

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER

IA (IBC) No. 573/JPR/2023
& CP No. (IB)- 98/7/JPR/2021

*(Application under Section 7 read with Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016)*

IN THE MATTER OF:

MR. DILIP BAFNA HUF & ORS.

...Applicants/ Financial Creditors

Versus

M/S VISHNU OIL MILL PVT. LTD.

...Respondent/ Corporate Debtor

MEMO OF PARTIES

MR. DILIP BAFNA HUF

Through its Karta Dilip Bafna
47, Vikas Colony Paota C Road,
Jodhpur- 342006 (Rajasthan)

...Applicant No. 1

MRS. MEENA BAFNA

47, Vikas Colony Paota C Road,
Jodhpur- 342006 (Rajasthan)

...Applicant No. 2

MR. YASH BAFNA

47, Vikas Colony Paota C Road,
Jodhpur- 342006 (Rajasthan)

...Applicant No. 3

MR. MOOLCHAND HUNDIA

Prop. of Moolchand & Company
G-II/13, Main Mandi, Mandore
Road, Jodhpur- 342007 (Rajasthan)

...Applicant No. 4

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VERSUS

M/s VISHNU OIL MILL PVT. LTD.

Outside Siwanchi Gate, Gaddi Road,
Jodhpur- 342001 (Rajasthan)

...Respondent/ Corporate Debtor

AND IN THE MATTER OF
IA (IBC) No. 573/JPR/2023

MEMO OF PARTIES

M/sVISHNU OIL MILL PVT. LTD.

Outside Siwanchi Gate, Gaddi Road,
Jodhpur- 342001 (Rajasthan)

...Applicant/ Corporate Debtor

VERSUS

MR. DILIP BAFNA HUF

Through its Karta Dilip Bafna

47, Vikas Colony Paota C Road,
Jodhpur- 342006 (Rajasthan)

...Respondent No. 1

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Jodhpur- 342006 (Rajasthan)

...Respondent No. 2

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47, Vikas Colony Paota C Road,
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...Respondent No. 3

MR. MOOLCHAND HUNDIA

Prop. of Moolchand & Company

G-II/13, Main Mandi, Mandore
Road, Jodhpur- 342007 (Rajasthan)

...Respondent No. 4

For the Financial Creditor : Anuroop Singhi, Adv.
Aditya Vijay, Adv.

For the Corporate Debtor : Hemant Kothari, Adv.

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Order Pronounced On: 14.06.2024**ORDER****Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application is filed by *Mr. Dilip Bafna HUF & Ors.* ('Applicants'/ 'Financial Creditors') against *M/s Vishnu Oil Mill Private Limited* ('Respondent'/ 'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the 'IBC'/ 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process ('CIRP') pursuant to default in repayment of loan amount by the Corporate Debtor to the Applicants/Financial Creditors.
2. The relevant particulars of the Applicants/Financial Creditors as provided in Part-I of the Application are reproduced hereunder:-

<i>PARTICULARS OF APPLICANT NO. 1</i>	
<i>Name of Financial Creditor</i>	<i>Dilip Bafna HUF</i>
<i>Identification Number of Financial Creditor</i>	<i>PAN No. – AAAHB7300L</i>
<i>Name and Address of the person Authorized to submit application on its behalf (enclose authorization)</i>	<i>Dilip Bafna 47- Vikas Colony Paota C Road Jodhpur (Raj.)- 342006</i>
<i>PARTICULARS OF APPLICANT NO. 2</i>	
<i>Name of the Financial Creditor</i>	<i>Mrs. Meena Bafna</i>
<i>Identification Number of Financial Creditors</i>	<i>PAN No. – ACMPB5892R</i>
<i>Name and Address of the person Authorized to submit application on its behalf (enclose authorization)</i>	<i>Dilip Bafna 47- Vikas Colony Paota C Road Jodhpur (Raj.)- 342006</i>
<i>PARTICULARS OF APPLICANT NO. 3</i>	



