

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -I**

CP (IB) No. 300/MB/2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Micro Capitals Private Limited

[CIN: U70109MH1991PTC224575]

Shop-35, Sonam Shopping Center CHS
Limited, Old Golden Nest, Phase 6, Mira-
Bhayander-East Thane-401105.

... Financial Creditor /Petitioner

Versus

Aarya Equity India Private Limited.

[CIN: U67110MH2006PTC159630]

Tower 2-2403, R-Anthurium LBS Road,
Mulund West. Mumbai-400080.

...Corporate Debtor / Respondent

Order Delivered on :09.11.2023

Coram:

Hon'ble Member (Judicial) : Hon'ble Member (Technical)
Justice V.G. Bisht, (Retd.) : Mr. Prabhat Kumar

Appearances:

For the Financial Creditor : Mr. S.A. Pathak, Advocate
For the Corporate Debtor : None present

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 7 ("the Petition") of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Micro Capitals Private Limited** ("the Financial Creditor"), seeking to initiate

Corporate Insolvency Resolution Process (CIRP) against **Aarya Equity India Private Limited** ("the Corporate Debtor ").

2. The Corporate Debtor is company incorporated on 08.02.2006 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai.

Facts:

3. The Financial Creditor submits that from 08.08.2014 till 12.12.2014 various amount aggregating to Rs.6,58,00,000/- were advanced as a loan and by way of financial assistance to Corporate Debtor. The loan was a short-term loan and which was to be repayable on demand.
4. The Corporate Debtor from time to time has repaid amounts aggregating to Rs.4,25,00,000/- leaving an unpaid sum of Rs.2,33,00,000/- as outstanding amount which was due and payable by the Corporate Debtor.
5. The Financial Creditor states that the matter was referred to Arbitration and the Arbitration Proceedings commenced on 16.10.2018 wherein the Financial Creditor had made a claim against the Corporate Debtor for a sum of Rs.2,33,00,000/- with interest at 18% p.a.
6. The Petitioner submits that arbitration concluded and culminated into Final Award dated 24.03.2020 in favour of the Financial Creditor. The Corporate Debtor was directed to pay to the Financial Creditor an

amount of Rs. 2,33,00,000/- with interest at 6 % p.a from 16.10.2018 till the date of the award. The Arbitral Award is placed as “Exhibit-G” to the Petition

7. The Corporate Debtor was directed to pay to the Financial Creditor further interest at 6% p.a. on the said sum of Rs. 2,33,00,000/- from the date of the award till date of payment.
8. The Petitioner submit that as on 13.02.2023 the aggregate Total debt amount is Rs. 2,97,08,998/- (Rupees Two Crore Ninety Seven Lakhs Eight Thousand Nine Hundred and Ninety Eight Only) which is inclusive of interest at 6% p.a. on from the date of commencement of proceedings (16.10.2018) till 13.02.2023. The computation of claim is placed as “Exhibit-F” at page 28 of the Petition.
9. It is further stated that till date no payment, whatsoever, has been made by the Corporate Debtor.
10. The date of default stated to be in Part-IV of the Petition is 24.03.2020. The date of e-filing of the Petition is 22.02.2023. Hence, the Petition is within the period of Limitation as prescribed under Article 137 of the Limitation Act.
11. Further, to prove to existence of debt, the Financial Creditor has placed on record NeSL certificate and Ledger Statement of the Corporate Debtor clearly reflecting the balance amount of Rs.2,33,00,000/-.

12. None appeared for the Corporate Debtor. The Registry was directed to serve court notice on the Corporate Debtor. The Court Notice was duly served. However, despite of service by the Petitioner and Court Notice, none appeared for the Corporate Debtor. Accordingly, the Corporate Debtor was set ex-parte vide order dated 01.06.2023.

