creditor submits that the present issue arises out of a non-payment of loan amount along with interest provided to the Corporate Debtor (CD) in the year 2013 on the interest chargeable @ 13.25% per annum till 31.03.2014 and @ 15% per annum thereafter was payable by the Corporate Debtor.




5. The Financial Creditor submits that the Corporate Debtor, while paying the interest accrued with respect to the Principal Amount to the Financial Creditors, also made the TDS (Tax Deducted at Source), which is reflected in the Form 26AS, as part of the Annual Tax Statement under Section. 203AA of the Income Tax, 1961. The Tax deducted at source by the Corporate Debtor demonstrate that the Corporate Debtor owes the Principal Amount along with the interest charged to the Financial Creditors which should lawfully be recovered.
6. The Financial Creditor submits that the Corporate Debtor started defaulting the interest and the Financial Creditor requested the Corporate Debtor for the payment of loan and interest thereon and that, several correspondences were also made to release of due amount along with interest thereon.
7. The Financial Creditor submits that Corporate Debtor in the year 2021 made the payment to the tune of Rs. 2,47,64,188/- to the Financial Creditor, however the payment of Rs. 4,36,32,487.42 was still left due. The Bank Statements of the Financial Creditor evidence the payment made by the Corporate Debtor.
8. The Financial Creditor submits that vide its letter dated 10.04.2021 also requested the Corporate Debtor to repay the loan amount along with applicable interest within 7 days from the receipt of the letter. However, no repayment was ever made by the Corporate Debtor.
9. The Financial Creditor submits that the applicant issued the demand notice dated 10.04.2021. However, instead of repaying



the whole of the outstanding amount, the CD failed to clear the interest amount to the tune of Rs. 4,36,32,487/-, in spite of his assurances.


Submissions made by the Corporate Debtor:

10. The Corporate Debtor submits that it is the Petitioner's own case that a Principal Sum of Rs. 2,00,00,000/- was due and payable on demand from the Respondent with effect from 2013 along with interest payable @13.25% p.a. till 31.03.2014 and @15% p.a. thereafter. The total amount of default as per its own working is Rs. 4,36,32,487.42/- with date of default referred to as 18.04.2021. The fact that loan was "payable on demand is derived from the Petitioner's own submission recorded in the Order dated 20.06.2023 passed by this Hon'ble Tribunal. The Respondent submits that as mutually agreed between the parties, loan was repayable whenever the Respondent was in a position to repay and hence the Respondent paid the same in January 2021. That on comparing the Computation of Default the Ledger account of Respondent in the books of Petitioner, it is clear that the closing balance receivable from Respondent as on 31 March 2015 is Rs.2,47,64,188/-. It is of pertinence to note that the interest as levied by the Petitioner upon the Respondent for the financial years ended on 31 March 2013, 31 March 2014 and 31 March 2015 has been paid by the Respondent as evident from Form 26AS of Petitioner. Thereafter, as per the Petitioner's Computation of Default, Interest @ 15% p.a, is levied for the period beginning from 1.04.2015 to 31.12.2020, however no ledger account in the books of Respondent reflects these amounts of interests. The



Respondent submits that Reference is made to Page 37 of the same Petition which shows ledger account of Respondent for the period 01.04.2020 to 31.03.2022 in the books of Petitioner when the Opening balance as on 01.04.2020 is Rs.2,47,64,188/-, which is the same balance which is outstanding as on 31 March 2015. The Balance sheets of Petitioner filed and annexed with this Petition for financial years ended on 31 March 2016, 31 March 2017, 31 March 2018, 31 March 2019, 31 March 2020 and 31 March 2021, when consistently the balance shown as receivable from Respondent i.e. Arihant Technocraft Ltd (now known as Amoghvarsh Houses Private Limited w.e.f. 08.01.2021) is shown as Rs.2,47,64,188/- which was finally paid off in January 2021 and hence reflects "Nil" amount in Balance Sheet as on 31 March 2021. Also, the Petitioner has neither taken any accounts/balance confirmations for the period 01.04.2015 to 31.03.2022 from the Respondent nor has claimed interest income as accrued in his financials and income tax returns for the aforesaid period, because in essence interest was never payable for this period. It is for this reason no interest incomes are reflected in Form 26AS for the Petitioner for such period as TDS on interest was never deducted and paid by Respondent since interest was never paid. Hence, the amount receivable from Respondent based on the ledger accounts and balance sheet was Rs.2,47,64,188/- and not beyond it.

