IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKT BENCH,

KOLKATA

C.P (IB) No.548/KB/2020

In the matter of

An application 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.

And

In the matter of:

Hari Charan Gupta, residing at Main Road, Barbil, District- Keonjhar, Odisha-758035

… Financial Creditor

Versus

In the matter of:

Mayapur Sales Private Limited, CIN 51909WB2007PTC116498 having its registered office at 18, Rabindra Sarani, Room No. 703-704, Kolkata-700001, West Bengal.

…Corporate Debtor

Date of hearing : 06/04/2022

Order Pronounced on :24 /05/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr.Shaunak Mitra, Adv.] For the Financial Creditor
2. Mr. Zeeshan Haque, Adv.]
3. Mr. Tanay Agarwal, Adv.]
4. Mr. Ram Maroo, Adv.]

1. Mr. Ratnanko Baneji, Sr.Adv.] For the Corporate Debtor
2. Mr. Swapna Choubey, Adv.]

8. Mr. Saubhik Chowdhury, Adv.]

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This petition 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 has been filed by **Hari Charan Gupta,** (hereinafter referred to as the Financial Creditor) for initiation of Corporate Insolvency Resolution Process in respect of **Mayapur Sales Private Limited,** having its registered office at 18, Rabindra Sarani, Room No. 703-704, Kolkata-700001, West Bengal (hereinafter referred to as the Corporate Debtor).

3. It is submitted in the petition that on 26th April, 2011, the Financial Creditor transferred a sum of Rs.1,00,00,000/- as loan in favour of the Corporate Debtor vide cheque no. 593797 as after due course of negotiations and discussions between the Financial Creditor and the Corporate Debtor, the Financial Creditor agreed to advance a loan of Rs. 1,00,00,000/- (Rupees One Crore) to the Corporate Debtor and in terms of the understanding between the parties, the Corporate Debtor agreed to pay quarterly interest @ 18% p.a. on the principal amount.

4. It is further submitted that upon the loan being received and/or accepted by the Corporate Debtor, on 1st April, 2014, the Corporate Debtor acknowledged the amount advanced by the Financial Creditor as loan by making payment of a sum of Rs.90,000/- as TDS in acknowledgement of its liability to repay the principal sum together with interest. In this context, it is relevant to mention that the principal sum together was repayable together with quarterly interest at 18% per annum as per the agreement between the parties. It is submitted that from the confirmation of accounts, the Corporate

Debtor in acknowledgement of its indebtedness towards the Financial Creditor had deposited interest @ 9% as TDS for two consecutive financial years 2012-2013 and 2013-2014.

5. It is further submitted that the Corporate Debtor failed and defaulted in making any payment of interest in respect of the financial debt in question. As such, there has been no payment made in respect of the interest or the principal amount since 2011 and that the Corporate Debtor defaulted in payment of the loan on 24th July,2011.

6. It is submitted that although, the loan agreement between the parties required the Corporate Debtor to pay interest @ 18% p.a, the Corporate Debtor had deposited TDS in respect of the interest on the said loan at only 9% p.a. In the circumstances, by his letters dated September 16, 2013 and September 04,2014, the Financial Creditor called upon the Corporate Debtor to make payment of the outstanding dues of the Financial Creditor. i.e. principal amount along with interest @ 18% per annum as agreed upon. Accordingly, the said letters of demand were duly accepted and acknowledged by the Corporate Debtor.

7. It is submitted that despite having all along admitted and acknowledged its liability in respect of the financial debt, no payment has been made by the Corporate Debtor either as interest or the principal apart from the said sum of Rs.90,000/- for each of the Financial Years being 2012-13 and 2013-14.

8. It is submitted that from time to time, the Financial Creditor has called upon the Corporate Debtor to make payment of the said sum of Rs.1,00,00,000/- along with quarterly interest @ 18% amounting to Rs.3,60,08,838.17 after deducting the sum of Rs.1,80,000/- for the two financial years being 2012-13 and 2013-14 as referred to hereinabove.

However, till date the said sum of Rs.1,00,00,000/- together along with quarterly interest at 18% p.a. continues to remain pending and the Corporate Debtor has committed default in making the payment of the aforesaid financial debt.

9. It is further submitted in the petition that the date of default is 25th July 2011 and 1st April, 2019 (date of issuance of the last Balance confirmation statement duly signed and stamped by Corporate Debtor to the Financial Creditor, according to the Financial Creditor, which constitutes an acknowledgement in writing).

