IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT 3 (SPECIAL BENCH), MUMBAI

No. CP(IB)-70/MB/2022

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

In the matter of

Shimnit India Private Limited,
8th Floor, Regent Chambers,
Nariman Point,
Mumbai – 400 021.

..... Petitioner/
Financial Creditor

V/s

Rushabh Precision Bearings Limited,
Registered office at:
404, Floor 4, Plot6-208,
Regent Chambers,
Jamnalal Bajaj Marg,
Nariman Point,
Mumbai – 400 021.

..... Respondent/
Corporate Debtor

Order delivered on : 25.04.2022

Coram:

Hon'ble Ms Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Ayush J Rajani, PCA

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For the Respondent: Mr. Faran Khan, Counsel.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This Petition has been filed by M/s Shimnit India Private Limited, Mumbai 400021 (**"SIPL"**) on 21.01.2022 under Section 7 of the Insolvency & Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against M/s. Rushabh Precision Bearings Limited, Mumbai-400021 (**"RPBL"**), (**Corporate Debtor**) for a total financial debt as on 31.12.2021 of Rs. 22,23,45,748/- including Interest @ 18% per annum. In Part-IV of Form No.1 of the Petition, the Petitioner has submitted the details of the claim amount as under:-

"

Sr. No.	*Particulars*	*Amount (in Rs.)*
Principal Loan		
1.	*Principal Amount*	*6,35,74,028/-*
2.	*Interest (at the rate of 18% PA) Amount*	*91,34,876/-*
Total	***(A)***	***7,27,08,904/-***
Additional Loan		
1.	*Principal Amount*	*11,00,00,000/-*
2.	*Interest (at the rate of 18% PA) Amount*	*1,08,59,178/-*
Total	***(B)***	***12,08,59,178/-***
Further Loan		
1.	*Principal Amount*	*2,65,00,000/-*
2.	*Interest (at the rate of 18% PA) Amount*	*22,77,666/-*
Total	***(C)***	***2,87,77,666/-***
Grand Total (A + B + C)		***22,23,45,748/-***

"

2. The Petitioner submits that, as per the Loan Agreement dated 28.05.2021 executed between the Corporate Debtor and the Financial Creditor, there shall be a 6 months moratorium period for repayment of interest on the Principal Loan from the date of execution of the Loan Agreement and

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that such interest accrued during the moratorium period shall become due and payable immediately upon expiration of the moratorium. The Petitioner submits that the moratorium period which was applicable for the principal loan expired on 27.11.2021. The instalments payable under the additional loans as well as for further loan were payable by the Corporate Debtor on quarterly basis.

3. The Petitioner has annexed with the Petition at Annexure-2, the computation of Statement of Loan disbursed and Interest on loan to RPBL. The Petitioner submits that the Principal loan availed from the Petitioner has been utilized for repayment of the credit facility availed from Kotak Bank of India by the Corporate Debtor and to the National Stock Exchange of India Ltd A/c RPBL towards listing fees of the Corporate Debtor.

4. According to the Petitioner, the Corporate Debtor defaulted towards the principal loan itself which was due on 27.11.2021. Therefore, the date of default is to be treated as 27.11.2021, i.e., six months after the date of Loan Agreement dated 28.05.2021.

5. The Petitioner submits that Corporate Debtor acknowledged having received Rs 11 crores from the Financial Creditor and hence there is a clear admission of debt and default on the part of the Corporate Debtor.

6. The Petitioner further submits that on 29.11.2021, the Financial Creditor sent a default notice to the Corporate Debtor and Guarantor regarding default of payment under Loan Agreement dated 28th May 2021 calling upon the outstanding due with immediate effect. According to the

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Petitioner, no reply has been received from the Corporate Debtor till the date of filing the Petition.

7. The Petitioner has proposed the name of Mr. Keyur Jagdishbhai Shah, Registration No. IBBI/IPA-002/IP-N00244/2017-18/10729 of Ahmedabad, Gujarat-380015 to act as Interim Resolution Professional in this matter. The Insolvency Professional has submitted his written consent in Form No.2 dated 10.01.2022 and also certified that there are no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professional Agency.

