

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH - I, CHENNAI**

**IBA/203/IB/2019** filed Under  
Section 7 of the Insolvency and  
Bankruptcy Code, 2016 and Rule 4 of  
the Insolvency and Bankruptcy  
[Application to Adjudicating Authority],  
Rules, 2016

In the matter of **M/s. Spencer's Travel Services Limited**

**PRIYANKA KUMARI JAIN**  
No.18, Samundara Mudali Street,  
Chennai, Tamil Nadu - 600 003.

.. *Financial Creditor*

- Vs -

**M/s. SPENCER'S TRAVEL SERVICES LIMITED**  
Sudarshan Building, 6<sup>th</sup> Floor,  
No.27, Whites Road, Royapettah,  
Chennai - 600 014.

.. *Corporate Debtor*

*Order Pronounced on 10<sup>th</sup> of March, 2020*

CORAM:

**R. VARADHARAJAN,**  
MEMBER (JUDICIAL)

**ANIL KUMAR B,**  
MEMBER (TECHNICAL)

*For the Financial Creditor* : *M/s. Vikram U. Jain, Advocate*  
*For the Corporate Debtor* : *Audhesh Bairwa, Advocate*

**ORDER**

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**



1. This Application has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“hereinafter referred to as IBC, 2016”) by **Priyanka Kumari Jain** (hereinafter called as “*Financial Creditor*”) for the purpose of initiating the Corporate Insolvency Resolution Process (CIRP) against **M/s. Spencer’s Travel Services Limited** (hereinafter called as “*Corporate Debtor*”).
  
2. Part – I of the Application discloses the fact that the Applicant 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 Limited Company with CIN:U63040TN2001PLC047809 which was incorporated on 26.09.2001 and that its Nominal Share Capital and Paid up Capital is Rs.526,00,00,000/- and Rs.65,06,10,940/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at Sudarshan Building, 6<sup>th</sup> Floor, No.27, Whites Road, Royapettah, Chennai – 600 014.



3. Part – III of the Application discloses the fact that the Financial Creditor had proposed one Mr. Tharuvai Ramachandran Ravichandran as the Interim Resolution Professional, who has also filed his consent in Form 2. From Part-IV of the Application, it is seen that a total sum of Rs.21,58,719/- is being claimed by the Financial Creditor from the Corporate Debtor. The transactions given as to the amount claimed by the Financial Creditor as against the Corporate Debtor is stated to have arisen consequent upon a loan being given by the Financial Creditor to the Corporate Debtor.

4. Part V of the Application describes the particulars of the documents, records and evidence of default of the Financial Debt which *inter alia* includes the following;

- a) Copy of Promissory Note acknowledging the existence of debt issued by the Corporate Debtor,
- b) Copy of Bank Statement of Financial Creditor showing transfer of monies from the Financial Creditor to the Corporate Debtor



- c) Copy of Ledger Accounts of Corporate Debtor dated 01.04.2015 to 31.03.2016 and 01.04.2016 to 31.03.2017.
- d) Copy of Pay-in Slip dated 23.10.2018 received by the Financial Creditor while attempting to encash the cheque issued by Corporate Debtor,
- e) Copy of Cheque dated 23.10.2018 issued by the Corporate Debtor in the name of the Financial Creditor and
- f) Copy of inward return memo denoting the stoppage of payment by the Corporate Debtor dated 24.10.2018.

5. The Ld. Counsel for the Financial Creditor submitted that the Corporate Debtor approached the Financial Creditor in the year 2015 seeking financial assistance for the running of its business. Pursuant to the same, the Financial Creditor provided amounts to a tune of Rs.25,00,000/- on 08.12.2015 to the Corporate Debtor with the understanding that the same was to be repaid in equal monthly instalment of Rs.2,50,000/-. In the said arrangement, a sum of Rs.20,00,000/- was



advanced to the Corporate Debtor after deducting Rs.5,00,000/- as interest, as agreed between the parties.

6. The Ld. Counsel for the Financial Creditor submitted that as a security for repayment, the Corporate Debtor issued a Cheque for a sum of Rs.25,00,000/- and a Promissory Note, on the date of disbursement of the loan amount thereby acknowledging the existence of a debt due and payable to the Financial Creditor.

7. It is submitted by the Learned Counsel for the Financial Creditor that as per the understanding between the parties, the amounts were partly repaid by the Corporate Debtor in equal monthly instalments of Rs.2,50,000/- for a period from 5 months from March to July, 2016. However, no further payments were forthcoming from the Corporate Debtor from August, 2016, onwards. Under the said circumstance, it is stated that since even after repeated requests, the Corporate Debtor failed to pay the remaining instalments, the Financial Creditor was constrained to encash the Cheque

issued by the Corporate Debtor which got bounced as "payment stopped by drawer" when presented to the Bank. In spite of repeated requests made by the Financial Creditor, the Corporate Debtor failed to repay the amounts due to the Financial Creditor. Hence, this Application.