10. It is submitted that in support of its claim, the Financial Creditor has annexed copies of the following documents:-

i. A copy of the bank statement of the Financial Creditor reflecting such loan being advanced is annexed as Annexure-E.
ii. Copies of the confirmation of accounts for the year 2012-2013 and 2013-2014 sent by the Corporate Debtor acknowledging its debt are annexed as Annexure-F.
iii. Copies of the Form 26AS evidencing deposit of tax deducted at source in respect of interest on the loan by the Corporate Debtor are annexed as Annexure-G.
iv. Copies of the letters of demand dated 16th September, 2013 and 4th September, 2019 duly received by the Corporate Debtor are annexed collectively as Annexure-H.
v. Copies of the confirmation of accounts for the financial years 2014-15, 2015-16, 2016-17, 2017-18, and 2018-19 duly received from the Corporate Debtor and duly signed and acknowledged by the Corporate Debtor are annexed as Annexure-I.
vi. A Working Computation of amounts and days of default for the loan are represented in tabular forms and are annexed as

Annexure- J.

11. In its reply affidavit filed by Corporate Debtor through one of its Directors and Principal Officer submitted that there is no debt, financial debt or otherwise, outstanding and there is no question of any default allegedly committed by the Corporate Debtor. It is submitted that the claim of the Financial Creditor is ex-facie barred by limitation and there is no subsisting claim on the basis of which the present proceedings could have been instituted.

12. It is submitted that in the ordinary course of business, the Financial Creditor and the Corporate Debtor had collaborated with intention to develop certain properties and the Corporate Debtor accepted a loan for a sum of Rs.1,00,00,000/- (One Crore) from the Financial Creditor in April, 2011. It was agreed that the said letter would be used for the purpose of development of properties, which would be jointly developed by both the parties. It was further agreed that the Corporate Debtor would pay interest on the said amount at the rate of 9% p.a., for which, tax would require to be deducted at source by the Corporate Debtor, which the Corporate Debtor deducted at source for the financial years 2012-13 and 2013-14.

13. It is submitted by the Corporate Debtor that the development of the properties could not be undertaken and that by way of adjustment of all claims between the parties, the Corporate Debtor and the applicant would no longer have any claim against each other in respect of the development of the properties or in respect of the companies, in which there was mutual rights and claims of the parties.

14. It is submitted that Memorandum of Understanding was entered into on 10th January, 2013 (Annexure-A) whereby the Financial Creditor ceased to have any rights or claims against the Corporate Debtor. It is submitted that no tax on interest has been deducted at source after 2014, and pursuant to such adjustment of all mutual rights and liability neither of the parties took any further steps in the matter since 2014. It is submitted that all of a

sudden the Corporate Debtor was surprised to receive a copy of the application under section 7 of IBC along with a letter dated 28th January, 2020 on the basis of a purported claim of Rs.4,60,08,838.17/- filed by the Financial Creditor against the Corporate Debtor.

15. It is submitted that the Corporate Debtor is not aware about the existence of the Demand Notice dated 16th September, 2013 and 4th September, 2014 annexed with the petition as Annexure-H at pages 41 – 42 of the application, which according to the Corporate Debtor are false, fabricated and manufactured. It is submitted that the stamps on the said Demand Notice are stamp of Mayapur. It is submitted that the documents annexed as Annexure F and Annexure I being purported acknowledgement .The purported signature appearing on the documents are also not that of any of the representatives or authorised representatives or any office of the Mayapur. The stamps appearing on the said documents, purportedly of the Mayapur, are also not that of the respondent company. The documents have been forged, fabricated and manufactured by the Financial Creditor.

16. It is submitted that the aforesaid documents are wholly inconsistent and contradictory to the stand of the Financial Creditor itself. It is submitted that there is no reason as to why the purported documents would have been issued by Mayapur in the manner as has been done. The documents do not amount to any acknowledgement or confirmation of accounts. No reliance can be placed on the aforesaid alleged confirmation of accounts. It does not constitute any acknowledgement in writing and is of no relevance insofar as the institution of the present proceedings under IBC is concerned. In any event, the aforesaid documents do not in any manner extend the default as alleged by the Financial Creditor in the Company Petition.

17. It is submitted that the Financial Creditor is purporting to use the forged and fabricated documents and is creating evidence in support of its purported claim as against Mayapur. The Financial Creditor is dishonestly and intentionally using false and fabricated documents in the course of

judicial proceedings as purported evidence in support of its claim.

