



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.133/ALD/2019

(An application under Section 7 of the Insolvency and Bankruptcy Code, 2016.)

IN THE MATTER OF:

AMOUR INFRASTRUCTURE LLP

THROUGH ITS DIRECTOR

Having its registered office at:

336, Ground Floor, Jagriti Enclave,
Delhi- 110092

.....Applicant Company/Financial Creditor

Versus

DIGITAL INTEGRATED TECHNOLOGIES PVT. LTD.

Having its registered office at:-

92C, Block D4, Udyog Vihar,
Sector- 82, Noida, Uttar Pradesh- 201301

.....Respondent Company/CORPORATE DEBTOR

Order pronounced on 03rd October, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Karan Luthra with : For the Financial Creditor
Sh. Yogesh Malik &
Sh. Naman Gowda, Advs.

Sh. S.D. Singh with : For the Corporate Debtor
Sh. Jitin Singhal, Advs.

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ORDER

1. This Application was initially filed on 13.04.2019 by M/s Armour Infrastructure Private Limited as the Applicant/Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “**IBC**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 against M/s Digital Integrated Technologies Private Limited (hereinafter referred as “**Respondent/Corporate Debtor**”) in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form showing a total financial debt of Rs. 1,09,29,138.00 (as on 25.03.2019), with the dates of default as specified in the application being 06.06.2018 as being the first date of default and for the rest of tranches of the loans disbursed as being 04.07.2018, 16.07.2018, 10.08.2018 and 28.09.2018, respectively.
2. After hearing both the parties, the predecessor Adjudicating Authority passed the order dated 23.05.2022 under Section 7 of the Code holding this application as not liable to be admitted as per the provisions of Section 65 of IBC, 2016 are clearly attracted. Accordingly, the same was dismissed.

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3. It is the second round of proceeding held before us after the earlier order dated 23.05.2022 passed by our predecessor adjudicating authority, was set aside by the Hon'ble NCLAT holding in its order dated 03.10.2023 as under:-

“ 2. It is the case of the appellant that loan of Rs. 1,00,00,000/- with carrying an interest of 24% p.a. was advanced as per Loan-cum- Share Pledge Agreement dated 20.11.2017. It is submitted that default was committed in payment, hence, the application was filed. Adjudicating Authority by the impugned order rejected the application taking the view that application is not liable to admitted as per provision Section 65 of IBC, 2016 which are clearly attracted.

3. Learned Counsel for the appellant challenging the order contends that disbursement of loan has admitted and partial repayment of the loan has also been made and the debt was due, hence, the Adjudicating Authority's finding that Section 65 of IBC attracted is without any basis.

4. Learned Counsel for the respondent refuting the submission of learned counsel for the appellant submits that entire amount has been paid to the appellant. Some amount has been paid to the appellant admittedly and some amounts have been paid to his son and his company, as per instructions of the appellant, which is referable to loan agreement itself, where Clause (h) of the agreement provides so.

5. Learned Counsel for the respondent has referred to the findings in paragraph 26 of the order which is to the following effect:



"From these facts, we have got reasonable basis to reach to a conclusion that application filed under Section 7 is a mechanism whereby financial creditor is trying to settle personal scores and put undue pressure on the corporate debtor, hence, we have no hesitation in holding that this application has been filed with malicious intent and for purposes other than the Resolution of Insolvency of the Corporate Debtor. We further find that corporate debtor is a solvent company".

6. We have considered submissions of learned counsel for the parties and perused the records.

7. The submissions which is sought to be pressed by the respondent in this appeal that entire amount is paid and the application is malicious application but there is no findings in the order of Adjudicating Authority that entire amount has been paid and nothing is due, hence, the application is malicious.

8. Observations made in paragraph 26 is that Financial Creditor is trying to settle personal scores and put undue pressure on the Corporate Debtor. We are of the view that for proving the ingredient of Section 65 there has to be adequate pleadings and findings. Observations made in paragraph 26 does not fulfill the requirement of Section 65 so as to reject the Section 7 application.

9. We, thus, are of the view that the order of the Adjudicating Authority impugned cannot be sustained and is hereby set aside. In result, we revive the Section 7 application before the Adjudicating Authority which



may be decided afresh after hearing both the parties in accordance with law.”

