



IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) No.43/ALD/2022

In the matter of:

An application under section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

KV Foundations India Limited

Having its registered office at:

A-2/31, 3rd Floor, WHS DDA Marble Market, Kirti Nagar,
New Delhi-110015

... *Financial Creditor*

Versus

Holy Heights Infrastructures Pvt Ltd.

Having its registered office at:

198/1, Rajpur Road, Dhakpati Dehradun,
Uttarakhand-248001

... *Corporate Debtor*

Coram:

Shri Praveen Gupta. : Member (Judicial)

Shri Ashish Verma : Member (Technical)

Appearances (through video conference):

For Financial Creditor : Sh. Vibhor Garg, Advocate
Sh. Derin Joy, Advocate

For Corporate Debtor : Ms. Pallavi Parmar, Advocate

Order pronounced on: 22.02.2023

-Sd-

-Sd-



ORDER

1. This application has been filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code, 2016) by the Applicant, M/S K.V. Foundations India Ltd, which is a Financial Creditor in the case under consideration. The Respondent, M/S Holy Heights Infrastructure Pvt. Ltd. (HHIPL) is Corporate Debtor. The Financial Creditor is a non-banking financial company which advanced a loan of ₹6,92,77,000/- (Rupees six crore ninety-two lakhs seventy-seven thousand only) for 12 months repayable with interest of 12% p.a. to the Corporate Debtor. The loan agreement was executed on 10.01.2019. The said loan amount was disbursed periodically as per the requests of the Corporate Debtor from 11.01.2019 to 23.01.2019. It is further stated that no interest was charged from the dates of respective disbursements till 12.12.2019 after which an interest of 12% was payable as agreed by both parties.
2. It is also averred that the corporate debtor has acknowledged the debt in its balance sheets filed for 2019-20 and for 2020-21 wherein an unsecured loan amount of Rs.6,92,77,000/- in 2019 (principal amount) and Rs.7,15,62,248/- in 2020 and Rs.7,18,83,248/- in 2021 (principal amount plus compound interest of 12%) have been acknowledged.
3. It has been shown that total loan of Rs. 6,92,77,000/- was disbursed to the Corporate Debtor, from 11.01.2019 to 23.01.2019 which remained outstanding till 31.03.2022 and after adding interest of 12% PA compounded monthly till 31.03.2022 at Rs.2,19,79,747/-, total outstanding amount comes to Rs.9,12,56,747/- as on 31.03.2022. It is submitted that when the Corporate Debtor failed to pay the amount after repeated requests, a legal notice was served on 11.04.2022 demanding repayment of Rs.9,12,56,747/- as on 31.03.2022. It is claimed that the Corporate

-Sd-

-Sd-



Debtor in its reply dated 25.04.2022 acknowledges the debt, yet refuses to pay the same, taking a plea that the said loan as per its knowledge was advanced by Sh. Ashok Kumar Gupta to the Corporate Debtor, through various entities of his group companies out of which M/S Lakshmi Float Glass Ltd. and M/S Hindustan Glass Works Ltd. were specifically mentioned from whose accounts amount was usually being paid to the Corporate Debtor. Sh. Ashok Kumar Gupta, however, has not been found holding any share or any position in the Financial Creditor that has filed the present application. However, his family members are found connected with it. Sh. Ashok Kumar Parmar is Director in the Corporate Debtor, who used to do business dealings with Sh. Ashok Kumar Gupta during the normal course of business. In the said reply, it has also been alleged that Sh. Ashok Kumar Gupta has kept an original sale deed for a plot of land measuring 490 square meters located at Rajpur Road, Dehradun purchased by Sh. Ashok Kumar Parmar from one Smt. Talat Jahan. After admitting the loan received from Sh. Ashok Kumar Gupta through his various entities, it is subsequently admitted in para 12 of the said reply that the Corporate Debtor was saddled with a total loan amount of Rs.7,25,00,000/- out of which a loan of Rs.6,92,77,000/- was from M/S K.V. Foundation India Ltd, the Applicant-Financial Creditor and the remaining amount of loan of Rs.31,23,000/- was from another group company, M/S Hindustan Glass Works Ltd. However, knowledge of any entity being in the name of M/S K.V. Foundation India Ltd., has been denied but entry of amount received from M/S KV Foundation India Ltd. in the books of HHIPL has been accepted expressing shock & surprise and a plea has been taken further that these loan amounts were routed in the books of accounts of HHIPL without its knowledge. Subsequently, in the reply, it is admitted

