

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 38/7/JPR/2022

(Application under Section 7 read with 60(5) of the Insolvency and Bankruptcy Code, 2016 & Rule 11 of the NCLT Rules, 2016)

IN THE MATTER OF:

**SMT. MOHINI DEVI, PROP. OF KHANDELWAL
CONSTRUCTIONS AND BUILDING MATERIALS**

...Financial Creditor

Versus

KHANDELWAL BUILDCON PVT. LTD.

...Corporate Debtor

MEMO OF PARTIES

Smt. Mohini Devi, Proprietor,
Khandelwal Constructions and Building Materials
Office: 120, Baal Vihar, Kalwar Road,
Jaipur-Rajasthan.

...Financial Creditor/Applicant

VERSUS

M/s Khandelwal Buildcon Private Limited
CIN- U45201RJ2006PTC023403
Reg. Add: 171, Officers Campus,
Ext. Sirsi Road, Jaipur, Rajasthan-302021

...Corporate Debtor/Respondent

For the Applicant : Nitesh Shrivastava, Adv.

For the Respondent : Ankit Sareen, Adv.
Yash Tandon, Adv.

Order Pronounced On: -01.06.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This application is filed by Smt. Mohini Devi Proprietor of Khandelwal Construction and Building Materials ('Applicant' / 'Financial Creditor') against the Corporate Debtor namely M/s Khandelwal Buildcon Private Limited ('Respondent' / 'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') pursuant to the default in repayment of loan amount by the Corporate Debtor to the Applicant.
2. The Corporate Debtor is a Company incorporated in the year 2006 under the provisions of the Companies Act, 1956, having its registered office at 171, Officers Campus Ext. Sirsi Road, Jaipur-302021. Copy of the Corporate Debtor's Master data along with details of Signatory as extracted from the portal the of Ministry of Corporate Affairs (www.mca.gov.in) is annexed as Annexure 3 of the Application at Page No. 18B.
3. The Financial Creditor, Smt. Mohini Devi Proprietor of Khandelwal Construction & Building Material, has its registered office situated at 120, Baal Vihar, Kalwar Road, Jaipur, Rajasthan, India.

4. The details of the transactions leading to the filing of this Application as averred by the Applicant are as follows:
- a) The Corporate Debtor is engaged in the business of running hotels, gardens for marriages, and other functions. In 2013 Corporate Debtor approached the Applicant for financial assistance.
 - b) Consequently, the Applicant and Corporate Debtor entered into a loan agreement dated 31.01.2013 for a loan amount of Rs. 1,28,50,000/- (Rupees One Crore Twenty-Eight Lakh Fifty Thousand Only) carrying an interest @18% per annum. Copy of the loan agreement annexed as Annexure-1 of the Application.
 - c) It is stated that the repayment of the aforesaid loan was agreed to be made by the Corporate Debtor within three years as per the terms of the loan agreement however no repayment of either the principal amount or the interest has been done at the completion of the three year.
 - d) Since the Corporate Debtor has defaulted in the payment of the alleged amount, the Applicant has issued a letter dated 05.02.2016 to repay an entire principal amount along with interest within a period of one month.
 - e) Further the Corporate Debtor vide letter dated 25.02.2016 has acknowledged the liability and requested an extension of three years to repay the same. Copy of the letter dated 25.02.2016 is annexed as Annexure-3 of the Application.

- f) The Corporate Debtor and Applicant entered into a Consent Letter wherein it was undertaken by the Corporate Debtor that at the end of three years, the loan amount along with the interest shall be paid off however the same is not complied by the Corporate Debtor.
- g) Consequent upon the same the Applicant has sent a notice dated 15.04.2019 to the Corporate Debtor to repay the loan amount along with the outstanding interest amount within one month from the receipt of this notice. Copy of the letter dated 15.04.2019 annexed as Annexure-5 of the Application.
- h) Thereafter in response to the aforesaid letter the Corporate Debtor has acknowledged its debt and shows its inability to pay off the alleged loan amount.
5. As a consequence of the aforementioned default, this application has been filed seeking initiation of CIRP against the Corporate Debtor. The Applicant has stated the details of the amount due in Part IV of the Application which is as follows:

Particulars of Financial Debt		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	<p>The total amount of debt: Rs. 1,01,00,000/- (Principal)</p> <p>Date of Disbursement 31.01.2013</p> <p>The Copy of the Bank Statement showing disbursement of the loan</p>

		amount is annexed as Annexure-7 of the Application
2.	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)	<p>The total amount claimed to be in default is Rs. 4,41,91,643/- (Principal amount of Rs. 1,01,00,000/- + Interest of Rs. 3,40,91,634/-)</p> <p>The date of default is 15.05.2019</p> <p>The Copy of Computation of Amount of Default and days of default in tabular form is annexed as Annexure-8 of the Application.</p>

6. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its reply *vide* Diary No. 2394/2022 dated 10.08.2022 whereby stated the following:

- a) The Corporate Debtor submits that in the year 2013, the Corporate Debtor for its expansion and for working capital requirement approached the Applicant for financial assistance for an amount of Rs. 1,28,50,000/- (Rupees One Crore Twenty-Eight Lakh Fifty Thousand Only) along with the interest of 18% per annum.
- b) Further the Corporate Debtor contends that due to less inflow of the funds in the Company, no repayments were done to the Applicant. Additionally, multiple FIRs were registered against the director of the Corporate Debtor and also an investigation has been started by

Enforcement Directorate and attached all the properties of the Corporate Debtor.

