



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH, COURT IV

COMPANY PETITION IB 362 (ND) 2024

Order 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:

GAP INVESTMENTS PTE LTD

...Applicant No. 1/ Financial Creditor No.1

AJOY KHANDHERIA

...Applicant No. 2/ Financial Creditor No.2

DHARMINDER SINGH SANDHU

...Applicant No. 3/ Financial Creditor No.3

Versus

JAG BROS CONSULTANTS PRIVATE LIMITED

...Respondent/ Corporate Debtor

Order Pronounced On: 06.05.2025

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI,

HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Ms. Saumya Chopra, Advocate.

For the Respondent : Mr. Sahil Gupta, Advocate.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)



1. The instant Company Application is filed jointly by 3 Financial Creditors collectively who are represented by Authorized Representative/ Special Power of Attorney Holder, Mr. Lok Chand Aggarwal. under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The names of Financial Creditors are as under:

Gap Investments PTE Ltd. (Financial Creditor No.1)

Ajoy Khandheria (Financial Creditor No.2)

Dharminder Singh Sandhu (Financial Creditor No.3)

The Financial Creditor No. 1 is an investment company incorporated on 17.09.2007 in Singapore and Financial Creditor No. 2 and 3 are individuals. The total amount of default is Rs. 1,04,27,908/- (Rupees One Crore Four Lakh Twenty Seven Thousand Nine Hundred and Eight Only). Out of this, Rs.84,82,920/- (Rupees Eighty Four Lacs Eighty Two Thousand Nine Hundred and Twenty Only) is the Consolidated Principal Amount along with interest of Rs.19,44,988/-(Rupees Nineteen Lacs Forty Four Thousand Nine Hundred and Eighty Eight Only) calculated as per the interest mentioned in the Memorandum of Understanding executed between the parties.

2. The Corporate Debtor i.e. Jag Bros Consultants Private Limited bearing CIN U74900DL2009PTC189481, was incorporated on 17.04.2009 having its registered office situated at 10-B, Raj Niwas Marg, Civil Lines, Delhi-110054. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent Corporate Debtor under sub-section (1) of Section 60 of the Code.

3. The averments made by the Applicant in the Application and argued by the Ld. Counsel for the Applicant are summarized hereunder: -

i. The Applicants submit that the date of default of each of the Financial Creditors is subject to separate Memorandum of Understanding ("MOU") entered into between the Financial Creditors and the Corporate Debtors. The date of default for each Financial Creditor is as under:-



- a) As per the MOU dated 29.1.2021 executed between the Financial Creditor No.1 and the Corporate Debtor, the loan amount of Rs.51,74,920/- (Rupees Fifty One Lakh Seventy Four Thousand Nine Hundred and Twenty Only) was to be repaid by the Corporate Debtor on or before 31.12.2022. Further, the Financial Creditor No.1 was entitled to interest of Rs.10,09,108/- (Rupees Ten Lakh Nine Thousand One Hundred and Eight Only) at 9% p.a. on the principal amount as the said interest became due and payable upon recall of principal amount by demand notice dated 31.01.2024.
- b) As per the MOU dated 24.5.2022 executed between the Financial Creditor No.2 and the Corporate Debtor, the loan amount of Rs.15,00,000/- (Rupees Fifteen Lakh Only) was to be repaid by the Corporate Debtor on or before 01.06.2023. Further, the Financial Creditor No.2 was entitled to interest of Rs. 2,85,000/- (Rupees Two Lakh Eighty Five Thousand Only) at 12% p.a. on the principal amount as the said interest became due and payable upon recall of principal amount by demand notice dated 31.01.2024.
- c) As per the MOU dated 07.12.2020 executed between the Financial Creditor No.3 and the Corporate Debtor, the loan amount of Rs.18,08 ,000/- (Rupees Eighteen Lakh Eight Thousand Only) was to be repaid by the Corporate Debtor on or before 31.03.2023 . Further, the Financial Creditor No.3 was entitled to interest of Rs.6,50,880/- (Rupees Six Lakh Fifty Thousand Eight Hundred and Eighty Only) at 12% p.a. on the principal amount as the said interest became due and payable upon recall of principal amount by demand notice dated 31.01.2024.
- d) Further, the default of the Corporate Debtor is continuous as the loan amount has not been repaid alongwith interest till date as agreed in the MOUs.
- ii.** The Applicant for the purpose of proving the existence of debt, consequential default, acknowledgement of debt, have annexed the following documents with the instant Application :-
- a) Copy of Loan Recall Notice dated 31.01.2024.
- b) Copy of the Interest Computation Sheet.



