

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

CP (IB) No.698/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Labh Capital Services Private Limited

[CIN: U67120MH1992PTC067214]

...Financial Creditor/Applicant

V/s

Shah Brothers Ispat Private Limited

[CIN: U27101MH2004PTC147842]

...Corporate Debtor/Respondent

Order Dated: 02.06.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Shyam Kapadia a/w
Mr. Umang Mehta, Advocates.
For the Respondent(s) : Mr. Rohan Agarwal, Advocate.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application being C.P. (IB) No. 698/NCLT/MB/C-IV/2021 filed by Labh Capital Services Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Shah Brothers Ispat Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

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2. The Application is filed by Mr. B.K. Nath, authorized by the Financial Creditor vide Board Resolution dated 06.07.2021, claiming total default amount of Rs.1,61,98,356/- (Rupees one crore sixty-one lakh ninety-eight thousand three hundred fifty-six only) as on 30.06.2021 along with the penal interest/damage @ 15,000 per day w.e.f. 01.07.2021 till realisation.
 3. The date of Default is 30.06.2021. The petition is filed on 19.07.2021.
 4. The case of the Financial Creditor is as under:
 - a) The Financial Creditor vide letter dated 28.12.2020, granted Temporary Unsecured Loan to the Corporate Debtor for a period of 6 months for the purpose of scaling up the business as the Corporate Debtor's book debts were overstretched and they were short of working capital. The loan was given with a stipulation of interest @18% p.a. on Principal Amount along with penal interest/damage thereon @15,000/- per day w.e.f. 01.07.2021 till payment and/or realisation and was supposed to be returned on or before 30.06.2021.
 - b) The Financial Creditor on 27.05.2021 had given letter to the Corporate Debtor for repayment of unsecured loan. The total default is for the amount of Rs.1,61,98,356/- (Rupees one crore sixty-one lakh ninety-eight thousand three hundred fifty-six only) as on 30.06.2021 including Principal Amount of Rs.1,50,00,000 (Rupees one crore fifty lakh only) and interest @18% p.a. i.e. Rs.11,98,356. (Rupees eleven lakh ninety-eight thousand three hundred fifty-six only) on or before 30.06.2021.

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- c) Further, the Financial Creditor again on 28.06.2021 had sent an email to the Corporate Debtor requesting the repayment of total unsecured loan on or before 30.06.2021.
5. The Bench vide Order dated 21.12.2021 directed the Financial Creditor to place on record certain facts pertaining to the treatment of interest levied by the Financial Creditor and the TDS deducted on it. The Financial Creditor has filed the Financial Statement for the period of 01.04.2020 - 31.03.2022 and that a sum amounting to the tune of Rs.5,25,375/- (Rupees five lakh twenty-five thousand three hundred seventy-five only) as interest income is reflected in the same at p.5 of the Additional Affidavit filed by the Financial Creditor on 04.03.2022.
6. The Corporate Debtor on the said interest has deducted and deposited TDS amounting to the tune of Rs.39,391/- (@7.5% on Rs.5,25,205/-) and the same is reflected at pp.6-9 of the Additional Affidavit filed by the Financial Creditor on 04.03.2022.
7. Further, the Financial Creditor again on 09.01.2022 had sent an email to the Corporate Debtor requesting the repayment of outstanding principal amount along with the interest on or before 30.01.2022 which is at p.10 of the Additional Affidavit filed by the Financial Creditor on 04.03.2022. The Corporate Debtor replied to this letter vide his email dated 14.01.2022 asking to arrange a meeting with the Directors of the Company which is at p.11 of the Additional Affidavit filed by the Financial Creditor on 04.03.2022.
8. Financial Creditor submitted in its Additional Affidavit that a meeting of the Financial Creditor and the Corporate Debtor was held on 24.01.2022 wherein the Corporate Debtor said that they are not in a position to repay the Financial Debt owed to the Financial Creditor.

