

**Under Section 7 of Insolvency and
Bankruptcy Code, 2016**

...Petitioner-Financial Creditor

Ludhiana Scrips Private Limited, B-23, 2581/3B/1, Industrial Area-A, Near
Zoom Hotel Building, Ludhiana- 141003 IN

...Respondent-Corporate Debtor

Judgment delivered on 11.12.2018.

Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)

For the Petitioner : 1. Mr. V.K. Mahajan Advocate
2. Mr. R.K. Joshi, Practising Company Secretary

Per: R.P.Nagrath, Member (Judicial):

JUDGMENT

The instant petition has been filed by Prem Pal Gandhi, claiming himself to be a financial creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the '**Code**') for

initiating the Insolvency Resolution Process against the respondent-corporate debtor. The application has been filed under Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (for brevity the '**Rules**'). The petitioner has also proposed the name of Resolution Professional to be appointed as Interim Resolution Profession in Part-III of the application by filing written communication furnished by Mr. Ashok Kumar Gupta in Form 2, attached as Annexure A-2.

2. The petitioner is said to have given a short term loan of ₹40,00,000/- to the respondent on 18.04.2017, by way of two cheques of the even date for an amount of ₹20,00,000/- each. It is stated that the loan was given for a period of three months and the amount fell due on 18.07.2017, which the respondent-corporate debtor has failed to return, despite repeated documents. A notice dated 30.07.2018 (Annexure A-6) was also served upon the respondent-corporate debtor asking it to make payment of amount of the loan with interest of ₹12,00,000/- within a period of 15 days, failing which to take legal action in accordance with law. The petitioner has claimed the interest @ 2% per month, which comes to ₹15,12,889/- upto 31.08.2018.

3. We have heard the learned counsel for the petitioner at the preliminary stage and have perused the record.

4. The learned counsel for the petitioner has referred to the copy of the bank statement of the petitioner, maintained by the State Bank of India (Annexure A-3). There are entries dated 24.04.2017 and 10.05.2017 with regard to the transfer of ₹ 20,00,000/- each on the basis of cheques as relied upon by the petitioner. We are however, of the firm view that in the absence

of any agreement in writing of payment on the interest or suggesting that the repayment was to be made within a period of three months, as claimed by the petitioner, it is not possible to say that the money was advanced for the time value of money, simply because an assertion has been made by the petitioner, who is an individual. It is pertinent to note that we are dealing with a transaction alleged against a company incorporated under the Companies Act for which there has to be heavy burden to bring it within the definition of the term 'Financial Debtor'.

5. The petitioner has been unable to substantiate the plea that the amount advanced carried the interest @ 2% per month. The petitioner has filed the computation of calculation (Annexure A-5) in which all the entries right from 30.04.2017 upto 30.08.2018 are by way of addition of the interest. This is self-serving document having no legal sanctity and thus, carries no significance. There is no indication if the respondent ever paid the amount of interest to the petitioner for the past one year or deposited TDS towards the payment of the tax over interest.

6. When the matter was listed on 23.10.2018, learned counsel for the petitioner sought time to place on record any agreement between the parties with regard to payment of interest for borrowing the money. When the matter was listed on 14.11.2018, learned counsel for the petitioner categorically stated that there was no agreement in writing between the parties with regard to payment of interest for borrowing money.

7. Sub-section (8) of Section 5 of the Code defines the term "financial debt" meaning a debt along with interest, if any, which is disbursed

against consideration for the time value of money and includes various transactions, one of which is the money borrowed against payment of interest. The primary requirement is the disbursement of loan for consideration of time value of money, which is missing in this case. In view of the above, the petition is rejected in limine.

A copy of this order be communicated to both the parties.

Pronounced in open Court.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

December 11, 2018
Mohit Kumar