



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB)/922 (MB)/2024

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

Mr. Sahil Deepak Surve

...Financial Creditor/Applicant

Versus

Viztar International Private Limited

[CIN-U80301MH2007PTC174600]

...Corporate Debtor/Respondent

Order Pronounced on 20.02.2025

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Financial Creditor : Mr. Kunal Kanungo a/w Surekha and Khushbu, Ld. Counsel
For the Corporate Debtor : Mr. Yahya Batatawala, Ld. Counsel



ORDER

Brief Facts:

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Mr. Sahil Deepak Surve** ("hereinafter referred to as the Financial Creditor/Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Viztar International Private Limited** ("hereinafter referred to as the Corporate Debtor/Respondent/VIPL").
2. The Applicant is an Indian national having his address at Surve Niwas, Naupada, Raju Badekar Marg, Near Suri Motor, Kurla West, Mumbai - 400017.
3. The Respondent is incorporated under the Companies Act, 1956 on 28.09.2007 having Company Identification no. U80301MH2007PTC174600 with its registered office at Office No.502, Fairmount, Plot no.4 to 6, Sector 17, Sanpada, Navi Mumbai, Thane, Maharashtra - 400705. It is a Limited Company having authorized share capital Rs. 2,00,00,000/- and Paid up share Capital Rs. 1,00,000/-. It is involved in the business of BPO, Call Centre, Drone Cinematics, Event Management, etc.
4. The total amount of default as stated in Part IV of the Application is Rs. 2,15,35,722/- (Rupees Two Crore Fifteen Lacs Thirty-Five Thousand Seven Hundred and Twenty Two Only), as calculated upto 23.08.2024 and the date of default is 31.10.2021.

Submissions of the Applicant:

5. The Corporate Debtor entered into a loan agreement and executed deed of hypothecation dated 10th December 2020 in favor of the Applicant agreeing

to provide a working capital loan of Rs. 1,25,00,000/-, for the purpose of business expansion.

6. As per the terms and conditions of the said loan agreement, VIPL was bound to make repayment of the loan amount within 30 days from the date of written demand after 30.09.2021, demanding payment of the amount.
7. In this regard, on 1st October 2021, a letter seeking repayment of the loan amount with interest, within 30 days was issued upon VIPL, for which there was no response.
8. The Applicant further made multiple requests vide letters dated 20th December 2021 and 31st March 2022 for repayment of the loan amount and issuance of ledger balance confirmation, however there was no repayment from VIPL except for assurances that repayment will be done.
9. Further, vide letter dated 17th July 2023 and 20th December 2023, a final opportunity was granted to VIPL for repayment of the amount due. However, till date, the Respondent has failed to do the payment. Hence, the present application.

Submissions of the Respondent:

10. The Respondent has contested the present application on the following grounds:
 - i. This Tribunal being the Adjudicating Authority has limited jurisdiction which is summary in nature and hence specific performance of the terms of the inter-se agreement entered between the parties cannot be sought.
 - ii. There is no financial debt – there exists no financial debt as per Section 5(8) of the Code. The Respondent has relied upon the judgment given in *Jaypee Infratech Ltd. Interim Resolution Professional v. Axis Bank Ltd., (2020) 8 SCC 401* wherein it has been held that “*the requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our*

view, remains an essential part even in respect of any of the transactions / dealings stated in clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein" and "the essential element of disbursal, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as "financial debt " within the meaning of Section 5(8) of the Code."

- iii. What exists between the parties was a mutual understanding, not a financial obligation, and was based on personal goodwill rather than contractual terms.
- iv. The present application is hit by provisions of Section 10A of the Code, since the date of default is 31.10.2021.
- v. The Petitioner has filed the recovery petition in garb of initiating insolvency process against the Respondent, since the Petitioner could have recovered the loan by realizing its Security which is provided by the Respondent. The motive of the Applicant is to recover the amount and not to revive the Respondent.
- vi. The dispute between the parties is that of civil nature.

Findings-

11. Heard learned counsel for both the parties and perused the material produced on record.
12. The Respondent's contention that the present application is hit by Section 10A is untenable since the period specified in Section 10A ends on 25.03.2021, whereas the date of default is 31.10.2021 and filing date is 27.08.2024.
13. The Respondent's further contention that the transaction between the parties was merely a mutual understanding is incorrect since the Applicant has placed on record the loan agreement and deed of hypothecation dated 10.12.2020 as well as the ledger balance confirmation issued by the

Respondent. The Applicant has also placed on record the NeSL report which proves the existence of debt. Further, on letter dated 20.12.2023, the Respondent has clearly admitted its liability, produced verbatim as under:

“We acknowledge the above. We request you to give us some more time.

For Viztar International Pvt. Ltd.”

14. As per section 5(8), “*“financial debt” means a debt alongwith 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.....”

15. In view of the above, we are of considered view that there exists a financial debt, exceeding the threshold limit prescribed u/s 4 of IB Code and the same is in default, since the respondent had clearly borrowed the money against the payment of interest and the same was disbursed against the consideration for the time value of money. Accordingly, the Respondent falls within the definition of a Corporate Debtor as well as there exists a financial debt and hence this bench has jurisdiction in the present matter.

16. The Petition is complete in all respects. Therefore, the Petition bearing CP (IB) 922/MB/2024 filed by **Mr. Sahil Deepak Surve**, the Financial Creditor, under section 7 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Viztar International Private Limited** [CIN-U80301MH2007PTC174600], the Corporate Debtor, is **admitted/allowed**.


17. The Financial Creditor has proposed the name of **Mr. Indrajit Mukherjee**, Registration No. **IBBI/IPA-001/IP-P01533/2018-2019/12450**, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

18. It is, accordingly, hereby ordered as follows: -

- I. The Petition bearing **CP(IB)/922(MB)/2024** filed by **Mr. Sahil Deepak Surve**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Viztar International Private Limited** [CIN-U80301MH2007PTC174600], the Corporate Debtor, is **admitted**.
- II. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

Notwithstanding the above, during the period of moratorium: -

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- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
 - III. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
 - IV. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - V. **Mr. Indrajit Mukherjee**, Registration No. **IBBI/IPA-001/IP-P01533/2018-2019/12450**, having registered address at Flat No. B-405, Siddhivinayak Twins, Plot no.9, Sector 17, Roadpali, Kalamboli, Navi Mumbai, Raigad, Maharashtra – 410218, **Email ID: indrajitmukherjeel5@yahoo.com mob.: 7045312912**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
 - VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section

17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- VII. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- VIII. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- IX. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

19. Ordered accordingly.

Sd/-
Prabhat Kumar
Member (Technical)
MK

Sd/-
Justice V. G. Bisht (Retd.)
Member (Judicial)