Further, the Financial Creditor vide letter dated 27.01.2022 conveyed that they are unable to accept any change in the position of terms of repayment.

9. The Financial Creditor has also filed Ledger Account of the Corporate Debtor showing the total outstanding of Rs.1,62,23,356/- (Rupees one crore sixty-two lakh twenty-three thousand three hundred fifty-six only) as on 30.06.2021 which is at p.13 of the Additional Affidavit filed by the Financial Creditor on 04.03.2022.
10. The Corporate Debtor has filed its Affidavit of Reply and submits as under:
 - a) The Corporate Debtor had availed financial facilities for a total sum of Rs. 301.25 crores (Rupees three hundred one crores and twenty-five lakh only) from several consortium banks. Out of the total borrowed sum, the Corporate Debtor had receivables amounting to the tune of Rs. 243.61 crores (Rupees two hundred forty-three crores and sixty-one lakh only) and in regard to the balance trade receivables, The Corporate Debtor has made a provision towards bad debts amounting to the tune of Rs. 93,31,00,000 (Rupees ninety-three crores and thirty-one lakh only) attributable to the litigations filed by/against it under the Insolvency and Bankruptcy Code, 2016 and other legal proceedings. The list of proceedings filed against the debtors of the Corporate Debtor under S. 138 of Negotiable Instruments Act, 1938 and IBC, 2016 cases are annexed at pp. 8-10 of the Reply Affidavit filed by the Corporate Debtor.
 - b) The Corporate Debtor submits that in view of the mounting interests on the loans availed by it and its numerous receivables stuck being pending, the Corporate Debtor was unable to fulfil its working capital

requirement. Hence the business of the Corporate Debtor has clearly suffered a loss and the COVID-19 pandemic made it even worse.

- c) The Corporate Debtor submits that due to unavoidable circumstances it was also unable to avail the emergency line of credit and other concessions which had been granted by RBI and other Government authorities to MSME's and other eligible units.
- d) Thereafter, the Corporate Debtor in view of the Press Release dated 7th August, 2020 and 7th September, 2020 issued by the RBI on Resolution Framework for Covid-19 related stress, the Corporate Debtor submitted proposals to the consortium banks for restructuring of credit facilities on 10.09.2020 which was thereafter modified on 12.12.20. The outcome of the said proposals is presently pending before consortium banks for further consideration as on the date of the filing of the petition.
- e) The Corporate Debtor was declared as Non-Performing Asset by all the consortium bank members as on 31.03.2021.
- f) The Corporate Debtor received demand notices u/s 13(2) of the SARFESI Act from all the respective banks. Thereafter, with effect from April 2021, the Corporate Debtor was desisted from undertaking any operations from the said banks. The Corporate Debtor submits that it is also unable to file its GST returns thereby attributing to the risk of blocking E-Way bill generation, that is mandatory for making sales.
- g) The Corporate Debtor kept requesting the banks to restructure the loans and in the meanwhile somehow managed to reduce its liabilities from Rs. 243 crores to Rs. 232 crores as on 31.10.2021.

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- h) Therefore, to reduce the liabilities from the consortium banks, the Corporate Debtor availed a loan of Rs.1,50,00,000 (Rupees one crore fifty lakh only) from the Financial Creditor to commence with its operations and repay the consortium bankers. The Corporate Debtor had anticipated an expeditious outcome qua the restricting approval and was hoping to repay the Financial Creditor as per the timelines stipulated in the letter dated 28.12.2020. However, the outcome of the said restructuring proposal is pending as on today and it is not in a position to commit to any timeline for rendering payments to the Financial Creditor.
11. The Corporate Debtor has filed its Additional Affidavit as ordered by the Tribunal vide order dated 07.03.2022 and submits as under:
- a) The Corporate Debtor was ordered to submit a comparative statement of assets and liabilities and income & expenditure for the last three years Balance sheet of the Corporate Debtor and the same is annexed at pp. 8-11 of the Additional Affidavit. The Corporate Debtor's liabilities reflecting in its Balance Sheet for the year ending 31st March, 2019, 31st March, 2020 & 31st March, 2021 amounting to the tune of Rs.296,55,92,678/-, Rs.340,25,38,827/- & Rs.273,31,51,739/- respectively.
- b) The Corporate Debtor has also in regards to the order of the court provided details pertaining to action taken by various banks against the Corporate Debtor for the recovery of outstanding dues and the date of declaration of the Corporate Debtor as NPA which is at pp.3-4 of the Additional Affidavit.