<i>Name of the Financial Creditor</i>	<i>Mr. Yash Bafna</i>
<i>Identification Number of Financial Creditors</i>	<i>PAN No. – CFNPB2054R</i>
<i>Name and Address of the person Authorized to submit application on its behalf (enclose authorization)</i>	<i>Dilip Bafna 47- Vikas Colony Paota C Road Jodhpur (Raj.)- 342006</i>
<i>PARTICULARS OF APPLICANT NO. 4</i>	
<i>Name of the Financial Creditor</i>	<i>Mr. Moolchand Hundia Prop. Of Moolchand & Company</i>
<i>Identification Number of Financial Creditors</i>	<i>AAMPH6555P</i>
<i>Name and Address of the person Authorized to submit application on its behalf (enclose authorization)</i>	<i>Dilip Bafna 47- Vikas Colony Paota C Road Jodhpur (Raj.)- 342006</i>

3. The Corporate Debtor is a Private Limited Company, incorporated under the Companies Act, 1956 on 30.03.2010, duly registered with the Registrar of Companies, Jaipur having CIN: U15143RJ2010PTC031379. The Registered Office of the Company is situated at Outside Siwanchi Gate, Gaddi Road, Jodhpur- 342001 (Rajasthan). The authorized share capital of the Corporate Debtor Company is Rs. 50,00,000/- (Rupees Fifty Lakhs Only), and the paid-up share capital is Rs. 25,60,000/- (Rupees Twenty- Five Lakhs Sixty Thousand Only). The same has been verified from the online database maintained by the Ministry of Corporate Affairs.
4. The details of the transactions leading to the filing of this Application as averred by the Financial Creditors are as follows:

- 4.1 The Applicants/Financial Creditors i.e., *Dilip Bafna HUF* ('Applicant No. 1'), *Mrs. Meena Bafna* ('Applicant No. 2'), and *Mr. Yash Bafna*

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(‘Applicant No. 3’), extended credit facility on interest to the Corporate Debtor to the tune of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only) each and *Mr. Moolchand Hundia Prop. of Mool Chand & Company* (‘Applicant No. 4’) extended a credit facility of Rs. 10,00,000/- (Rs. Ten Lakhs Only). Thus, the Applicants have together given a principal amount of Rs. 85,00,000/- (Rupees Eighty Five Lakh Only) to the Corporate Debtor. The extension of the credit facilities by the Applicants to the Corporate Debtor has been acknowledged by the Corporate Debtor itself.

4.2 Initially, the Corporate Debtor paid its interest liability arising out of the principal amount to the Applicants. Moreover, the Corporate Debtor while paying the interest also made deduction qua the TDS which is reflected in Form 26AS as part of the Annual Tax Statement under Section 203AA of the Income Tax, 1961. The tax deducted at source by the Corporate Debtor shows that the Corporate Debtor owes the Principal amount along with interest to the Applicants.

4.3 Thereafter, on account of the non-payment of the principal amount and the interest by the Corporate Debtor, Applicant No. 1 contacted *Mr. Hemant Nihalani*, Managing Director of the Corporate Debtor, on 03.04.2021 and 07.04.2021, and requested him to return all the outstanding amount immediately. The Managing Director of the

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Corporate Debtor in the conversations admitted the loan advanced by the Applicants but conveyed his inability to repay the same.

- 4.4 Subsequently, Applicant No. 1, 2, and 3 issued a final recall notice to the Corporate Debtor to return the principal amount along with interest and the same was duly served upon the Corporate Debtor on 07.06.2021. Similarly, a recall notice was sent by Applicant No. 4 which was served upon the Corporate Debtor on 08.09.2021. In its Reply to the Recall Notices, the Corporate Debtor indirectly admitted the non-payment of the credit amount to the Financial Creditors.
- 4.5 After repeated requests and reminders, the Corporate Debtor has failed to make the repayments of the dues to the Applicants/ Financial Creditors, thus, the Applicants have filed the instant Application for initiation of the CIRP against the Corporate Debtor.
- 4.6 The details of the Financial Debt owed by the Corporate Debtor to the Applicants/ Financial Creditors as reflected in Part IV of the Application is reproduced hereunder:-

Part IV

S. No.	Particulars of Financial Debt	
1.	Amount claimed to be in default and the date on which the default occurred	A. <u>Mr. Dilip Bafna (HUF)</u> Date of Default: 15.06.2021 Default Amount till 30.09.2021- Rs. 31,05,591/- (This amount is inclusive of interest charge @ 15% per annum).

