

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**C.P. NO.IB-1096(PB)/2019**

**IN THE MATTER OF:**

Bharat Chugh

....Petitioner

Vs.

PD Advisory Services LLP

....Respondent

**SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016**

**Order delivered on: 21.10.2019**

**Coram:**

**CHIEF JUSTICE (RTD.) M.M. KUMAR**  
**Hon'ble President**

**SHRI S.K. MOHAPATRA**  
**Hon'ble Member (Technical)**

**PRESENTS:**

For Petitioner : Mr. P.K. Agarwal, Ms. Deepti Gupta,  
Advocates

For Respondent : Mr. Arun Saxena, Mr. Saral Sharma,  
Advocates

**ORDER**  
**M.M.KUMAR, PRESIDENT**

The Petitioner claiming to be financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating



Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent PD Advisory Services LLP (for brevity the 'corporate debtor').

2. The Corporate Debtor – PD Advisory Services LLP was incorporated on 18.12.2014 under the provisions of the Limited Liability Partnership Act, 2008. The identification number of the Corporate Debtor given is AAD-0771.
3. The Petitioner has claimed that it had advanced unsecured loans to the respondent-corporate debtor from 2015 till 2018 to the tune of Rs.8,02,15,000/- out of which Rs.5,55,00,000/- was paid back and the remaining amount of Rs.2,47,15,000/- together with interest @5% p.a. is outstanding. The petitioner further states that the loan advanced was payable on demand along with interest as agreed between the parties. The details of the interest received on the amount is as follows:

<b>Sr. No.</b>	<b>Financial Year</b>	<b>Interest</b>	<b>TDS</b>
1.	2014-2015	Rs.5,06,769/-	Rs.50,677/-



2.	2015-2016	Rs.78,67,321/-	Rs.7,86,732/-
3.	2016-2017	Rs.26,88,869/-	Rs.2,68,887/-
4.	2017-2018	Rs.14,85,750/-	Rs.1,48,575/-

The petitioner has placed on record Forms 26AS that show the tax deduction against the deposits made [Annexure D(Colly)].

4. The petitioner has also placed on record a certificate issued by the bank maintaining its account certifying the disbursal of the amount in the account of the respondent-corporate debtor (Annexure A). A copy of its bank statement (Annexure B) has also been added. It is further asserted that the respondent-corporate debtor vide letter dated 05.05.2018 has acknowledged the outstanding amount as claimed by the petitioner-financial creditor in the instant petition (Annexure E). A legal notice dated 15.02.2019 (Annexure I) was sent to the respondent-corporate debtor and a reply dated 20.02.2019 to the said notice is also placed on record (Annexure J).

5. The precise case of the Petitioners is that the total amount in default due and payable by the corporate debtor is Rs.



2,59,50,750/- (inclusive of interest). The petitioner has also attached a computation of the amount disbursed along with the dates of default when the amount became due and payable (Annexure C).

6. The Financial Creditor has proposed the name of Ms. Maya Gupta as the Insolvency Professional with the address 701, Vikrant Tower, Rajendra Place, Delhi-110008. Her registration number is IBBI/IPA-002/IP-N00363/2017-18/11061. She has filed her written communication as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration **(Page 233-238)**.

7. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the petition the Financial Creditor has given the details of the amount claimed in default and the date of the default.

8. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate



the amount claimed including the amount disbursed. It also includes the statement of account maintained with the financial creditors, photocopies of the bank statements of both the financial creditor and the corporate debtor, ledger account of the corporate debtor and the acknowledgement letter of the corporate debtor.

9. In the Reply the Respondent-Corporate Debtor has raised a preliminary objection to the maintainability of the petition and has questioned the material facts based on which the petition is filed. On that basis it is sought to be projected that the amount claimed to be in default is not due and payable to the petitioner. Further it is also submitted by the respondent-corporate debtor that it is the petitioner that owes him a certain amount as the respondent company suffered losses due to the negligence of the petitioner.

The pleas raised have been denied by the petitioner. He has asserted that he did not owe any money to the respondent-corporate debtor nor any losses were ever suffered by the respondent due to any negligence on his part whatsoever.



Keeping in view the aforementioned facts we are of the view that the counter claim as alleged cannot be determined particularly when there is no document on record to support the amount claimed by the respondent-corporate debtor. On the contrary the Balance Sheet for the year ending March 2018 placed on record by the respondent clearly mentions the amount of Rs.2,41,75,000/- as a liability under the heading 'Loan & Advances' and the same amount has been acknowledged by the respondent-corporate debtor vide letter dated 05.05.2018 (supra).

10. The plea set up in the reply with respect to the relationship between the petitioner-financial creditor and the corporate debtor in another company namely SMC Global Securities Ltd. would have no bearing on the instant petition under Section-7 of the Code as we only have to adjudicate upon the issue whether the petitioner-financial creditor has disbursed money to the respondent corporate debtor and the amount is 'due and payable' as per the provisions of the Code.



11. Therefore the amount claimed by the petitioner is a 'financial debt' within the meaning of the Code. Moreover the respondent-corporate debtor in its reply has admitted that loan was disbursed by the petitioner-financial creditor and a certain amount was repaid along with interest on the said loan till 31.03.2018. There is overwhelming evidence placed on record to show that the amount as claimed 'due and payable' was disbursed by the petitioner to the respondent company.

12. As a sequel to the aforesaid discussion and the material placed on record we have no hesitation to hold that the petitioner-financial creditor had disbursed money to the respondent-corporate debtor. It is accordingly held that the respondent-corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of rupees one lakh. Thus, the petition warrants admission as it is complete in all respects.

13. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate



Insolvency Resolution Process stand fulfilled and accordingly the present petition is admitted.

14. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with and after a conjoint reading of the aforesaid provisions along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed by the petitioner and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional namely Ms. Maya Gupta and she is appointed as the Interim Resolution Professional.

15. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.



16. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

17. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by



Interim Resolution Professional and shall be paid back to the Financial Creditor.

18. Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in their knowledge within a period of one week from the admission of the petition to the IRP, otherwise coercive steps to follow.

19. There is a general complaint received against the financial creditors, banks, NBFCs and Asset Reconstruction Companies that the amount claimed by them is far more than what is owed by the corporate debtor to them. Many a times the rate of interest is alleged to be exorbitant and allegations are levelled that a penal interest compounded monthly has been charged. We have no mechanism of rectification of claims made. However, the RPs ordinarily have professionals & experts at their disposal and in case the ex-management raises any such issue then the RP must get it settled in order to avoid any injustice to the corporate debtor.



20. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. Petitioner is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

(M.M.KUMAR)  
PRESIDENT

21.10.2019

Sd/-

(S.K. MOHAPATRA)  
MEMBER (TECHNICAL)

21.10.2019  
(VIDYA)