Findings:

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- a) We have heard the arguments of the Learned Counsel for both the parties and perused the records.
- b) We have prudently gone through the pleadings available on record. The Financial Creditor vide letter dated 28.12.2020, granted Temporary Unsecured Loan of Rs.1,50,00,000 (Rupees one crore fifty lakh only) to the Corporate Debtor for a period of 6 months @18% p.a. i.e. Rs.11,98,356 (Rupees eleven lakh ninety-eight thousand three hundred fifty-six only) on or before 30.06.2021 on Principal Amount along with a stipulation of penal interest/damage thereon @15,000/- per day w.e.f. 01.07.2021 till payment and/or realisation and was supposed to be returned on or before 30.06.2021. The total default is for the amount of Rs.1,61,98,356/- (Rupees one crore sixty-one lakh ninety-eight thousand three hundred fifty-six only) as on 30.06.2021.
- c) The Corporate Debtor had availed financial facilities for a total sum of Rs. 301.25 crores (Rupees three hundred one crores and twenty-five lakh only) from several consortium banks and was unable to repay them. Subsequently, it took an Unsecured Loan of Rs.1,50,00,000 (Rupees one crore fifty lakh only) from the Financial Creditor on the anticipation that the bankers shall accept their proposal of restructuring the loan but the same is pending at present.
- d) The Corporate Debtor has neither disputed the loan availed by the Financial Creditor nor the claim amount. The Corporate Debtor has time and again sent proposals to the Financial Creditor to restructure the loan availed by the consortium of banks and this in itself can be considered to be the admission of liability. The Corporate Debtor appears to have no intention of repaying the Financial Creditor for the

loan availed from it. Hence, there is no reason to deny the admission of the Application under Section 7 filed by the Financial Creditor.

- e) On a specific question asked by the Bench as to why the Consortium Bankers who are having a huge outstanding of Rs.301.25 crores (Rupees three hundred and one crores twenty-five lakh only) have not initiated any action against the Corporate Debtor irrespective of the default occurred and the Corporate Debtor being declared as NPA by them, the Counsel appearing for Corporate Debtor submitted that the probable reason as to why the Consortium Bankers did not initiate Insolvency Process against Corporate Debtor may be because the Corporate Debtor occurred defaults during the period when Section 10A of the Insolvency and Bankruptcy Code, 2016 was in force and hence no IBC proceedings against the Corporate Debtor could have been filed for default during the period of enforceability of Section 10A of the Insolvency and Bankruptcy Code, 2016 i.e. for a period from 25.03.2020 to 24.03.2021. This Section may have acted as a restraint for the bankers to initiate any IBC proceedings against the Corporate Debtor for default committed by it during that period, also called zero period.
- f) On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the Corporate Debtor.
- a) The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the

Corporate Debtor has been established and the application deserves to be admitted.

- g) The Applicant has proposed the name of Mr. Padmanabhan Nair, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P02289/2020-2021/13495] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

- h) This Application being C.P. (IB) No. 698/NCLT/MB/C-IV/2021 filed by Labh Capital Services Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Shah Brothers Ispat Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **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
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- 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 appoints Mr. Padmanabhan Nair, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P02289/2020-2021/13495] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is 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/-

Kishore Vemulapalli
Member (Judicial)

02.06.2022

Sd/-

Rajesh Sharma
Member (Technical)