- c) Copy of Financial Statements of the Corporate Debtor as available on MCA.
4. The defense placed by the Corporate Debtor in its Reply and submissions made and argued by the Learned Counsel for the Corporate Debtor as summarized hereunder:-
- i. It is submitted that the Applicants are not a creditor, much less a financial creditor. No debt is due and payable on behalf of the Respondent either in facts or in law. There is no default on the part of Respondent in payment of alleged financial debt.
 - ii. In the facts of the present case the Applicants have been unable to plead or otherwise demonstrate the disbursal against time value on the alleged debt. Further, the present debt is not payable in law on account of the mala fide and vexatious commercial practice of the Applicants.
 - iii. It is submitted that a 'corporate debtor' under sub-section (8) of Section 3 of the Code means a corporate person who owes a debt to any person. "Debt" regarding a Financial Creditor is the "Financial Debt" defined under Section 5(8) of the Code.
 - iv. It was submitted that under sub-section (5) of section 7 of the Code, the Adjudicating Authority, before passing an order admitting the Application must be satisfied that a default has occurred. For a 'default', there must be a debt; the debt has not been paid, either in whole or any part or instalment has become due and payable; and the debt, which has become due and payable has not been repaid by the debtor/ corporate debtor. A default as defined under the Code had not occurred in the present case, and consequently the application ought to be rejected by this Hon'ble Adjudicating Authority.
 - v. It was further submitted that as per the definition of 'debt', it includes a 'financial debt'. Therefore, the evidence of default must be regarding a 'financial debt'.
 - vi. In the absence of a default, no proceedings can lie under Section 7 of the IB Code.
 - vii. It was submitted that there is no due date of alleged money claimed by the Applicants from the non-applicant. Moreover, applicant has utterly failed



to place anything on record that shows that the alleged amount is due on any particular date or is payable by the Respondent.

- viii.** Therefore, the alleged amount does not fall under the category of "Debt" as defined under Section 3(11) of the IBC, 2016, because "Debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operation debt. For considering event of "Default" under Section 3(12) of the IBC, 2016 first, there should be a "Debt" under Section 3(11) of IBC, 2016, because "Default" means non-payment of debt when whole or any part of instalment of amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.
- ix.** The alleged debt claimed by the Applicants being a disputed debt, cannot be adjudicated in a summary proceedings as contemplated under the Code and it requires evidence to be led by the parties. There is no default on the part of non-applicant and no amount is legally due or payable to the Applicants.
- x.** The default has not even been proved by the Financial Creditors as no calculations whatsoever or days of default have been provided. Therefore, the mandatory pre-requisites of Section 7 of the IBC are not fulfilled and hence, the Company Petition under Reply deserves to be dismissed in terms of Section 7(5)(b) of the IBC.
- xi.** It is further submitted that the Application is incomplete as per section 7(5)(a) of the IBC, 2016 suffering from lack of proper authorization.
- xii.** It is submitted that the present Petition has set out false particulars. Including an incorrect date of default, an incorrect amount disbursed, a false amount in default, a false description in security and an illegal Form II.
- xiii.** The resolution process under the Code is not in the nature of recovery proceedings and the Financial Creditor cannot seek to enforce its alleged claim under the guise of the present proceedings under the Code.
- xiv.** The Hon'ble Supreme Court in *Innoventive Industries v. ICICI Bank 2018 (1) SCC 407 @para 28* has clarified that during the course of S.7 proceedings



a Respondent is entitled to point out that a debt is not payable either "in fact" or "in law."

- xv.** The Financial Creditors 1 and 3 are the shareholders in the Corporate Debtor company by investing sums of money in the share capital of the Corporate Debtor company.
- xvi.** The Corporate Debtor in the year 2018 was looking to expand the business, hence required more capital for the same. Financial creditors seeing it as an opportunity agreed to infuse more capital in the Corporate Debtor company.
- xvii.** It was agreed between the parties that the all the Financial Creditors would invest in the corporate debtor company and the Corporate Debtor company would take requisite permissions to increase the share capital.
- xviii.** In order to secure the monies invested or agreed to be invested, formal agreements were entered into the parties. Therefore, the amount given by the Financial Creditor was in the nature of an investment and not as financial debt.
- xix.** An agreement was got signed by the Financial Creditor alleging that it is an investment agreement and copy thereof was not shared with the Corporate Debtor. The Financial Creditor has duped the Corporate Debtor.
- xx.** The amount remitted by the Financial Creditors were remitted with utmost delay and not on time, due to which the day to day affairs of project started by the Corporate Debtor suffered and it incurred losses which is solely attributable to the Financial Creditor.
- xxi.** Due to stringent requirements/formalities and also due to heavy duties Corporate Debtor was not able to take requisite permission to increase the share capital.
- xxii.** If that was not enough, the outbreak of Covid-19 added to the misery of the Corporate Debtor. In that view of the matter, the Corporate Debtor requested more time from the Financial Creditors to increase their shareholding.
- xxiii.** Despite oral assurances, the Financial Creditor for malafide reasons and to exert undue pressure on the Corporate Debtor filed the present application.



xiv. It was submitted that even otherwise, the amount paid by the Financial Creditor was in the nature of an investment, which by no stretch of imagination can be termed as Financial Debt.

