

**NATIONAL COMPANY LAW TRIBUNAL,  
COURT-V, MUMBAI BENCH**

**C.P. No. 951/IBC/MB/2022**

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**Mr. Mahhesh Bapuraoji Nage,**

Having registered office at:

C-703, Akruiti Aneri, behind Marol, Maroshi Bus Depot, Andheri East, Mumbai, Maharashtra-400059

**.....Financial Creditor/Petitioner**

*Vs*

**Sudhir Constructions Infraspac Private Limited**

Having registered office at:

Samashish Bhavan, 18 Mulik Complex Tenement, Somalwada, Wardha Road, Nagpur 440025

**.....Corporate Debtor**

**Order Reserved on: 09.01.2023**

**Order Pronounced on: 03.03.2023**

**Coram:**

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**For the Petitioner:** Mr. Ayush J Rajani, PCA a/w Khushboo Shah  
I/b AKR Advisors

**For the Respondent:** Mr. Atishay Jain, Advocate

*Per: Anuradha Sanjay Bhatia, Member (Technical)*

**ORDER**

1. The present Company Petition is filed by **Mr. Mahhesh Bapuraoji Nage**, (hereinafter called as “**Petitioner**”) seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against **Sudhir Constructions Infraspace Private Limited** (hereinafter called as “**Corporate Debtor**”) by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called as “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 alleging that the Corporate Debtor committed default, on 30.06.2022, to the extent of Rs. 3,12,81,348/- along with interest @ 21% per annum.
2. In the requisite Form-1, under the head “Particulars of Financial Debt” the amount claimed to be in default is Rs. 3,12,81,348/- inclusive of interest. The details of the same are as follows:

Sr. No.	Particulars	Amount (in Rs.)
1.	Principal Outstanding Amount	Rs. 1,25,00,000/-
2.	Interest (at the rate of 21.00%)	Rs. 1,87,81,348/-
	Total	Rs. 3,12,81,348/-

3. The list of documents attached to this Petition in order to prove the existence of Financial Debt, the amount of default and the date of default are as follows:
  - a. Copy of the Loan Agreement, dated 09 August 2013, executed between Shree Engineers Infrastructure Private Limited (Assignor) and the Corporate Debtor, carrying interest @21% p.a., along with the Board Resolution dated 07 August 2013.
  - b. Copy of Deed of Assignment of Debt, dated 01 April 2018, executed between Assignor, Petitioner and Corporate Debtor for assigning the loan.
  - c. Copy of the Accounts Receivable/ Balance confirmation as on 31<sup>st</sup> March 2017, received from the Corporate Debtor.

- d. Copy of the Accounts Receivable/ Balance confirmation as on 31<sup>st</sup> March 2019 received from Corporate Debtor.
  - e. Copy of Accounts Receivable/ Balance confirmation as on 31<sup>st</sup> March 2021 received from Corporate Debtor.
  - f. Copy of Demand Notice dated 7<sup>th</sup> October 2021.
  - g. Copy of 2<sup>nd</sup> Demand Notice dated 26<sup>th</sup> November 2021.
  - h. Copy of 3<sup>rd</sup> Demand Notice dated 7<sup>th</sup> April 2022.
4. The Petition reveals that the Petitioner herein, is an individual and the Corporate Debtor is a company registered under the Companies Act, 1956 and is engaged in the business of Building installation.
5. On 01<sup>st</sup> April 2018, Shree Engineers Infrastructure Private Limited (original lender) had assigned loan to Mr. Mahhesh Bapuroaji Nage (Petitioner/Financial Creditor) via a Deed of Assignment of Debt, dated 01<sup>st</sup> April 2018. As per the Deed of Assignment of Debt, dated 01 April 2018, the Petitioner/Financial Creditor is entitled to recover an outstanding amount of Rs. 1,25,00,000/- being the amount lent, as a loan repayable, bearing interest at the rate of 21% per annum, from the Corporate Debtor.
6. Further, the Corporate Debtor has acknowledged that there has been default on its part, as there has been no repayment of said loan so far and hence sought extension of the repayment period till 30 June 2021. Accordingly, the Petitioner and the Corporate Debtor agreed to allow extended period for repayment for another period of 39 months i.e. from 01 April 2018 till 30 June 2021, along with interest @ 21% per annum.
7. Since no payment was forthcoming from the Corporate Debtor, the Petitioner issued a Demand Notice dated 7<sup>th</sup> October 2021 to the Corporate Debtor demanding the outstanding loan amount, along with interest. As there was no reply from the Corporate Debtor, the Petitioner issued a 2<sup>nd</sup> Demand Notice dated 26<sup>th</sup> November 2021 to the Corporate Debtor, to which the Corporate Debtor replied on 3<sup>rd</sup> March 2022, wherein

they have acknowledged the outstanding loan amount. The relevant portion of the reply to the Demand Notice is as follows:

