

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
ALLAHABAD BENCH**

CA No.142 of 2019
IN
CP(IB) No.422/ALD/2018

IN THE MATTER OF :

Mr. Vikas Tiwari

.....Applicant/Operational Creditor

Versus

M/S Jain Mfg. (India) Pvt. Ltd.

.....Corporate Debtor

IN THE MATTER OF :

Mr. Rajnish Jain, Promoter, stakeholder and MD of Suspended Board of Directors.

.....Applicant

Versus

**1. Manoj Kumar Singh
Interim Resolutional Professional)**

2. BVN Traders

..... Respondent

ORDER RESERVED ON :15.11.2019
ORDER DELIVERED ON : 23.01.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Resolution Professional: Dr. Ram Kumar Mishra, PCMA.

For the applicant: Mr. Mayank Srivastava , Adv

For the respondent: Mr. Shubham Agarwal,Adv

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present application is filed on behalf of Mr. Rajnish Jain, promoter, stakeholder and MD Suspended Board of directors under Sec 60(5) of IBC,2016 read with Rule 11 of NCLT Rules,2016 for declaration of BVN traders to be "financial creditor" or not within the meaning of Section 5(8) of IBC,2016
2. The learned counsel for the applicant stated that the corporate debtor has never taken a loan from BVN Traders and has never created any charge or any kind of mortgage, over or of, Plot No. Y of 7/190(1), Swaroop Nagar, Kanpur-208002 in favour of BVN Traders as alleged by them.

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3. It is further submitted that the ledger entries of Jain manufacturing (India Private Limited) in the books of account of BVN Traders, for the period of 01.04.2018 to 31.3.2019, shows the entry in reference to the payment by RTGS to the tune of of Rs. 70,00,000/- and Rs. 10,00,000/- which has been made on 16.08.2018, in the same way as has been done in reference to the payment by RTGS in thier ordinary course of business in the books of account of BVN Traders. Thereafter, the entry in reference to the amount of Rs. 70,00,000/- and 10,00,000/- has been moved from normal ledger account to the loan account.
4. It is further submitted that CA Dilip Kumar, who is the partner of BVN Traders has filed an FIR dated 21.10.2018 in which it is mentioned " *unki yachna par 80,00,000/- "aur de diya gya jisko unke dwara wapis krne ko kaha gya....*" and this FIR was register after two months of the entries in the books of account and the said entry has not been shown or qualified as a loan transaction, after alleging creation of charge or mortgage.
5. It is further stated that Jain Manufacturing India Private Limited was not having knowledge of the alleged loan till the first meeting of the COC i.e. 23.03.2019.
6. The counsel for RP stated that the said claim was admitted by IRP, as a financial creditor wherein the security interest has been shown by way of possession of original title deed of plot no. Y of 7/190 (1), Swaroop Nagar, Kanpur. The RP revisited the claim and found that the alleged financial creditor M/s BVN Traders has failed to file any conveyance deed as per requirement of Section 55 of TPA 1882 .
7. It is further stated that the RP has obtained a legal opinion from learned Advocate Mr. D.N. Awasthi and from transitional auditors from M/s Jan Ashwani & Co. regarding the status of BVN Traders whether the debt is operational or financial and they have given a specific opinion that M/s BVN Traders is not covered by definition of financial creditor as envisaged under section 5 (7) read with Section 5 Clause 8 of the IBC, 2016 and BVN Traders has also failed to submit any basic evidence regarding loan.

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8. It is further submitted that in light of the order dated 19.-08.2019 of this Tribunal, the RP placed the matter before the COC in 4th Meeting held on 30.08.2019 as agenda No. 11 where in the majority of COC members voted against the status of the said claim as operational creditor and declared the creditor as financial creditor.
9. In reply to the application the learned counsel for BVN Traders stated that a loan of Rs. 80,00,000/- for BVN Traders against the deposit the title deed was taken by the corporate debtor and further alongwith Form C, BVN Traders submitted whatsapp chat between Mr. Rajnish Jain (one of the director of corporate debtor and M/s Dilip Kapoor of BVN Traders) in which it is much clear that the corporate debtor approached BVN Traders for loan and it is submitted that the it is a common accounting practice of correction in the ledger account which is found incorrect in the same way the entry was made wrong which was later on corrected and the FIR filed by Mr. Dilip Kapoor that on request of corporate Debtor the amount was given itself prove the debt as financial debt and COC also in its 4th meeting has voted in majority in favour of BVN Traders as an financial creditor.
10. As per **section 5(7) of the IBC, "Financial creditor"** means any person to whom financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.

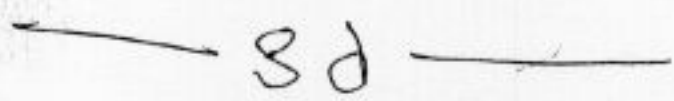
As per **section 5(8) of the IBC "Financial Debt"** means, a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

- a. Money borrowed against the payment of interest
- b. Any amount raised by acceptance under any acceptance credit facility or its dematerialized equivalent;
- c. Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument.
- d. the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

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- e. *receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- f. *any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- g. *any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- h. *any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- i. *the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;*

11. In view of provisions and the fact stated, this adjudicating Authority is of the view that as the COC has voted in majority in favour of BVN Traders as "financial creditor" and thus Suspended Management as well as Resolution Professional has no locus to challenge the commercial wisdom and decision of Committee of creditors with regard to determination of respondent as financial creditor.
12. Therefore, this adjudicating Authority declares "BVN Traders" as "**financial creditor**" as per Sec 5 (7) of IBC,2016 and the loan amount given by BVN traders to corporate Debtor is declared as "**financial debt**" under Sec 5(7) (f) of the IBC,2016.
13. Accordingly, CA No. 142/ALD/2019 is **rejected** and hereby **dismissed**.


JUSTICE RAJESH DÁYAL KHARE
MEMBER (J)

Date: 23.01.2020

Swati Gupta
(LRA)