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		B. <u>Mrs. Meena Bafna</u> Date of Default: 15.06.2021 Default Amount till 30.09.2021- Rs. 31,07,405/- (This amount is inclusive of interest charge @ 15% per annum). C. <u>Mr. Yash Bafna</u> Date of Default: 15.06.2021 Default Amount till 30.09.2021- Rs. 31,09,521/- (This amount is inclusive of interest charge @ 15% per annum). D. <u>Mr. Mool Chand Hundia</u> Date of Default: 15.09.2021 Default Amount till 30.09.2021- Rs. 12,35,421/- (This amount is inclusive of interest charge @ 15% per annum). Total Amount of Default- A+B+C+D = Rs. 1,05,57,938 (Rs. One Crore Five Lakhs Fifty- Seven Thousand Nine Hundred Thirty-Eight only) as on 30.09.2021
	Date from which Debt fell Due	A. <u>Mr. Dilip Bafna (HUF)</u> Date of Default: 15.06.2021 B. <u>Mrs. Meena Bafna</u> Date of Default: 15.06.2021 C. <u>Mr. Yash Bafna</u> Date of Default: 15.06.2021 D. <u>Mr. Mool Chand Hundia</u> Date of Default: 15.09.2021

5. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its Preliminary Objections cum Reply *vide* Dairy No. 2080/2022 dated 13.07.2022 and made the following submissions:

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- 5.1. The Corporate Debtor is a medium enterprise registered with the Ministry of Micro, Small and Medium Enterprises and is engaged in the business of manufacturing of food products, grain mill products, and processing and milling of other grains. The business of the Corporate Debtor was adversely affected by the onslaught of the Covid-19 Pandemic. As a direct consequence of the distress caused due to the pandemic, the Corporate Debtor was not in the position to repay its debts, including the debts owed to the Applicants.
- 5.2. The Corporate Debtor had not defaulted on any of its obligations to any Bank, NBFCs or Unsecured creditors before the onset of pandemic and before the relevant date for the purpose of Section 10A i.e., 24.03.2020. The Corporate Debtor timely paid the monthly installments till March, 2020 and defaulted in making the payments only between April 2020 till December 2020.
- 5.3. The Applicants are trying to initiate the CIRP fraudulently and maliciously. Despite knowledge of the fact that the default took place during the period covered by Section 10A, the Applicants have mentioned that the default took place in June 2021 and September 2021. The Applicants have claimed that while the interest for the financial year 2019-20 was paid, the interest for the period between 01.04.2020 to 25.03.2021 was not paid and the same is recorded in the ledgers filed with the Application. Thus, the default occurred during

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the COVID-19 pandemic and consequently, Section 10A of the Code is attracted in the instant fact situation.

- 5.4. The Applicants have taken contradictory stands in the Application. On the one hand, it has been submitted that the Corporate Debtor has not paid interest for the period between 1.04.2020 to 25.03.2021, and on the other, it has been urged that the default took place in June 2021 and September 2021.
- 5.5. In Form 1, the Applicants have claimed that the Corporate Debtor owes different debts to each of them and none of the individual debts of any Applicant satisfies the threshold limit required for initiation of the CIRP i.e., One Crore Rupees. Further, the Corporate Debtor has filed a *DB Civil Writ Petition bearing no. 2507/2022* wherein it has challenged the validity of Section 7 to the extent of jointly filing of Applications for meeting the threshold requirement of Rs. 1 Crore.
6. The Applicants filed its rejoinder *vide* Diary No. 581/2023 dated 03.03.2023 and made the following submissions:-
- 6.1. The Applicants demanded their money back from the Corporate Debtor for the first time in April, 2021 and then on 07.06.2021 as evident from Annexure-5 and Annexure-9 of the main Application. Thus, the contention of the Corporate Debtor that the request for repayment was made in March, 2020 is vague and factually incorrect.





- 6.2. The Corporate Debtor has wrongly averred that the Applicants were intimated about the inability of the Corporate Debtor to pay the debt in between March, 2020 to March 2021. By making the aforementioned submission, the Corporate Debtor is trying to take advantage of the bar provided under Section 10A of the Code by distorting the facts of the case. The correct facts are that the Applicants were intimated only in June, 2021 regarding inability of the Corporate Debtor to repay its debts. Further, the date of default of loan in the instant case is 15.06.2021 which is seven days from the date of the loan recall letter.
- 6.3. Further, the date of default starts from 15.06.2021 on account of the fact that the Applicants sent the loan recall letter to the Corporate Debtor on 07.06.2021. The Corporate Debtor in its reply dated 21.06.2021 to the recall notice expressed its inability to repay the debt owed to the Applicants. Thus, all these communications which have been annexed with the main Application proves that the default does not fall under the purview of Section 10A of Code.
- 6.4. It was submitted that the *Writ Petition bearing no. 2507/2022* filed by the Corporate Debtor challenging the filing of joint Applications to meet the threshold limit prescribed under the Code has been dismissed by the Hon'ble Rajasthan High Court *vide* its Judgment dated 25.07.2022.