4. Subsequent to passing of above order by the Hon’ble NCLAT, an Interlocutory Application vide IA No. 117 of 2024 was submitted on 14.02.2024 to amend the Applicant’s name to 'Armour Infrastructure LLP', reflecting its prior registration as a Private Limited Company. In compliance with the order dated 11.03.2024, the Applicant filed a supplementary affidavit on 19.03.2024, which included a copy of the certificate issued by the Registrar of Companies (ROC) on 13.07.2020, evidencing the conversion of the Applicant from a Private Limited Company to a Limited Liability Partnership (LLP).
5. As the Hon’ble NCLAT vide its order dated 03.10.2023 as reproduced in para 3 above, revived the Section 7 application before the Adjudicating Authority of this Tribunal to decide afresh after hearing both parties in accordance with the law, we have taken up the entire matter afresh to consider the pleadings of both the parties filed earlier and also, fresh opportunity of hearing both parties have been given. The



fresh examination of the pleadings as well as details of hearings held before us are discussed in succeeding paras.

6. It is stated in Part-IV of the Application that to finance the liability of the Corporate Debtor, a total credit facility of Rs.1,00,00,000/- (Rupees One Crore Only) has been extended by the Applicant to the Corporate Debtor by executing a tripartite agreement referred to as the Loan cum Share Pledge Agreement, between the Applicant, the Director of the Borrower Company i.e., Mr. Shailesh Anandani and the Borrower Company, dated 20.11.2017 along with the memorandum of understanding dated 27.11.2017. Additionally, on 16.11.2018, the Applicant granted an additional loan of Rs. 20,00,000/- (Rupees Twenty Lakhs only) to the Corporate Debtor, as also mentioned in Part IV of the Application. Details of disbursement under the above facility are annexed as Exhibit No. 5 to the Application. Details of securities created on these loans are given in Part V on Pages 46-52 of the Application.
7. Subsequently, as stated in the Application, the Corporate Debtor started defaulting in repayment of the principal



amounts and interest and other charges in respect of the said Credit Facilities. Under the Loan cum Share Pledge Agreement, the Corporate Debtor was obligated to repay each tranche or instalment at an interest rate of 24% per annum, with repayments due every seven months. On 15.11.2018, the Corporate Debtor made a partial payment of Rs. 36,00,000/- to the Applicant. The additional loan of Rs. 20,00,000/-, which was also subject to a repayment rate of 24% per annum, similarly fell into default. The Corporate Debtor subsequently failed to repay the remaining portions of the loan amount on a regular basis, resulting in a total outstanding debt of Rs. 1,09,29,138/- as of 25.03.2019. Accordingly, the initial dates of default under the Term Loan were as follows: Tranche-I on 06.06.2018, and for the remaining tranches on 04.07.2018, 16.07.2018, 10.08.2018, and 28.09.2018, respectively.

8. As mentioned in the application, the loan facility was secured in favor of the Applicant through a demand promissory note of Rs. 1,12,00,000/-, dated 30.11.2017, executed by Mr. Shailesh Anandani, the director of the Corporate Debtor. Additionally, in accordance with the terms



of the loan agreement, Mr. Shailesh Anandani executed an affidavit on 20.11.2017, pledging 30% of the total share capital of the Corporate Debtor, specifically 12,00,000 equity shares of Rs. 10 each, and personally guaranteeing the repayment of the loan.

9. In respect of the outstanding amount of Rs.1.09 crores as on 25.03.2019, a legal notice dated 25.03.2019 was issued by the Applicant calling upon the Corporate Debtor to pay this outstanding amount within 7 days of receipt of the notice. In response, the Respondent submitted a reply dated 25.03.2019, asserting that the Corporate Debtor was not liable for any outstanding loan dues and instead claimed that the Applicant owed an excess payment to the Corporate Debtor. This claim was rejected by the Applicant, who subsequently issued another legal notice on 09.04.2019, reiterating the demand for payment of the outstanding sum of Rs. 1.09 crores.
10. Therefore, as on the date of filing of this Application, an aggregate outstanding amount of Rs. 1.09 crores remains due and payable by the Corporate Debtor, with the initial date of default being 06.06.2018 and subsequently



04.07.2018,16.07.2018,10.08.2018 and 28.09.2018, when the default on the repayment of the principal debt under the loan facility, as well as the interest thereon, occurred.

- 11.** In the support of the above debt and default, particulars of financial debt along with supporting documents have been produced such as copy of loan cum share pledge agreement dated 20.11.2017 and copy of memorandum of understanding dated 27.11.2017, records and evidence of default have been filed as mentioned in Part V of the application, which includes copy of Demand Promissory Note, affidavit sworn and acknowledgement made by the director of Corporate Debtor, execution of SH-4 for transfer of shares held by the director of Corporate Debtor, copy of audited balance sheet for F.Y. 2017-18 and legal notices dated 25.03.2019 and 09.04.2019.
- 12.** Given the details and supporting pieces of evidence, it has been shown that a total debt of Rs.1.09 crores owed by the Corporate Debtor is in default which is more than the threshold limit as averred by the Applicant and discussed in the aforementioned paras, the present Application u/s 7 of the I & B Code, 2016 has been filed to initiate CIRP against



the Corporate Debtor, initially filed on 13.04.2019 by the M/s Armour Infrastructure Private Limited but later amended as M/s Armour Infrastructure LLP as Applicant/Financial Creditor vide order dated 22.03.2024 of this Tribunal as discussed in para 4 of this order.