18. It is submitted that Mayapur uses a different stamp for the purpose of receiving any document or acknowledging its accounts The genuine stamp of Mayapur used in the usual course of its business will appear from the document annexed as Annexure-B. The Financial Creditor is using the aforesaid fabricated documents as false evidence in the insolvency proceeding.

19. It is stated that the purported confirmation of accounts annexed in the Insolvency Application are all forged and fabricated documents as no such confirmation was ever issued in favour of the Financial Creditor by Mayapur. It is submitted that the Mayapur has already instituted a Civil Suit before the Hon'ble High Court at Calcutta challenging the said documents as stated hereinabove.

20. It is submitted that the Financial Creditor is deliberately trying to mislead this Adjudicating Authority by annexing purported demand notice which was never raised upon Mayapur. The Financial Creditor has filed the instant application with the malafide intention to deceive Mayapur by filing such frivolous, fraudulent, illegal application against it.

21. It is submitted that in any event the said purported loans are already time bared and no action or legal remedies are available to the Financial Creditor under the Insolvency and Bankruptcy Code, 2016. The Financial Creditor has himself mentioned that the date of default is July 25, 2011 and the purported manufactured documents as stated hereinabove have been produced by the Financial Creditor as an attempt to save limitation.

22. It is submitted that the Financial Creditor has tried to deliberately mislead and deceive this Adjudicating Authority by making false allegations and by fabricating and manufacturing documents and are guilty of making false statement on oath and are liable to be prosecuted for committing perjury.

23. It is submitted that it is apparent that there is no default by Mayapur and that the instant proceeding is instituted in the abuse of process. The application is not maintainable at all and the same cannot be filed under section 7 of the IBC. There is no default on the part of Mayapur and, therefore the application is liable to be dismissed. In any case, if default had occurred over three years prior to the date of filing of the application, the application would be time barred as the intention of the Code is not to give a new lease of life to debts which are time barred.

24. It is submitted that with regard to the statement made in Part I,II and III of the said application, save what are matters and save what appears there from each and every allegation contained therein is denied and disputed.

25. It is submitted that with regard to the statement made in Part IV and sub-paragraphs of the said application, it is denied that the sum of Rs. 4,60,08,838.17/- is due or payable by Mayapur on any account as alleged or at all. It is submitted that the Financial Creditor is wrongfully and contrary to the understanding between the parties seeking to initiate proceeding against Mayapur. It is further denied that the last date of default is April, 2019 as alleged or that the interest rate was agreed at 18% P.A. on the said purported loan as alleged or at all. It is further denied and disputed that the confirmation of accounts are duly signed and stamped by the Mayapur through its authorised representative. The Financial Creditor has manufactured and fabricated the said documents for initiating instant proceedings against Mayapur and is trying to create evidence in support of its purported claim. It is further denied and diputed that Mayapur failed and defaulted in making any payment of interest in respect of the purported financial debt in question as alleged or at all. It is denied that there was any loan agreement as alleged or that the Mayapur has agreed to pay interest of 18% p.a. on the same as alleged or at all.

26. It is denied that the letter of demand dated September 16th, 2013 and dated September 4th, 2014 were duly signed or stamped by the authorised

signatory of Mayapur as alleged or at all. The Corporate Debtor further denied that the said demand notice annexed as Annexure-H was ever received or acknowledged by Mayapur. It is not aware of the existence of such demand notices. The said demand notices are false, fabricated and manufactured. The purported stamp on the said demand notices are not the stamp of the Mayapur. The said stamp is also manufactured and fabricated. It is denied that Mayapur have all along admitted or acknowledged its liability in respect of purported financial debt as alleged or that any sum is due or payable by Mayapur to the Financial Creditor as alleged or at all. It is further denied that Mayapur has acknowledged its liability in respect of purported financial debt as alleged or that the said purported confirmation of accounts constitutes acknowledgement in writing as alleged or that it demonstrates the continuous liability as alleged or at all. It is stated that the purported confirmation of accounts annexed in the Insolvency Application are all forged and fabricated documents as no such confirmation was ever issued in favour of the Financial Creditor by Mayapur. It is submitted that the purported confirmation of accounts annexed as Annexure-F and I are all manufactured documents and no reliance can be placed upon them. The said confirmation of accounts have no sanctity and the same do not evidence any liability or default of Mayapur as alleged Corporate Debtor. It is denied that a sum of Rs.4,60,08,838.17 can be regarded as amount claimed to be in default or April 1, 2019 can be regarded as date of default. The Corporate Debtor reiterated that the purported balance confirmation are all manufactured documents and no reliance can be placed on the same. The calculations given by the Financial Creditor in Annexure-J are denied and disputed.

