IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

CP No. (IB)- 297/7/JPR/2019

(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:

MRS. SAROJ GUPTA **…Financial Creditor**

Versus

M/S AASTHA BUILDHOME DEVELOPERS PRIVATE LIMITED

…Corporate Debtor

MEMO OF PARTIES

Mrs. Saroja Gupta
6/226, SFS Agarwal, Farm,
Mansarovar Jaipur, Rajasthan – 302020

…Applicant

VERSUS

Aastha Buildhome Developers Pvt. Ltd.
CIN: U4520RJ2008PTC027832
E-60, Girdhar Marg, Siddharth Nagar,
Malviya Nagar, Jaipur, Rajasthan – 302017

…Respondent

For the Applicant : Naresh Kumar Sejvani, Adv.
Devendra Sharma, Adv.
Balram Vashisth, Adv.
For the Respondent : None Appeared

Order Pronounced On: 09.12.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The application in the prescribed Form No.1 is filed by Mrs. Saroj Gupta, claiming to be a Financial Creditor ('Applicant'/ 'Financial Creditor') for the initiation of the Corporate Insolvency Resolution Process ('CIRP') against M/s Aastha Buildhome Developers Pvt. Ltd. ('Respondent'/ 'Corporate Debtor'). The application is filed 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 ('Rules').

2. The Respondent is a Private Limited Company, incorporated under the Companies Act, 1956, on 26.11.2008 and duly registered with the Registrar of Companies, Jaipur bearing CIN: U45201RJ2008PTC027832. The Registered Office of the Company is at E – 60, Girdhar Marg, Malviya Nagar, Jaipur – 302017 (Rajasthan). The authorized share capital of the Respondent Company is Rs. 1,00,00,000/- (Rupees One Crore Only), and the paid-up share capital is Rs. 96,04,000/- (Rupees Ninety-Six Lakhs Four Thousand Only). Copy of the Corporate Debtor's Master Data and Certificate of Incorporation is annexed as Annexures – 1 and 2, respectively, of the application.

3. The Financial Creditor alleged default on the part of the Respondent in settling the amount of Rs. 30,40,047/- (Rupees Thirty Lakhs Forty Thousand and

Forty-Seven Only) inclusive of interest as of 01.04.2019. The details of transactions leading to the filing of this application, as averred by the Applicant, are as follows:

a. The Corporate Debtor approached the Financial Creditor for financial assistance for Rs. 15,75,000/- (Rupees Fifteen Lakhs Seventy-Five Thousand Only) at 14% per annum interest, which was disbursed through State Bank of Bikaner and Jaipur ('SBBJ') cheques of account number 51003109212, as detailed below:

Dates	Cheque Number	Amount (*in Rupees*)
08.02.2014	21	Rs. 5,00,000/-
19.02.2014	23	Rs. 7,00,000/-
24.02.2014	22	Rs. 3,75,000/-
Total		Rs. 15,75,000/-

A copy of bank statements reflecting the disbursement of the loan amount to the Corporate Debtor is annexed as Annexure – 4 of the application.

b. The Respondent remained irregular with its interest payment and depositing Tax Deducted at Source ('TDS'). A Copy of the Income Tax Returns of the Applicant of Assessment Year 2014-15 to 2017-18 is annexed as Annexure – 10 of the application. The detailed summary of the accounts is reproduced for ease of reference:

Period	Principal Amount (*in Rupees*)	Interest (*in Rupees*)	TDS (*in Rupees*)	Balance Outstanding (*in Rupees*)
February 2014 – 31st March 2014	15,75,000/-	25,555/-	2,556/-	15,97,999/-
Financial Year 2014-15	15,97,999/-	2,23,720/-	TDS not deducted	18,21,719/-
Financial Year 2015-16	18,21,719/-	2,55,739/-	TDS not deducted	20,77,458/-
Financial Year 2016-17	20,77,458/-	2,90,844/-	29,084/-	23,39,218/-

c. Given the Corporate Debtor's failure to maintain financial discipline, *i.e.*, failing to repay the entire loan amount by 01.04.2018, the financial creditor served a Legal Notice dated 12.05.2018 for repaying the dues. A copy of the Legal Notice dated 12.05.2018 is annexed as Annexure – 7 of the application. The aforementioned Legal Notice was replied to *vide* Letter dated 04.06.2018 whereby the Respondent acknowledged the outstanding dues of the Financial Creditor. A Copy of the Letter dated 04.06.2018 is annexed as Annexure – 9 of the application.

d. The Corporate Debtor requested an extension of time as it was under severe financial distress and therefore, was not able to repay the entire outstanding dues of the Financial Creditor. The Financial Creditor accepted this request. However, upon expiration of such extension, the Applicant issued a Demand Notice dated 19.06.2019 demanding repayment of financial dues. A copy of the Demand Notice dated 19.06.2019 is annexed as Annexure – 8 of the application. The Respondent did not reply to this Demand Notice.

