

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**IBA/52/2020**

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w  
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016)*

In the matter of **M/s. Brownstone Foundation Private Limited**

**Jayantilal H.Jain,**

Flat No. A-101, 1<sup>st</sup> Floor, Sankheswara,  
Serenite Apartment, 1089, Poonamalle,  
High Road, Vepery, Chennai – 600084.

*... Financial Creditor*

-Vs-

**M/s. Brownstone Foundation Private Limited,**

Challa Mall, No.108, 1<sup>st</sup> Floor,  
Door No. 11/11A, Sir Theyagaraya,  
Road, T.Nagar, Chennai – 600017.

*...Corporate Debtor*

*Order Pronounced on 25th April 2022*

CORAM :

**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Financial Creditor : E.K. Kumaresan,  
K. Suresh,  
K. Nagendra Prasad,  
G. Prabhu,  
P. Sivasakthivel, Advocates

For Corporate Debtor : Rohan Rajasekaran, Advocate

ORDER

**Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**

Under Adjudication is an Application that has been filed by  
**Mr. Jayantilal H. Jain** (hereinafter referred to as '*Financial  
Creditor*') under Section 7 of the Insolvency & Bankruptcy Code

2016 (in short, 'I&B Code, 2016') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Brownstone Foundation Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is an Individual. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U45400TN2011PTC082387 was incorporated on 10.09.2011 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.11/11A, Sir Theyagaraya Road, T.Nagar, Chennai - 600017. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Sandeep Kumar Jain, as the Interim Resolution Professional, who has also filed his consent in Form - 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.26,98,633/- (Rupees Twenty Six Lakh Ninety Eight Thousand Six Hundred Thirty Three only) is being claimed by the Financial Creditor as the Financial debt. Part - V of the Application discloses



the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt', which are as follows:

- a) Bank Statements
- b) Pro Note dated 23.05.2018 and 19.07.2018
- c) Ledger statement from 01.04.2018 to 30.06.2019

4. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor, by way of loan has disbursed the following sums to the Corporate Debtor:

- a) A sum of Rs.15,00,000/- (Rupees Fifteen Lakh Only) vide pro note dated 23.05.2018 in pursuance of this Rs.14,10,000/- (Fourteen Lakh Ten Thousand Only) was transferred via RTGS on 23.05.2018 after deducting interest in advance of Rs.90,000/- (Ninety Thousand Only) for a tenure of six months.
- b) A sum of Rs. 16,00,000/- (Rupees Sixteen Lakh Only) vide pro note dated 19.07.2018 in pursuance of this Rs. 15,04,000/- (Rupees Fifteen Lakh Four Thousand Only) was transferred via RTGS on 19.07.2018 after deducting interest in advance of Rs.96,000 (Ninety Six Thousand Only) for a tenure of four months.

Further, it was submitted that the Corporate Debtor at the time of receiving the money from the Financial Creditor had agreed to pay interest every month at the rate of 18% p.a.

5. It was submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor has not paid the following amounts:-

<b>Particular</b>	<b>Principal</b>	<b>Interest</b>	<b>Total</b>
Pro Note dated 23.05.2018	7,50,000	1,06,397	8,56,397
Pro Note dated 19.07.2018	16,00,000	2,42,236	18,42,236
<b>Total</b>			<b>26,98,633</b>

Hence, it was submitted that the Financial Creditor has moved the present Application under Section 7 of IBC, 2016 seeking for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

6. In relation to the Corporate Debtor, it is seen that a Counter has been filed wherein it is stated that the Application copy served by the Applicant does not establish the essentials of a financial debt i.e., disbursement, time value of money and default. It was submitted that one associate of the Applicant, M/s. K.B. Associates had even obtained an attachment order date 18.03.2020 in O.S No. 303 of 2020 on the file of City Civil Court at Madras. The Respondent submitted that the Applicant has preferred a suit O.S No.9485 of 2019 against M/s Artic Business Group claiming amounts arising out of the very same transaction that has been claimed against the Respondent herein in the Application under reply. Based on the above the Respondents prayed that the application be rejected.

7. The Applicant has filed a memo attaching the copies of bank statements. Also the Applicants have filed a rejoinder denying all the points raised by the Respondent.

8. Heard the submissions made by the Learned Counsel for the parties and perused the records. The Learned Counsel for the Applicant has placed on record before this Tribunal a document termed as "Pronote", which was entered into between the parties on 23.05.2018 and 19.07.2018 wherein it is seen that the Corporate Debtor as agreed to repay to the Financial Creditor with interest at the rate of 18% p.a. Further, the said document is signed by the Director of the Corporate Debtor and the common seal of the Corporate Debtor is also affixed thereto. However it was not signed by the Financial Creditor.

9. Thus, the above document proves that there exists a 'debt' between the parties and the said debt qualifies to be a 'financial debt' as defined under 5(8)(c) of IBC, 2016 and also the Corporate Debtor has defaulted in repayment of the said 'financial debt' which is due and payable to the Financial Creditor. Further, from the copies of bank statement filed by the Applicant it is demonstrated that the Applicant has disbursed funds to Corporate Debtor on the specified dates. However, the Respondents have not submitted any document to show that they have repaid the dues to the Applicant. Under the said circumstances, this Tribunal is left with no other

option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor. Also the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter under Section 10A of IBC, 2016.

10. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016.

11. The Financial Creditor has proposed the name of one **Mr. SANDEEP KUMAR JAIN**, having Registration Number **[IBBI/IPA-002/IP-N00174/2017-2018/10446]**, email ID: **sandeepjaincs@gmail.com** as *Interim Resolution Professional* (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the

Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

12. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. *The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.*

*Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;*

13. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:



- (2) *The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*
- (2A) *Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.*
- (3) *The provisions of sub-section (1) shall not apply to*
- (a) *such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*
- (b) *a surety in a contract of guarantee to a corporate debtor.*

14. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) *The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:*

*Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.*

15. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to

the Petitioner as well as to the Respondent above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-  
**B. ANIL KUMAR**  
MEMBER (TECHNICAL)

-Sd-  
**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

Sudhir