REPLY ON BEHALF OF THE CORPORATE DEBTOR

13. The Respondent, Corporate Debtor, filed its Reply on 09.09.2019. The objections raised in the Reply against the averments made in the Application are briefly discussed as under: -

- (i) The Corporate Debtor cited Section 3(11) of the IBC, 2016, defining "debt" as a liability or obligation, including financial and operational debt, and Section 3(12), which defines "default" as the non-payment of debt when due. The Corporate Debtor asserted that the entire debt had been settled, with partial payment to the Applicant and the remainder to another company i.e., M/s DIT Televentures Pvt. Ltd., which has been established by Mr. Sahil Jain, the Applicant's Director's son. This repayment arrangement is claimed to have been done as per



clause (h) of the Agreement dated 20.11.2017, allowing the loan to be paid in full or mutually consulted upon after seven months.

- (ii) The Corporate Debtor argued that the Adjudicating Authority's primary role under Section 7 is to determine the existence of a default. Section 7(4) requires the Authority to ascertain this based on information utility records or evidence from the Financial Creditor. The Respondent contended that the Applicant failed to present any documents demonstrating a default, while the Respondent provided financial statements evidencing repayment to both the Applicant and M/s DIT Televentures Pvt. Ltd.
- (iii) The Corporate Debtor submitted that the Applicant filed this petition to exert pressure and gain control over the Respondent. It argued that the Applicant did not issue a demand letter or communication regarding the alleged default and failed to encash the post-dated cheques provided for loan repayment.



- (iv) In view of the above situation, the Corporate Debtor argued that the Applicant failed to disclose that the Respondent made a partial payment of Rs. 36 lakhs to the Applicant between June and September 2018, with no issues raised during that time. Additionally, as per the Agreement, the Respondent paid Rs. 7,70,396 as salary to Mr. Sahil Jain, from November 2017 to June 2018, and Rs. 1,02,26,283 to M/s DIT Televentures Pvt. Ltd. These above-stated transactions were conducted in mutual consultation according to clause (h) of the Agreement. The Respondent contended that these payments would not have occurred without instructions to pay M/s DIT Televentures Pvt. Ltd.
- (v) The Respondent, as per the memorandum of understanding, paid Rs. 1 crore to M/s DIT Televentures Pvt. Ltd., consisting of Rs. 72,72,033 for invoices, Rs. 25,25,918 for vendor and staff payments, and a deduction of Rs. 15,62,902 for defective work. The Respondent stated that it is entitled for recovering these amounts from M/s DIT Televentures Pvt. Ltd.



- (vi) It has been submitted by the Corporate Debtor that the Applicant has filed a First Information Report (FIR) concerning the present transaction, alleging that the agreement was made by deceiving the Applicant into paying Rs. 1 crore. Additionally, the Corporate Debtor noted that the Applicant's Director has lodged two FIRs, one in Noida and another in Delhi, related to the same amount.
- (vii) The Respondent, Corporate Debtor, asserts that under Section 186(5) of the Companies Act, 2013, which mandates that no loan or investment may be made without a board resolution approved by all directors present and prior approval from the relevant public financial institution, the Applicant has not submitted a board resolution authorizing the loan to the Respondent. Consequently, the loan cannot be classified as 'Financial Debt.' Moreover, for a company to lend to another entity, its Articles of Association must authorize such transactions. The Applicant has not provided its Articles of Association to demonstrate



the authority to issue inter-corporate loans as per Section 179 of the Companies Act, 2013.

(viii) The Respondent contends that the present petition undermines the purpose and intent of the Insolvency and Bankruptcy Code, as the Respondent is a going concern with numerous employees. Subjecting the Respondent to the Corporate Insolvency Resolution Process (CIRP) would contravene the very objectives of the IBC. The Respondent relied on the case of *Mobilox Innovations Private Limited v. Kirusa Software Private Limited* (2018) 1 SCC 353 and *Transmission Corporation of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited* (Civil Appeal No. 9597 of 2018, decided on 23.10.2018), in which it was held that the IBC is not intended to serve as a substitute for a recovery forum.

(ix) The Corporate Debtor contends that the present matter involves complex facts requiring a trial for proper adjudication and cannot be resolved summarily. Issues regarding the amount transferred or repaid to the Applicant and the involvement of Mr.