Submissions from the Respondent/ Corporate Debtor

8. The Respondent/ Corporate Debtor submits that there has been no breach whatsoever of the loan agreement dated 28.05.2021 and the present Petition is prematurely filed. According to the Respondent, the event of defaults stipulated under Clause 8 of the loan agreement read with Schedule I therefore makes it abundantly clear that the liability of the Corporate Debtor to start repaying the loan amount does not commence before May 2022. Schedule I of Loan Agreement dated 28.05.2021 is reproduced below:-

"SCHEDULE I

(Principal Loan)

A. The Lender has in terms of the following schedule already disbursed payments amounting to Rs. 6,35,74,668/- which shall bear interest @ 18% per annum from the date of disbursement:

Sr. No.	*Date of Payment*	*Particulars*	*Amount in Rs.*	*Ch No. / UTR No.*	*Purpose*
1	*11.01.2021*	*National Stock Exchange of India A/c RPBL*	*7,10,640*	*CMS1764297833*	*Towards listing fees*

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2	*16.03.2021*	*Rushabh Precision Bearings Ltd.*	*3,87,46,714*	*2053*	*Repayment of Loan from Kotak Bank*
3	*16.03.2021*	*Rushabh Precision Bearings Ltd.*	*2,25,39,513*	*2041*	*Repayment of Loan from Kotak Bank*
4	*26.03.2021*	*Rushabh Precision Bearings Ltd.*	*3,36,635*	*CMS1877757246*	*Repayment of Loan from Kotak Bank*
5	*31.03.2021*	*National Stock Exchange of India A/c RPBL*	*12,41,166*	*CMS1884884248*	*Towards listing fees*
		Total	*6,35,74,668*		

B. *The tenure of the Principal Loan shall be three years.*

C. *There shall be a six month moratorium period for repayment of interest from the date of execution of this Agreement. The interest shall be applicable and levied from the date of disbursement of the Principal Loan amount. The interest accrued for the first 6 months shall be paid immediately upon the expiration of the moratorium.*

D. *The interest on the Principal Loan shall be payable on last day of every quarter and shall be calculated on the basis of 365 days to a year on reducing balance. The interest shall be payable quarterly from the date of first disbursement.*

E. *That any failure to make payment towards the interest against the Principal Loan amount for 2 (two) consecutive quarters (i.e. 6 months) shall trigger an event of default in terms of clause 8 hereinabove."*

9. The Corporate Debtor argues that Clause 8(E) in particular makes it clear that failure to make payment of interest as stipulated in the Schedule to the said loan agreement on due date for 6 (six) consecutive months shall constitute an event of default. In terms of Clause 8(C) of Schedule I of the said loan agreement, there is a 6 (six) months moratorium period for repayment of interest from the date of execution of the said loan agreement. The loan agreement was executed on 28.05.2021. Therefore, six months moratorium period would come to an end on 28.11.2021 in terms of Clause 8(C) of Schedule I of the said loan agreement. Consequently, an event of default under Clause 8(C) would be triggered only upon lapse of 6 (six) consecutive months after expiry of the

moratorium period. The purported Schedule I of the Loan Agreement under Clause 'C' as submitted by the Respondent is reproduced below:-

> *"**There shall be a 6 months moratorium period for repayment of interest from the date of execution of this agreement (emphasis added).** The interest shall be applicable and levied from the date of disbursement of the principal loan amount. The interest occurred for the first 6 months shall be paid immediately upon the expiration of the moratorium."*

The Respondent also stresses on Clause 'E' of the Schedule-I which stipulates that:

> *"Any failure to make payment towards the interest against Principal Loan amount for 2 (two) consecutive quarters (i.e. 6 months) shall trigger a default in terms of clause 8 hereinabove."*

The Respondent also relies on Clause 8(e) of the Loan Agreement which stipulates that:

> *"Any failure to make payment of interest as stipulated under Schedule 1 and 2 on due dates for 6 months. However, the lender can exercise sole discretion for the purpose of extending the period of the interest under Schedule 1, 2 and 3."*

10. The Respondent, therefore, submits that the Financial Creditor, during the course of arguments, adverted to the relevant clause for repayment but failed to make any reference to clause 'C' of Schedule 1 to the Loan Agreement.

