

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) No. 116/KB/2022

*A Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

**IN THE MATTER OF:**

**S.R.C. REALTORS PVT. LTD.  
(CIN: U45400DL2010PTC206781)**

... Financial Creditor No. 1/ Petitioner No. 1.  
And

**AMAR NATH TEKRIWAL**

... Financial Creditor No. 2/ Petitioner No. 2.  
And

**NEVAAN AGARBATTI PVT. LTD.  
(CIN: U74999DL2016PTC307646)**

... Financial Creditor No. 3/ Petitioner No. 3.

Verses

**SPENCER DISTILLERIES & BREWERIES PVT. LTD.  
(CIN: U52208JH2002PTC012190)**

... Corporate Debtor/ Respondent.

Date of Hearing: November 10, 2023.  
Date of Pronouncement: November 21, 2023.

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)  
SHRI ARVIND DEVANATHAN, MEMBER (TECHNICAL)**

**APPEARANCE:**

**For the Financial Creditors: Mr. Deb Kumar Sen, Adv. and Mr. Buddhadeb Das, Adv.**

**For the Corporate Debtor: Mr. Rohit Kumar Keshri, Adv., Mr. Nitish Kumar Singh, Adv. and Mr. Satish Kumar, CS.**

**ORDER**

***Per: Bidisha Banerjee, Member (Judicial)***

1. This Court is congregated through hybrid mode.
2. Heard the Ld. Counsels for both parties.

***Factual Background:***

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3. The present petition is filed jointly under Section 7 of the Insolvency & Bankruptcy Code, 2016, for brevity "I&B Code" read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **S.R.C. Realtors Pvt. Ltd.** ("Financial Creditor No. 1" / "Petitioner No. 1"), **Mr. Amarnath Tekriwal** ("Financial Creditor No. 2" / "Petitioner No. 2") and **Nevaan Agarbatti Pvt. Ltd.** ("Financial Creditor No. 3" / "Petitioner No. 3") against **Spencer Distilleries & Breweries Pvt. Ltd.** ("Corporate Debtor"/ "Respondent") Seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process, for brevity CIR Process/ CIRP in respect of Corporate Debtor, herein.
4. The Corporate Debtor herein is a private limited company, incorporated on 20.06.2002 having Nominal Share Capital of Rs. 15 Crore Only and Paid-up Share Capital of Rs. 75.20 Lakh Only.
5. It is claimed that the total amount claimed to be in default is of Rs. 1,70,00,000/- along with interest payable on unpaid debt and the Date of Default is claimed as on 05.03.2020.

***Submissions of the Petitioners:***

6. The LD. Counsel for the Petitioners submits that in the year 2017-18, the Corporate Debtor had approached the Petitioners separately to extend loans in the form of investments in the light of the distressed financial condition of the Corporate Debtor, and had proposed to allot equity shares in lieu of such investment. The financial creditors/ petitioners agreed to infuse funds into the corporate debtor on various dates in the following manner:
  - i. S.R.C. Realtors Pvt. Ltd. transferred Rs. 50,00,000 /- against allotment of 50,000 equity shares of Rs. 100 /- each on 23.08.2017.
  - ii. Amarnath Tekriwal transferred Rs. 1,00,00,000 /- against allotment of 1,00,000 equity shares of Rs. 100 / - each on 24.04.2017.
  - iii. Nevaan Agarbatti Pvt. Ltd. transferred Rs. 20,00,000 /- on 19.02.2018.
7. As a consequence of the above-stated infusion of funds, a total amount of Rs. 1,70,00,000/- was invested by the financial creditors/ petitioners in the corporate

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debtor in the year 2017-18. The Corporate Debtor has acknowledged the amount invested by the Financial Creditors/ Petitioner in the balance sheets ending on 31.03.2018, 31.03.2019 and 31.03.2020.

8. Further, Corporate Debtor Vide its letters dated 06.08.2019 written to Financial Creditors No. 1 and 2 acknowledged the payments and promised to repay the amounts along with interest in case of failure to allot the shares.
9. However, when the same was not done till 2020, the financial creditors/petitioners were constrained to issue letters dated 03.03.2020 and 05.03.2020 requesting the corporate debtor to honour the terms of mutual understanding, allot the shares or pay the amount borrowed. However, the same has not been done till the date of this Petition.

***Submissions of the Respondent:***

10. Th Ld. Counsel for the Corporate Debtor denies that there is any amount due upon and payable to the Corporate Debtor. It is further also claimed that the Corporate Debtor had never proposed to issue equity shares in lieu of any kind of investment or advances or loan and accordingly, the Financial Creditors have never separately extended any loan in the form of investment in light of distressed financial condition of the Corporate Debtor. The Ld. Counsel of the Respondent relies upon the Financial Statement of the Petitioner No. 1 and 3 for the Financial Years of 2017-18, 2018-19, and 2019-20 annexed as Annexures "R-2" to "R-7" respectively as under:
  - a) The Financial Creditor No. 1 in its Financial statement for the Financial year, 2017 - 2018 has not shown any figure for investment of the alleged amount in its financial statement. (In Reply Affidavit at Pages- 51, 67 and 73).
  - b) The Financial Creditor No. 1 in its Financial statement for the Financial year, 2018 - 2019 has not shown any figure for investment of the alleged amount in its financial statement. (In Reply Affidavit at Pages 83, 107 and 113).
  - c) The Financial Creditor No. 1 in its Financial statement for the Financial year, 2019- 2020 has not shown any figure for investment of the alleged amount in its financial statement. (In Reply Affidavit at Pages 117, 134 and 139).