-Sd-

-Sd-



that HHIPL, the Corporate Debtor in the present case were given no other option but to agree to return back the loan. After discussing in later part of the said reply about some attempt made for settlement with Sh. Ashok Kumar Gupta for returning of the loan, it is finally stated in para 23 of the reply that HHIPL and its existing directors have no other financial resources to pay back the loans to M/S K.V. Foundations India Ltd. and then further stated in para 24 to have offered to give proportionate share of flats/apartments in the residential colony project of the Corporate Debtor in Dehradun but the same was not accepted by M/S KV Foundation India Ltd., the Financial Creditor. These two relevant paras of the said reply are quite pertinent to show the admission of loan from the Financial Creditor. The same are reproduced as under:-

- “23. *That your clients are also fully aware that our clients HHIPL and its existing directors have no other financial resource to pay back the loans to your clients’ NBFC, K.V. Foundations India Ltd.*
24. *That it is also pertinent that our clients have repeatedly offered since July 2019 to give to your clients proportionate share of flats/apartments in the Kings Residency Project at Dehradun as full and final settlement of your clients’ loan amount but your clients have not accepted such offers for reasons best known to them.”*

Though in subsequent paras of reply, several allegation were made about forgery and manipulation of documents alleged to have been created to show the amount due for payment to M/S K.V. Foundation India Ltd. as loan but, it is finally stated in the reply that HHIPL has no liability, debt or dues to be paid to M/S KV Foundation India Ltd., the Financial Creditor and accordingly, repayment of loan is refused. After refusal of the Corporate Debtor to pay back the loan, the present petition u/s 7 has been

-Sd-

-Sd-



filed by the Financial Creditor on 07.05.2022 giving all the details of disbursement of loan to the Corporate Debtor, defaulted by the Corporate Debtor in repaying the loan, Date of Default etc. and **filling up all the particulars in Part I, II, III, IV and V of the application as prescribed in Form 1 of the Rule 4, sub-rule (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.**

Reply filed by the Corporate Debtor (Respondent)

4. In the reply to the petition, it has been claimed by the Corporate Debtor that the attempt to initiate IRP proceedings is based on false and fabricated loan agreement and company financial statements. Such an act invites punishment under section 65 and 75 of IBC (hereinafter referred to as “the Code”), 2016 as contended in the reply.
5. It has also been submitted by the Corporate Debtor that Sh. Ashok Kumar Parmar, its Director and Sh. Ashok Kumar Gupta, having been said to be connected to the Applicant-Financial Creditor have been business associates and there was voluntary financial assistance provided by the alleged Financial Creditor to the Corporate Debtor and the corporate veil needs to be lifted to truly appreciate the nature of these financial dealings which were in no way advanced via a loan agreement.
6. The Respondent further avers that the alleged Financial Creditor has not come to the Tribunal with clean hands and supports this argument with the contention that the amounts advanced were never sanctioned via a board meeting for the same and hence, is in contravention to Section 180 of the Companies Act.

-Sd-

-Sd-



7. The Respondent challenged the loan Agreement dated 10.01.2019 vide which the loan under dispute is stated to have been given by the Financial Creditor to the Corporate Debtor, pointing out the date of purchase of the stamp paper is 4th January, 2019 and the Loan Agreement is dated 10th January, 2019 but the loan agreement only bears the signature of one of directors (Sh. Ashok Kumar Parmar) of the Corporate Debtor but there is no signature on stamp paper which is also part of the loan agreement. It is also pointed out that the said loan agreement is not supported with the resolution of the Board of Directors of the Corporate Debtor. Due to there being no signature of the Director/Authorized Signatory of both the Corporate Debtor and the Financial Creditor on Stamp Paper attached with the loan agreement, the Corporate Debtor challenged the genuineness of this document stating to be a doubtful document taking a view that there was nothing to bar the Corporate Debtor and the Financial Creditor to put their signature on the stamp paper as well, when they had allegedly put their signatures on the loan agreement. Further, various inconsistencies and mismatch in the terms and conditions enumerated in the said loan agreement has been pointed out from point no. (c) to (e) of para 27 of the reply, to show this loan agreement as not being a genuine agreement and it is contended by him to be a forged agreement created to convert a voluntary financial assistance into the loan.
8. It has also been alleged that Sh. Ashok Kumar Gupta and his associates took over the entire management and operation of the Corporate Debtor Company from Sh. Ashok Kumar Parmar from October 2017 to June 2019 and during this period, Sh. Ashok Kumar Gupta as contended by the Corporate Debtor in his reply, routed his voluntary financial assistance in the name of the Financial Creditor without the knowledge of the

