IN THE NATIONAL COMPANY LAW TRIBUNAL

SPECIAL BENCH, NEW DELHI

(IB)/637(PB)/2020

(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:

GUARDIAN FINANCE PRIVATE LIMITED

...Applicant/Financial Creditor

VERSUS

TEMPLE LEASING & FINANCE LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 25.06.2021

<u>CORAM:</u>

DR. DEEPTI MUKESH
HON'BLE MEMBER (Judicial)
MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (Technical)

For the Applicant: Mr. Ishwar Mohapatra, Advocate

For the Respondent: Mr. Harsh Kapoor, Advocate

MEMO OF PARTIES

GUARDIAN FINANCE PRIVATE LIMITED
Registered office at Sara Sanram, Outside Hall Gate,
Amritsar, Punjab, PB -143001

...Applicant/Financial Creditor

VERSUS

TEMPLE LEASING & FINANCE LIMITED
Registered office at 116A, 1st Floor, Somdatt Chamber-1,
Bikaji Camma Place, New Delhi-110066

...Respondent/ Corporate Debtor

ORDER

Per-Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Guardian Finance Private Limited through its Director, Mr. Dhwanil Saumilbhai Bhavnagari, who has been duly authorised vide Board Resolution dated 10.02.2020 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Temple Leasing & Finance Limited (for brevity 'Corporate Debtor').

2. The Applicant is a private limited company incorporated under the provisions of Companies Act, 1956 on 30.03.1976 and also a Non-Banking Finance Company registered with Reserve Bank of India, having registration no. B-06.00362 &CIN

U65993PB1976PTC003643. The applicant is having its registered office at Sara Sanram, Outside Hall Gate, Amritsar, Punjab, PB -143001.

3. The Corporate Debtor is a limited company incorporated under the provisions of Companies Act, 1956 on 18.06.2007, having L67120DL1984PLC018875. The Corporate Debtor is having its registered office at 116A, 1st Floor, Somdatt Chamber-1, 5, Bikaji Camma Place, New Delhi-110066.

4. The Applicant submits that the Corporate Debtor had entered into a Inter Corporate Deposit Agreement dated 05.08.2019 in pursuance of which an amount of₹15,00,000 (₹5,00,000 on 31.07.2019; ₹5,00,000on 02.08.2019 &₹5,00,000 on 05.08.2019) was disbursed by Financial Creditor to Corporate Debtor. The Intercorporate Deposit Agreement clearly mentions that the corporate debtor have to repay before 45 Days, along with interest at the rate of 12% per annum and a penal interest at the rate of 3% per annum for the period of default, as per the terms stipulated in the Agreement. The Applicant has annexed the said agreement reflecting the agreed terms in Schedule I and Schedule II, which is reproduced hereunder:

SCHEDULE-I:
Schedule of ICD, Interest, Re-payment, Pre-payment, etc

Agreement Date	05-08-2019
Loan Amount	Rs.15,00,000/- [Rupees Fifteen Lacs Only]
Loan Term (Days/ Months)	45 Days
Type of Loan	Inter Corporate Deposit
Rate of Interest	12% p.a. payable monthly rest.
Panel Interest	In case of delay or default in payment, whether of the principal or of the interest or any part thereof the Lender shall be entitled and the borrower shall be liable to pay a penal interest @3% p.a. over and above the interest mentioned hereinabove e.
Re-Payment	The Borrower shall make payment on or before due date or as and when demanded by the Lender. If, Borrower fail to make demanded payment within notice period, the Borrower to pay the entire balance of the unpaid principal and accrued interest immediately.
Pre-payment	The Borrower may pre-pay the loan without any penalty.
Others	All payments shall first be applied to interest and then to principal

Sd/-

SCHEDULE-II:
Schedule of Disbursement

Sl. No.	Cheque/ RTGS No.	Date	Amt. (Rs.)
1.	CBINR520190731100006530	31.07.2019	5,00,000
2.	CBINH19214150542	02.08.2019	5,00,000
3.	CBINR520190800510004840	05.08.2019	5,00,000

5. It is further submitted by the applicant that after the expiry of 45 days the Corporate Debtor did not repay the loan along with the interest as per the terms of ICDA. Hence, the Applicant issued demand notice dated 5th January, 2020, on Corporate Debtor demanding the payment of ₹15,00,000, along with interest. The Corporate Debtor did not reply the notice neither made the payment. The Applicant has annexed copy of Bank Statement of its Bank, copy of Ledger Statement issued by the Corporate Debtor as well as confirmation of Account by the Corporate Debtor to the Financial Creditor dated 01.01.2020.

6. The Applicant thereafter filed present application and served on the Corporate Debtor. In response to this, the corporate debtor has filed reply and raised preliminary objections and as such sought for time of 2 years for payment. The Respondent has submitted that they took loan for business purpose and in pursuance of which the respondent invested the said amount ₹15,00,000 in shares of UNNO Industries Limited and Jayant Mercantile Co. Ltd. The trading of the said company has been suspended by the Bombay Stock Exchange and hence the amount invested in aforesaid company cannot be liquidated at the moment. It is further submitted that the non-payment of financial debt is not intentional but only because of unfavourable circumstances beyond the control of Corporate Debtor which has resulted in financial crisis within the Corporate Debtor.

7. The Corporate Debtor filed reply and has admitted the debt. However, it is stated in the reply that it is not able to clear the dues outstanding. The Applicant has proved the 'existence of debt' and 'default' on the part of the Corporate Debtor. Moreover, the existence of debt and default are not disputed, but admitted by the Corporate Debtor.

8. As per Part IV Form 1 it is submitted that the date default is 20.01.2020 and the application is filed on 19.02.2020, which is well within the period of limitation and not barred by law.

9. The registered office of Corporate Debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

10. In the present application, the Applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt, which is also admitted by the Corporate Debtor. In the light of above facts and records the present application is admitted.

11. The Applicant has proposed the name of Mr. Arvind Mittal as Insolvency Resolution Professional, who is be and hereby appointed as IRP of corporate debtor having registration number registration number IBBI/IPA-001/IP-P01358/2018-19/12081 (email –arvindmittal181@yahoo.in) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and

Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 in relation to specifically the corporate debtor and the applicant herein and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

12. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Arvind Mittal to meet out the expense 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 for 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.

13. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate Debtor prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in vogue.

14. In terms of above order, the Application stands admitted in terms of Section 7(5) of IBC, 2016. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant

is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to RoC for updating the Master Data. RoC shall send compliance report to the Registrar, NCLT.

Sd/-

(MS. SUMITA PURKAYASTHA)
MEMBER (T)

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (J)