Findings:

13. Heard Learned Counsel for the Financial Creditor. Perused the record.
14. As far as the issue whether a claim arising out an arbitral award can be considered as a Financial Debt is concerned the Hon'ble Madras High Court in the case of *Cholamandalam Investment and Finance Company Ltd. V. Navrang Roadlines Private Limited (O.S.A (CAD) no. 115 of 2022*, following the decision of Hon'ble Supreme Court in case of Kotak Mahindra Bank (Supra) held at para 12 that –

“A mere perusal of the above observations of the Hon'ble Supreme Court in the decisions cited supra, shows that the liability in respect of a claim arising out of a recovery certificate issued by the DRT would be considered as “financial debt” within the ambit of Section 59(8) of Insolvency and Bankruptcy Code, 2016. It has also held that the underlying claim of the Bank/Claimant under the lending documents would have to be categorised as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Therefore, a recovery certificate issued in respect

of the same claim, which is essentially a crystallization of the claim through the process of adjudication, had also be classified as a “financial debt” under Insolvency and Bankruptcy Code, 2016. Consequently, the nature of the underlying claim of the creditor, would determine the categorisation of the amount payable under the final decree passed adjudication of the same claim. The liability arising out of an arbitral award or a court decree would be categorised as either financial or operational debt depending on the nature of the underlying claim which stands crystallised through the arbitral or court proceedings.

15. The Hon’ble Supreme Court in the matter of **Kotak Mahindra Bank vs A. Balakrishnan and Anr. Civil Appeal No. 689 of 2021** has held as under:

“We have already hereinabove, done the exercise of considering the relevant provisions of the IBC afresh and come to a conclusion that a liability in respect of a claim arising out of a Recovery Certificate would be a “financial debt” within the meaning of clause (8) of Section 5 of the IBC and a holder of the Recovery Certificate would be a “financial creditor” within the meaning of clause (7) of Section 5 of the IBC. We have also held that a person would be entitled to initiate CIRP within a period of three years from the date on which the Recovery Certificate is issued. We are of the

considered view that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same.”

16. Further, the Hon'ble Supreme Court in the Kotak Mahindra Bank (Supra), held at Para 53. Having held that a liability in respect of a claim arising out of a Recover Certificate would be “financial debt” within the ambit of its definition under clause 8 of section 5 of the IBC, as a natural corollary thereof, the holder of such Recovery Certificate would be financial creditor within the meaning of clause 7 of section 5 of the IBC. As such, such a “person” would be “person” as provided under section 6 of the IBC who would be entitled to initiate the CIRP.
17. As far as the nature of transaction is concerned the Learned Arbitrator has rendered a specific finding that the Petitioner had advanced a loan to the Respondents and has further recorded that the Petitioners are entitled to recover the amount at the rate of 6% p.a. Moreover, the Petitioners have placed on record ledger statement of the Corporate Debtor which clearly reflects the balance amount of Rs.2,33,00,000/-.
18. Therefore, this Bench is of the considered opinion that Learned Counsel for Petitioner through his arguments articulated the existence of debt and default which are corroborated from the records annexed to the Petition. It is not disputed that the amount was disbursed to the

Corporate Debtor and the Corporate Debtor has defaulted in repaying the amount.

19. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
20. The Financial Creditor has proposed the name of **Ms. Bharati Manoj Daga**, having registration no. **IBBI/IPA-001/IP-P01963/2020-2021/13070**, as the Interim Resolution Professional of the Corporate Debtor. She has filed her written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
21. It is, accordingly, hereby ordered as follows: -
 - (a) The Petition bearing **CP (IB) 300/MB/2023** filed by, **Micro Capitals Private Limited** the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Aarya Equity India Private Limited [CIN:**

U67110MH2006PTC159630], the Corporate Debtor, is **admitted.**

(b) There shall be a moratorium under section 14 of the IBC, regarding the following:

- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

(c) Notwithstanding the above, during the period of moratorium:-

- (i) 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;

- (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IB Code.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Ms. Bharati Manoj Daga**, having address at 94 B, Palash Tower, Veera Desai Road, Near Country Club, Andheri West.Mumbai-400053 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP in terms of section 17 of the IBC. The officers and managers of the Corporate

Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- 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).
- (i) Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-
PRABHAT KUMAR
Member (Technical)

09.11.2023
Priyal

Sd/-
JUSTICE V.G. BISHT
Member (Judicial)