7. During the pendency of the Section 7 Application, the Corporate Debtor filed an Application bearing *I.A. (IBC) No. 573/JPR/2023* under Section 65 of the Code and Section 340 of the Code of Criminal Procedure, 1973 ('CrPc') R/w Rule 11 of the NCLT Rules, 2016 alleging fraudulent and malicious initiation of proceedings by the Applicants/Financial Creditors and inter-alia seeking rejection of the Company Petition bearing no. *CP No. (IB)- 98/7/JPR/2021*. The contentions raised by the Corporate Debtor in the aforementioned Application are summarized hereunder:-

7.1. The Applicants have mentioned different dates of default in the Application filed under Section 7 of the Code. In Para 7 of the Application, it has been stated that the Applicants asked the Corporate Debtor to return all the outstanding amount in the communication dated 03.04.2021 and 07.04.2021. Contrary to the dates mentioned in Para 7, the letters sent by Applicants 1-3 annexed as Annexure-5 of the Section 7 Application states that the Applicants have been asking for repayment of the principal as well as the interest amount from the Corporate Debtor since December 2019. The date of default was again altered in Part IV of the Section 7 Application wherein it is mentioned that the default occurred on 15.06.2021 and 15.09.2021. Thus, the Applicants/Financial Creditors have claimed different dates for default. The said manoeuvre was undertaken to bypass the bar imposed against

initiation of CIRP for the default pertaining to COVID-19 period under Section 10A of the Code.

7.2. In the joint Rejoinder filed by the Applicants/Financial Creditors, the Applicants/ Financial Creditors have yet again taken a contradictory stand regarding the date of default which is evidenced from the following response to para 2(c):

“2(c). That the contents of the para No. C of reply are denied in the manner stated and it is submitted that the applicants demanded their money first time in April, 2021 and then on 07.06.2021 which is evident from Annexure- 5 and Annexure 9 of the main petition, thus, the averment that applicants requested for the repayment of their dues along with interest after March, 2020 is vague and incorrect.”

From the aforesaid extract, it is evident that the Financial Creditors have shifted their claim of demand and date of default in the purported letter dated 07.06.2021, Para 7 of Section 7 Application, and the Rejoinder. The different dates of default alleged by the Financial Creditors as per the Corporate Debtor are reproduced hereunder:-

- “ I. December, 2019 in the purported letters dated 07.06.2021;*
- II. Refund asked so many times before 07.09.2021, as per the purported letter dispatched on 07.09.2021 by the Respondent No. 3;*
- III. Defaults before 03.04.2021, as per para 7 of the Section 7 petition;*
- IV. First demand and default being made only on 03.04.2021, as per rejoinder.”*

7.3. The falsehood and fraud played by the Applicants/ Financial Creditor is also proved by the fact that they have deliberately suppressed the full



and complete Whatsapp chat between *Mr. Hemant Nihalani* and Respondent No. 1. The complete Whatsapp chat since the month of May 2020 would reveal that Respondent No. 1 was repeatedly asking for payment of interest. Further, it is evident from the ledgers produced with the Section 7 Application that only part payments toward interest were made by the Corporate Debtor. The part payments made in the months of June/ July, 2020 proves that the default by the Corporate Debtor falls within the suspended period under Section 10A of the Code.

7.4. The aforesaid oscillation in the dates of default and the conduct of the Applicants/Financial Creditors unequivocally establishes that they are trying to initiate the CIRP of the Corporate Debtor in a fraudulent and malicious manner. Further, such false and misleading pleadings by the Applicants/Financial Creditors warrant an immediate enquiry and prosecution under Section 209 R/w Section 340 of CrPc.