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- d)** The Financial Creditor No. 3 in its Financial statement for the Financial year, 2017 - 2018 has not shown any figure for investment of the alleged amount in its financial statement. (In Reply Affidavit at Pages 149, 166 and 169).
  - e)** The Financial Creditor No. 3 in its Financial statement for the Financial year, 2018 - 2019 has not shown any figure for investment of the alleged amount in its financial statement. (In Reply Affidavit at Pages 178, 196 and 199).
  - f)** The Financial Creditor No. 3 in its Financial statement for the Financial year, 2019 - 2020 has not shown any figure for investment of the alleged amount in its financial statement. (In Reply Affidavit at Pages 206, 225 and 227).
- 11.** It is alleged that this petition has been filed as a second attempt by one Mr P.K. Choubey, Mr. Amar Tekriwal, Mr. Nishant Kumar Chobey in connivance with the Ex-Directors Mr. Jogendra Tiwari and Mr. Amit Kumar Singh frivolously impersonating collectively themselves as Financial Creditors and under a conspiracy to commit fraud with an intention to try and grab the management control of the Corporate Debtor Company by distorting facts and events and misrepresenting the statements of bank accounts to create a false claim to misrepresent the credit entries in the Corporate Debtor through various bank statements held with ICICI , Allahabad Bank which has been closed. Another clandestine, fraudulent and shady bank account opened by Jogendra Tiwari, Amit Singh and Shanker Ghosh in Bank of Maharashtra in the name of Corporate Debtor, for which Mr. Ajay Sinha along with other shareholders had filed C.P. No. 66/KB/2023 against Jogendra Tiwari, Amit Singh and Shanker Ghosh and 33 other unknown persons wherein this Adjudicating Authority vide its Order dated 19.02.2020 recorded that there are 33 unknown persons who originally has not paid any money and Jogendra Tiwari want to allot shares in favour of them. The said application and act was declared ab initio null and void.
- 12.** Ld. Counsel for the Corporate Debtor submits that this instant petition is filed frivolously to harass the Corporate Debtor and to have undue gain at the cost of the Corporate Debtor. Thus, the Petition is liable to be rejected with an exemplary cost.

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***Analysis and Findings of this Adjudicating Authority:***

- 13.** It is a settled position of law that to admit any application/petition under Section 7 of the I&B Code filed by the Financial Creditor triggering the insolvency proceedings in respect of the Corporate Debtor, the Adjudicating Authority is required to satisfy certain criteria as the financial debt claimed to be in default indulges **the provisions laid down in Section 5(8) of the I&B Code** and the default is actually made on the part of the Corporate Debtor by substantiating proper evidence [*Innovative Industries Ltd. v. ICICI Bank* reported in (2018) 1 SCC 407: MANU/SC/1063/2017] and the amount claimed to be in default crosses the threshold financial limit of Rs. One Crore as per **Section 4 of the I&B Code**.
- 14.** It is admitted by the Petitioners that the financial debt, claimed to be in default herein is a consequence of the infusion of funds as **equity shares** in lieu of investment into the corporate debtor in the following manner, as:
  - i.** S.R.C. Realtors Pvt. Ltd. transferred Rs. 50,00,000 /- against allotment of 50,000 equity shares of Rs. 100 /- each on 23.08.2017.
  - ii.** Amarnath Tekriwal transferred Rs. 1,00,00,000 /- against allotment of 1,00,000 equity shares of Rs. 100 / - each on 24.04.2017.
  - iii.** Nevaan Agarbatti Pvt. Ltd. transferred Rs. 20,00,000 /- on 19.02.2018.
- 15.** Per contra, the Respondent submits that the Financial Creditors had never invested the alleged amount claimed to be in default in corporate debtor company in form of loan. To substantiate its averment, the Corporate Debtor has relied upon the Financial Statement of the Petitioner No. 1 and 3 for the Financial Years of 2017-18, 2018-19, 2019-20.
- 16.** We have perused the Financial Statements for the year 2017-18, 2018-19, 2019-20. Nowhere of the Financial Statements reflects the investment of the alleged amount into the Corporate Debtor in terms of the loan. We are of the view that the averment of the petitioner relating to its claim is bald and baseless. Even assuming that money has been advanced by the Financial Creditor to the Corporate Debtor. The Financial Creditor admitted that it is for investment in

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equity shares of the Corporate Debtor (though this averment is disputed by the Corporate Debtor). Where that being the case, even if, we were to accept the claim of Financial Creditors, then also it is not a financial debt in terms of Section 5(8) of the I&B Code, 2016. Further, we are of the view that the Respondent has rightly claimed that this Petition filed under Section 7 has frivolously been filed to harass the Corporate Debtor and to have undue gain from the Corporate Debtor, which should not be entertained at all.

17. In view of the above, we **dismiss** this petition being **Company Petition (IB) No. 116/KB/2022** with invoking the provision of Section 65 of the I&B Code, 2016. We hereby direct all the Petitioners, to deposit **Rs. One Lakh**, **individually** i.e.,

- (i) **S.R.C. Realtors Pvt. Ltd.** – **Rs. One Lakh;**
- (ii) **Mr. Amarnath Tekriwal** – **Rs. One Lakh;**
- (iii) **Nevaan Agarbatti Pvt. Ltd.** – **Rs. One Lakh;**

to **The National Defence Fund (NDF)** as penalty. Delaying payment of the penalty amount beyond 10 days shall carry a rate of **10%** per annum from the date of pronouncement to the date of payment. The Affidavit of Compliance shall be filed within 7 days upon the payment of penalty amounts with the Registry of this Adjudicating Authority. The Registry is directed to consign the Affidavit of Compliance to the record.

18. **This Company Petition being C.P. (IB) No. 116/KB/2022 is dismissed accordingly.**

19. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

**Arvind Devanathan**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order is signed on the 21th Day of November, 2023.**

Bose, R. K. [LRA]