e. The disbursement of debt is further substantiated by the signed Ledger accounts maintained by the Corporate Debtor in the usual course of business for the Financial Year 2014 – 15 and 2016 – 17. The copy of the Ledger Account for the Financial Year 2014 – 15 and 2016 – 17 are annexed as Annexures – 5 and 6 of the application, respectively.

f. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 30,40,047/- (Rupees Thirty Lakhs Forty Thousand and Forty-Seven Only) as of the date of filing of this application. The aforementioned details, as reflected in Part IV of the Application, are as follows:

Part IV

Particulars of Financial Debt

1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	Total amount of debt: Rs. 15,75,000/- (Rupees Fifteen Lakhs Seventy-Five Thousand Only)
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 30,40,047/- Total Principal Amount: Rs. 15,75,000/-

		Total Interest Due: Rs. 14,65,047/-* Date from which Debt fell Due: 06.07.2019

** Calculated the Interest Amount @14% p.a. from the period of 08.02.2014 to 01.04.2019.*

4. In spite of the service of notice on the Corporate Debtor, there was no representation. The Applicant was directed to issue fresh notices to the Respondent *vide* Order dated 15.07.2021. The compliance for the same is done by the Applicant *vide* Diary No. 2225/2021 dated 28.10.2021. In the interest of justice, the last opportunity was provided to the Corporate Debtor, and the Registry was directed to send notices *vide* Order dated 01.12.2021; the same has complied *vide* Sr. No. 325/2021.

5. The Order also stated that if there is no representation made and a reply filed by the Corporate Debtor on the next hearing date, appropriate orders will be passed in the matter based on the available records. It is noted that the Respondent has not filed any reply to this application in the face of having numerous opportunities provided by this Authority in the matter and wilfully avoiding appearance in the present case. Thus, the Respondent has forgone its right to file a reply, and *ex-parte* proceedings are being initiated against it.

6. During the hearing, the learned counsel for the Applicant relied on the application filed and stated that the requirements of Section 7 of the Code were satisfied. We have carefully considered the submissions of learned counsel for the Applicants and have perused the record.

7. In the present case, the occurrence of default is evidenced by the details furnished by the Applicant, including the copies of the acknowledgement through Letter dated 04.06.2018, the copies of receipts of money advanced, the copy of the signed and sealed ledger account by the Corporate Debtor, the copies of the statement of accounts duly certified under the Bankers Books Evidence Act 1891, and the copy of the Legal Notice dated 12.05.2018.
8. The application filed in the prescribed Form No. 1 is complete.
9. The financial debt and further default in the debt payment should be established to initiate proceedings under Section 7 of the IBC. In the present matter, the acknowledgement provided by the Corporate Debtor does fulfil the requirement of the consideration for time value. The Corporate Insolvency Resolution Process can be initiated against the Corporate Debtor, as it has committed a default. Therefore, the Adjudicating Authority has come to the view that the Corporate Insolvency Resolution Process of the Corporate Debtor should be initiated.
10. The Applicant has named one Mr. Prashant Agarwal with Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127, duly registered with the Insolvency and Bankruptcy Board of India, to be appointed as the Interim Resolution Professional ('IRP'). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP. The credentials of the proposed IRP have been checked

from the IBBI website, and nothing adverse is found on record. A copy of the Written Consent of the IRP is annexed as Annexure – 3 of the application.

11. Consequences of initiation of CIRP shall be inter-alia as follows:

a. The Insolvency Resolution Professional proposed by the Applicant, Mr. Prashant Agarwal, is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issuance of publication in widely circulated Newspapers as contemplated under the provisions of IBC, 2016 and calling for claims from the creditors of Corporate Debtor and collation of the same shall be done.

b. Further, as a sequel of admission, the moratorium, as envisaged under Section 14 of IBC, 2016, is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly per the timelines specified and as envisaged under the provisions of IBC, 2016, concerning the Corporate Debtor.

c. The said IRP shall act strictly in accordance with the provisions of IBC, 2016, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 1,00,000/- (Rs. One Lakh Only) to the bank account of IRP within a week from the date of this Order. The IRP shall duly file a status report apprising this

Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor.

d. In terms of Sections 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor, including promoters and the Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

e. In terms of Section 7 of IBC, 2016, this Order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, and the IRP appointed by this Adjudicating Authority to carry out the CIRP. A copy of this Order shall also be communicated to IBBI for its records.

12. Accordingly, CP No. (IB) 297/7/JPR/2019 is admitted in the abovementioned circumstances.

DEEP CHANDRA JOSHI Digitally signed by DEEP CHANDRA JOSHI Date: 2022.12.09 15:20:57 +05'30'

DEEP CHANDRA JOSHI
JUDICIAL MEMBER

PRASANTA KUMAR MOHANTY Digitally signed by PRASANTA KUMAR MOHANTY Date: 2022.12.09 18:16:27 +05'30'

PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER