

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT 1**

C.P. (I.B) No. 37/7/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW TRIBUNAL ,
AHMEDABAD BENCH ON 02.06.2020**

Name of the Company: JM Kathrotiya
V/s
Cosmos Technocast Pvt Ltd

Section: Section 7 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.

2.


ORDER

The case is taken up through video conferencing.

The case is fixed for pronouncement of order today.

The order in detail is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 2nd June,, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 35/7/NCLT/AHM/2018,

C.P. (I.B.) No. 36/7/NCLT/AHM/2018,

C.P. (I.B.) No. 37/7/NCLT/AHM/2018.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)**

In the matters of :

(1) C.P. (I.B.) No. 35/7/NCLT/AHM/2018

Mr. Krashin V. Thummar,
"Kaustubh", Plot No. 66/2,
Patel Colony - 2,
Gundala Road,
Gondal - 360311.

.....Petitioner/Financial Creditor

Versus

M/s. Cosmos Technocast Pvt. Ltd.
Plot No. 25 to 28,
Survey No. 47,
Hadmatla Industrial Estate,
Ta. KotdaSangani,
Dist. Rajkot,
Hadmatla, Gujarat - 360011.

.....Respondent/ Corporate Debtor

(2) C.P. (I.B.) No. 36/7/NCLT/AHM/2018

Mr. Popatbhai P. Thummar,
"Kaustubh", Plot No. 66/2,
Patel Colony - 2,
Gundala Road,
Gondal - 360311.

.....Petitioner/Financial Creditor

Versus



M/s. Cosmos Technocast Pvt. Ltd.
Plot No. 25 to 28,
Survey No. 47,
Hadmatla Industrial Estate,
Ta. KotdaSangani,
Dist. Rajkot,
Hadmatla, Gujarat – 360011.

.....Respondent/ Corporate Debtor

(2) C.P. (I.B.) No. 36/7/NCLT/AHM/2018

Mr. J. M. Kathrotiya,
“Kaustubh”, Plot No. 66/2,
Patel Colony – 2,
Gundala Road,
Gondal – 360311.

.....Petitioner/Financial Creditor

Versus

M/s. Cosmos Technocast Pvt. Ltd.
Plot No. 25 to 28,
Survey No. 47,
Hadmatla Industrial Estate,
Ta. KotdaSangani,
Dist. Rajkot,
Hadmatla, Gujarat – 360011.

.....Respondent/ Corporate Debtor

Appearance:

Mr. Sudhir Nanavati, Sr. Advocate along with Ms. Prachi Shah and Ms. Pooja Singh, Advocates for the Petitioner/Financial-Creditor.
Mr. Nipun Singhvi along with Mr. Vishal J. Dave and Ms. Pragati Tiwari, Advocates for the Respondent/ Corporate-Debtor.

Order delivered on 2nd June, 2020.

COMMON ORDER

1. These I.B. Petitions have been preferred by the above named different Petitioners/ Financial Creditors against the same

Respondent/ Corporate Debtor, **M/s. Cosmos Technocast Private Limited** under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) and they have sought for initiation of Corporate Insolvency Resolution Process (“CIRP”) in respect of the Corporate Debtor Company. Since the facts about the Corporate Debtor are common and similar are raised by these Financial Creditors, although they preferred to file independent petitions seeking for initiation of CIRP against the Corporate Debtor. Hence, these petitions are being dealt with together for the purpose of its adjudication as per merits and in accordance with the Law are being disposed of by this “Common Order.”

2. The fact in brief which arised for consideration and necessary for disposal of these petitions are stated herein under:

(A) C.P.(IB) No. 35 of 2018

- (i) The present I.B. Petition is preferred by the Financial-Creditor **Mr. Krashin V. Thummar** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a “Code”), seeking initiation of Corporate-Insolvency-Resolution-Process (“CIRP” in Short) in respect of the Corporate-Debtor-Company namely, M/s. Cosmos Technocast Pvt. Ltd. The Petitioner/Financial-Creditor, Mr. Krashin V. Thummar is an individual Financial Creditor. The Petitioner/Financial-Creditor is having its registered

address at: "Kaustubh", Plot No. 66/2, Patel Colony –
2, Gundala Road, Gondal – 360 311, India.