-Sd-

-Sd-



answering-Corporate Debtor and thus, as further contended that the liability of the previous group companies of Sh. Ashok Kumar Gupta were set off against the induction of funds from this Financial Creditor, K.V. Foundation and the Corporate Debtor once again admitted in this reply also as it was admitted in reply to legal notice of the Financial Creditor, as it is already discussed in para 3 of this order, that it was completely a *fait accompli* situation for the Corporate Debtor to agree to the terms and conditions of Sh. Ashok Kumar Gupta and agree to return back the loan of these entities despite maintaining his view that it was still the voluntary financial assistance given by Sh. Ashok Kumar Gupta in absence of a valid loan agreement and specified time line to return the loan.

9. The Corporate Debtor claims that he was not privy to the contract between him and the alleged Financial Creditor. This fact combined with the irregularities and mismatch in the documents as contended by the Corporate Debtor, ensures that this is not a financial debt as envisaged under Section 5(8) of the Code.
10. The Corporate Debtor also humbly prays that the sale deed which belongs to it pertaining to a plot of land measuring 490 square meters at Rajpur Road, Dehradun purchased from Smt. Talat Jahan Khan by him as part of his business be returned to him which is allegedly retained by Sh. Ashok Kumar Gupta alleged to be connected to Financial Creditor as security against the amount due to be paid to the Financial Creditor by the Corporate Debtor, which is termed as voluntary financial assistance by the Corporate Debtor but reflected in the records as loan alleged to be forged by the Financial Creditor.

-Sd-

-Sd-



11. Finally, it is concluded by the Corporate Debtor in its reply that there is no debt against the Corporate Debtor, which has become due and for which the default has happened giving rise to cause of action for filing the instant Application u/s 7 of the I&B Code, 2016 seeking initiation of resolution process against the Corporate Debtor, rather it is alleged that it is the case of disputed claims arising out of inter corporate voluntary assistance and non-settlement of inter-se business profits by the Financial Creditors in favour of the Corporate Debtor leading to filing of this Application while concealing material facts of the case.

Rejoinder filed by the Financial Creditor (Applicant)

12. In the rejoinder, it has been claimed that the Corporate Debtor has acknowledged the loan from the Financial Creditor via its balance sheets and payment of TDS and interest charged. Even in terms of the current balance sheet as on 31.03.2022 alongwith auditors report dated 22.08.2022 the amount of Rs.7,18,83,248/- is reflected in favour of the Applicant under the head of “Unsecured Loan from Others” duly signed by its Director, Sh. Ashok Kumar Parmar.

13. It is also claimed that Mr. Ashok Kumar Parmar, Director of the Corporate Debtor received another loan of Rs.1,00,00,000/- from the Applicant which was executed via an agreement dated 28.02.2020 and he returned the last instalment on 31.03.2021 with compound interest of 16% PA and thus, as stressed by the Financial Creditor in its rejoinder that he cannot claim that it was completely unknown entity and the amount received by the Corporate Debtor from it was a voluntary assistance, as the Director of the Corporate Debtor himself had taken a loan from the Financial Creditor. Applicant-Financial Creditor on loan not being returned by the Corporate

-Sd-

-Sd-



Debtor, sent an e-mail also to the Respondent-Corporate Debtor to pay the loan amount and interest to prevent its account from becoming NPA.

