

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

C.P.(IB) No. 973 of 2021

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. Sougat Samiran Ghosh

A/1503, Indian Ocean, Sagar City, V.P.
Road, Andheri (W), Mumbai - 400058

.....**Petitioner No. 1**

Mrs. Tapati Ghosh

A/1503, Indian Ocean, Sagar City, V.P.
Road, Andheri (W), Mumbai - 400058

.....**Petitioner No. 2**

Vs

Debtone Corporate Advisory Private Limited,

(CIN:U74120MH2013PTC246280)

Registered Office at 404, 4th Floor, Kaveri Complex,
Behind Holiday Inn Jagannath Mandir Road,
Sakinaka, Mumbai (M.H.)- 400 072.

.....**Corporate Debtor/ Respondent**

Ordered pronounced on: 17.03.2023

Coram:

Hon'ble Sh. Kuldip Kumar Kareer, Member (Judicial)

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

For the Financial Creditor: Ms. Ankita Sehgal, Advocate

For the Corporate Debtor: None Present

Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company Petition is filed by Mr. Saugat Samiran Ghosh and Mrs. Tapati Ghosh (hereinafter called "**Petitioners**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s/ Debtone Corporate Advisory Private Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate Debtor defaulted in making payment to the Financial Creditors. This Petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a Resolution of Financial Debt of Rs. 2,66,00,000/-, wherein Rs. 1,44,00,000/- is the Principal amount and 1,22,00,000/- is the interest as per Memorandum of Understanding executed between the parties as under:

SR	MOU DATED	AMOUNT (In Rs.)
1	01.03.16 (Applicant No.1)	5,00,000
2	01.03.16 (Applicant No.2)	5,00,000
3	02.04.16	30,00,000
4	19.06.16	4,00,000
5	12.08.16	1,00,00,000
	TOTAL	1,44,00,000

BRIEF FACTS OF THE CASE

2. The Counsel for the Petitioners submitted that the Petitioner No. 1 is an individual working with an investment bank for last several years and the Petitioner No. 2 is the mother of Petitioner No. 1. The counsel for the Petitioners submitted that a Memorandum of Understanding was executed between the

- parties on 01.03.2016, wherein the Petitioner No. 1 and Petitioner No. 2, granted loan to the Corporate Debtor, to the tune of 5,00,000/- each with interest chargeable @12% p.a. and the loan was repayable on demand.
3. On 02.04.2016, another MOU was executed between the parties wherein the Petitioner No. 1 & Petitioner No. 2 advanced an aggregate loan of Rs. 30,00,000/- and the Corporate Debtor agreed to pay interest @12% p.a. on the said loan, which was repayable on demands.
 4. On 19.06.2016, Petitioner No.1 once again granted a loan to the Corporate Debtor for an amount of Rs. 4,00,000/-, on interest @12 p.a. payable on demand. The terms were recorded in the MOU dated 19.06.2016 executed between the parties.
 5. On 12.08.2016, the Corporate Debtor availed another loan of Rs. 1,00,00,000/- from the Petitioner no. 1 with interest payable @24% p.a. and the loan was payable on demand. The terms were mutually agreed by the parties in MOU executed on 12.08.2016 at Mumbai.
 6. The said amount was loaned by the Petitioners at an agreed rate of interest and through banking channel. The details are summarized as under:

SR	DATE	CHEQUE NO.	AMOUNT (IN Rs.)
1	29.02.16	509223	5,00,000
2	29.02.16	288675	3,00,000
3	29.02.16	035438	2,00,000
4	31.03.16	530859	15,00,000
5	31.03.16	530860	15,00,000
6	24.06.16	649673	3,00,000
7	24.06.16	649674	1,00,000
8	12.08.16	602471	1,00,00,000
		TOTAL	1,44,00,000

7. The Corporate Debtor regularly credited interest to the Applicant from the period from August 2016 to June 2017. On 30.08.2018, the Petitioner wrote a letter demanding the Corporate Debtor to repay the loan, along with the interest accumulated thereon, within a period of 15 days, as agreed in the aforesaid MOU's. The Corporate Debtor failed to make the payment of the loan. The Corporate Debtor, as a security, issued cheques in favour of the Financial

