

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
CP 1015 (IB)/MB/2019**

Under Section 7 of the I&B Code, 2016
In the matter of

Shailen S Gala-HUF & Ors.

...Financial Creditor/ Applicant
v/s

Mayurpankh Fine Builders Private Limited

...Corporate Debtor

Order Dated 19th September 2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh

Hon'ble Member (Technical) Mr Rajesh Sharma

For the Petitioner: Adv. Sharad Bhosle, Pramod Bhosle

For the Respondent: Adv. Bhavik Salia

Per V.P. Singh, Member (Judicial)

ORDER

1. This is a joint application being CP 1015/2019 filed by **Shailen S. Gala-Hindu Undivided Family**, along with 8 other Financial Creditors or Applicants, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Mayurpankh Fine Builders Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**). The application was admitted vide our order dated on 19.09.2019.
2. Each Applicant has claimed payments and default in repayments as mentioned below:

S. No.	Name of the Applicant	Particulars of the Loan Amount	Amounts Claimed to be in Default as on 05.12.2018
1.	Mr. Shailen S. Gala	₹5,00,000/- by Cheque No.00067343 dated 15.05.2010	6,65,833/-

2.	Mr. Hitendra Vishanji	₹5,00,000/- by Cheque No.00059602 dated 15.05.2010	6,65,833/-
3.	Mr. Mr. Velbai Morarji Gala	₹5,00,000/- by Cheque No.00499564 dated 15.05.2010	6,65,833/-
4.	Ms. Pushpa Kantilal Gala	₹5,00,000/- by Cheque No.00499509 dated 15.05.2010	6,65,833/-
5.	Mr. Suresh Vishanji Gala	₹5,00,000/- by Cheque No.00059622 dated 15.05.2010	6,65,833/-
6.	Ms. Manisha Shailen Gala	₹5,00,000/- by Cheque No.0059576 dated 15.05.2010	6,65,833/-
7.	Mr. Hitendra Vishanji Gala	₹6,00,000/- by Cheque No.00499549 dated 15.05.2010	7,99,000/-
8.	Mr. Kantilal Morarji Gala	₹10,00,000/- by Cheque No.7633 dated	13,31,667/-

		15.05.2010	
9.	Mr. Nirav Kantilal Gala	₹5,00,000/- by Cheque No.00066707 dated 15.05.2010	6,65,833/-
	Total outstanding amount		67,91,498/-

3. The Applicants have issued the above cheques to extend financial assistance at an interest rate of 1.25% per month to be repaid on demand. The Corporate Debtor has issued promissory notes dated 14.05.2010 towards the repayment of the amounts extended as loan, assuring to repay the loan amount at an interest rate of 1.25% per month. However, the Corporate Debtor has failed to repay the loan amounts from 01.10.2016. The total amount claimed to be in default is ₹67,91,498/- (Rupees Sixty Seven Lakh Ninety One Thousand Four Hundred and Ninety Eight Only). The Applicants have annexed the following documents to establish the debt and default of the Corporate Debtor:

- i. Bank Statement of the Applicant No.1 to 9 reflecting disbursement of the Loan Amount on 15.05.2010 to the Corporate Debtor;
- ii. Promissory Notes issued by the Corporate Debtor to Applicant No.1 to 9 dated 14.05.2010;
- iii. TDS deposited by the Corporate Debtor in relation to the Loan amounts received from Applicant No.1 to 9 from the year 2012 till May 2017;
- iv. Confirmation of Balance letter dated 01.04.2014 issued by the Corporate Debtor to the Applicant confirming the balance amounts;
- v. Copies of the 9 Notices dated 05.12.2018 issued by the Applicants to the Corporate Debtor demanding a total sum of ₹67,91,498/- (Rupees Sixty Seven Lakh Ninety One

Thousand Four Hundred and Ninety Eight Only) along with the postal receipts;

4. It is observed by this Bench in order dated 13.08.2019, that the Applicant has served copy of the Application along with Court Notice on the Corporate Debtor and an affidavit of service has been filed by the Applicants. The Corporate Debtor was provided sufficient opportunity to file its Reply to the Application. However, the Corporate Debtor has chosen not to file any reply till date. At the time of hearing, the Ld. Counsel appearing for the Corporate Debtor stated that the Application is barred by limitation and is not maintainable.
5. We have heard the parties and perused the records.
6. On perusal of the Application and the documents annexed, it is seen that the Applicants have extended financial assistance to the Corporate Debtor vide cheques dated 15.05.2010 as mentioned supra. The Bank statements of the Applicants show transfer of the Cheque amounts to the Corporate Debtor. The Corporate Debtor has issued On Demand Promissory Notes dated 14.05.2010 in respect of the 9 cheques issued as loan to the Corporate Debtor, Further the Corporate Debtor has issued 'Confirmation of Accounts Letter' to the Applicants on 01.04.2014 admitting to its liability to repay the debt amount. The promissory notes dated 14.05.2010, Balance confirmation letter dated 01.04.2014 establish the debt, and admitted liability of the Corporate Debtor.
7. On perusal of the records, it is seen that the Corporate Debtor has paid the TDS on interest from 2012 till May 2017 for the loan amount. Further, on perusal of the 9 Notices dated 05.12.2018 issued by each Applicant demanding a sum of ₹67,91,498/- (Rupees Sixty Seven Lakh Ninety One Thousand Four Hundred and Ninety Eight Only), stating that the Applicant has not received any interest from 01.10.2016. The Corporate Debtor failed to pay the amount claimed to be in default. The Corporate Debtor has admittedly not repaid the loan amount and has defaulted from making interest payments since 01.10.2016. The Application having been filed on 04.02.2019, the same is well within the limitation period.

8. The debt and default amounts being more than a sum of Rupees One Lakh, the application deserves to be admitted.
9. However, on perusal of the documents submitted on record, there is a debt due and payable by the Corporate Debtor to the Applicant. The outstanding amount that is in default is more than The Applicant has proposed the name of **Mr. Arundeeep Singh Pathania**, a registered insolvency professional having Registration Number **[IBBI/IPA-002/IP-N00384/2017-18/11154]** as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that there are no disciplinary proceedings pending against him.
10. The Application under sub-section (2) of Section 7 of I&B Code, 2016 filed by the financial creditor for initiation of CIRP in prescribed Form No1, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This petition filed under Section 7 of I&B Code, 2016, filed by **Shailen S Gala- HUF & Ors.**, Financial Creditors or Applicants, against **Mayurpankh Fine Builders Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
 - III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
 - V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
 - VI. That this Bench at this moment appoints **Mr. Arundeeep Singh Pathania**, a registered insolvency professional having Registration Number **[IBBI/IPA-002/IP-N00384/2017-18/11154]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

11. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

19th September 2019