

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

CP(IB)No. 30/MB/2024

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

In the matter of

UTSAV SECURITIES PRIVATE LIMITED

[CIN: U65993DL1995PTC063997]

Having its registered office at

1208,12TH Floor,Vikrant Tower, Rajendra Place
,Patel Nagar, Central Delhi, New Delhi-110008

**.....Applicant/
Financial Creditor**

Versus

MAHAVIR INDUSTRIES LIMITED

[CIN: L31300MH1989PLC250547]

115, Shalimar Miracle, Wing-B,Plot No. 26 S V
road, jm of Jawahar Ngr Rd No.4,

Goregaon (W), Mumbai City, Mumbai,

Maharashtra, India-400062

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

Order Delivered on : 15.04.2024

Coram:

Sh. Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Prakhyat Sharma, Advocate

For the Corporate Debtor : Swastika Kumari, Advocate

ORDER

Per: Justice V.G Bisht, (Retd)

1. This Company Petition has been filed by **Utsav Securities Private Limited** ("**Financial Creditor**"), a non-banking finance company is seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **Mahavir Industries Limited**. ("**Corporate Debtor**") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for having committed a default in repayment of outstanding principal debt of INR 4,57,75,424.66/- (Rupees Four Crore Fifty Seven Lakh Seventy Five Thousand Four Hundred Twenty Four and Sixty Six Paise Only), 01.11.2023 is the date of default which is recorded in the National E-Governance Services Limited.

2. The Financial Creditor was incorporated on 03.01.1995, having CIN: U65993DL1995PTC063997 and the registered office is situated at 1208,12th Floor, Vikrant Tower, Rajendra Place, Patel Nagar, Central Delhi, New Delhi-110008.

Submissions made by the Financial Creditor:

3. The Financial Creditor submits on 28.08.2023 the Corporate Debtor approached the Applicant to seek Financial Assistance for expansion of its business.

4. The Financial Submits that a Business Loan Agreement between Financial Creditor and Corporate Debtor was executed for expansion of the Business of the Corporate Debtor. That on 01.09.2023 the Loan Sanction Letter was sent to the Corporate Debtor sanctioning an amount to Rs.4,45,00,000/- (Four Crore Forty-Five Lakhs Only). That on 04.09.2023 to 16.09.2023 the said amount was disbursed to the Corporate Debtor in 7 separate tranches via RTGS.
5. The Financial Creditor on 06.10.2023,11.10.2023, 16.10.2023,23.10.2023, issued a letter to the Corporate Debtor intimating about the default in the repayment of loan accrued along with Interest. The Financial Creditor on 28.10.2023 issued a final Recall Notice notice to pay the dues to an amount of Rs.4,48,36,657.53/- along with interest of 12% P. A till 05.10. 2023.The calculation of the total debt to be in default along with interest are as follows:

Particular	Amount Claimed to be in Default (Rs.)
Principal Amount	4,45,00,000/-
Simple Interest from 04.09.2023 to 05.10.2023	3,36,657.53/-
Total Amount including Interest	4,48,36,657.53/-

Submissions made by the Corporate Debtor:

6. At the outset, the Respondent submits that the present application filed by the Applicant is misconceived, bad in law and devoid of any substance, not maintainable and as such liable to be dismissed.
7. The Corporate Debtor admits that it is a matter of record that the Lender extended financial assistance to the Borrower through an interest-bearing loan, with a maximum principal amount of Rs.4,45,00,000/-, bearing an annual interest rate of 12% and penal interest of 2% per annum. This transaction transpired in September 2023 and was undertaken for the explicit purpose of facilitating the expansion of the Borrower's business endeavors and for addition of fixed assets. Consequently, a binding loan agreement, hereinafter referred to as 'the agreement,' was duly executed between the aforementioned parties on 04.09.2023. Pursuant to the execution of the said agreement, the Lender, herein referred to as the 'Applicant,' sanctioned the sum of Rs.4, 45, 00,000/-. Out of this sanctioned amount, was disbursed by the Applicant to the Borrower, in a phased manner comprising seven separate tranches. It is pertinent to note that the final tranche of disbursement was effected on the 16.09.2023.
8. The Corporate Debtor submits that they are currently combating with a financial exigency within the business operations, compounded by the prevailing downtrend observable within the market. This has resulted in the Borrower encountering unavoidable challenges and intricate complexity that hinder the ability to adhere to the provisions set forth within the aforementioned agreement.
9. The Corporate Debtor submits as a matter of fact, a letter dated 06th October 2023, for intimating about the prescribed deadline for the fulfilment of the