Sahil Jain in both matters relating to the Respondent Corporate Debtor as well as M/s DIT Televentures Pvt. Ltd. necessitate a trial for the presentation of evidence.

- (x) The Corporate Debtor asserts that the Respondent has filed a commercial suit before the Hon'ble Delhi High Court to recover excess payments made to M/s DIT Televentures Pvt. Ltd. and to seek the release of mortgaged shares held by Armour Infrastructure Pvt. Ltd., the Financial Creditor. The Corporate Debtor contends that admitting the present application would cause a miscarriage of justice and significant prejudice to the Respondent Corporate Debtor by imposing a moratorium, removing management control, and allowing the continuation of allegedly bad faith criminal proceedings initiated by the Applicant.
- (xi) The Corporate Debtor contends that the Applicant failed to disclose a critical fact that on 05.03.2018, the Applicant paid Rs. 20 lakhs to the personal account of the Respondent's Director, Mr. Shailesh Anandani, due to technical issues preventing the transfer to the Respondent Company's account. Mr. Anandani



transferred the amount to the Respondent Company the following day, as shown in the company's statement.

(xii) The Corporate Debtor argues that the Applicant claims an outstanding amount of Rs. 1,09,29,138/- as of 25.03.2019, which contradicts the Legal Notice dated 25.03.2019 stating the amount, including interest, was Rs. 81,86,520/-. This discrepancy indicates an unclear and contradictory outstanding amount. Furthermore, in its reply dated 09.04.2019 to the Respondent's Legal Notice, the Applicant reaffirmed the outstanding amount as Rs. 81,86,520/-, inclusive of interest. The Respondent further denies the liability for the amount, asserting that no sum is owed to the Applicant.

(xiii) The Corporate Debtor submits that the Applicant claims the default dates for the first tranche as June 2018 and for subsequent tranches as July, August, and September 2018, based on a 7-month loan period. However, the Respondent issued Post-Dated Cheques, including one dated 31.05.2018 for Rs. 20 lakh and



others for Rs. 40 lakh each, dated 30.06.2018 and 31.07.2018. On the alleged default date in June 2018, the Applicant held but did not encash the cheques, indicating that the loan was serviced by the Respondent, and the Applicant did not find it necessary to encash them

(xiv) Further, the Corporate Debtor emphasizes that if the Respondent had defaulted on the loan as alleged, the Applicant would not have extended an additional Rs. 20 lakhs. This undermines the credibility of the Applicant's claims, rendering them without merit.

14. Given the details and facts submitted in the Reply as discussed above, the Corporate Debtor has prayed for not admitting this Petition/Application since the present Petition/Application initiated by the Applicant was filed with malicious intention and should therefore be dismissed.

REJOINDER ON BEHALF OF THE FINANCIAL CREDITOR

15. A Rejoinder has been filed by the Applicant on 14.10.2019 countering all the contentions raised in the Reply of the Corporate Debtor. The Applicant has made the following averments in the Rejoinder:

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- (i) The Applicant contends that the parties entered into a loan agreement on 20.11.2017, which the Corporate Debtor failed to comply with by not following the terms of the agreement, resulting in an outstanding debt. It is asserted that this agreement should be considered independently of any other transactions or collaborations between the parties unless explicitly stated otherwise in the agreement.
- (ii) The Applicant contends that the failure to encash post-dated cheques does not absolve the Corporate Debtor from its repayment obligations, and submits that the non-encashment was based on a genuine belief of timely settlement. The Applicant further asserts that discretion to utilize pledged security remains, and non-utilization does not discharge the Corporate Debtor's debt obligations.
- (iii) It is asserted by the Applicant that the loan agreement dated 20.11.2017 did not stipulate any pre-condition requiring the advancement of funds contingent upon Mr. Sahil Jain's learning of the business operations alongside the Respondent's Director. This condition is



irrelevant to the loan advanced by the Applicant to the Corporate Debtor.

- (iv) The Applicant further asserts that salary payments to Mr. Sahil Jain do not constitute partial debt repayment. Any mutual agreements on debt repayment should have been documented, and in the absence of such documentation, the transfer of funds cannot be deemed part of a mutual agreement under clause (h) of the Loan cum Share Pledge Agreement dated 20.11.2017.
- (v) The Applicant submits that the loan agreement was executed on 20.11.2017, prior to the existence of M/s DIT Televentures Pvt. Ltd., and the Corporate Debtor's claims of transactions with this entity lack documentary evidence. The Director of the Corporate Debtor was a Director and 50% stakeholder of M/s DIT Televentures Pvt. Ltd. until March 2018. After his resignation, Shantanu Rastogi acted as Director under the orders of the Corporate Debtor's Director. The Applicant further contends that a claim that Mr. Rastogi was solely appointed by Mr. Sahil Jain should



be corroborated with Mr. Rastogi, given his prior association with Mr. Anandani.