- (ii) It is stated that the Respondent/Corporate-Debtor Company, namely M/s. Cosmos Technocast Pvt. Ltd. is a company incorporated under the Companies Act, 1956 on 08.12.2006 with the CIN: U27105GJ2006PTC049545 and it seems that the company is engaged in the business of manufacturing of machinery parts.
- (iii) The authorised share capital of the Respondent/Corporate-Debtor-Company is Rs.1,00,00,000/- (Rupees One Crore only) and the paid-up share capital of the company is Rs.1,00,00,000/- (Rupees One Crore only). The registered office of the Corporate Debtor Company is situated at: Plot No. 25 to 28, Survey No. 47, Hadmatala Industrial Estate, Ta. KotdaSangani, District Rajkot, Hadmatala, Gujarat – 360011, India.
- (iv) It is submitted that in the year 2006-07, Mr. Purushottam M. Thummar and Mr. Chaturbhai P. Thummar being Directors of the Corporate-Debtor-Company had requested the Financial Creditor, Mr. Krashin V. Thummar to invest in their company. Following this, the Petitioner/Financial-Creditor had

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paid total amount of Rs.3,00,000/- (Rupees Three Lakhs only).

- (v) For that invested amount as mentioned above, the Corporate-Debtor agreed to pay interest at the rate of 2% per month. The Petitioner has annexed a copy of annual returns of the Corporate-Debtor for the year 2008-2009 along with the present I.B. Petition.
- (vi) The Financial-Creditor, from time to time demanded his money back along with interest as per the agreed rate of 2% per month which have been held as Deposits /Unsecured Loans by the Corporate-Debtor-Company.
- (vii) Thus, the Corporate-Debtor had clearly failed to make such payment with interest to the Financial-Creditor. It is submitted that the Petitioner/Corporate-Debtor had also served legal notice to the Corporate-Debtor on 20.07.2017 and 11.10.2017. Even after serving such notices, the Corporate-Debtor did not make any payment.
- (viii) The Corporate Debtor had issued cheques in favour of the Financial Creditor for an amount of Rs.4,75,000/- vide cheque nos. 008261 dated 03.11.2016, cheque no.008363 dated 14.12.2016 and cheque no. 008787 dated 17.02.2017 drawn on Bank of Baroda against the repayment of the aforesaid amount as held as

deposit/unsecured loan by the Corporate-Debtor. The Financial Creditor had accepted an amount of Rs.4,00,000/- under protest and with a clear understanding that the interest is to be calculated at 2% per month as also that the remaining outstanding amount shall be repaid at the earliest. But the Financial Creditor did not encash cheque no.008788 dated 17.02.2017 for Rs.75,206/- as the same was unacceptable and against the understanding between the parties since the period of deposit with the Corporate-Debtor as also rate of interest were disputed. In order to support its claim, the Financial Creditor has annexed copies of cheques issued by the Corporate-Debtor along with the present Petition.

- (ix) Further, the Financial-Creditor has shown a chart of rate of interest calculated for the amount of Rs.4,00,000/- at 24% per annum. from the period of giving loan/deposit to the corporate debtor in the present petition. Thus calculating to Rs.23,03,321/- as a payable amount.
- (x) Thus, the Petitioner/Financial-Creditor has stated that the said Corporate-Debtor has clearly defaulted in the repayment of the amount of Rs.23,03,321/- and thus, committed a default.

- (i) The present I.B. Petition is preferred by the Financial-Creditor **Mr. Popatbhai P. Thummar** under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), seeking initiation of Corporate-Insolvency-Resolution-Process ("CIRP" in Short) in respect of the Corporate-Debtor-Company namely, M/s. Cosmos Technocast Pvt. Ltd. The Petitioner/Financial-Creditor, Mr. Popatbhai P. Thummar is an individual Financial Creditor. The Petitioner/Financial-Creditor is having its registered address at: "Kaustubh", Plot No. 66/2, Patel Colony – 2, Gundala Road, Gondal – 360311, India.
- (ii) It is stated that the Respondent/Corporate-Debtor Company, namely M/s. Cosmos Technocast Pvt. Ltd. is a company incorporated under the Companies Act, 1956 on 08.12.2006 with the CIN: U27105GJ2006PTC049545 and it seems that the company is engaged in the business of manufacturing of machinery parts.
- (iii) The authorised share capital of the Respondent/Corporate-Debtor-Company is Rs.1,00,00,000/- (Rupees One Crore only) and the paid-up share capital of the company is Rs.1,00,00,000/- (Rupees One Crore only). The registered office of the Corporate Debtor Company is

situated at: Plot No. 25 to 28, Survey No. 47,
Hadmatala Industrial Estate, Ta. KotdaSangani,
District Rajkot, Hadmatala, Gujarat – 360011, India.