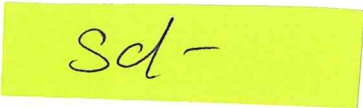
8. The Corporate Debtor filed its Written Submission *vide* Diary No. 1143/2024 dated 06.05.2024 wherein it is contended that:-

8.1. The date of default as per Part IV of the Application under Section 7 for Applicants 1-3 is 15.06.2021 and for Applicant No. 4 is 15.09.2021. The aforesaid dates have been arrived at by adding seven days in the date of the purported recall notices dated 07.06.2021 and 08.09.2021. It is a settled position of law that the right to send a recall notice arises



at the time of default and issuance of a recall notice by itself cannot constitute 'default' as defined under Section 3(12) of the Code. Further, sending of a recall notice after the default will not change the date of original default.

- 8.2. The ledgers filed with the Section 7 Application show part payment of interest during the months of June, July and August 2020. The part payments were made in compliance of the demand made by the Applicants in month of June 2020. Thus, the actual date of default occurred on 09.07.2020 for Applicant No. 1; on 05.08.2020 for Applicant No. 2; on 21.07.2020 for Applicant No. 3 and on 16.06.2020 for Applicant No. 4.
- 8.3. It was submitted that the Applicants have wrongly contended that the Corporate Debtor made the part payment during the Covid period only after 05.06.2020 i.e., the date on which Section 10A was introduced, for availing the benefits of Section 10A of the Code. The Corporate Debtor was granted Guaranteed Emergency Credit Line ('GECL') by SBI and Axis Bank in the month of June and July, 2020. It was only after the grant of GECL by the banks that the Corporate Debtor was able to make part payment to the Applicants/ Financial Creditors.
- 8.4. The Corporate Debtor reiterated the contentions raised in the Reply and the I.A. bearing no. 573/2023 and placed reliance upon the following case laws:-





- I. *Laxmi Pat Surana v/s Union Bank of India and Ors., (2021) 8 SCC 481*
- II. *Milind Kashiram Jadhav v/s State Bank of India, CA (AT) (Insolvency) No. 1589 of 2023.*
- III. *Ramesh Kymal v/s M/s Siemens Gamesa Renewable Power Pvt. Ltd. CA No. 4050/2020 SC*
- IV. *M/s Co-operative Robobank U.A. v/s M/s Coffee Day Global Limited, C.P. (IB) No. 19/BB/2021 NCLT, Bengaluru Bench*
- V. *Ramjas Foundation and Anr. v/s UOI (2010) 14 SCC 38*

9. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder and Written Submission along with the documents enclosed therein.
10. Before delving into the issue at hand, we refer to Section 7 of the Code which clarifies that the Adjudicating Authority upon being satisfied that the default of financial debt has occurred, may order for initiation of CIRP of the Corporate Debtor. The key ingredients of an Application filed under Section 7 of the Code are: (i) there has to be a financial debt and; (ii) there must be a default in repayment of the financial debt. Hence, the Applicant must establish that there is a financial debt and that a default has been committed in respect of that financial debt by the Corporate Debtor. While dealing with an application under section 7, the Adjudicating Authority is not required to consider the question of the dispute between the parties as long as the 'debt' and 'default' is proved.

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11. It has been well settled by the Hon'ble Supreme Court in *M/s Innoventive Industries Ltd. vs. ICICI Bank, C.A. Nos. 8337-8338 of 2017*, that upon being satisfied that a debt is due and default has occurred, the Adjudicating Authority is bound to commit the Corporate Debtor into CIRP. The relevant excerpts from the judgment are as below:

*“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. **The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete**, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.*

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

(emphasis added)

12. Further, the Apex Court in the case of *E S Krishnamurthy & Ors. vs. M/s Bharath Hi Tech Builders Pvt. Ltd., Civil Appeal No. 3325 of 2020*, dated 14.12.2021, relied upon the judgment of *Innoventive (supra)* and had held as below:

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“25. In Innoventive Industries (supra), a two-judge Bench of this Court has explained the ambit of Section 7 of the IBC, and held that the Adjudicating Authority only has to determine whether a “default” has occurred, i.e., whether the “debt” (which may still be disputed) was due and remained unpaid. If the Adjudicating Authority is of the opinion that a “default” has occurred, it has to admit the application unless it is incomplete. Speaking through

27. The Adjudicating Authority has clearly acted outside the terms of its jurisdiction under Section 7(5) of the IBC. The Adjudicating Authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively. These are the only two courses of action which are open to the Adjudicating Authority in accordance with Section 7(5). The Adjudicating Authority cannot compel a party to the proceedings before it to settle a dispute.”