- (vi) Additionally, even after his resignation, the Corporate Debtor's Director continued unauthorized transactions on behalf of M/s DIT Televentures Pvt. Ltd., confirmed by the bank's acknowledgment in April 2019, with criminal proceedings pending on grounds of fraud.
- (vii) The assertion of the Corporate Debtor with respect to an excess payment of Rs. 20 lakhs to the Applicant is vehemently denied. Since this claim appears to be an afterthought to evade liability, the Corporate Debtor has not made any effort to recover the stated amount.
- (viii) The Applicant asserts that the Corporate Debtor has not provided evidence of full debt repayment and has instead misled the Court with irrelevant facts. A legal notice was issued by the Financial Creditor demanding for a payment of outstanding amounts of Rs. 1,09,29,138/- when the Corporate Debtor failed to pay the said amount after its director failed to comply with his promise falsely made earlier. As regards to advancing an additional amount of Rs. 20 lacs to the



Corporate Debtor, it is stated that after Rs. 36 lakhs had been repaid out of earlier loan of first tranche, this amount was advanced due to the Corporate Debtor's urgent need. The claim of the Corporate Debtor of not making any default, is unsubstantiated, as the Corporate Debtor has failed to provide acknowledgments or bank records proving full repayment of debt having been made.

- (ix) The Applicant also submits that a WhatsApp screenshot cannot be admissible as evidence unless it complies with the provisions of the Evidence Act.
- (x) The Applicant contends that allegations of an attempted takeover of the Corporate Debtor's company by the Applicant's Director and his son, based solely on emails, are baseless. The Applicant argues that email communications cannot result in a company takeover and that the Corporate Debtor should have pursued legal action if its concerns were genuine. These allegations are seen as a diversionary tactics to evade responsibility.



- (xi) The Applicant contends that the notice dated 25.03.2019 issued by the Corporate Debtor was a retaliatory response to the Applicant's notice dated 25.03.2019 and was deliberately backdated with mala fide intent. This notice was emailed on 30.03.2019 and dispatched by post on 01.04.2019.
- (xii) The Applicant asserts that the Corporate Debtor's reliance on payments allegedly made to M/s DIT Televentures Pvt. Ltd. is a deliberate attempt to mislead the Tribunal. There was no agreement authorizing payments to this entity, nor has any such agreement been presented. The Applicant contends that any such arrangement would require an amendment to the loan agreement.
- (xiii) The Applicant contends that the Corporate Debtor's contention of no board resolution prior to the loan is unfounded, as the board resolution dated 06.11.2017 is attached as Annexure-3 in the rejoinder affidavit and referenced in the loan agreement. Additionally, the Applicant asserts that non-compliance with the Companies Act, 2013 does not bar the initiation of



insolvency proceedings under the Insolvency and Bankruptcy Code, 2016.

- (xiv) The Applicant clarifies that the proceedings are not a recovery mechanism but a legitimate claim under the Insolvency and Bankruptcy Code, 2016. Outstanding debt of the Applicant is reflected in the Balance sheet of the Corporate Debtor for F.Y. 2017-18. However, the Corporate Debtor has failed to demonstrate full repayment of this debt. Therefore, as asserted by the Applicant, the application is properly filed under Section 7 of the Code due to there being a debt and default on its repayment.
- (xv) The Applicant asserts that filing FIRs against the Corporate Debtor was a legitimate pursuit of legal remedies, with criminal proceedings as per the law. The Applicant appears before this Tribunal due to the Corporate Debtor's failure to repay the debt, as evidenced by the records provided. The burden of proof for showing repayment, lies with the Corporate Debtor, which has focused on irrelevant issues rather than demonstrating that the debt has been settled.



16. In the light of the above submissions made in the Rejoinder countering all the objections raised by the Corporate Debtor in its reply, it has been finally submitted by the Applicant that the Reply of the Corporate Debtor ought to be disregarded and Section 7 Application to be admitted.
17. In Pursuance of the directions passed by this tribunal vide order dated 14.06.2024, the Financial Creditor and Corporate Debtor have also filed their written submissions which have been taken on record and not repeated here for the sake of brevity.