5. The Applicants had filed Rejoinder to the reply submitted by the Corporate Debtor. The submissions of the Applicant in the rejoinder and argued by the Learned Counsel of the Applicant are summarized hereunder:

i. The Applicants submitted that they are Financial Creditor as per the code and the debt is a “financial debt” as defined in the Code. It is submitted that the amount given by the Financial Creditor was a financial debt, so that the Corporate Debtor could use the same to meet its day-to-day expenses. MOU's/Agreements were entered into between the Financial Creditors and the Corporate Debtor.

6. ANALYSIS AND FINDINGS:

- i.** We have carefully perused the pleadings, documents placed on record, and considered the arguments advanced by the Ld. Counsel for both the parties.
- ii.** The present application under Section 7 of the Code has been filed jointly by the Applicant claiming to be Financial Creditors of the Corporate Debtor on the basis of three separate Memoranda of Understanding ("MOUs") entered into with the Corporate Debtor.
- iii.** The Financial Creditor No. 1 relies upon the MOU dated 29.01.2021 for a principal sum of ₹51,74,920/-, with interest of ₹10,09,108/-. Financial Creditor No. 2 bases its claim on an MOU dated 24.05.2022 for ₹15,00,000/- along with interest of ₹2,85,000/-, and Financial Creditor No. 3 refers to an MOU dated 07.12.2020 for ₹18,08,000/- along with interest of ₹6,50,880/-.
- iv.** The primary issue for consideration before this Adjudicating Authority is whether the Applicants qualify as “Financial Creditors” within the meaning of Section 5(7) read with Section 5(8) of the Code, and whether a “default” as contemplated under Section 3(12) has occurred.
- v.** For the purpose of determining whether the threshold under the Code is met, and whether a financial debt exists and has been defaulted upon, it is necessary to examine these MOUs on their own merits.



- vi.** The MOU dated 07.12.2020, relied upon by Applicant No. 3, purports to evidence a loan of Rs. 18,08,000/- with interest of Rs. 6,50,880/-. The said MOU is allegedly signed on 07.12.2020. However, the board resolution is dated 31.12.2020, which is claimed to be the resolution authorizing execution of the said MOU on behalf of the Corporate Debtor.
- vii.** Quite evidently, the authority to execute the MOU did not exist on the date it was allegedly signed. Therefore, this document suffers from an incurable defect and appears to be a fabricated instrument created to falsely claim a financial debt. Consequently, the said MOU cannot be relied upon to establish the existence of a financial debt under Section 5(8) of the Code.
- viii.** Upon careful perusal of the documents placed on record, it is evident that the Applicants have raised a claim on the basis of the MOU dated 07.12.2020 despite the fact that the necessary board resolution authorizing execution was passed only on 31.12.2020.
- ix.** This serious discrepancy reflects an attempt to mislead this Adjudicating Authority by relying upon a document that was not duly authorized or validly executed on the date it purports to have been entered into.
- x.** Coming to the remaining two MOU's - dated 29.01.2021 (in favour of Applicant No. 1) and dated 24.05.2022 (in favour of Applicant No. 2), we find that the total principal amount under these two MOUs is Rs. 66,74,920/- (Rs. 51,74,920/- + Rs. 15,00,000/-).
- xi.** Even if the interest amount is added, the cumulative amount falls below the minimum threshold of Rs. 1 crore as stipulated under Section 4 of the Code, which applies post the notification dated 24.03.2020 issued by the Ministry of Corporate Affairs.
- xii.** Thus, even assuming that the two MOUs dated 29.01.2021 and 24.05.2022 are otherwise valid and enforceable, the total amount of debt and default under these two agreements is below the threshold prescribed under Section 4 of the Code. The third MOU dated 07.12.2020, which could have potentially bridged the threshold, stands vitiated due to its fabrication and lack of proper authority on the date of execution.
- xiii.** It is a well-settled principle, as laid down by the Hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* [(2018) 1 SCC 407], that the



Adjudicating Authority must be satisfied that a financial debt is due and payable and that a default has occurred. In the absence of a valid debt and default that meets the statutory threshold, the Application cannot be admitted.

- xiv.** In the present case, in view of the questionable validity of the MOU dated 07.12.2020 and insufficiency of the remaining claims to meet the minimum threshold under Section 4, this Adjudicating Authority finds that the joint Application is **not maintainable** and liable to be **rejected**.
- xv.** Furthermore, this Adjudicating Authority is of the view that filing an Application under Section 7 on the strength of a fabricated document, without disclosing the material fact regarding lack of authority on the date of execution, amounts to an abuse of the process of law.
- xvi.** Accordingly, the present Application i.e. **Company Petition IB (IBC)/362 (ND) 2024** 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 filed by the Applicants is hereby **dismissed**.
- xvii.** This Adjudicating Authority is not the appropriate forum for recovery proceedings. However, liberty is granted to the Applicants to approach the appropriate forum for recovery, where their claims can be duly considered and addressed.
- No order as to costs.

-Sd/-

ATUL CHATURVEDI
MEMBER (TECHNICAL)

-Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)