financial commitment pertaining to the loan repayment, was served upon the Corporate Debtor herein demanding an amount aggregating to Rs. 4,48,36,657.53/-(including interest)in full and final settlement as soon as possible. However, the Borrower herein, undergoing a financial turmoil as a reason of inadequate cash flows and shortage in the working capital requirements. The said inability was substantiated by the Borrower's reference to the actual reason for the default, rooted in a financial loss sustained in the preceding fiscal year, which in turn contributed to the failure to fulfil the mandated repayment of the loan.

10. The Corporate Debtor submits that it is pertinent to highlight that Mahavir Industries Limited, even amidst the challenges posed by the Covid-19 pandemic, or else it remained a profitable enterprise. Despite the prevailing adverse circumstances, the company exhibited resilience and maintained profitability. However, it encountered a minor financial disruption attributable to a degree of instability in its liquid assets. In light of this situation, the company sought financial aid from the Lenders/Applicant named herein, in an effort to address its liquidity concerns.
11. The Corporate Debtor submits that the circumstances took a turn for the worse due to the subsequent cancellation of a high-value contract. This particular event had a profoundly detrimental impact on Mahavir Industries Limited, leading to substantial losses. It is pertinent to bring before this Hon'ble Tribunal the fact that the cancellation of the aforementioned contract played a pivotal role in plunging the Borrower into an onerous state of indebtedness. This was chiefly a consequence of substantial investments having been made in capital goods and raw materials, which were rendered unproductive due to the contract's cancellation.
12. The Corporate Debtor Submits that a loan recall notice was sent by the Financial Creditor to Corporate Debtor on 28.10.2023, intimating about the default in the repayment of loan accrued along with the interest to pay a sum of Rs.4,48,36,657.53/-(including Principal Amount and interest till

05/10/2023). The applicant has claimed total debit as Rs. 4,57,75,424.66/- (From 04.09.2023 till 29.11.2023).

13. The Corporate Debtor assures that the said outstanding principal amount along with the interest would be discharged as soon as possible since the Borrower is in the business of wires, the market of which is already very competitive in India and the existing companies dealing in the same industry are producing goods on a large scale with minute cost of production making it extremely difficult to cope with the selling prices of its competitors thereby making the Respondent vulnerable to losses and leaving a little scope to bring the company back on track.
14. The Corporate Debtor lastly request a waiver of interest by the Hon'ble Tribunal as it is in no state to pay the debt amount including interest, the borrower is already struggling to pay the principal amount and is no position to the interest.

Findings

15. Heard learned counsel and perused the materials on record.
16. We find that the Corporate Debtor has defaulted on several terms as stipulated in the Loan Agreement and has also failed to repay the outstanding amount due. The Financial Creditor issued Final Recall Notice dated 28.10.2023 and recalled the entire loan amount being an aggregate sum of Rs.4,48,36,657.53/- along with interest of 12% P. A till 05.10. 2023.
17. The Corporate Debtor itself acknowledges the impact of the financial crisis and the challenges posed by the Covid-19 pandemic, which has rendered it unable to settle its outstanding debt with the Financial Creditor.

18. From perusal of the record and the documents relied upon by the Applicant it stands proved that there has been a financial debt in respect of which default has been committed by the Corporate Debtor and further that the Application has been filed within the period of limitation. Therefore, the Application u/s 7 of the Code, deserves to be admitted. It is ordered accordingly in the following terms:

ORDER

- a. The petition bearing CP (IB) 30/MB/C-I/2024 filed by **Utsav Securities Private Limited**, the Financial Creditors, under Section 7 of the Code read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **Mahavir Industries Limited**, the Corporate Debtor, is admitted.
- b. This Bench hereby **appoints Devendra Umrao, Registration No: IBBI/IPA-003/IP-N00223/2019-2020/12640 as the Interim Resolution Professional** having **email: - devumraoibc@gmail.com**, Mobile No.-9871045874 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. There shall be a moratorium under section 14 of the IBC, in regard to 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.
- d. 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. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- e. 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 Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- f. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. The Financial Creditor shall deposit an amount of **Rs. Three Lakhs** towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- h. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. 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.

- i. The 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/-

SH. PRABHAT KUMAR
Member (Technical)

Shivang Rawat LRA

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)