



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB)/8(MB)/2025

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

Umaveer Buildcon Private Limited

...Financial Creditor/Applicant

Versus

Jouelana Construction Private Limited (earlier known as Gold Star Builders and Developers Private Limited)

[CIN-U45300MH2008PTC177709]

...Corporate Debtor/Respondent

Order Pronounced on 18.03.2025

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Financial Creditor : Mr. Yahya Batatawala, Ld. Counsel

For the Corporate Debtor : Mr. Vivek Sharma a/w
Chittesh Dalmia, Ld.
Counsel

ORDER

Brief Facts:

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Umaveer Buildcon Private Limited** ("hereinafter referred to as the Financial Creditor/Applicant"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Jouelana Construction Private Limited (earlier known as Gold Star Builders and Developers Private Limited)** ("hereinafter referred to as the Corporate Debtor/Respondent/JCPL").
2. The Financial Creditor bears CIN: U45201MH2022PTC376649 and was incorporated on 11.02.2022. Its Regional Office is at 01, Ramkutir Building, Near Shivsena Office, Ghatkopar West, Mumbai, Maharashtra 400086.
3. The Respondent is incorporated under the Companies Act, 1956 on 10.01.2008 and was earlier known as Gold Star Builders and Developers Private Limited. It has Company Identification no. U45300MH2008PTC177709 with its registered office at Plot no.8, Western Industrial Estate, Cepz, Opp. Seepz Main Gate, MIDC, Andheri (East), Mumbai - 400093. It is a Limited Company having authorized share capital and Paid up share Capital of Rs. 1,00,000/-.
4. The total amount of default as stated in Part IV of the Application is Rs.1,17,40,300/- (Rupees One Crore Seventeen Lakhs Forty Thousand Three Hundred Only), as on 31.10.2024 and the date of default is 01.08.2024.

**Submissions of the Applicant:**

5. Corporate Debtor approached the Financial Creditor in and around January, 2024 for availing the Intercompany Deposit for an amount of Rs 1,10,00,000/- (Rupees One Crore Ten Lakh only).
6. Thereafter, the Financial Creditor and the Corporate Debtor entered into an Inter-Corporate Deposit/ Loan Facility Agreement (hereinafter referred to as "Agreement") dated 01/02/2024 on terms and conditions more particularly set out therein.
7. As per the terms of the said Agreement, the ICD of Rs. 1,10,00,000/- was provided to the Borrower at an interest rate of 15% p.a. until the maturity date and in case of delayed payment, penal interest of 24% would be charged.
8. As per the terms of the said Agreement, the maturity date for the loan granted to the Borrower was 31/07/2024. However, the Borrower has failed to repay the loan amount on the maturity date and thus, has committed default.
9. Thus, the Financial Creditor issued Loan Recall Notice vide its email dated 13/08/2024 upon the Corporate Debtor thereby recalled the entire Loan amount along with accrued interest.
10. However, the Corporate Debtor failed to repay the outstanding loan amount. Aggrieved by the conduct of the Corporate Debtor Financial Creditor issued another Recall Notice (Final Recall Notice) vide email dated 21/08/2024 and called upon the Financial Creditor to immediately make the outstanding payment on receipt of the said notice. However, the Corporate Debtor failed to repay the Loan amount and thus committed default. Hence the present Petition.

**Submissions of the Respondent:**

11. The Respondent has contested the present application on the following grounds:
- i. There is no Financial Debt - the relationship between the Financial Creditor and the Respondent is based on trust and mutual understanding, rather than formal contractual obligations and hence the transaction between them is not a formal loan arrangement. The threshold for any debt to be included under the definition of financial debt u/s. 5 (8) of the Code is not satisfied.
 - ii. The lack of a signed loan agreement, clear repayment terms, or the presence of legally binding documentation indicates that any repayments made were not subject to the formal terms and conditions typically associated with loan agreements.
 - iii. Default under the Loan Agreement has not occurred - the loan agreement does not contain any due date for repayment of debt. The definition clause of maturity date in the loan agreement is vague and uncertain. The event of default (clause 7) fails to explicitly cover that dues on the alleged maturity date will be a default under the loan agreement and would lead to termination of the loan agreement. The loan recall notice dated 13/08/2024 is entirely on the basis of the aforesaid maturity date. The final recall notice dated 21/08/2024 is also issued on the basis of the aforesaid maturity date which is misconceived.
 - iv. The Petitioner is using this Tribunal as a recovery forum – the Respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of *K Kishan vs. Vijay Nirman Company Private Limited* [2018 SCC Online SC 1013] wherein the Hon'ble Supreme Court has opined that creditors cannot use the Insolvency and Bankruptcy Code, 2016 either prematurely or for extraneous considerations or as a substantive for debt enforcement procedures.