27. It is submitted that with regard to the Part V and sub paragraphs thereunder of the said application, it is stated to be a matter of record and it is denied and disputed by the Corporate Debtor. It is apparent that there is no default by Mayapur and that the instant application is instituted in abuse of process. It is submitted that the instant application is hopelessly time barred and same cannot be filed under section 7 of IBC.

28. During the course of arguments, Ld. Counsel for the Financial Creditor has submitted that the Financial Creditor had disbursed a sum of Rs.1,00,00,000/- on 26th April, 2011 to the Corporate Debtor. The Corporate Debtor had agreed to pay an interest @ 18% p.a. but deposited TDS @ 9% p.a. for the Financial Year 2012-2013 and Financial Year 2013-2014. It is submitted that the Corporate Debtor has therefore admitted its liability to pay the interest on the said loan amount.

29. It is submitted that the Financial Creditor is also relying on balance sheets of the Corporate Debtor for the years 2012-2013 to 2018-2019.

30. During the Course of arguments, the Ld. Counsel for the Corporate Debtor submitted that in the light of the MoU dated 10th January, 2013 signed by the parties / their representatives, the Financial Creditor ceased to have any rights or claim against the Corporate Debtor.

31. It is submitted that the documents annexed with the petition are contradictory to the stand taken by the Financial Creditor itself. It is submitted that these documents do not amount to any acknowledgement or confirmation of accounts. It is submitted that the Corporate Debtor has never issued any such acknowledgement in writing. It is further submitted that the Corporate Debtor has already instituted a Civil Suit before the Hon'ble High Court of Calcutta, challenging the said documents which are forged, manufactured and fabricated with the purported signatures of the Corporate Debtor. The Corporate Debtor has further submitted that the Financial Creditor is dishonestly and intentionally using false and fabricated documents in these proceedings. It is further submitted by the Ld. Counsel for the Corporate Debtor that the claim and the petition are in any case ex-facie barred by the laws of Limitation and no action or legal remedies are available to the Financial Creditor under the IBC, 2016.

32. It is submitted that the date of default as mentioned by the Financial Creditor is 24thJuly, 2011 and the last TDS certificate annexed by the Financial Creditor is of the Financial Year 2014. It is submitted that if the

default occurred after 9 years prior to the date of filing of the application, the application would be time barred as the intention of the Code is not to give a new lease of life to debts which are time barred. Ld. Counsel for the Corporate Debtor has referred to and relied upon the following judgments, which are as under:-

i. *Hytone Merchants Private Limited vs. Satabadi Investment Consultants Private Limited (Before NCLAT, Principal Bench, New Delhi) Company Appeal(AT) (Insolvency) No.258 of 2021, order dated 30.06.2021,*

ii. *Patangi Trade & Holdings Private Limited vs. Priaya Food Products Limited (Before NCLT, Kolkata Bench) CP(IB) 1343/KB/2019,Order dated 20.12.2021,*

iii. *Eskay Video Private Limited Vs. DAG Creative Media Private Limited (Before NCLT, Kolkata Bench) CP(IB) 1845/KB/2019, Order dated 4th January, 2022.*

33. It is settled law that the right to sue accrues when a default occurs, and when the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases, in the facts of the case, Section 5 of Limitation Act may be applied to condone the delay in filing such application.

34. After going through all the pleadings of the parties and after hearing Ld. Counsel for the parties, if the Memorandum of Understanding entered into between the parties terminating the business relationship of both the parties herein **is taken as genuine, then there was no logic behind reflecting the amount of debt in its Balance Sheets of succeeding years, by the Corporate Debtor, which confirms the debt, making this Bench to believe that even the confirmation of debt as genuine one.**

35. The said MoU clearly indicates that the parties had agreed that any document signed between both the parties till the date of said MoU, shall stand null and void. The Second Party shall have no further rights, claims

whatsoever in respect of the above said property and the above mentioned Companies. It was further agreed in the MoU that the Second Party would co-operate fully with the First Party in signing any documents as and when may be required in respect of the above mentioned Companies. The relevant extract of the Memorandum of Understanding are as under:-

