



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-III**

**Item No.01**  
IB-550(ND)/2022

**IN THE MATTER OF:**

M/s. Fun, N, Food Pvt Ltd.

.... **APPLICANT/RESPONDENT**

**Vs.**

Pansy Construction Pvt Ltd.

.... **RESPONDENT**

**SECTION**

**U/s 7 IBC code 2016**

**Order pronounced on 27.09.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets. IB-550(ND)/2022  
is **admitted.**

**Sd/-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**Sd/-**  
**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**





to the Corporate Debtor vide a Loan Agreement dated 01.04.2021 and in terms of the said agreement an amount of Rs. 1,42,70,000/- was disbursed to the Corporate Debtor. Since the Corporate Debtor failed to repay the loan amount, the Financial Creditor recalled the loan vide notice dated 22.02.2022.

2. The relevant clauses of the Loan Agreement which are necessary for reference are mentioned briefly hereunder:

Clause 2 of the Loan Agreement stipulates that the lender sanctioned the loan amount of Rs. 1,45,00,000/- (Rupees one crore forty-five lakhs only) to the borrower which shall be released in favour of the borrower on its request from time to time through banking channels.

3. Clause 3 of the Loan Agreement stipulates that the borrower shall repay the entire disbursed loan amount to the lender with interest, cost, charges, etc. on or before 31.12.2021.
4. Clause 4 of the Loan Agreement stipulates that the borrower shall repay Quarterly interest in advance @12% per annum compounded monthly on reducing balance on the first day of each quarter. It further says that in case of default and/or delay in repay the additional interest @2% per month shall be payable over and above the current rate of 12% per annum.
5. Clause 9 of the Loan Agreement enumerates the events which will constitute default.
6. Clause 10 of the Loan Agreement deals with the consequences of an event of default.
7. The Financial Creditor has placed on record a copy of the letter dated 22.04.2022 issued by the Noble Co-operative Bank Limited to the Financial Creditor which shows the certain amount have been debited from the account of the Financial Creditor to the Corporate Debtor as per the following table:

| Date       | Amount    | Mode      |
|------------|-----------|-----------|
| 05.04.2021 | 30,00,000 | By Cheque |
| 06.07.2021 | 24,60,000 | By Cheque |



|            |           |           |
|------------|-----------|-----------|
| 12.07.2021 | 26,00,000 | By Cheque |
| 15.07.2021 | 26,10,000 | By Cheque |

8. Further, the letter dated 22.03.2022 issued by the South Indian Bank to the Financial Creditor also shows that the following amount has been disbursed to the account of the Corporate Debtor,

| <b>Date</b> | <b>Amount</b> | <b>UTR Number</b> |
|-------------|---------------|-------------------|
| 01-07-2021  | 10,00,000/-   | SIBLH21182403866  |
| 13-07-2021  | 26,00,000/-   | SIBLH21194404219  |

9. The Financial Creditor has further placed on record the Bank Statement showing disbursement of the amount to the Corporate Debtor's account. The Financial Creditor has also placed on record the financial information and Form-C issued by NESL showing the total outstanding amount to be Rs. 1,62,79,517/- which includes the principal amount as well as interest.
10. The Corporate Debtor in its reply has admitted the receipt of the loan amount from the Financial Creditor and also has expressed its inability to repay the amount due to financial constraints. It is submitted that the Corporate Debtor made several requests to the Financial Creditor to allow more time for repayment which was not acceded to by the Financial Creditor.
11. We have heard the submissions of Ld. Counsel appearing for both parties and perused the contents of the application along with documents as well as the reply affidavit filed by the Corporate Debtor.
12. On perusal of the record of default of the Corporate Debtor maintained by the Information Utility namely National E-Governance Services Limited (NESL) dated 23.05.2022, we find that this is the record w.r.t. the status of authentication by the debtor shown along with the date of default as 25.04.2021. Therefore, we are satisfied that there exist debt and default and the same is corroborated by the IU certificate filed along with the application.



13. From the records, it is amply clear that the amount in question was disbursed to the account of the Corporate Debtor and the Corporate Debtor failed to repay the said amount which is supported by the NESL Certificate, confirmation of Accounts issued by the Banks as well as the Bank Statement. The Financial Creditor also issued a recall notice on 22.02.2022, which has not been denied by the Corporate Debtor.
14. On the contrary, the Corporate Debtor has admitted its liability. In view of the facts and circumstances of the case as mentioned above, we are constrained to **admit** the present application filed under Section 7 of IBC and initiate CIRP against the Corporate Debtor.
15. This Adjudicating Authority vide order dated 02.01.2023 passed in IA-5329/2022 allow the application seeking replacement of the name of the Interim Resolution Professional from Mr. Ram Phal Bhardwaj to Mr. Vijender Kumar Jain having registration No. IBBI/IPA-001/IP-P01581/2022- 2023/14151.
16. In light of the above facts and circumstances, it is ordered as follows: -
- a. The Application bearing **IB-550(ND)/2022** filed by the Applicant/(FC), under section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent/(CD) is **admitted**.
  - b. We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14(1)(a), (b), (c) and (d) of the Code. Thus, the following prohibitions are imposed:
    - “(a) 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;*
    - (b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*



*(c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

*(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.*

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

- c.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the Corporate Debtor in terms of Section 14(3)(b) of the Code.
- d.** The Applicant/(FC) has proposed the name of Mr. Vijender Kumar Jain as the Interim Resolution Professional (“IRP”) having address:46, Lower Ground Floor, Jor Bagh, Delhi-



110003. His Email id [isvijenderj@hotmail.com](mailto:isvijenderj@hotmail.com). His registration number is IBBI/IPA-001/IP-P01581/2022-2023/14151.

- e. The Applicant filed a copy of the Consent Issued by Mr. Vijender Kumar Jain in Form 2, Written Communication by proposed IRP, as per the requirement of Rule 9(l) of the Adjudicating Authority Rules along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, Mr. Vijender Kumar Jain is appointed as IRP.

- f. In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/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 one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- h. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- i. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- j. The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakh Only) with the IRP to meet the expenses



arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (“CoC”).

- k.** In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today.
- l.** The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- m.** The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- n.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**