

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH- III**

IB-2906/ND/2019

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

IN THE MATTER OF

UTSAV SECURITIES PRIVATE LIMITED

CIN No. U65993DL1995PTC063997

Registered Address

16/121-122, Jain Bhawan Faiz Road,

W.E.A Karol Bagh,

New Delhi-110005

...Financial Creditor/Applicant

Versus

S.K.P.J. INVESTMENT & FINANCE PRIVATE LIMITED

CIN No. U65921DL1989PTC036275

Registered Address

House No-106, T-10,

Palco House, Patel Nagar,

NEW DELHI - 110008

...Corporate Debtor



Coram:

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)
SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER
(TECHNICAL)**

Delivered on: 25.10.2021

Appearances:

Financial Creditor : PCS Ms. Sanchita Bhardwaj

Corporate Debtor :

ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. This is an application filed by the Financial Creditor namely, Utsav Securities Private Limited against the corporate debtor namely, S.K.P.J. Investment and Finance Pvt. Ltd. under section 7 of the IBC, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor
2. The transaction leading to filing of application under consideration is as follows:
 - a. The financial creditor has given loan to the corporate debtor pursuant to the loan agreement entered into by the financial creditor and corporate debtor on

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08.12.2018. As per terms of the agreement, the financial creditor had to disburse the loan amount into the bank account of the corporate debtor.

- b. It is submitted that total sum of Rs. 10,00,000 (Rupees Ten Lakhs Only) was disbursed from the bank account of financial creditor to the Bank account of corporate debtor on 10.12.2018. As per terms of the Loan agreement, the corporate debtor was granted loan for a period of six months, at the end of which the corporate debtor would be liable to pay back the entire amount with an interest at 9% p.a. The corporate debtor is liable to repay to the financial creditor entire amount outstanding as on 09.06.2019.
- c. It is further submitted that against the above loan provided by the financial creditor, the corporate debtor is obliged to pay a sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) along with agreed interest of Rs. 45,000/- (Rupees Forty-Five Thousand only) and another penal interest @15% p.a. on the total amount due i.e., 10,45,000/- which amount to Rs. 34,785/- (Rupees Thirty-Four Thousand Seven Hundred Eighty-Five Only).



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- d. It is further averred that several reminders were sent to the corporate debtor for clearing the dues but no outstanding debt was paid, which compelled the financial creditor to take legal action, hence, the present petition.
3. The Corporate Debtor has appeared only once in the matter i.e., on 20.02.2020 and prayed time to file vakalatnama as well as reply. However, the corporate debtor did not appear during the hearing of this matter thereafter even after notice has been duly served to it on multiple occasions, hence, this Adjudicating Authority proceeded ex-parte against Corporate debtor vide order dated 26.03.2021.
4. During the hearing of the matter this Adjudicating Authority vide order dated 05.08.2021 has directed the Authorized Representative for Financial Creditor to file a short affidavit from his client that as per the Memorandum and Article of Association, they can conduct lending activity and same is permitted being NBFC.
5. In compliance of order dated 05.08.2021, the financial creditor has filed an affidavit in order to show that it is eligible to advance Loan and also attached the certificate of registration u/s 45 IA of RBI Act, 1934 as well as MOA of



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the Financial Creditor with the affidavit. As per point 8 of sub clause B of clause III of Memorandum of Association of financial creditor can carry on:

“(B) the objects incidental or ancillary to the attainment of the main object: -

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8. To advance money, either with or without security and give credit to such persons (including government) and upon such terms and conditions as the Company may deem fit, provided that the company shall not carry-on banking business within the meaning of Banking Regulation Act

.....”

6. This Adjudicating Authority has perused the petition and affidavit filed thereafter in compliance of the order of this adjudicating authority and the submissions made by financial creditor. The evidence placed by the financial creditor is sufficient to ascertain the existence of a default on the part of the Corporate Debtor. The Financial Creditor has fulfilled all the requirements of law. It is also important to take a note that the Notification regarding the enhancement of minimum amount of default to Rs. one crore for the purpose of Section 4 was issued by the Ministry of Corporate Affairs on 24th March, 2020 and the amount defaulted by the Corporate Debtor as well as the

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filing of captioned petition is much before the coming into effect of notification dated 24th March, 2020. Since any notification issued by the Government is generally prospective in nature unless specifically expressed, hence the said notification is not applicable to the present case. Accordingly, this Adjudicating Authority is inclined to admit this application and initiate the process of CIRP of the Corporate Debtor. The financial Creditor has also proposed the name of the Resolution Professional for appointment of IRP.

7. Mr. Atiuttam Prasad Singh having Regn. No.- IBBI/IPA-001/IP-P01914/2019-2020/12914 (Mob No. +919582064799 and Email ID - atiuttamsingh@gmail.com) is hereby appointed as IRP as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as evident from the Form-2 dated 07.01.2020. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of

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receiving the copy of this order and call for submissions of claim in the manner as prescribed.

8. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

- 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's 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

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- 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.
9. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.
10. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.
11. The financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this order as per the provisions of IBC, 2016.

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12. The financial Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect.
13. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.
14. The order is pronounced by this Adjudicating Authority through Virtual Hearing



(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)



(P.S.N. PRASAD)
MEMBER (JUDICIAL)