8. The Corporate Debtor has filed a detailed counter along with documents and submitted that the Corporate Debtor is in the business of travel related service and in the course of business, they got acquainted with one Pramod Chardia of M/s. Jineshwar Capital. The said Pramod Chardia had agreed to finance the Corporate Debtor a sum of Rs.6,05,00,000/- through his consortium of financiers and money lenders, and towards the same, the Corporate Debtor executed several signed blank cheques, blank signed promissory notes and signed blank stamp papers as security in favour of M/s. Jineswar Infraventures Pvt. Ltd. Copy of sanction of unsecured loan dated 14.08.2015 is placed at page 1 of the typed set filed with the Counter.

9. It is further submitted by the Learned Counsel for the Corporate Debtor that the Corporate Debtor had duly repaid the above said loan amount of Rs.6,05,00,000/- along with interest by way of bank transfers on various dates and the same has been reflected in the statement of accounts maintained by Corporate Debtor, copy of which is enclosed at pages 3 to 6 of the typed set filed with the Counter Affidavit. Thus, there is no amount due and payable towards the above borrowing.

10. While things resting so, the Corporate Debtor had approached M/s. Jineswar Infraventures Pvt. Ltd. and requested them to return the documents given as a security after the repayment of entire loan amount. However, the said security documents were not returned to the Corporate Debtor and due to which the dispute arose. It is further submitted by the Learned Counsel for the Corporate Debtor that all the blank Cheques, Promissory Notes and other securities provided by the Corporate Debtor has been misused by the Financial Creditor.

11. Thereafter, the Corporate Debtor filed a Civil Suit in OS No.4759/2016 before VI Assistant Judge, City Civil Court, Chennai against M/s. Jineswar Capital and Group praying for a direction to Mr. Pramod Chordia of M/s. Jineswar Infraventures Pvt. Ltd. to return the loan documents and negotiable instrument including the Cheques given as security and to restrain the Defendants therein from misusing the said security documents of the Corporate Debtor. In the said Suit, the Financial Creditor has been arrayed as 32<sup>nd</sup> Defendant in the said Suit. Copy of OS is placed at pages 48 to 66 of the typed set filed with the Counter.

12. It is contended in the Counter that the Corporate Debtor had never approached the Financial Creditor and only M/s. Jineswar Infraventures Pvt. Ltd. approached the Corporate Debtor and agreed to finance the Corporate Debtor through consortium of financiers. It is further contended that the Financial Creditor was one of the financiers under the consortium of financiers of M/s. Jineswar Infraventures Pvt. Ltd. from whom the



Corporate Debtor availed the loan of Rs.6,05,00,000/- and repaid the same. The Corporate Debtor denied any loan arrangement with Financial Creditor and submission of Cheque or Promissory Note acknowledging the debt in favour of the Financial Creditor.

13. It is averred that the Corporate Debtor gave several blank Cheques, Promissory Notes and blank papers to M/s. Jineswar Infraventures Pvt. Ltd., who in turn colluded with the present Financial Creditor and misused the documents of the Corporate Debtor given to the other consortium of financer as security. In this regard, the Corporate Debtor has already filed a Civil Suit in OS No.4759/2016 to return the loan documents including the Cheques given as security and to restrain the Defendants therein (including the Financial Creditor) from misusing the said security documents of the Corporate Debtor. It is stated that the Financial Creditor who is arrayed as 32<sup>nd</sup> Defendant in the said OS was set *ex parte* along with other Defendant. The Corporate Debtor has also filed O.P. No.44/2019 before IX Assistant



City Civil Court, against M/s. Jineswar Infraventures Pvt. Ltd. and the other consortium of financiers and money lenders including the Financial Creditor under the Tamilnadu Prohibition of Charging Exorbitant Interest Act, 2003, praying for the repayment of the exorbitant interest amount collected by M/s. Jineswar Infraventures Pvt. Ltd. and other financiers, which is pending.

14. It is further contended that if the debt so fell due in 2016, the Financial Creditor has not brought the same to the notice of the Corporate Debtor until the filing of the present Application. Furthermore, the Financial Creditor has not produced a proper statement of accounts to the alleged claim of Rs.25,00,000/- made from the Corporate Debtor. Therefore, the Financial Creditor has come before this Tribunal with unclean hands with intent to use this forum as an arm twisting mechanism to cause irreparable loss to the Corporate Debtor. Hence, the Corporate Debtor has prayed to dismiss the Application with exemplary costs.



