



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, Court-II, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 10/Chd/Hry/2024

Under Section 7 of IBC, 2016

In the matter of C.P. (IB) No.10/Chd/Hry/2024

Hemraj Choudhary

Registered Address:

9 Cosmos Villa, Near Jalpari Soc,
Behind Taksh Shila School Vastral
Ahmedabad-382418
Gujarat

...Petitioner/Financial Creditor

Vs.

Rattan Spirit Private Limited

Having its Registered Address at:
H.No. 2286, Sector-9, Faridabad
Haryana- 121006
PAN: AAHCR7827A

...Respondent/Corporate Debtor

Judgment delivered on: 09.05.2025

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. ASHISH VERMA, MEMBER (TECHNICAL)**

Present:

For the Financial Creditor: Mr. Ankit Kishore, Advocate

For the Corporate Debtor: Already proceeded ex-parte vide order dated
01.08.2024

**Per: Sh. Harnam Singh Thakur, Member (Judicial)
Sh. Ashish Verma, Member (Technical)**

JUDGMENT

The present petition is filed by Hemraj Choudhary, (hereinafter referred to as the **“Petitioner”** or the **“Financial Creditor”**), under Section 7 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the **“IBC”** or the **“Code”**) seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as **“CIRP”**) against Rattan Spirit Private Limited, (hereinafter referred to as the **“Respondent”** or the **“Corporate Debtor”**), claiming default of Rs.2,51,53,127/- (Rupees Two Crores Fifty-One Lakhs Fifty-Three Thousand One Hundred and Twenty-Seven only) on the part of the Corporate Debtor.

2. The office of the Corporate Debtor is situated in the State of Haryana; hence, this Adjudicating Authority has jurisdiction over the matter.
3. The facts stated in the petition are as under:
 - i. The Financial Creditor is an individual and is engaged in the business of metal trading.
 - ii. The Corporate Debtor is a Private Limited Company incorporated and registered as a Private Limited Company under the provisions of the Companies Act, 2013 and is engaged in the business of retail sales and deals in the country and foreign wine and beers, spirits, and liquors potable, commercial, industrial powder and absolute alcohols, rectified, methylated, sweet spirits, beers, aerated waters and mineral waters and dry ice and as a wholesaler, retailer, distributors, stockiest, dealers, godown keepers, C&F Agents, agents, marketers, merchandiser of all kind of alcoholic spirits, including Foreign liquor,



Country liquor, beer, wine, rum, brandy etc. and manufacturers and dealers, importers and exporters of thermocoal, plastics, plastic material and plastic goods.

- iii. The Corporate Debtor approached the Financial Creditor in the year 2019 and requested the Financial Creditor for financial assistance to meet the short-term working capital requirement of the Corporate Debtor.
- iv. The Financial Creditor advanced a loan to the Corporate Debtor to the extent of Rs.1,39,00,000/- (Rupees One Crore Thirty-Nine Lakhs Only) in tranches, through NEFT bank transfer to the Corporate Debtor's account.
- v. As per the oral understanding between the parties, the financial loan was to be paid within a period of 2 years along with an interest of 18% p.a. from the date of disbursement.
- vi. As per the last available Audited financial statement on the website of the Ministry of Corporate Affairs for the year ended 31st March 2020, the Corporate Debtor has acknowledged the debt of the Financial Creditor and has shown the said financial loan as an advance instead of borrowing or loan.
- vii. The Financial Creditor on the expiry of 2 years, i.e. in April 2022, approached the Corporate Debtor for repayment of the financial debt. The Corporate Debtor requested some more time to make the payment and took the excuse of the Covid-19 pandemic. Considering the



situation, the Financial Creditor granted a further 3 months to the Corporate Debtor to repay the loan.

- viii. The Financial Creditor as agreed again approached the Corporate Debtor in August 2022 whereby the management of the Corporate Debtor neither met nor responded to the Financial Creditor. Thereafter, the Financial Creditor made several attempts seeking repayment of his loan from the Corporate Debtor, but the Corporate Debtor dismissed the Financial Creditor on account of one or other reason.
 - ix. Constrained by the act of the Corporate Debtor, the Financial Creditor vide legal notice dated 05.04.2023 called upon the Corporate Debtor to repay the loan.
 - x. The Corporate Debtor vide reply dated 14.04.2023 acknowledged the financial debt of the Financial Creditor and sought some time to make the payment along with interest. However, to date, the Corporate Debtor has not made any payment to the Financial Creditor.
 - xi. The Financial Creditor has been continuously requesting the Corporate Debtor to clear the outstanding loan but despite numerous attempts, the Corporate Debtor has to date not made the payment. The default is continuing as the Corporate Debtor has not paid the amount.
4. The Financial Creditor filed an Affidavit of Service dated 16.02.2024 vide Diary No.03944/01 in compliance with the order dated 18.01.2024 and another Affidavit of Service dated 15.07.2024 vide Diary No.03944/02 in compliance of order dated 13.06.2024 whereby a copy of the present Petition was delivered to the Corporate Debtor.



