IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III (SPECIAL BENCH)
IB-313(ND)/2025

Under Section 7 of the Insolvency and Bankruptcy Code, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:
Mr. Akshay Kumar Rout ..... Financial Creditor
Prop. of Jagannath Traders
Vs.
Indo Laminates Pvt. Ltd. ..... Corporate Debtor

Order delivered On: 05.08.2025

CORAM:
SHRI BACHU VENKAT BALARAM DAS
HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

PRESENT:
For Applicant : Mr. Ashish Mohan, Sr., Adv., Mr. Akash Madan, Adv.
For Respondent : Mr. Ankush Bhardwaj, Mr. Shikhar Gupta, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 has purportedly been filed by Mr. Akshay Kumar Rout, Prop. of Jagannath Traders, seeking initiation of CIRP against M/s. Indo Laminates Pvt. Ltd., the Corporate Debtor herein for the alleged default amount of Rs. 1,13,45,000/- as on 03.05.2025.
2. It is the case of the Applicant that the Applicant granted financial assistance to the Corporate Debtor amounting to Rs. 1,05,00,000/- at an interest rate of 18% per annum. A loan agreement was executed subsequently between the Applicant/Financial Creditor and the Respondent/Corporate Debtor, on 01.03.2025.

3. The Corporate Debtor defaulted in repayment of the financial assistance despite several requests and reminders given by the Applicant/Financial Creditor.
4. The Applicant/Financial Creditor sent a loan demand cum legal recall notice dated 03.05.2025 to the Corporate Debtor for repayment of the outstanding amount.
5. The Respondent/Corporate Debtor, vide e-mail dated 21.05.2025, while acknowledging the liability, took a plea that a fire incident broke out in the godown premises of the Corporate Debtor, which led to financial distress in the company, and therefore, the Respondent/Corporate Debtor could not repay the outstanding loan amount.
6. For the sake of convenience and better understanding of the case, Part IV of the present application is extracted below:-

PART-IV

PARTICULARS OF FINANCIAL DEBT		
1.	**TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT**	DATE OF SANCTIONS ALONGWITH AMOUNTS: - SANCTION DATE: 01.03.2025

DATE	AMOUNT DISBURSED
16.01.2025	Rs. 5,00,000/-
29.01.2025	Rs. 20,00,000/-
31.01.2025	Rs. 13,00,000/-
06.02.2025	Rs. 20,00,000/-
07.02.2025	Rs. 12,00,000/-
11.02.2025	Rs. 9,97,500/-
13.02.2025	Rs.

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<tr><td></td><td>10,02,500/-</td></tr>
<tr><td>21.02.2025</td><td>Rs. 7,00,000/-</td></tr>
<tr><td>25.02.2025</td><td>Rs. 8,00,000/-</td></tr>
<tr><td>TOTAL</td><td>Rs. 1,05,00,000/-</td></tr>
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<td>2.</td>
<td>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</td>
<td>AMOUNT: RS.1,13,45,000/- (Rupees One Crore Thirteen Lakhs Forty Five Thousand Only) AS ON 03.05.2025BESIDES ACCRUED INTEREST FROM 03.05.2025.

DATE OF DEFAULT:
➢ 03.05.2025 WHEN THE LOAN RECALL NOTICE WAS ISSUED.

(DETAILED STATEMENT OF ACCOUNT ALONGWITH INTEREST CALCULATION SHEET IS ANNEXED ALONGWITH THE PRESENT APPLICATION).</td>
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7. The Respondent/Corporate Debtor filed a reply affidavit denying the allegations leveled against it by the Applicant/Financial Creditor.

8. The Respondent admitted that it had availed a financial facility amounting to Rs. 1,05,00,000/- from the Applicant/Financial Creditor, against the stock in trade which was duly hypothecated as security, and a loan agreement was executed on 01.03.2025.

9. The Applicant/Financial Creditor conducted a verification and due diligence of the stock in trade hypothecated by the Corporate Debtor prior to the disbursal of the said facility. The Respondent further submitted that a fire incident occurred at the godown premises of the Corporate Debtor-Company on 20.05.2025 at about 10.20 AM as a result of which the entire stock in hand including ply wood and other

goods stored therein, was completely destroyed and reduced to ashes. The incident was immediately informed to the Fire Station at about 10.29 A.M. Further, the First Information Report was lodged on 21.05.2025 at Buria Police Station informing about the incident and the loss suffered by the Corporate Debtor.

10. The Respondent contended that the financial condition of the Corporate Debtor has been impacted by the fire incident and the Corporate Debtor has suffered heavy losses, which have caused disruption in the business operations of the Corporate Debtor.

11. The Respondent has further contended in its reply affidavit that it is willing to repay the entire outstanding amount to the Applicant/Financial Creditor in case a reasonable time is afforded to it by the Financial Creditor.

12. We have heard the arguments advanced by Mr. Ashish Mohan, Ld. Senior Counsel appearing on behalf of the Applicant and Mr. Ankush Bhardwaj, Ld. Counsel appearing on behalf of the Respondent and perused the record.

13. The instant case is a case filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by the Applicant seeking initiation of CIRP against INDO Laminates Pvt. Ltd., the Corporate Debtor.

14. We are conscious of the fact that as per the settled principles of the law laid down by the Hon'ble Supreme Court of India and the Hon'ble NCLAT while dealing with a Section 7 application, the Adjudicating Authority is only required to see as to whether there is a debt due and whether the Corporate Debtor has defaulted in paying the debt. The Applicant/Financial Creditor is required to establish that there is a

financial debt and that a default has been committed in respect of that financial debt.