15. Heard Ld. Counsel for both the sides and perused the records including the documents placed on file. The instant Application has been filed under Section 7 of the I&B Code, 2016 r/w Rule 4 of the IBBI (Application to Adjudicating Authority) Rules, 2016 (in short, AAA Rules). The Rule 4 of the said AAA Rules is extracted hereunder;

**4. Application by financial creditor.**— (1) *A financial creditor, either by itself or jointly, shall make an application for initiating the corporate insolvency resolution process against a corporate debtor under section 7 of the Code in Form 1, accompanied with documents and records required therein and as specified in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*

In this context it is relevant to refer to attendant Regulation 8 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which is extracted below:-



**8. Claims by financial creditors.** (1) A person claiming to be a financial creditor, other than a financial creditor belonging to a class of creditors, shall submit claim with proof to the interim resolution professional in electronic form in Form C of the Schedule:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

(2) The existence of debt due to the financial creditor may be proved on the basis of –

(a) the records available with an information utility, if any; or

(b) other relevant documents, including –

**(i) a financial contract supported by financial statements as evidence of the debt;**

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been paid; or

(iv) an order of a court or tribunal that *has adjudicated upon the non-payment of a debt, if any.*

The term 'Financial Contract' is defined in clause (d) of Sub-section 1 of AAA Rules, 2016;

(d) **“financial contract”** means a contract between a corporate debtor and a financial creditor setting out the terms of the financial debt, including the tenure of the debt, interest payable and date of repayment;

16. Referring to the aforementioned Rule, it becomes clear that it is incumbent upon the Financial Creditor while filing this Application to place on record before this Authority, the 'Financial Contract' and demonstrate without any ambiguity from the financial contract, the amount disbursed as per the loan/debt, the tenure of the loan/debt, the interest payable and the conditions of repayment. In the present case, it is evident that the Financial Creditor has not placed on record any *Financial Contract* or any *Financial Agreement*, in pursuance of which the loan was disbursed to the Corporate Debtor.

17. By looking at the Application filed by the Financial Creditor, it has been alleged that the Corporate Debtor approached the Financial Creditor in the year 2015 for a loan period of 10 months with the condition that the Corporate Debtor was to repay the said loan amount including interest thereon at the rate of 2% per month. However, as stated *supra*, the Financial Creditor has not produced any Agreement or Financial Contract to substantiate such statement and it appears if at all to be only an oral agreement contested which is alleged to have been entered into between the parties, of which this Tribunal has no means to ascertain, as being a proceeding of summary nature, unlike a Civil Court cannot indulge in the luxury of taking evidence, oral or otherwise as to its existence.

18. As to the aspect of whether any default being committed by the Corporate Debtor, the Financial Creditor contended that in view of the amount being disbursed which is reflected in the books of the Corporate Debtor, the same becomes repayable on

demand with interest and the said amount not being paid by the Corporate Debtor, a default has arisen as contemplated under Section 3 (12) of the I&B Code, 2016. However, we are not able to accept the said submissions made by the Ld. Counsel for the Financial Creditor, in view of the fact that there is no 'Financial Contract' entered into between the parties reflecting the tenure nor to substantiate the claim of interest, the transaction being a loan transaction, unequivocally.

19. In the matter of **Prayag Polytech Private Limited – Vs- M/s. Good Marketing and Sales Private Limited**, in *IB-219/(ND)/2019*, one of us while sitting in the New Delhi Bench has dealt with the issue of 'Financial Contract' and has held that the primary onus about the details of the 'Financial Contract' and default is required to be demonstrated by the Applicant and in the instant case, the Financial Creditor, who is not able to place on record any 'Financial Contract', to demonstrate on its own the existence of 'default'. The said view is also upheld by the Hon'ble NCLAT in **Prayag Polytech Pvt.**

**Ltd. -Vs- M/s. Good Marketing and Sales Private Limited**, in *Company Appeal (AT)(Insolvency)No.1307 of 2019 dated 25.11.2019*, wherein the Hon'ble NCLAT has concurred with the view taken by NCLT, New Delhi, that the default as alleged cannot be determined in absence of any requisite document.

20. Thus, in view of the facts mentioned *supra*, and in the absence of any 'Financial Contract' between the parties, this Authority is not able to ascertain the default on the part of the Corporate Debtor and hence we are constrained to **dismiss** this Application, however without any costs.

-SD-

**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-

**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)