FINDINGS AND ORDER

18. We have heard the arguments of Learned Counsels appearing for both Applicant Financial Creditor and Respondent Corporate Debtor and perused the pleadings, records, written submissions and exhibits/annexures marked thereto.
19. Having heard the Learned Advocates appearing for the parties and on perusal of the records, exhibits/annexures and after considering arguments advanced by respective



Learned Advocates, the main issues which are before us to be decided in respect of the present Application u/s 7 is:

- I) Whether there is debt and default within the meaning of the I &B Code, 2016.
- II) Whether Section 65 of the Insolvency and Bankruptcy Code, 2016 is applicable in the present proceeding u/s 7 of the IBC, 2016.

20. It is an admitted fact that the Corporate Debtor has availed the Financial Facility in the form of loan from the Financial Creditor. The loan for the amount of Rs.1 crore was sanctioned through the loan cum share pledge agreement dated 20.11.2017 and additionally, a loan of Rs. 20 Lakhs was also advanced, the details of which have already been discussed in para 3 of this order. The total amount of default as stated in Part-IV of the application is Rs. 1,09,29,138/- (as on 25.03.2019) and the initial dates of default, as stated in Part-IV of the Application, are as follows: Tranche-I on 06.06.2018, and for the remaining tranches on 04.07.2018, 16.07.2018, 10.08.2018, and 28.09.2018. Moreover, in respect of the outstanding amount of Rs.1.09 crores as on 25.03.2019, legal notices dated 25.03.2019 and 09.04.2019



were sent by the Financial Creditor. All supporting necessary documents as required under Part V of the Application in Form-1 for section 7 application under IBC, have been filed by the Financial Creditor.

- 21.** Later on, an Interlocutory Application vide I.A. No. 117 of 2024 was submitted on 14.02.2024 to amend the Applicant's name to 'Armour Infrastructure LLP', reflecting its prior registration as a Private Limited Company. Further, this Tribunal vide order dated 22.03.2024 amended the name of the Present Financial Creditor to 'Armour Infrastructure LLP'.

I) WHETHER THERE IS DEBT AND DEFAULT WITHIN THE MEANING OF I & B CODE, 2016.

- 22.** The first issue for consideration before this Tribunal for the purpose of admission of application under Section 7 of the IBC is whether there is the existence of "debt" and "default" committed by the Corporate Debtor.
- 23.** The Ld. Counsel of the Financial Creditor has argued that there is an admitted debt and default which is easily evident from the Loan cum Share Pledge Agreement executed



between Applicant and Borrower Company dated 20.11.2017 along with Memorandum of understanding dated 27.11.2017. The Corporate Debtor has acknowledged the credit facility availed from the Financial Creditor is secured in the paragraphs 4 to 6 of its reply. Further, as informed by the Financial Creditor, the total amount of debt owed by the Corporate Debtor as on 25.03.2019 is Rs.1.09 cr. owed to the Financial Creditor.

24. The default on the part of the Corporate Debtor is evident from the documents placed on record including the audited balance sheet for the financial year 2017-18. This balance sheet, which is part of Exhibit 8 on page 55, reflects the Corporate Debtor's acknowledgment of an indebtedness of Rs. 1,05,71,660/- as of 31.03.2018, classified under 'long-term borrowings' owed to the applicant. Thus, the Corporate Debtor is admittedly in default on repayment of its huge amount of loan towards the present Financial Creditor, which now has become overdue.

25. Ld. Counsel for the Corporate Debtor, based on clause (h) of the loan agreement dated 20.11.2017, has argued that the Corporate Debtor has repaid the entire loan amount by



making payments to a third party, M/s DIT Televentures Pvt. Ltd., which has been claimed by the Director of the Corporate Debtor to have been done on a discussion made with the son of the Director of the Financial Creditor i.e., Mr. Sahil Jain. Countering the above argument, the Ld. Counsel for the Financial Creditor contends that the Corporate Debtor has failed to produce any documentation or communication demonstrating any mutual agreement between the parties, or any evidence that the Applicant requested repayment of the outstanding loan amount due for repayment to the Applicant/Financial Creditor to be paid to M/s DIT Televentures Pvt. Ltd. Additionally, the Applicant also submitted that if the Corporate Debtor had indeed fully repaid the loan making payments to DIT Televentures Pvt. Ltd., the Corporate Debtor would have obtained a no-dues certificate and sought the return of the security documents, namely the signed share transfer forms pledging the shares of the Corporate Debtor and the Demand Promissory Note. However, no such steps have been taken by the Corporate Debtor and its Director to get himself discharged from the debt.