14. The Applicant-Financial Creditor contended that all the allegations made in reply to the legal notice and subsequently in reply to the petition, are made by the Corporate Debtor first time and they are unsubstantiated. They are made in order to avoid its liability in favour of the Applicant.
15. As regards the validity of loan agreement, it was submitted that the parties in the present case were already in discussion towards the disbursement of the loan amount and accordingly, the stamp papers were purchased for execution of legally valid document which is a matter of record. Taking signature of Sh. Ashok Kumar Parmar on blank paper for preparation of loan agreement has been denied. As regards the Board Resolution of Corporate Debtor being not part of loan agreement, it is submitted that the Corporate Debtor and its directors including the answering deponent are liable to be prosecuted for the offence committed by them in this regard. It is further stressed that the contents of the loan agreement are part of the record of this Tribunal but the interpretation as sought to be given by the Corporate Debtor is denied in totality and the loan is still pending and no proof has been filed by the Corporate Debtor that the said amount has been paid by it.

Findings

16. We have heard the learned counsel for both parties and have also perused the record carefully. On perusal of the Petition and the documents annexed, it is evident that the Corporate Debtor had availed the said loan facilities from the Financial Creditor and had subsequently committed default in repaying the same. We note that the Corporate Debtor has

-Sd-

-Sd-



acknowledged the loan in paras 23 & 24 of the reply dated 25.04.2022 sent in response to the legal notice dated 11.04.2022 and expressed its inability to pay back due to having no financial resources other than the housing project at Dehradun in which proportionate share of flats/apartment were offered but the same was not accepted by the Financial Creditor.

17. Before adjudicating upon the admission of this application for initiation of Corporate Insolvency Resolution Process (CIRP) in this case, we reproduce herewith the relevant provisions of Section 7:-

“(1) A Financial Creditor either by itself or jointly with [other Financial Creditors, or any other person on behalf of the Financial Creditor, as may be notified by the Central Government] may file an application for initiating Corporate Insolvency Resolution Process against a Corporate Debtor before the Adjudicating Authority when a default has occurred.

.....
(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

-Sd-

-Sd-



[Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.]

- (5) ***Where the Adjudicating Authority is satisfied that—***
- (a) ***a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or***
 - (b) ***default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:***

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days(i) of receipt of such notice from the Adjudicating Authority.

- (6) *The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).*
- (7) *The Adjudicating Authority shall communicate—*
- (a) *the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;*
 - (b) *the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.”*

The above provisions of Section 7 has been interpreted by the Hon’ble Supreme Court in its order dated 31.08.2017 in case of ***M/S Innovative Industries Ltd. Vs. ICICI Bank & Anr. (Civil Appeal No.8337-8338 of 2017)*** as under:-

28. *When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section*

-Sd-

-Sd-



7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the *Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016*. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. **The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.**

.....

30. **On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become**

-Sd-

-Sd-



due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

18. Now as regards to the issue of limitation we find that as stated in Part IV, the date on which default occurred is 31.12.2019. And this application was filed on 07.05.2022 vide Diary No. 0902110003232022. Thus, this application is well within the limitation period.
19. As regards the amount of default, w.e.f. 24.03.2020, the limit is enhanced to Rs.1 crore. It is stated in Serial no.2 of Part IV of the petition that amount of default is Rs.6,92,77,000/- and in the latest Balance sheet of Corporate Debtor as on 31.03.2022, it is reflected at Rs.7,18,83,248/- (including interest) in the name of Financial Creditor under the head “Unsecured Loan from Others” and therefore, the same is above the threshold limit.
20. We further examined whether the amount of default is supported with the proper and valid documents. In Part V of the petition, supporting documents, records and evidence of default as provided and mentioned in its column 3, are copy of Ledger of Corporate Debtor as maintained by the Financial Creditor for the period from 01.04.2018 to 01.05.2022 alongwith certificate under Section 65B of Indian Evidence Act and copy of the Ledger Account of Financial Creditor maintained by the Corporate Debtor for the period of 01.04.2018-31.03.2020 and also ledger account of Corporate Debtor maintained by the Financial Creditor for the period of 01.04.2019 to 31.03.2020, both acknowledged/confirmed by the Director Sh. Ashok Kumar Parmar of the Corporate Debtor.