11. The Respondent also submits that the purported second tranche of Rs.11.00 crores was cyclical transaction and

thus, there exists no "Financial Debt". According to the Respondent, the said sum of Rs.11.00 crores was, in fact, repaid to the Financial Creditor almost simultaneously on receipt, as submitted by the Respondent in the detailed Affidavit dated 16.03.2022, placing on record the relevant facts and producing documentary evidence to substantiate the same. The Respondent also submits that the sum of Rs.11.00 crores, though received by the Corporate Debtor was, almost simultaneously returned in terms of the instructions of the Financial Creditor. The Respondent argues that it was at the behest of the Financial Creditor that the money was transferred to the sister concern viz. M/s Bravo Builders Pvt. Ltd. The Respondent, therefore, submits that at lest in so far as the payment under 2nd tranche is concerned, i.e., the sum of Rs.11.00 crores under the Loan Agreement, has been returned to the Financial Creditor almost simultaneously after the disbursal of the same to the Corporate Debtor.

12. Further, the Corporate Debtor claims that the first event of default in terms of Clause 8(C) would occur only on 28th May 2022. The Corporate Debtor states that the present Petition has been filed in January 2022, therefore, the same is premature and on this ground is liable to be dismissed with costs.

13. The Corporate Debtor further submits that there has been no default on the part of the Corporate Debtor inasmuch as the liability of the Corporate Debtor to repay the amounts due under the said loan agreement does not commence before 28th May 2022. The Corporate Debtor also submits that the Financial Creditor has invoked Clause 9 of the said loan agreement which details the consequences of an event

of default to initiate the current proceedings and reiterates that the Corporate Debtor is not guilty of committing any default under the said loan agreement. Therefore, any steps initiated by the Financial Creditor purportedly under Clause 9 of the said loan agreement are clearly in breach of the said loan agreement itself and, therefore, not maintainable. Therefore, prays that the present Petition be dismissed with costs.

FINDINGS

14. This Petition has been filed by the Financial Creditor M/s Shimnit India Private Limited u/s 7 of the IBC against the Corporate Debtor M/s Rushabh Precision Bearing Limited for a total amount of about Rs.22.23 crore including interest as on 31.12.2021.

15. As per the Petition, vide a Loan Agreement dated 28.05.2021 the following loan was granted to the Corporate Debtor:-

> "a) Principal Loan of Rs.6,35,74,668/- @ 18% rate of interest,
> b) Additional Loan of Rs.11,00,00,000/- @ 18% rate of interest and
> c) Further Loan to the extent of Rs.2,65,00,000/- @ 18% rate of interest."

16. As per Schedule-1 of the Loan Agreement for regarding the principal loan the clauses of the Loan Agreement are as under:-

> "*B. The tenure of the Principal Loan shall be three years.*
>
> *C. There shall be a six month moratorium for repayment of interest from the date of execution of this Agreement. The interest shall be applicable and levied from the date of disbursement of the Principal*

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Loan amount. The interest accrued for the first 6 months shall be paid immediately upon the expiration of the moratorium.

D. ....

E. ...."

17. The Bench notes that as per the Loan Agreement, for the principal loan accrued interest was payable immediately upon the expiration of the moratorium which was six months from the date of execution of the Loan Agreement. The Bench notes that the execution of the Loan Agreement was 28.05.2021 and, therefore, as per the Petition, the six months moratorium period was up to 27.11.2021 on which date the interest was payable. However, the Corporate Debtor defaulted that payment of interest and, therefore, the Petitioner rightly shown default on 27.11.2021. The Bench notes that the principal amount availed from the Applicant has been utilized for repayment of credit facility availed from Kotak Bank of India by the Corporate Debtor and to the National Stock Exchange of India Limited A/c RPBL towards 'listing fee' for the Corporate Debtor. The Bench notes that the legal recall notice was also issued to the Corporate Debtor on 29.11.2021.