Creditors in order to secure the said loan amount thereby acknowledged the existence of debt due and payable to the Financial Creditors. The details of the cheques are as under:

SR	CHEQUE No.	AMOUNT (In Rs.)
1	000002	5,00,000
2	000004	5,00,000
3	000008	40,00,000
4	000018	5,00,000
5	000019	1,00,00,000

8. The above-mentioned cheques, when presented to the bank on the due date were dishonoured and returned by the bank for which separate proceedings under Section 138 of the Negotiable Instrument Act, 1881 have been initiated. The Petitioners has enclosed a copy of the returned cheques along with the return memo in Annexure – 5 of the Company Petition.
9. However, despite the several verbal and telephonic reminders the Corporate Debtor has miserably failed and defaulted to pay the admitted debt till date. Thus, the Petitioners filed the above Company petition against the Corporate Debtor under Section 7 of the Code.
10. The following documents categorically demonstrate the financial debt due and payable by the Corporate Debtor, to the Financial Creditors :-
 - a. Copies of the MoU's dated 01.03.2016, 02.04.2016, 19.06.2016 and 12.08.2016 executed between the Petitioner No. 1 and the Corporate Debtor
 - b. Copies of the MoU's dated 01.03.2016, executed between the Petitioner No. 2 and the Corporate Debtor
 - c. Copy of the bank statement showing disbursement of loan amount to the Corporate Debtor and credit of interest thereon;
 - d. Copy of the letters issued by the Petitioners demanding the said loan along with the postal receipt;
 - e. Copy of the returned cheques along with the returned memo

11. **The Respondent has not appeared before this Bench despite having been duly served and has been proceeded against Ex-Parte.**

FINDINGS

12. Heard the submissions of Ms. Ankita Sehgal, counsel appearing for the Petitioner/ Financial Creditor and perused the material available on record. It is evident from the record that the Corporate Debtor had approached the Petitioners requesting for financial assistance against which the Petitioner has granted a loan of Rs. 1,44,00,000/- through banking channel in various tranches for which a separate Memorandum of Understanding (MoU) were executed between the parties.
13. Notice in the present Company Petition was duly sent to the Corporate Debtor both by the Petitioner as well as by the Registry of this Bench. The Corporate Debtor failed to appear before this Bench despite the court notice served on them from the Registry of NCLT. Thereafter, on 08.12.2022, the Corporate Debtor was set ex-parte and the matter was listed on Board on 18.01.2023 for hearing the arguments of the Petitioners. None appeared on behalf of the Corporate Debtor when the matter was called out on 18.01.2023. Hence, the hearing was concluded after hearing the counsel for the Petitioners/ Financial Creditors.
14. It is pertinent to note that when the above-mentioned cheques were presented to the Bank for clearing, the cheques were dishonoured. Sec 138 of the Negotiable Instrument Act proceedings had also been initiated. The issuance of the cheque by the Corporate Debtor clearly demonstrates that the Corporate Debtor has acknowledged the amounts as payable.
15. Further, it was stated that the Petitioner has sent an email dated 30.08.2018, requesting the Corporate Debtor to pay the outstanding amount, but the Corporate Debtor had chosen not to reply to the above-mentioned email.
16. After hearing the submissions and upon perusing the material available on record and considering the Corporate Debtor has been proceeded against ex-parte, the claim of Operational Creditor remains unchallenged. Hence, this Bench feels that the Petitioner has successfully demonstrated the existence of

“debt” and “default” committed by the Corporate Debtor in this case. The Petitioners suggested the name of Mrs. Chhaya Gupta as Interim Resolution Professional along with his consent letter in Form 2. Accordingly, the above Company Petition is '**admitted**' by passing the following:

ORDER

- a. The above **Company Petition No. 973 of 2021** is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Debtone Corporate Advisory Private Limited.
- b. This Bench hereby appoints **Mrs. Chhaya Gupta**, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00984/2020-2021/13133, having Registered Address at: 1, Bima Nagar, 202, Almas Dreams Apartment, Near Anand Bazaar, Indore-452018, Madhya Pradesh as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor 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.
- d. That this Bench hereby prohibits 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 supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- f. 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.
- g. 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.
- 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 suspended directors and 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, this Petition 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)