(emphasis added)

13. Thus, upon conclusion of the fact that the debt has become due and default has been committed in payment of the same to the Creditor, the Adjudicating Authority has no discretion to refuse the admission of the Application for CIRP of the Corporate Debtor. Similarly, when it is found that the debt has not become due and payable, the Application under Section 7 of the Code can be rejected.
14. In the instant case, the Corporate Debtor has contended that the default of the debts owed to the Financial Creditors took place when the last payment was made to the Creditors which is tabulated hereunder:-

S. No	Name of Creditor	Date of Default
1.	Dilip Bafna (Applicant No. 1)	09.07.2020
2.	Meena Bafna (Applicant No. 2)	05.08.2020



3.	Yash Bafna (Applicant No. 3)	21.07.2020
4.	Mool Chand Hundia (Applicant No. 4)	16.06.2020

It was further contended that since the aforementioned dates fall within the period prescribed under Section 10A of the Code, Section 7 Application filed by the Applicants is not maintainable.

15. To deal with the contention raised by the Corporate Debtor, it is relevant to set out certain facts concerning the debts advanced by the Applicants to the Corporate Debtor:-

15.1 The Applicants advanced a principal sum of Rs. 85,00,000/- (Rupees Eighty Five Lakh Only) at the interest rate of 15% P.A. to the Corporate Debtor in the following manner:

Name of Creditor	Date of Disbursement	Amount
Dilip Bafna (Applicant No. 1)	05.06.2018	25,00,000/-
Meena Bafna (Applicant No. 2)	18.06.2018	25,00,000/-
Yash Bafna (Applicant No. 3)	05.06.2018	25,00,000/-
Mool Chand Hundia (Applicant No. 4)	02.01.2019	10,00,000/-
TOTAL		85,00,000/-

15.2 Subsequently, for the Financial Year 2018-2019, the Corporate Debtor paid the due interest amount to the Applicant No. 1 to 3 on 02.04.2019 and to Applicant No. 4 on 27.03.2019. It is relevant to mention here that as per the ledger entries of the Applicants, the interest was accrued against the loan advanced by them on the last date of the Financial Year i.e., on 31.03.2019. Further, as per the 26 AS form filed with the

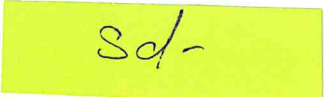


Application for the F.Y. 2018-2019, the Corporate Debtor has credited the interest in favour of the Applicants towards the aforementioned debts and deducted the TDS amount on 31.03.2019 i.e., the transaction date.

15.3 In regard to the Financial Year 2019-20, the Corporate Debtor has paid the due interest amount to Applicant No. 1 on 09.07.2020; to Applicant No. 2 on 05.08.2020; to Applicant No. 3 on 21.07.2020; and to Applicant No. 4 on 16.06.2020. It is relevant to mention here that as per the ledger entries of the Applicants, the interest was accrued against the loan advanced by them on the last date of the Financial Year i.e., 31.03.2020. Further, as per the 26 AS form submitted with the Application for the F.Y. 2019-2020, the Corporate Debtor has credited the interest in favour of the Applicants towards the aforementioned debts and deducted the TDS amount on 31.03.2020 i.e., the transaction date.

15.4 Thereafter, the Corporate Debtor had not made any payment towards the interest due on 31.03.2021. Consequently, recall notices were issued by Applicants No. 1 to 3 on 07.06.2021 and Applicant No. 4 on 08.09.2021.

16. A perusal of the ledger documents and the 26 AS forms filed with the Application, makes it apparent that the amount of interest was accrued by the Corporate Debtor as well as the Financial Creditors at the end of the






concerned Financial Year i.e., 31st March. In so far as the interest liability of for the F.Y. 2021-21 is concerned, there is nothing on record to show that the Corporate Debtor created a liability and deposited T.D.S. or paid any interest on the amount due on 31.03.2021. Thus, the interest payment due on 31.03.2021 has neither been credited as done in the previous financial years nor any proof of payment is available for the same.

17. At this juncture, it is relevant to refer to Section 10A of the Code that provides that:

“Section 10A. Suspension of initiation of corporate insolvency resolution process

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

PROVIDED that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation: For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said section before 25th March, 2020.”