5. Since the Corporate Debtor did not appear despite service of notice, therefore, the Corporate Debtor was proceeded ex-parte vide order dated 01.08.2024.

6. Written Submissions dated 21.01.2025 were filed vide Diary No. 03944/6 by the Financial Creditor wherein it is stated that:

i. The disbursement between the parties took place in the following manner:

Year	Principle Amount	Total amount with 18% interest by the end of the financial year
1.From April 2020 to March 2021	Rs.1,39,00,000/-	Rs.1,64,02,000/-
2. From April 2021 to March 2022	Rs.1,64,02,000/-	Rs.1,93,54,360/-
3.From April 2022 to March 2023	Rs.1,93,54,360/-	Rs.2,28,38,144/-
4. From April 2023 to October 2023	Rs.2,28,38,144/-	Rs.2,51,53,127/-
5.From November 2023 to October 2024	Rs.2,51,53,127/-	Rs.2,96,80,639/-

ii. The Ld. Counsel for the Financial Creditor referred to the judgments of the Hon'ble NCLAT in the following matters:

a. ***M/s Agarwal Polysacks Limited vs. M/s K.K. Agro Foods and Storage Limited, Company Appeal (AT) (Ins.) No. 1126 of 2022***, stressing upon the satisfaction of three essential criteria for a Section 7 petition under the Code.

b. ***Satish Balan vs. M/s Neeta Navin Nagda & Others, Company Appeal (AT) (Ins.) No. 718 of 2023***, wherein the Hon'ble NCLAT observed that the Code nowhere prescribes that



there should be a written agreement between the parties to prove the loan and its disbursement to be treated as financial debts and if there are acknowledgments by the Corporate Debtor and where the statements of accounts of the 'Corporate Debtor' are in position to prove disbursement of loan and payment of interest, the absence of formal written agreement would not bar the Financial Creditor from initiating the CIRP.

2. In compliance with the order dated 06.01.2025 of this Adjudicating Authority, the Financial Creditor vide Diary No. 03944/7 filed a Bank Confirmation Letter confirming the transfers from its account to the account of the Corporate Debtor.
3. We have heard the Ld. Counsel for the Financial Creditor and pursued the records in the petition under Section 7 of the Code.
4. The first point for consideration is “***Whether the petition is filed within the period of limitation***”.
 - i. The date of default as mentioned in Part IV of the petition is April 2022, the date on which the loan became due and payable as per the oral understanding between the parties, as contended by the Ld. Counsel for the Financial Creditor.
 - ii. However, no specific date of default has been mentioned in Part IV of the Petition. Assuming that the debt fell due in April 2022, and thereafter, even after giving of legal notice dated 05.04.2023 to the Corporate Debtor to pay the outstanding amount of loan, no payment was made by the Corporate Debtor, and hence the Petition was filed



on 15.01.2024, which we find as having been filed well within the period of limitation of three years.

5. The next issue to be delved into is ***Whether any Financial Debt was disbursed to the Corporate Debtor and he defaulted in repayment of the same.***

- i. The term 'Financial Debt' is defined in Section 5(8) of the Code as:

“financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money.

- ii. Though there is no written agreement for giving of loan amount but when a legal notice dated 05.04.2023 was sent by the Financial Creditor to the Corporate Debtor for repayment of amount in question, the Corporate Debtor replied vide letter dated 14.04.2023 stating that *“we are aware of the loan and the associated interest obligation as per the oral agreement in place. However, I regret to inform you that due to certain unforeseen financial circumstance we are currently unable to make the requested payment of the outstanding balance”*. A copy of the reply dated 14.04.2023 sent by the Corporate Debtor is reproduced hereunder:



Rattan Spirit Pvt. Ltd.