- v. The Respondent has also relied upon the judgment dated 12/07/2022 given by the Hon'ble Supreme Court in *Vidarbha Industries v. Axis Bank 2022 SCC OnLine SC 841*, paras. 60 to 90, wherein the Hon'ble Supreme Court has clarified the law with respect to proceedings under Section 7 of the Code and the factors that needs to be considered prior to admitting a Petition under Section 7(5) of the Code.

Findings-


12. Heard learned counsel for both the parties and perused the material produced on record.
13. The Petitioner has placed on record a loan agreement dated 1.2.2024, which is signed by both the parties, and specifies the terms of loan arrangement. There is no dispute that a sum of Rs. 1.10 crore was disbursed to the Corporate Debtor as loan carrying interest @ 15% p.a. It is trite law that even no formal loan agreement is necessary to prove existence of financial debt, if such existence is evidenced from the records. The said agreement establishes a relationship of borrower and lender, as defined in the said agreement. The Corporate Debtor has not disputed execution of the said agreement or the terms contained therein.
14. The Respondent has contested that the maturity date clause in the Loan Agreement dated 01.02.2024 is vague and there is no due date for repayment of loan in the agreement. The loan agreement defines maturity date as ““maturity date” shall mean “31 July 2024””. The maturity date of the agreement in itself mean that the said agreement would stand determined on 31st July, 2024 and the facilities granted thereunder shall become payable on that date. Hence, the contention of the Respondent that there is no repayment date specified in the loan agreement and that the definition of maturity date is vague is untenable.



15. The Corporate Debtor's reliance on the decision in the case of *K Kishan vs. Vijay Nirman Company Private Limited* {2018 SCC Online SC 1013} to content that creditor's cannot use the Insolvency and Bankruptcy Code, 2016 either prematurely or for extraneous considerations or as a substantive for debt enforcement procedures is ill-conceived and devoid of any merit in view of maturity date having been clearly stated and defined in the said loan agreement.
16. The Corporate Debtor's reliance on the decision in the case of *Vidarbha Industries v. Axis Bank* 2022 SCC OnLine SC 841 to contend that the viability and overall Financial health of the Corporate Debtor are not extraneous factors is without merit, as the Corporate Debtor has not placed on record its financial statements demonstrating its viability and overall financial health to persuade this Tribunal to look into that. Nonetheless, this decision was later on clarified in review petition as having been rendered on peculiar facts and circumstances of the case and was distinguished by Hon'ble Supreme Court in case of *M. Suresh Kumar Reddy Vs. Canara Bank & Ors* holding that if the NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application. The decision in the case of *Vidarbha Industries* cannot be read and understood as taking a view which is contrary to the view taken in the cases of *Innoventive Industries* and *E.S. Krishnamurthy*. The view taken in the case of *Innoventive Industries* still holds good.
17. Further, the existence of debt is clearly established upon perusal of the Statement of Account of the Respondent in the books of Financial Creditor, and the default certificate in Form D obtained from NESL., annexed to the petition. There is no evidence on record to suggest that the present petition is for purpose other than insolvency resolution of the Corporate Debtor.



18. In view of the above, we are of considered view that there exists a financial debt, exceeding the threshold limit prescribed u/s 4 of IB Code and the same is in default, since the respondent had clearly borrowed the money against the payment of interest and the same was disbursed against the consideration for the time value of money. Accordingly, the Respondent falls within the definition of a Corporate Debtor as well as there exists a financial debt and hence this bench has jurisdiction in the present matter.
19. The Petition is complete in all respects. Therefore, the Petition bearing CP (IB) 8/MB/2025 filed by **Umaveer Buildcon Private Limited**, the Financial Creditor, under section 7 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Jouelana Construction Private Limited** [CIN-U45300MH2008PTC177709], the Corporate Debtor, is **admitted/allowed**.
20. The Financial Creditor has proposed the name of **Mr. Debi Prasanna Sarangi**, Registration No. **IBBI/IPA-002/IP-N00158/2017-2018/10405**, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
21. It is, accordingly, hereby ordered as follows: -
- I. The Petition bearing **CP(IB)/8(MB)/2025** filed by **Umaveer Buildcon Private Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Jouelana Construction Private Limited** [CIN- U45300MH2008PTC177709], the Corporate Debtor, is **admitted**.

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- II. There shall be a moratorium under section 14 of the IBC, in regard to the following:
- i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

Notwithstanding the above, during the period of moratorium: -

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- III. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.



- IV. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- V. **Mr. Debi Prasanna Sarangi**, Registration No. **IBBI/IPA-002/IP-N00158/2017-2018/10405**, having registered address at Office No. 125, Bhoomi Mall, Plot No.9, Sector-IS, CBD Belapur, Navi Mumbai 400614, **Email ID: debi.sarangi@judilegalcombine.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- VI. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- VII. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- VIII. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email

immediately, and in any case, not later than two days from the date of this Order.

- IX. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

22. Ordered accordingly.

Sd/-

Prabhat Kumar
Member (Technical)
MK

Sd/-

Justice V. G. Bisht (Retd.)
Member (Judicial)