- c) In the meantime, to the legal hassles and complications, the business of the Corporate Debtor came to a standstill and the Corporate Debtor came into a huge financial crunch. Further in its reply the Corporate Debtor acknowledges the principal amount, which is due and payable along with the interest of 18% per annum.
7. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of Laws of Limitation, as the debt fell due in 2019, and the Application was filed before this Adjudicating Authority in 2022. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
8. We have gone through the pleadings presented before us, and documents filed by both the parties and heard the arguments made by the counsels, the applicant has filed the present application stating default of loan amount of Rs. 1,01,00,000/- (Rupees One Crore and One Lakh Only) + interest of Rs. 3,40,91,634/- (Rupees Three Crore Forty Lakh Ninety-One Thousand Six Hundred Thirty-Four Only).

9. The mere plain reading of the provisions under Section 7 of the IBC shows that to initiate CIRP under Section 7 of the Code, the Applicant must establish that there is a financial debt and that default has been committed in respect of that financial debt by the Corporate Debtor. While dealing with an application under Section 7, the Adjudicating Authority is not required to see the question of a dispute between the parties as long as debt and default is proved.
10. In the case of *Pawan Kumar v. Utsav Securities Private Limited & Ors., Company Appeal (AT) (Ins) No. 251 of 2020*, the Hon'ble NCLAT has stated the following to be essential conditions to be satisfied by a Financial Creditor under Section 7 read with Section 5 (7) and (8) of the Code:
- a. *There must be disbursal of loan amount.*
 - b. *Such disbursal should be made for a consideration for time value of money, and*
 - c. *When the debt (whole or any part or instalment) become due and payable and is not paid by the Corporate Debtor means committed default.*
11. The above all conditions are to be satisfied by the Financial Creditor in order to consider the Application under section 7 of the IBC and initiate the CIRP against the Corporate Debtor. In the present case, it is perused from the documents placed on record that the Financial Creditor disbursed a loan of Rs. 1,28,50,000/- (Rupees One Crore Twenty-Eight Lakh Fifty Thousand

Only) for three years (3) at the rate of 18% interest per annum. It is seen that the application has been filed for default of repayment of loan which was granted to the Corporate Debtor *vide* loan agreement dated 31.01.2013. As per the loan agreement, the loan was granted for a period of three years and an interest at the rate of 18% per annum ought to be charged on the loan amount.

12. The second essential condition is that the loan disbursement is made for consideration of the time value of money. The Hon'ble Supreme Court of India, in *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd., Civil Appeal No. 2231 of 2021* held that the Time Value of money means that the money which is being given will be more at the time of return. This would be through the interest on the principal amount, in case of absence of interest the debt still qualifies as Financial Debt. In the present matter herein, the loan was repayable along with interest @18% per annum.
13. The next essential condition is that the debt (whole or any part or installment) becomes due and payable. In the present case in hand, the Corporate Debtor himself admitted the fact that a loan amounting to Rs. 1,28,50,000/- (Rupees One Crore Twenty-Eight Lakh Fifty Thousand Only) was granted by the Applicant *vide* loan agreement dated 31.01.2013 and which supposed to be repaid within three (3) years. However, no payment has been received from the Corporate Debtor on or after the aforesaid due date.

14. In view of the aforementioned, we are of the view that Corporate Insolvency Resolution Process ought to be initiated against the Corporate Debtor.
15. The Applicant has named one Mr. Prashant Agarwal, the registration number of the proposed Interim Resolution Professional ('IRP') is IBBI/IPA-001/IP-P00053/2017-18/10127 (email: ippa@gmail.com), duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. 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.
16. Consequences of initiation of CIRP shall be inter-alia as follows:
 - a) The Insolvency Resolution Professional proposed by the Applicant is Mr. Prashant Kumar Agrawal, who is an IP registered with ICSI Insolvency Professional Agency having Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127. He is hereby appointed as the Interim Resolution Professional 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 issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.

- b) Further, as a sequel of admission, 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 as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- c) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray his expenses to be incurred and fees on the account. The Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rs. Two Lakh Only) to the bank account of IRP within a week from the date of this Order. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and 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.
- d) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution

Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.

17. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.
18. In the circumstances, CP No. (IB) 38/7/JPR/2022 is admitted.

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

-Sd-

**ATUL CHATURVEDI,
TECHNICAL MEMBER**