18. In the reply the Corporate Debtor mentions that as per Clause 8(e) relating to Event of Default, the first event of default would occur only on 28.05.2022 and since the Petition has been filed on 12.11.2022, the present Petition is premature.

19. In this regard the Bench would like to reproduce Section 8(e) of the Loan Agreement which reads as under:

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> "8(e) *Any failure to make payment of interest as stipulated under Schedules 1 and 2 on the due date for 6 consecutive months. However, the Lender shall exercise sole discretion for the purpose of extending the period of repayment of the interest under Schedules 1, 2 and 3.*"

20. The Bench notes that the execution of six months mentioned under Clause 8(e) relates to moratorium period and thereafter any failure in making the payment of interest amount to an event of default. In order to remove any ambiguity the Section 8(e) further reads that it is the prerogative of the Lender who shall exercise the sole discretion for the purpose of extending the period of repayment of the interest under Schedule 1, 2 and 3. The Bench further notes that as per Schedule-1, Clause (C), the interest accrued for the first six months on the principal loan shall be paid immediately upon the expiration of moratorium of six months. Since the loan was extended on 28.05.2021, the interest accrued was to be paid on 27.11.2021 and since it was not paid, the Financial Creditor rightly held it as an 'event of default' and filed the Petition on 12.01.2022.

21. The Bench also notes that any extension of period of repayment of interest is exclusively the prerogative of the lender and it is at his sole discretion. Therefore, the Corporate Debtor cannot take the plea that it should have been extended by another six months from 27.11.2021. The Bench also notes that, in fact, in their additional Affidavit filed on 16.03.2022, the Corporate Debtor also acknowledges that he has received Rs.11 crore from the Financial Creditor and hence there is a clear admission of default on part of the Corporate Debtor.

22. The Bench, therefore, is of the clear view that there is a 'financial debt' in terms of Section 5(8) of the Code and there is a 'default' in terms of Section 3(11) of the Code. Therefore, the Petition is liable to be "Admitted".

23. The Petitioner has proposed Mr. Keyur Jagdishbhai Shah, Registration No. IBBI/IPA-002/IP-N00244/2017-18/10729, Address – 1007, Sun Avenue One, Near Shreyas Foundation, Manekbaug Society, Ambawadi, Ahmedabad, Gujarat – 380015, Contact Number: 9909702182, Email: keyur@keyurjshah.com as the Insolvency Resolution Professional. The Interim Resolution Professional has filed his written consent in Form No.2 and also certified that there are no disciplinary proceedings pending against him with the Board or ICSI or IPA. Accordingly, this Bench appoints the said Mr. Keyur Jagdishbhai Shah to act as Interim Resolution Professional in this matter. Upon Admission of the Application and declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under Section 13 read with Section 15 of the Code. He shall perform the duties as an Interim Resolution professional as defined under Section 18 of the Code and inform the progress of the Resolution process and compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

24. Having admitted the Petition/ Application the provisions of "**Moratorium**" as prescribed u/s. 14 of the Code shall come into operation. As a result, institution of any suit or parallel proceedings before any Court of Law are prohibited. The assets of the Corporate Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of

essential goods or services to the Corporate Debtor shall not be suspended or interrupted during **"Moratorium"** period. This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process.

25. Accordingly, CP(IB)-70/(MB)/2022 stands **"Admitted"**. The Corporate Insolvency Resolution Process shall commence from the date of this Order.

26. Registry is directed to communicate this order to both the parties and the IRP immediately.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)

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On 02.05.2022

Deputy Registrar 9.5.2022
National Company Law Tribunal Mumbai Bench
Government of India