- (iv) It is submitted that in the year 2006-07, Mr. Purushottam M. Thummar and Mr. Chaturbhai P. Thummar being Directors of the Corporate-Debtor-Company had requested the Financial Creditor, Mr. Popatbhai P. Thummar to invest in their company. Following this, the Petitioner/Financial-Creditor had paid total amount of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand only). The Petitioner/Financial Creditor funded the said amount by the mode of cheques as per the following details:

Sr. No.	Date	Cheque No.	Amount (Rs.)
1	13.12.2006	0787773	2,50,000=00
2	24.01.2007	0787774	1,00,000=00

- (v) It is stated that the Respondent/Corporate Debtor had allotted shares to the Petitioner having value of Rs.3,00,000=00 (Rupees Three Lakh Only). And had treated the rest of the amount, i.e. Rs.50,00=00 (Rupees Fifty Thousand only) as a deposit for which Corporate Debtor had agreed to pay interest at 2% per month. Thus, the Petitioner/Financial Creditor became a shareholder/ member as well as creditors of the Respondent Company.

- (vi) As stated, the Petitioner/Financial Creditor from time to time demanded his deposited money back along with the agreed rate of interest, i.e. 2% which, the Corporate Debtor had held as deposit money, claimed to be an unsecured loan. The Corporate Debtor had failed in repayment of such deposited money, i.e. Rs.50,000=00 along with interest of 2%.
- (vii) It is averred that the financial creditor was compelled to serve legal notice(s) to the Corporate Debtor. Thus, the notices were served on 20.07.2017 and 11.10.2017 by the Petitioner/Financial Creditor. The same are annexed as Annexures E & F to the present petition.
- (viii) It is stated that the Corporate Debtor, pursuant to the notices issued by the Petitioner had issued a cheque of Bank of Baroda having no.008787 dated 17.12.2017 for an amount of Rs.86,473=00 (Rupees Eighty-Six Thousand Four Hundred Seventy-Three only) to the Petitioner against the repayment of the aforesaid amount held as deposit to the Petitioner. It is stated that the financial creditor did not encash the cheque as the amount in the cheque was unacceptable to the Petitioner/ Financial Creditor, as it was not as per the terms they entered into.
- (ix) Thus, it reflects that there was some pre-existing dispute regarding rate at which the repayment was

calculated. The petitioner has also enclosed a copy of the said cheque with the present petition.

- (x) It is averred by the Petitioner that the Corporate Debtor issued a legal notice dated 12.08.2017, through its advocate in reply to the legal notice served by the Petitioner dated 20.07.2017 by denying inter-alia that the deposit amounts held with the Respondent Company are long term borrowings from the promoters. It is stated that the Petitioner was neither a promoter nor a director of the corporate debtor company. However, the amount of Rs.50,000=00 clearly reflect in the accounts maintained by the corporate debtor company.
- (xi) It is stated that the corporate debtor sent an e-mail on 28.10.2016 and had provided the details of deposit account of the financial creditor, which reflect that the corporate debtor is holding monies of the financial creditor as deposit, which as per the Section 2(31) of the Companies Act, 2013 read with Section 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014 defines as, *"any receipt of money by way of deposit or loan or in any other form by a company."*
- (xii) A copy of referred email is also enclosed by the Petitioner along with the present petition.

(xiii) The Petitioner/ Financial Creditor has produced a calculation of interest in a tabulated form as per the below:

50000		P. P. THUMMAR		
24.01.07 to 24.01.08	50000	2.00%	1000	12000
24.01.08 to 24.01.09	62000	2.00%	1240	14880
24.01.09 to 24.01.10	76880	2.00%	1538	18451
24.01.10 to 24.01.11	95331	2.00%	1907	22879
24.01.11 to 24.01.12	118211	2.00%	2364	28371
24.01.12 to 24.01.13	146581	2.00%	2932	35180
24.01.13 to 24.01.14	181761	2.00%	3635	43623
24.01.14 to 24.01.15	225383	2.00%	4508	54092
24.01.15 to 24.01.16	279475	2.00%	5590	67074
24.01.16 to 24.01.17	346549	2.00%	6931	83172
24.01.17 to 24.07.17	429721	2.00%	8594	51567
				481288

(xiv) It is stated that the interest calculation with a 2% interest per month (or ~~12~~²⁴% p.a.), the deposited amount of Rs.50,000=00 is claimed to come to Rs.4,81,288=00 (Rupees Four Lakh Eighty-One Thousand Two Hundred Eighty-Eight only), which was admittedly awarded to the another deposit holder as per the e-mail of the Corporate Debtor dated 16.10.2011. A copy

of such email is enclosed as Annexure - J to the present petition.

(C) C.P.(IB) No. 37 of 2018

- (i) The present I.B. Petition is preferred by the Financial-Creditor **Mr. J. M. Kathrotiya**, under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code"), seeking initiation of Corporate-Insolvency-Resolution-Process ("CIRP" in Short) in respect of the Corporate-Debtor-Company namely, **M/s. Cosmos Technocast Pvt. Ltd.** The Petitioner/Financial-Creditor, Mr. J. M. Kathrotiya is an individual Financial Creditor. The Petitioner/Financial-Creditor is having its registered address at: "Kaustubh", Plot No. 66/2, Patel Colony - 2, Gundala Road, Gondal - 360311, India.
- (ii) It is stated that the Respondent/Corporate-Debtor Company, namely M/s. Cosmos Technocast Pvt. Ltd. is a company incorporated under the Companies Act, 1956 on 08.12.2006 with the CIN: U27105GJ2006PTC049545 and it seems that the company is engaged in the business of manufacturing of machinery parts.
- (iii) The authorised share capital of the Respondent/Corporate-Debtor-Company is Rs.1,00,00,000/- (Rupees One Crore only) and the paid-up share capital

of the company is Rs.1,00,00,000/- (Rupees One Crore only). The registered office of the Corporate Debtor Company is situated at: Plot No. 25 to 28, Survey No. 47, Hadmatala Industrial Estate, Ta. KotdaSangani, District Rajkot, Hadmatala, Gujarat – 360011, India.

- (iv) It is submitted that in the year 2006-07, Mr. Purushottam M. Thummar and Mr. Chaturbhai P. Thummar being Directors of the Corporate-Debtor-Company had requested the Financial Creditor, Mr. J. M. Kathrotiya to invest in their company. Following this, the Petitioner/Financial-Creditor had paid total amount of Rs.7,50,000/- (Rupees Seven Lakh Fifty Thousand only). The Petitioner/Financial Creditor funded the said amount by the mode of cheques as per the following details:

Sr. No.	Date	Cheque No.	Amount (Rs.)
1	29.01.2007	625535	3,00,000=00
2	26.04.2007	625536	2,50,000=00
3	18.05.2010	602659	2,00,000=00
Total			7,50,000=00

- (v) It is stated that the Respondent/Corporate Debtor had allotted shares to the Petitioner having value of Rs.5,00,000=00 (Rupees Five Lakh Only). And had treated the rest of the amount, i.e. Rs.2,50,000=00 (Rupees Two Lakh Fifty Thousand only) as a deposit

for which Corporate Debtor had agreed to pay interest at 2% per month. Thus, the Petitioner/Financial Creditor became a shareholder/member as well as creditor of the Respondent Company.

- (vi) As stated, the Petitioner/Financial Creditor from time to time demanded his deposited money back along with the agreed rate of interest, i.e. 2% which, the Corporate Debtor had held as deposit money, claimed to be an unsecured loan. The Corporate Debtor had failed in repayment of such deposited money, i.e. Rs.2,50,000=00 along with interest @2%.
- (vii) It is averred that the financial creditor was compelled to serve legal notice(s) to the Corporate Debtor. Thus, the notices were served on **20.07.2017** and **11.10.2017** by the Petitioner/Financial Creditor. The same are annexed as Annexures E & F to the present petition.
- (viii) It is stated that the Corporate Debtor, pursuant to the notices issued, the Petitioner had issued a cheque of Bank of Baroda having no.008786 dated 17.12.2017 for an amount of Rs.4,32,000=00 (Rupees Four Lakh Thirty-Two Thousand only) to the Petitioner against the repayment of the aforesaid amount held as deposit to the Petitioner. It is stated that the financial creditor did not encash the cheque as the amount in the

cheque was unacceptable to the Petitioner/ Financial Creditor, as it was not as per the terms they entered into.

- (ix) Thus, it reflects that there was some pre-existing dispute regarding rate at which the repayment was calculated. The petitioner has also enclosed a copy of the said cheque with the present petition.
- (x) It is averred by the Petitioner that the Corporate Debtor issued a legal notice dated 12.08.2017, through its Advocate/Counsel, in reply to the legal notice served by the Petitioner dated 20.07.2017 by denying inter-alia that the deposit amounts held with the Respondent Company are long term borrowings from the promoters. It is stated that the Petitioner was neither a promoter nor a director of the corporate debtor company. However, the amount of Rs.2,50,000=00 clearly held in the accounts maintained by the Corporate Debtor Company.
- (xi) It is stated that the corporate debtor sent an e-mail on 28.10.2016 and had provided the details of deposit account of the financial creditor, which reflect that the corporate debtor is holding monies of the financial creditor as deposit, which as per the Section 2(31) of the Companies Act, 2013 read with Section 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014

defines as, "any receipt of money by way of deposit or loan or in any other form by a company."

- (xii) A copy of above referred email is also enclosed by the Petitioner along with the present petition.
- (xiii) It is submitted that, by perusal of Annual Return of the Corporate Debtor Company for the f.y. ending on 31.03.2016, the Respondent has admitted that the present Applicant is a creditor, since, it has provided an unsecured loan of **Rs.3,94,664=00** (Rupees Three Lakh Ninety-Four Thousand Six Hundred Sixty-Four only) as per the balance sheet and Schedule, forming a part of the accounts.
- (xiv) The Petitioner/ Financial Creditor has produced a calculation of interest in two parts in tabulated forms as per the below:

50000		J. M. Kathrotiya		
24.01.07 to 24.01.08	50000	2.00%	1000	12000
24.01.08 to 24.01.09	62000	2.00%	1240	14880
24.01.09 to 24.01.10	76880	2.00%	1538	18451
24.01.10 to 24.01.11	95331	2.00%	1907	22879
24.01.11 to 24.01.12	118211	2.00%	2364	28371
24.01.12 to 24.01.13	146581	2.00%	2932	35180
24.01.13 to 24.01.14	181761	2.00%	3635	43623
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24.01.15 to 24.01.16	279475	2.00%	5590	67074

24.01.16 to 24.01.17	346549	2.00%	6931	83172
24.01.17 to 24.07.17	429721	2.00%	8594	25783
A				455505

2,00,000=00		J. M. Kathrotiya		
14.05.10 to 14.05.11	200000	2.00%	4000	48000
14.05.11 to 14.05.12	248000	2.00%	4960	59520
14.05.12 to 14.05.13	307520	2.00%	6150	73805
14.05.13 to 14.05.14	381325	2.00%	7626	91518
14.05.14 to 14.05.15	472843	2.00%	9457	113482
14.05.15 to 14.05.16	586325	2.00%	11727	140718
14.05.16 to 14.05.17	727043	2.00%	14541	174490
14.05.17 to 14.07.17	901533	2.00%	18031	36061
B				901533
A+B				13,57,038

(xv) It is stated that the interest calculation with a 2% ^{24% 27} interest per month (or ~~12~~% p.a.), the deposited amount of Rs.2,50,000=00 is claimed to come to Rs.13,57,038=00 (Rupees Thirteen Lakhs Fifty-Seven Thousand Thirty-Eight only), which was admittedly awarded to the another deposit holder.

3. As per the material available on record, the Corporate Debtor has filed separate and independent reply by denying the contentions/ allegations made therein and thus, to oppose

the admission of the present I.B. Petition under the provisions of the I.B. Code. The relevant Paragraphs of the reply filed are being reproduced herein below:

Reply of Respondent in CP (IB) No.35 of 2018

4. In response to the Petition, the Corporate-Debtor has submitted its affidavit-in-reply on 02.08.2018 by contending that the Petitioner/Financial-Creditor has suppressed many material facts and stated many false facts to mislead the court.
5. It is contended by the Corporate-Debtor that it never intended to default any dues of the Petitioner and had issued cheque of due amount of **Rs.75,206/- (Rupees Seventy Five Thousand Two Hundred Six Only)**. This was not deposited by the Petitioner having malicious intent. Later on the company issued another cheque of **Rs.1,24,783/- (Rupees One Lakh Twenty Four Thousand Seven Hundred Eighty Three Only)** on 15.01.2018 in favour of Petitioner but again the same was not deposited.
6. It is contended from the affidavit in reply that the Respondent/ Corporate-Debtor-Company is a healthy and profit making company and there is no loan default by the Respondent Company. It is further contended that as per

profit and loss account of the last audited statement for the year ended on 31.03.2017, the total revenue of Respondent company was Rs.9,18,87,438/- (Rupees Nine Crores Eighteen Lakhs Eighty-Seven Thousand Four Hundred Thirty-Seven Only) and total profit was Rs.36,93,751/- (Rupees Thirty-Six Lakhs Ninety-Three Thousand Seven Hundred Fifty-One Only). In support of its contention, the Corporate Debtor has annexed copies of audited financial for the f.y. ended on 31.03.2017 to the present reply/objection.

7. The Corporate-Debtor, further, in its reply has submitted that **the object of the code is the revival of a debt ridden company and not the recovery of dues.**
8. In support of this, the Corporate-Debtor has also relied on a decision of Hon. NCLAT in the matter of Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. in company appeal (AT) (Insol.) No. 89 of 2017, and held that **the object of the code is not the recovery of the dues, whereas the Code is made for the revival and recognition of debt ridden company with maximization of the value of assets in the time bound manner.**

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9. It is further averred by the Corporate Debtor that the Respondent/Corporate-Debtor is paying an interest @ 12% per annum to all the unsecured creditors including the Petitioner and in support of the same, it has annexed with a copy of the ledger account of the Petitioner as mentioned in Respondent Company evidencing the payment / accrual of interest amount to the Petitioner @ 12% per annum (i.e. 1% per month) along with the filed reply as Annexure-3. The same is also evident from the Income Tax Returns as filed by the Corporate-Debtor where Corporate-Debtor is regularly depositing the tax deducted on interest under Section 194A of the Income Tax Act, 1961 on interest pay outs.

10. It is further contended that the calculation sheet as prepared by the Petitioner for computing the default amount is also defective and wrong on the basis that the Petitioner is getting interest @ 12% ^{P.A.} whereas on the other hand he is wrongly claiming additional interest @ 24% ^{P.A.}

11. It is further contended that there was no agreement that may have been executed between the Petitioner and the Respondent Company regarding payment of interest on the unsecured loan.

12. It is contended that prior to year 2017 (issuance of first legal notice), the Petitioner never raised any objection / dispute regarding payment of interest on unsecured loan @ ^{P.A. 2} 12% which was being received by the Petitioner since 2012.
13. It is averred by the Corporate Debtor that the company that Petitioner is using such tactics like issuing legal notices, filing this application for initiating CIRP in spite of the absence of any default in re-payment for just a sake of recovery of more money.
14. It is also contended by the Respondent in its affidavit-in-reply that the Respondent Company has **accepted non-interest bearing unsecured loan from the directors and promoters and there was no fixed time limit for the payment of such unsecured loan as well as no formal agreement has ever been executed between the company and directors/promoters from whom unsecured loan had been obtained. The company may pay the amount when demanded by the unsecured loan lender. The Respondent Company has paid the amount to the unsecured loan lender when they request to repay the loan and the rate of interest is same for all the unsecured loan holder (including the petitioner)**

which is 12% p.a. Therefore, the petitioner's claim of interest @24% is not legible.

15. It is pertinent to mention that the **Petitioner/Financial-Creditor did not encash the cheques and there is no proof of dishonour of cheques as issued by the Corporate-Debtor. Thus, the Petitioner/Financial-Creditor has tried to dispute the payment without any proof of default.** The Respondent has produced its financial statements like profit and loss account which could be considered as a legal document to prove the healthy financial status/ profit making of the company. In such case, we are of the view that the C.I.R.P. could not be triggered.

16. Furthermore, it is contended by the Respondent that as per the Petitioner, the default was occurred on 24.01.2008 and it sent legal notices to the Respondent on 01.06.2017. **It is evident that almost nine years of time had been lapsed. Therefore, the present Petition is barred by Section 3 of the Limitation Act, 1963, which states that:**

"3. Bar of limitation:-

(1) Subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

In fact now the legislature in its wisdom has introduced via Ordinance dated 06.06.2018: Section 238A of the I & B Code, 2016 to this effect, which is reproduced herewith for ready reference:-

“238A. The provisions of the Limitation Act, 1963 shall, as far as may be apply to proceedings or appeals before the Adjudicating Authority or the NCLAT, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal as the case may be.”