“Sir,

- 1) *This is with reference to demand notice dated 26 November 2021 calling upon us to repay the said amount along with applicable interest.*
- 2) *It is important to state that we did not receive any notice dated 07 October 2021 as stated in your demand notice dated 26 November 2021.*
- 3) *As you are aware that the impact of Covid has now reduced and we are hoping to have routine business operations in the next 6 to 9 months hence request you to kindly bear with us and grant us more time to repay your outstanding loan.*
- 4) *We suggest that we will be able to arrive at a settlement plan by end of June 2022 and considering our existing relationship we request you not to take any legal action or any penal consequences in this regard.*
- 5) *In view of our relation for over a decade we request you to kindly extend the courtesy of allowing us more time to repay the entire debt*
- 6) *We are hopeful that we may be able to repay the debt in full if you allow us a staggered payment option till 30 June 2023.”*

8. The Petitioner further issued 3<sup>rd</sup> Demand Notice dated 07<sup>th</sup> April 2022 to the Corporate Debtor, demanding the outstanding amount, to which there was no reply from the Corporate Debtor. Hence this Petition.

**Reply of the Corporate Debtor:**

9. The Corporate Debtor has filed their reply on 7<sup>th</sup> January 2023 denying all the allegations and contentions raised in the present petition.
10. The Corporate Debtor in their reply submitted that the Petitioner has not placed on record the true facts. The Corporate Debtor is facing financial difficulties i.e. cash flow shortage due to the pandemic and lockdown and is in an attempt to revive its business operations. Further, the Corporate Debtor is desirous of settling the matter.

11. The Corporate Debtor further states that the alleged financial debt is not maintainable under the Code since it is a trite law and the Code is a special law for the resolution of companies and is not a recovery tool mechanism. To that effect, the Corporate Debtor has placed reliance upon the judgment of Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited* wherein it was held that I&B Code, 2016 is not intended to be a substitute to a recovery forum and cannot be used to jeopardize the financial health of an otherwise solvent company by pushing it into insolvency. Hence, the Corporate Debtor stated that the Petitioner should be dismissed.

**Findings:**

12. Heard the Counsel appearing for the Petitioner and the Corporate Debtor and perused the material available on record.
13. It is established beyond doubt that the Deed of Assignment of Debt dated 1<sup>st</sup> April 2018 was executed between the Assignor, Petitioner and the Corporate Debtor, wherein in the Para 2 it is clearly stated that the Assignor is entitled to recover an outstanding amount of Rs. 1,25,00,000/- along with interest @21% p.a. from the Corporate Debtor. Further, the parties agreed to extend the time period of the said loan by 39 months i.e. 1<sup>st</sup> April, 2018 till 30<sup>th</sup> June 2021 with interest @21% p.a.
14. Since the Corporate Debtor did not repay the loan amount, the Petitioner issued a Demand Notice dated 7<sup>th</sup> October 2021 to the Corporate Debtor, and 2<sup>nd</sup> Demand Notice dated 26<sup>th</sup> November 2021 to the Corporate Debtor recalling the outstanding loan amount. The reply of the Corporate Debtor to the 2<sup>nd</sup> Demand Notice clearly establishes the debt on the part of Corporate Debtor. It is evident from the reply that the Corporate debtor has acknowledge his debt. Further, the Corporate Debtor never disputed its liability in respect of the said loan.

15. Further, the Corporate Debtor in their reply has admitted the fact that they failed to repay the loan amount, due to business loss suffered during the Pandemic.
16. On going through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced on record, it is clear that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this petition u/s 7 of the Code deserves to be admitted.
17. Considering the above facts, we come to conclusion that the nature of Debt is a “**Financial Debt**” as defined under section 5 (8) of the Code. It has also been established that there is a “**Default**” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘**debt**’ and ‘**default**’, for admission of a Petition under Section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.
18. As a consequence, keeping the aforesaid facts in mind, it is an undisputed fact that the Petitioner has not received the outstanding amount from the Corporate Debtor and that the formalities as prescribed under the Code have been complied by the Petitioner, we are of the considered view that this Petition deserves ‘**Admission**’ by passing the following:

**ORDER**

- a. The above Company Petition No. 951/IBC/MB/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Sudhir Constructions Infraspac Private Limited.**

- b. The IRP proposed by the Financial Creditor, **Mr. Ram Ratan Kanoongo**, ([ram@headwayip.com](mailto:ram@headwayip.com)) having registration No. IBBI/IPA-001/IP-P00070/2017-2018/10156, having address at 708, Raheja Centre, 7<sup>th</sup> Floor, Free Press Marg, Nariman Point, Mumbai-400021, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order

for liquidation of corporate debtor under section 33, as the case may be.

- f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P. No. 951/IBC/MB/2022 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

**Anuradha Sanjay Bhatia**  
**Member (Technical)**

SD/-

**Kuldip Kumar Kareer**  
**Member (Judicial)**