-Sd-

-Sd-



The Balance of these ledger accounts are further corroborated with the closing balance of this loan reflected in the Balance Sheet of the Corporate Debtor filed alongwith Auditors report for the year ending on 31.03.2019, 31.03.2020 and 31.03.2021 attached with the petition showing the amount under default in the name of Financial Creditor under the head “Unsecured Loan from Others”. The latest Balance Sheet of Corporate Debtor as on 31.03.2022, has also been filed by the Applicant-Financial Creditor while furnishing the Rejoinder as mentioned above in which the loan under default is continued to be shown. Thus, existence of loan is also established with the supporting documents attached by the Petitioner-Financial Creditor alongwith the petition filed in Form No.1 and the same is also found to be above the threshold limit.

21. Further this loan is also evidenced by the loan agreement dated 10.01.2019 though disputed by the Corporate Debtor taking a plea that it is forged document as prepared after obtaining signature of its director, Sh. Ashok Kumar Parmar on blank paper but this allegation could not be substantiated by it by producing any supporting corroborative evidence and hence, the objection of the Corporate Debtor is rejected as being unsubstantiated. The Corporate Debtor also pointed out that the Stamp Paper attached with the loan agreement is not signed by both Financial Creditor and Corporate Debtor and also the Board Resolution of Corporate Debtor as per Section 180 of the Companies Act is not attached with the loan agreement, making this loan agreement doubtful. Such objections are found only of technical nature and the same is curable and would not take away the right of the Financial Creditor seeking initiation of CIRP. If there is no board resolution of Corporate Debtor for taking loan, it is fault on the part of Corporate Debtor and its Director under the Companies Act as

-Sd-

-Sd-



the loan agreement has been found duly signed by its Director, Sh. Ashok Kumar Parmar, hence, for any fault on part of the Corporate Debtor, we don't think that interest of Financial Creditor would suffer in taking back its loan when it is duly reflected as unsecured loan in Balance Sheet itself. Accordingly, we don't find any force in these objections of the Corporate Debtor to doubt the validity of the loan agreement. The Principal Bench of National Company Law Appellate Tribunal, Delhi (NCLAT) vide its recent order dated 02.08.2022 in case of *Praful Nanji Satra Vs. Vistra ITCL (India) Ltd & Ors. Company Appeal (AT) (Ins.) No. 713 of 2020* held that insufficiency of stamping of the debt agreement documents is only of the nature of a technical deficiency, which can be cured.

The relevant part of this judgment is reproduced below:-

“22. The second issue that has been emphatically raised by the Learned Senior Counsel for Appellant relates to the inadmissibility of the Debenture Trust Deed and the Non-Convertible Debenture Subscription Agreement as valid and legal documents which could be relied upon in the admission of the section 7 application as they are not sufficiently stamped as required under the Maharashtra Stamp Act.

.....

27. Looking to the facts of the present case, we note that the Insolvency and Bankruptcy (Application to Adjudicating Authority) Regulations, 2016 (hereinafter called 'Regulations') lays down as explained in the above judgment the list of documents in Part V of the Form I which could be used for proving the debt and default in section 7 application.

*28. We also consider the judgment in the matter of **Innoventive Industries Ltd. vs. ICICI Bank & Anr (2018) 1 SCC 407**, wherein Hon'ble Supreme Court has held as follows :-*

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the

-Sd-

-Sd-



information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

*We note that that the issue of debt being due and payable in the present case is not interdicted by any law but **only a technical deficiency of insufficiency of their stamping has been raised which can be cured.***

In the above cited case, the agreement under dispute was insufficiently stamped as required under the Maharashtra Stamp Act, 1958 but in the present, Stamp Paper of requisite amount is not under dispute, only absence of signature on the stamp paper is pointed out, however the loan agreement is signed and contention of Corporate Debtor of this loan agreement prepared on blank signed document could also not be substantiated. Therefore, we accept the loan agreement dated 10.01.2019 from the point of view of evidence of the loan taken by the Corporate Debtor from the Petitioner-Financial Creditor.