18. A perusal of Section 10A of the Code reveals that the said section is restricted to default committed by a Corporate Debtor between 25th March 2020 to 25th March 2021. In the instant case, the Corporate Debtor as well as the Applicants have accrued the amount of interest at the end of the concerned financial year, though, the actual payments have been made on different subsequent dates. The Corporate Debtor had serviced the interest



amount for the Financial Year 2018-19 and 2019-20 and in all such cases the Corporate Debtor had created liability on 31st March of the concerned year. Accordingly, the amount of interest for the Financial Year 2020-21 shall accrue on 31.03.2021 which is after the expiry of the Section 10A period i.e., post 25th March 2021. Therefore, the submission of the Corporate Debtor that the default occurred during the Section 10A period is unsustainable and being rejected forthwith.

19. The Corporate Debtor has also contended that it owes different debts to each of the Applicants and none of the individual debts of any Applicant satisfies the threshold limit required for initiation of the CIRP i.e., One Crore Rupees. Further, the Corporate Debtor has filed a DB Civil Writ Petition bearing no. 2507/2022 wherein it has challenged the validity of Section 7 to the extent of jointly filing the Application for meeting the threshold requirement of Rs. 1 Crore Rupees.
20. To deal with objection of the Corporate Debtor, it is relevant to refer to the Judgment of the Hon'ble Rajasthan High Court in the Writ Petition bearing no. 2507/2022 filed by the Corporate Debtor. The Hon'ble High Court in its Judgment dated 25.07.2022:

“Having considered the entirety of the facts and circumstances as available on record and after appreciating the arguments advanced at bar, we are of the firm view that the statute i.e., Section 7 of the IBC as amended vide Gazette Notification dated 05.06.2020, admits no other interpretation except that a group of financial creditor can converge and join hands to touch the financial limit of Rs. 1 crore stipulated under Section 7 so as to initiate a CIRP under the IBC.

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Consequently, we find no merit in this writ petition which is dismissed as such.... ”

21. In view of the aforesaid observation of the High Court and the settled position of law, we find no force in the argument of the Corporate Debtor concerning joint Application filed by the Applicants under Section 7 of the Act.
22. Upon conjoint reading of the ratio laid down by the Hon'ble Supreme Court, it is evident that in Applications filed under Section 7 of the Code, the Adjudicating Authority is only required to determine the existence of a financial debt and default. If the same is answered in positive, the CIRP of the Corporate Debtor is liable to be initiated under Section 7 of the Code regardless of the dispute, if any.
23. In the case at hand, the Corporate Debtor has not disputed the existence of debts owed to the Applicants. Further, as already observed, the default in the instant case has not occurred during the Section 10A period. Thus, the instant Application satisfies the requisites for admission of a Section 7 Application. In view of the aforementioned, we are of the view that the Corporate Insolvency Resolution Process ought to be initiated against the Corporate Debtor as all the ingredients laid down under Section 7 of the Code are fulfilled in the present matter.
24. The Applicant has named one *Mr. Babu Lal Sharma* having Registration Number IBBI/IPA-001/IP-P01151/2018-19/11832, (email: tejgati@yahoo.com, duly registered with the Indian Institute of Insolvency



Professional of ICAI, to be appointed as the Interim Resolution Professional. The Applicants have filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.

25. Consequences of initiation of CIRP shall be inter-alia as follows:

25.1. The Resolution Professional proposed by the Applicant is *Mr. Babu Lal Sharma*, who is an IP registered with Indian Institute of Insolvency Professional of ICAI, having Registration No. IBBI/IPA-001/IP-P01151/2018-19/11832, is hereby appointed as the Insolvency Resolution Professional ('IRP') to take over the affairs of the Corporate Debtor and execute duties as required to be performed by him under the provisions of IBC, 2016, including the issuance of the publication in widely circulated newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same therein.

25.2. Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

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- 25.3. The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray his expenses to be incurred and fees on the account. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant shall deposit a sum of Rs 1,00,000/- (Rupees One Lakh Only) as the fees in the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- 25.4. In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.
26. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.

Sd/-

Sd/-



27. In the circumstances, CP No. (IB) 98/7/JPR/2021 is admitted and the IA (IBC) No. 573/JPR/2023 is disposed off.

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

A handwritten signature in black ink on a yellow rectangular background.

**RAJEEV MEHROTRA,
TECHNICAL MEMBER**