15. Ld. Senior Counsel appearing on behalf of the Applicant/Financial Creditor submitted that an amount of Rs. 1,05,00,000/- was in fact disbursed to the Corporate Debtor on various dates as indicated in the following table:

SCHEDULE A

DATE	AMOUNT
16.01.2025	5,00,000/-
29.01.2025	20,00,000/-
31.01.2025	13,00,000/-
06.02.2025	20,00,000/-
07.02.2025	12,00,000/-
11.02.2025	9,97,500/-
13.02.2025	10,02,500/-
21.02.2025	7,00,000/-
25.02.2025	8,00,000/-
TOTAL	**1,05,00,000/-**

16. Ld. Senior Counsel further fairly submitted that the loan agreement was executed much after the disbursals were made, i.e. on 01.03.2025. The Applicant's case is that the said credit facility was extended on the request made by the Respondent/Corporate Debtor. However, the Applicant has not placed on record any document to show that any such request was made by the Corporate Debtor for extending the credit facility.

17. The Applicant has placed on record the bank statements in support of the disbursals made to the account of the Corporate Debtor.

18. The following sequence of events shows that the Applicant has not come with clean hands; rather, it has filed the Section 7 application for recovery of its dues:

(i) As per the case of the Applicant, the entire amount was disbursed by the Financial Creditor to the Corporate Debtor on different dates in the month of January, 2025 and February, 2025. However, the loan agreement was executed between the Financial Creditor and the Corporate Debtor on 01.03.2025. On a query raised by this Adjudicating Authority, Ld. Senior Counsel submitted that even though the loan facility was extended, the loan agreement was executed subsequently in order to regularize the transaction. This explanation does not carry any weight/substance.

(ii) The amount of default as claimed by the Applicant in the present Section 7 application is Rs. 1,05,00,000/-, which is just above the threshold as prescribed under Section 4 of the I.B.C., 2016.

(iii) The Section 7 application was listed for the first time on 06.06.2025 when this Adjudicating Authority issued notice to the Respondents after hearing the submissions of Mr. Ashish Mohan, Ld. Senior Counsel appearing on behalf of the Applicant. Mr. Ankush Bhardwaj and Mr. Shikhar Gupta, Ld. Counsel appeared on behalf of the Respondent and accepted notice and sought time to file reply affidavit. The Respondents filed a short reply affidavit (running into five pages) on 09.07.2025. The Respondents enclosed the copies of the photographs of the fire incident that occurred at the factory premises and a copy of the fire incident report dated 22.05.2025, along with the reply affidavit.

(iv) The Corporate Debtor in its reply affidavit admitted having availed the financial facility of Rs. 1,05,00,000/-.

(v) However, it took the plea that due to the fire incident in the godown premises of the Corporate Debtor, the entire stock in hand was destroyed and the company suffered losses because of which the Corporate Debtor could not repay the outstanding dues to the Applicant.

(vi) Ld. Counsel appearing on behalf of the Respondent/Corporate Debtor, during the course of the arguments, did not oppose the application but prayed for granting a reasonable time for repayment of the outstanding dues to the Applicant/Financial Creditor.

(vii) This Adjudicating Authority vide order dated 10.07.2025 directed both the parties to file non-collusive affidavits.

19. From the conspectus of the case, it appears to us that the Applicant has filed the present application under Section 7 with the purpose to recover its money from the Corporate Debtor and not for the resolution of the Corporate Debtor Company.

20. It is an accepted principle that the Insolvency and Bankruptcy Code, 2016 cannot be used as a tool for recovery of money particularly with respect to the companies which are solvent in nature.

21. In the instant case, the Respondent has categorically submitted that due to a fire incident, the company suffered losses and therefore was unable to pay the outstanding dues.

22. Ld. Counsel for the Respondent further contended that the Applicant and the Respondent have been in business relationship for several years and no default has ever happened before. We have perused the loan agreement very carefully. The recital "C" of the loan agreement reads as under:-

> "*The Borrower has approached the Lender to obtain loan to expand their business interest and considering, the long standing business and personal relationship has agreed to lend certain amount as per the terms and conditions stipulated herein in this Loan Agreement*"

23. A bare reading of the various clauses of the agreement shows that the stamp paper for the execution of the loan agreement was purchased on 12.02.2025, whereas the agreement was executed/signed on 01.03.2025 for the disbursals made from 16.01.2025 to 25.02.2025. This approach of the parties casts a doubt about the bona fides of the Applicant, and such irregularity prima facie suggests a deliberate attempt to retrospectively regularize the transaction.

24. Be that as it may, there is no dispute that the Respondent Company is a solvent company who had a long-standing business relationship with the Applicant. There has been no prior record of financial delinquency or breach of contractual obligations by the Respondent vis-à-vis the Applicant.

25. It is because of the fire incident which caused a great loss to the company, the Respondent could not repay the amount due to the Applicant.

26. The Respondent was prevented by force majeure circumstances and therefore, could not pay the default amount.

27. From the above said discussion, we are of the considered view that the Applicant has not come with clean hands and the sequence of actions and overall conduct suggest that the Applicant is primarily seeking to recover its dues, rather than facilitating the resolution of the Corporate Debtor, who is solvent and operational.

28. We are therefore not inclined to entertain this application filed under Section 7 of the IBC, and accordingly, the present application stands **dismissed**.

Sd/- Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)