11. The Respondent further submits that amount of Rs.2,47,64,188/- has already been paid by the Respondent in two tranches viz Rs.1,13,79,845 on 05.01.2021 and Rs. 1,33,84,343 on 07.01.2021 as reflected in the Bank Statements of the Petitioner. Further the letter dated 10 April 2021 issued by Petitioner to



Respondent also acknowledges receipt of Rs.2,47,64,188/- from the Respondent.

Findings:

12. Heard the Ld. Counsel for the Financial Creditors and Ld. Counsel for the Corporate Debtor and perused the records.
13. As per material on record, this Bench finds that there is no Loan Agreement placed on records to prove that there is a Financial Debt existing between the Financial Creditor and the Corporate Debtor.
14. This Bench takes note that the Applicant is relying on the letter dated 10.04.2021 for claim amount and interest. However, the service of this letter on the Corporate Debtor is not established. There is just a scribble signature without any name & stamp and hence cannot be relied upon. The Corporate Debtor has also disputed delivery of the said letter and states that it was never endorsed/acknowledged by the Corporate Debtor.
15. The Bench also take note that the Financial Creditor claims an amount of Rs. 4,36,32,487.42/- is due and outstanding from the Corporate Debtor. However, on perusal of Financial Statements of Financial Creditor filed by the Petitioner shows an outstanding as on 31.03.2020 at Rs. 2,47,64,188/- and as on 31.03.2021 as NIL. Thereby, the Financial Statements of the Financial Creditor do not show any amounts receivable from the Corporate Debtor as on 31.03.2021.



16. This Bench also notes that ledger Account of Corporate Debtor in the Books of Financial Creditor filed by the Financial Creditor shows an opening balance of Rs. 2,47,64,188/- as on 01.04.2020. The Ledger account reflects credit entries on 05.01.2021 & 06.01.2021 with an Amount of Rs. 1,13,79,845/- & Rs. 1,33,84,343/- (RTGS received from SBI, Barmer). Thereafter, the account is squared off. Since the account of the Corporate Debtor was squared off by the Financial Creditor after receiving the outstanding dues on 05th & 06th January, 2021, the Balance Sheet of the Financial Creditor as on 31.03.2021 shows NIL Balance receivable from the Corporate Debtor. This corroborates the claim of the Corporate Debtor that in 2021 he has repaid the entire outstanding amount of Rs. 2,47,64,188/- due to the Financial Creditor.
17. While adjudicating upon an application for admission into Resolution Process filed by a Financial Creditor, it is mandated to ascertain the existence of the debt, and any default in payment of such debt. In the facts and circumstances stated supra, it is clear that the Financial Creditor failed to establish the Financial debt and default of the amount claimed in the petition.
18. Considering the facts placed before us, this bench is of the view that, the Corporate Insolvency resolution process cannot be initiated against Amoghvarsh Houses Private Limited (Formerly Known as Arihant Technoinfra Private Limited)., the Corporate Debtor. Since, the debt and default does not exist, this bench is of the view, that the present case deserves to be dismissed.



ORDER

19. The petition bearing CP(IB) 407/MB-IV/2023 filed by Good Fly Distributors Private Limited (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Amoghvarsh Houses Private Limited (Formerly Known as Arihant Technoinfra Private Limited)., the Corporate Debtor is **Rejected**.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)