MEMORANDUM OF UNDERSTANDING

DATED	10th January 2013
PARTIES	Mr. Lalit Kumar Giria, s/o late Sumermal Giria, currently residing at CD-35 Sector-I, Salt Lake City, Kolkata-700061(First Party) AND Mr. Hari Charan Gupta, s/o Shri Laxmi Chand Gupta, currently residing at Main Road, Barbil-758 035,Orissa (Second Party)
SUBJECT MATTER	ALL THAT piece and parcel of demarcated plot of land situated at Mouza- Gopalpur, JL No.2, Re.Sa. No.140, Touzi Nos. 2998 & 125B, Pargana-Kalikata, P.S. Airport, comprised in C.S. Dag No. 5680/5787, R.S. 1571, L.R. Khatian No.239/1 corresponding to L.R. Khatian Nos. 5853, A.D.S.R.C. Bidhannagar, Salt Lake City within the local limit of Rajarhat Gopalpur Municipality, in Ward No.5 at present 2, in the District North 24 Parganas, West Bengal, together with all easement rights and all other rights, appurtenances and inheritances for access and user of the Said Property.
EVENTS	That the Second Party has credited to terminate the partnership with the First Party for the development of the subject matter. As a result the Second Party has resigned & transferred his shareholdings to the First Party/his nominees from the following companies. 1. MAYAPUR SALES PRIVATE LIMITED (CIN: U 51909WB2007PTC116498) 2. OPINION VINCOM PRIVATE LIMITED (CIN: 51909WB2011PTC163903) 3. HYTONE TRADERS PRIVATE LIMITED (CIN: U51909WB2011PTC163910 4. HIGHVIEW VANIJYA PRIVATE LIMITED (CIN: U51909WB2011PTC163899) 5. ENTHUSISASTIC DEALERS PRIVATE LIMITED (CIN: U51909WB2011PTC163531) 6. ZEALOUS DISTRIBUTORS PRIVATE LIMITED (CIN: 74999WB2011PTC163759) 7. GOOD DEAL SUPPLIERS PRIVATE LIMITED (CIN: U74999WB2011PTC163759)

	8. PROFOUND ADVISORY PRIVATE LIMITED (CIN: U74140WB2011PTC163548) 9. HOLISTIC SALES PRIVATE LIMITED (CIN:U51909WB2011PTC163541) 10. APARAJEET MARKETING PRIVATE LIMITED (CIN:U51909WB2009PTC132201) 11. ADIDEV MARKETING PRIVATE LIMITED (CIN:U51101WB2009PTC132769)
UNDERTAKING	Both the Parties hereby agree as under: 1. That any documents signed between Both parties till the date of this MoU, shall stand null and void. 2. That the Second Party shall have no further rights, claims, whatsoever in respect of the above said property and/or the above mentioned Companies. 3. That the Second Party shall co-operate fully with the First Party in signing any documents as and when may be required in respect of the above mentioned Companies.

Execution and Delivery

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS MoU ON THE DATE MENTIONED ABOVE.

Received in original all documents relating to the land.

_________________________ _________________________

(LALIT KUMAR GIRIA) (HARI CHARAN GUPTA)”

36. Even though the Financial Creditor has denied this MoU but the Financial Creditor has not enclosed any document, any notice sent to the Corporate Debtor within three years preceding the filing of this petition. The default as mentioned in the petition is 25th July, 2011. No payment has been made since 25th July, 2011. The confirmation of accounts for the Financial Years 2014-15, 2015-16, 2016-17, 2017-18, whereby the Corporate Debtor has allegedly acknowledged its liability, have been denied by the Corporate Debtor.

37. This is a case with peculiar facts. Both the parties dispute the documents filed by the other. The Financial Creditor disputes and denies having entered into any MOU, and the Corporate Debtor denies and disputes

having signed or sealed any confirmation of account/balance and describes them as false and forged ones. This Adjudicating Authority is not a forum where we can ask the parties to lead evidence to assess the authenticity of their documents. These are some other facts which have not been revealed by both the parties. If there was any MOU, then where was the need for the Corporate Debtor to reflect the said loan in its Balance Sheets for the later years, and similarly, if the amount was due, why the Financial Creditor did not initiate any action against the Corporate Debtor within 3 years. There are some gaps which cannot be filled by this Adjudicating Authority on the basis of presumptions.

38. We, therefore, do not deem it fit to admit or entertain this petition. The petition is, therefore, rejected. The Financial Creditor can avail its remedies elsewhere if so desired.

39. CP (IB) No.548/KB/2020, is therefore, dismissed.

40. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

HARISH CHANDER SURI Digitally signed by HARISH CHANDER SURI Date: 2022.05.24 16:15:40 +05'30'

(Harish Chander Suri)
Member (Technical)

ROHIT KAPOOR Digitally signed by ROHIT KAPOOR Date: 2022.05.24 15:20:53 +05'30'

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 24th day of May,2022

Pj