26. We have found the outstanding debt of Rs. 1,05,71,660 is reflected in the balance sheet of M/s Digital Integrated Technologies Private Limited, the Corporate Debtor for F.Y. 2017-18 under the head “4.3- Loan-Others” in the name of M/s Amour Infrastructure Pvt. Ltd., the Financial Creditor. No documentary evidence could be produced showing repayment of this outstanding loan amount except making verbal claim by the Corporate Debtor to have been paid to another company i.e., M/s DIT Televentures Pvt. Ltd. on verbal instruction of the Financial Creditor but the same has been denied by the Financial Creditor. Therefore, this debt still exists on record of the Financial Creditor proving the default on the repayment of the debt.
27. After considering the entire facts of the case so far discussed and taking into account the decision of the Apex Court in the case of ***Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407*** which mandates that a petition under IBC be admitted if there is clear debt and default, we are of the considered opinion that in the present case, default on repayment of the debt has occurred and the Section 7 Petition filed by the Financial Creditor is complete in all



aspects providing all the details of debt and default as required in Part IV of the Application in Form 1 and attaching all the necessary supporting documents. **Considering that all the above criteria are fulfilled as required under the I & B Code, we find that this Application deserves to be admitted u/s 7 for initiating CIRP against the Corporate Debtor.**

II) WHETHER SECTION 65 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 IS APPLICABLE IN THE PRESENT PROCEEDING U/S 7 OF THE IBC, 2016.

28. In respect to the second issue, the Ld. Counsel of the Corporate Debtor contends that the applicability of Section 65 of the Insolvency and Bankruptcy Code, 2016 is contingent upon the alleged suppression of facts by the Financial Creditor regarding payments made by the Corporate Debtor to M/s DIT Televentures Pvt. Ltd. Consequently, the Corporate Debtor asserts that it is not liable for any outstanding dues to the Applicant as per clause (h) of the loan agreement dated 20.11.2017. Furthermore, the Corporate Debtor, in its response, has highlighted that



the Financial Creditor's actions are intended to exert undue pressure and gain control over the Corporate Debtor through filing of false FIRs and initiating the present petition.

- 29.** Ld. Counsel for the Financial Creditor reiterated that there exists no dispute between the Financial Creditor and the Corporate Debtor concerning M/s DIT Televentures Pvt. Ltd. The Financial Creditor is not a shareholder of M/s DIT Televentures Pvt. Ltd. and holds no association with the management or operations of the said company. M/s DIT Televentures Pvt. Ltd. is a separate and distinct legal entity, established through an independent transaction between Mr. Sahil Jain (son of a partner of the Financial Creditor) and Mr. Shailesh Anandani (director of the Corporate Debtor). Thus, any disputes involving Mr. Sahil Jain and Mr. Shailesh Anandani relating to M/s DIT Televentures Pvt. Ltd. are unrelated to the Financial Creditor and do not suggest that the present petition is motivated by any extraneous factors.
- 30.** The Financial Creditor emphasized that the Corporate Debtor's argument with respect to the alleged disputes concerning M/s DIT Televentures Pvt. Ltd. falling under Section 65 of the Insolvency and Bankruptcy Code, 2016



would result in arbitrary and irrational outcomes, thereby undermining the fundamental objectives of the IBC. Such an interpretation would enable entities like the Corporate Debtor, which is in default of its debt obligations, to fabricate disputes related to other transactions merely to claim that the application under Section 7 of the IBC was filed with malicious intent to exert pressure or settle unrelated grievances. The Financial Creditor contends that accepting this argument would improperly introduce a "pre-existing dispute" defense in Section 7 proceedings, a defense that is typically applicable only to operational debt. It is argued that, for the purpose of an application under Section 7 of the IBC, the Hon'ble Tribunal's role is limited to determining whether there is debt and a default has occurred.

- 31.** The Financial Creditor further asserts that the Corporate Debtor has failed to meet the criteria for invoking Section 65 of the IBC, by placing reliance on the judgment passed by *the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of Monotrone Leasing Pvt. Ltd. vs. PM Cold Storage Private Ltd., 2020 SCC Online NCLAT 581*. The relevant findings of the case are as follows:



“34. Section 65 of the Code provides for penal action for initiating Insolvency Resolution Process with a fraudulent or malicious intent or for any purpose other than the resolution. However, the same cannot be construed to mean that if a petition is filed under Section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the Adjudicating Authority on the ground that the intent of the Applicant/Petitioner was not resolution for Corporate Insolvency Resolution Process. As the proceedings under IBC are summary in nature, it is difficult to determine the intent of the Applicant filing an application under Section 7, 9 or 10 of the Code unless shown explicitly by way of documentary evidence. This situation may arise in specific instances where a petition is filed under IBC specifically with a fraudulent or malicious intent.”