22. Disbursement of loan amount of Rs.6,92,77,000/- to Corporate Debtor by the Financial Creditor is also evidenced by the Bank Statement of account maintained by the Financial Creditor with IDBI Bank attached with Petition in Annexure C. Thus, we are satisfied with the loan amount of Rs.6,92,77,000/- disbursed by the Corporate Debtor to Petitioner/Financial Creditor in this case.

-Sd-

-Sd-



23. After having decided about the existence of loan amount of Rs.6,92,77,000/- disbursed by the Petitioner-Financial Creditor to Corporate Debtor duly disbursed through the Banking Channel and also evidenced through the documents maintained as discussed in previous paras, we hold that there is no force in contention of Corporate Debtor that financial debt is not within the meaning of Section 5(8) of the Code. There is a tacit acknowledgement of the liability by the Corporate Debtor in terms of the balance confirmation as on 31st March, 2020 in favour of the Financial Creditor as per the Corporate Debtor's ledger and the same is also reflected in the balance sheets filed by the Corporate Debtor before the statutory authorities for the Financial years 2019-20 and 2020-21. Even as per the current balance sheet and the Auditor's report dated 22nd August, 2022, the amount of Rs. 7,62,31,681/- is reflected in favour of the applicant under the head of "Unsecured loan from Others". The balance sheets for the Financial Year 2021-22 also reflects the amount advanced to the applicant at page 134 of the rejoinder. The Annexure F is the copy of the Form 26 AS for the Financial Year 2019-20 whereby the TDS is shown to have been deposited by the Corporate Debtor. Likewise, in the financial year 2020-21, the loan is shown as "Unsecured loans from Others" for an amount of Rs. 7,59,10,681/- for the year closing 2020 at page 65. Therefore, the debt falls within the meaning of Section 5(8) of the Code.
24. The last issue to be decided is whether there is default in payment of loan or not. In this regard, it is held in the case of *Innoventive Industries (Supra)* that the scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the Insolvency Resolution Plan begins and the Adjudicating Authority has merely to see

-Sd-

-Sd-



the records of information utility or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred. In this decision, it is very clearly held that it is of no matter that the debt is disputed so long as the debt is “due” i.e. payment unless interdicted by some law or not has yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the Adjudicating Authority that the Adjudicating Authority may reject an application and not otherwise. In the present case, we are already satisfied that a loan exists in the name of the Financial Creditor in the books of the Corporate Debtor and the Corporate Debtor has defaulted in repaying it and the same is above the threshold limit. In reply to legal notice of the Financial Creditor, the Corporate Debtor in its para 23 had itself admitted that it is unable to pay the loan due to its financial condition. Though it tried to argue the outstanding debt amount being voluntary financial assistance and not loan but its repayment has not been denied. It could also not be proved by the Corporate Debtor to our satisfaction that its repayment has not become due. Based on the documents attached by the Financial Creditor in Part V of Form 1, it has been clearly shown to us that the loan amount is already under default and for its recovery, a legal notice has already been issued by the Financial Creditor. Therefore, we find this case fit for initiating the Insolvency Regulation Plan.

25. The application filed is found to be complete in all respect. Another condition is that there are no disciplinary proceedings pending against proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Ashutosh Jain has been proposed as Interim Resolution Professional. The Law Research Associate of this Tribunal, Ms. Aditi Kharbanda, has checked the credentials of Mr. Ashutosh Jain, and there

-Sd-

-Sd-



is nothing adverse against him. In view of the above, we appoint Mr. Ashutosh Jain, Registration No. IBBI/IPA-001/IP-P00394/2017-2018/10712, R/o A-210, Shivalik, Malviya Nagar, New Delhi, National Capital Territory of Delhi, 110017, Email: aj@ajtax.in, Mobile No.9871256760, the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

26. **In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. Accordingly, the petitioner proved the debt and the default, which is more than threshold limit of one crore.** As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

-Sd-

-Sd-



- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.
 - (e) 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.
 - (f) 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
 - (g) 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.”
27. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial 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 Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

-Sd-

-Sd-



28. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakh Only) with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.
29. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

List the matter on 24th April, 2023 for filing of the progress report/further proceeding.

-Sd-

(Ashish Verma)
Member (Technical)

February 22nd, 2023

Priya Agarwal
(Stenographer)

-Sd-

(Praveen Gupta)
Member (Judicial)