Plant : Plot No. 305, Sector-24, Faridabad-121005 Haryana
Phone : 9873396990, 9555442228
Email : rattanspirit@gmail.com
Web : www.rattanspirit.com



Ref. No.

Date


14.04.2023

To,
Sh. Hemraj Choudhary,
9 Cosmos Villa, Near Jalpari Soc,
Behind Taksh Shila School, Vastrapur,
Ahmedabad - 382418, Gujarat

Dear Sir,

I am writing in response to your recent legal Notice bearing Reference No. HEMRAJ/01/2023 dated 05.04.2023 regarding the outstanding unsecured loan of rupees Rs. 1,39,00,000/- (Rupees One Crore Thirty - Nine Lakhs Only/-) along with 18 % interest, which was provided to Rattan Spirit Private Limited.

Firstly, I want to acknowledge that we are aware of the loan and the associated interest obligations, as per the oral agreement in place. However, I regret to inform you that, due to certain unforeseen financial circumstances, we are currently unable to make the requested payment of the outstanding balance.


Hemraj Choudhary
196, First Floor,
Delhi-110024
1968
For RATTAN SPIRIT PVT. LTD.

- iii. This letter from the Corporate Debtor clearly demonstrates that the amount in question is loan taken on interest by the Corporate Debtor from the Financial Creditor, though there is no written agreement.
- iv. It is settled law now that for a financial debt, written agreement is not essential and with the evidences available on record, conclusion can be drawn whether a particular amount is a financial debt or not as in



the present case, the letter from the Corporate Debtor clearly demonstrates that it had taken loan from the Financial Creditor on interest.

- v. The Hon'ble NCLAT in the matter of **Satish Balan vs. M/s Neeta Navin Nagda & Others (supra)**, observed as under:

"14. This 'Appellate Tribunal' observe that the Code nowhere prescribes that there should be a written agreement between the parties to prove the loan and its disbursement to be treated as financial debts. It is also observed that if there are acknowledgments by the 'Corporate Debtor' and where the statements of accounts of the 'Corporate Debtor' are in position to proof disbursement of loan and payment of interest, the absence of formal written agreement would not bar the 'Financial Creditor' (the Respondent No.1 herein) from initiating the CIRP."

- vi. Also, for a debt to be a financial debt, charging of interest is not an essential factor. In **Orator Marketing Pvt Ltd. v. Samtex Desinz (P) Ltd. Case, (2023) 3 SCC 753**, the Hon'ble Supreme Court has specifically held that an interest-free loan can also be classified as a financial debt if it satisfies the criteria under Section 5(8).

6. As a sequel to the above discussion and reasons recorded hereinbefore, we find that the present petition is maintainable and the Petitioner has been able to establish the debt and default of the Corporate Debtor.

- vii. In the given facts and circumstances, the present application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the Moratorium in terms of Section 14(1) (a),



(b), (c) & (d), the following prohibitions are imposed, which must be followed:

- viii. The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- ix. Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;
- x. Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- xi. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.”
- xii. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.



- xiii. The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.
- xiv. The AFA of the proposed Interim Resolution Professional in Part-III of the petition, Mr. Rajan Sharma, has expired on 26.03.2024. Therefore, this Bench appoints Mr. Prashant Gupta, as IRP having Registration No. IBBI/IPA-001/IP-P-02471/2021-2022/13868, Email: pgupta.rp@gmail.com, Mobile No. 9815993315, whose AFA is valid upto 31.12.2025, and antecedents of the proposed IRP have been verified by the Legal Research Associate of this Adjudicating Authority, with the following directions:-
- xv. The term of appointment of Mr. Prashant Gupta, shall be in accordance with the provisions of Section 16(5) of the Code;
- xvi. In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and



other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

xvii. The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;

xviii. The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

xix. It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and



extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- xx. The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take



the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- xxi. The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/ institutions/ others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the



constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

- xxii. The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.
- xxiii. The Petitioner is directed to deposit Rs.1,00,000/- (Rupees One Lakh only), with the IRP to meet the immediate expenses in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Petitioner.
- xxiv. A copy of this Order shall immediately be communicated to the Petitioner, the Respondent Company, and the IRP named above, by the Court Officer/Registry of this Tribunal.
- xxv. The petition is admitted for CIRP of the Respondent and is disposed of accordingly.

Sd/-
(Ashish Verma)
Member (Technical)

May 09, 2025
ASG

Sd/-
(Harnam Singh Thakur)
Member (Judicial)