- 32.** The Financial Creditor further submitted that an appeal was filed before the Hon'ble National Company Law Appellate Tribunal (NCLAT) challenging the order dated 23.05.2022 issued by this Tribunal. In its subsequent order dated 03.10.2023, the Hon'ble NCLAT overturned the order dated 23.05.2022, finding that the observations made by this Tribunal did not satisfy the criteria under Section 65 necessary to reject the Section 7 application. The relevant observations made by Hon'ble NCLAT is as follows:



“7. The submissions which is sought to be pressed by the respondent in this appeal that entire amount is paid and the application is malicious application but there is no findings in the order of Adjudicating Authority that entire amount has been paid and nothing is due, hence, the application is malicious.

8. Observations made in paragraph 26 is that Financial Creditor is trying to settle personal scores and put undue pressure on the Corporate Debtor. We are of the view that for proving the ingredient of Section 65 there has to be adequate pleadings and findings. Observations made in paragraph 26 does not fulfill the requirement of Section 65 so as to reject the Section 7 application.

9. We, thus, are of the view that the order of the Adjudicating Authority impugned cannot be sustained and is hereby set aside. In result, we revive the Section 7 application before the Adjudicating Authority which may be decided afresh after hearing both the parties in accordance with law.”

33. In view of above judgement of the Hon’ble NCLAT in case of this matter on earlier order, the Ld. Counsel for the Financial Creditor submitted that if this Hon'ble Tribunal concludes that a default on repayment of the debt towards Financial Creditor has taken place on the part of the Corporate Debtor and that the purported payments to M/s DIT Televentures



Pvt. Ltd. were not made towards the repayment of this debt, then the Corporate Debtor's argument concerning the applicability of Section 65 should be dismissed.

Considering all the above submissions made by both parties, we find that the insolvency proceeding initiated by the Applicant/Financial Creditor does not fall under Section 65 of the Insolvency and Bankruptcy Code, 2016 as Corporate Debtor could not bring any a material on record to establish that the present application u/s 7 filed by the Financial Creditor for the initiation of CIRP against the Corporate Debtor has been done fraudulently or with malicious intent for any purpose other than for the resolution of insolvency because we have already found that there is a debt due to Financial Creditor and default has occurred in its repayment as held by us in para 26 & 27 of this order. Given that the existence of debt and default has been established and the requirements under Section 65 are not met, the Corporate Debtor's contention is unfounded, hence rejected.



- 34.** Further, it is also important to note here that the Financial Creditor has a statutory right being a creditor under the I&B Code, 2016 to initiate insolvency proceedings against the Corporate Debtor on account of non-repayment of debt issued under the Loan Agreement. The only requirement for admission of an application under Section 7 of the I&B Code, 2016 is the existence of debt and default.
- 35.** In the present case, the existence of a debt and default has been clearly established. The debt is also more than the threshold limit. Hence, there cannot be any other option but to admit the present Petition u/s 7.
- 36.** In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and the default, which is more than the threshold limit of one lakh at the relevant time and even more than Rs.1 crore, the limit which is applicable at present. The application is also filed within the limitation period and complete in all respects and an Interim Resolution Professional is also proposed as per section 7(3)(b). **Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.**



- 37.** The Financial Creditor has proposed the name of Mr. Rajiv Bajaj as Interim Resolution Professional in Part- III of the application. His Registration Number is IBBI/IPA-002/IP-N00276/2017-2018/10834, R/o 4/180, Backside, Ground Floor, Subhash Nagar, New Delhi -110027, E-mail: rbajajip@gmail.com. He has duly given the consent in Form No. 2 dated 09.04.2019 annexed as **Exhibit 3 with the application**. The Law Research Associate of this Tribunal, Ms. Kriti Kaushal, has checked the credentials of Mr. Rajiv Bajaj, and found that there are no disciplinary proceedings pending against the proposed Interim Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 07th December 2024. After considering these details, we appoint Mr. Rajiv Bajaj having IBBI Registration No. : IBBI/IPA-002/IP-N00276/2017-2018/10834, as Interim Resolution Professional (IRP).
- 38.** In the given facts and circumstances of the case as per our above findings, the present application u/s 7 being complete in all respects and having established the default in payment of the Financial Debt for the default amount being above the



threshold limit and an IRP also having been appointed as per above para 28, **the application is admitted in terms of Section 7(5) of the I & B Code, 2016 against the Corporate Debtor i.e. Digital Integrated Technologies Private Limited and accordingly, moratorium is declared in terms of Section 14 of the Code.**

39. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.
40. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every month.



41. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

(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 any of its 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(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.



(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

(f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.”

42. We direct the Financial Creditor to deposit a sum of Rs. 1,00,000/- 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

- 43.** A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.
- 44.** List the matter on 08.11.2024 for filing of the progress report/further proceeding.

-Sd-
(Ashish Verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

Dated- 03rd October, 2024