17. The purpose of the amendment can be traced from the Report of the Insolvency Law Committee (March 2018) which specifically points out the necessity to apply The Limitation Act, 1963 in cases under the Code. Relevant Para of the report is reproduced herein below:

“The purpose of the law of limitation is “to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party’s own inaction, negligence or laches”
150. *Though the Code is not a debt recovery law, the trigger being ‘default in payment of debt’ renders the exclusion of the law of limitation counter-intuitive. Second, it re-opens the right of claimants (pursuant to issuance of a public notice) to file time-barred claims with the IRP/RP, which may potentially be a part of the resolution plan. Such a resolution plan restructuring time-barred debts and claims may not be in compliance with the existing laws for the time being in force as per Section 30(4) of the Code.”*

Therefore, the debt is claimed by the applicant through the petition is a time barred debt which is liable to be dismissed.

Reply of Respondent in CP(IB) No.36 of 2018

18. In response to the present Petition, the Respondent/ Corporate Debtor has filed its objection in this Bench on 02.08.2018 stating that the present application suffers from ***Suppression veri and suggestion falsi***, as the petitioner has suppressed many material facts.

19. Stating such, the Respondent, by denying all the averments made by the petitioner has stated that, the Petitioner is holding total 30,000 equity shares, i.e. 3.00% of the total share equity of the company. Further, it is averred that the petitioner did not encash the cheque of Rs.86,473=00 dated 17.02.2017 and also another cheque issued for Rs.95,826=00 dated 15.01.2018 with a malafide intention to harass the petitioner and to initiate frivolous proceedings under the I.B. Code. It is stated that the present corporate debtor company is a healthy and profit making company and there is no loan default by the Respondent. It is also stated that the respondent company has submitted and annexed copies of net profit-loss account for the last audited statement for the year ended on 31.03.2017,

showing total revenue of Rs.9,18,87,437=00 and total net profit of Rs.36,93,751=00.

20. It is further stated by the Respondent that it has publically placed its financial statements before Annual General Meeting every year, claiming to be a public document which cannot be disputed. It is vehemently opposed by the Respondent that this Petition is a result of family dispute arose among the brothers and therefore, filing present petition under Section 7 is merely to harass the Respondent. It is averred that the present matter is in-fact of an oppression and mismanagement, then it is to be filed under proper Section, i.e. under **Section 241-246 of the Companies Act, 2013.**

21. It is further to note as stated by the Respondent in its reply/objection that, if the claimed default has been occurred on 24.01.2008 and the legal proceedings were initiated by the Petitioner on 01.06.2017, by sending a notice. However, the present petition is filed in this bench on 09.01.2018 and on this ground also, the Limitation Act, 1963, does not permit the petition to be admitted.

Reply of Respondent in CP(IB) No.37 of 2018

22. In response to the present Petition, the Respondent/ Corporate Debtor has filed its objection in this Bench on

02.08.2018 stating that the present application suffers from ***Suppression veri and suggestion falsi***, as the petitioner has suppressed many material facts.

23. Stating such, the Respondent, by denying all the averments made by the petitioner has stated that, the Petitioner is holding total 30,000 equity shares, i.e. 3.00% of the total share equity of the company. Further, it is averred that the petitioner did not encash the cheque of Bank of Baroda having no.008786 dated 17.12.2017 for an amount of **Rs.4,32,000=00 (Rupees Four Lakh Thirty-Two Thousand only)** and also another cheque issued for Rs.95,826=00 dated 15.01.2018 with a malafide intention to harass the petitioner and to initiate frivolous proceedings under the I.B. Code. It is stated that the present corporate debtor company is a healthy and profit making company and there is no loan default by the Respondent. It is also stated that the respondent company has submitted and annexed copies of net profit-loss account for the last audited statement for the year ended on 31.03.2017, showing total revenue of Rs.9,18,87,437=00 and total net profit of Rs.36,93,751=00.

24. It is further stated by the Respondent that it has publically placed its financial statements before Annual General

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Meeting every year, claiming to be a public document which cannot be disputed. It is vehemently opposed by the Respondent that this Petition is a result of family dispute arose among the brothers and therefore, filing a petition under Section 7 is merely to harass the Respondent. It is averred that the present matter is in-fact of an oppression and mismanagement, then it is to be filed under proper Section, i.e. under **Section 241-246 of the Companies Act, 2013.**

25. It is further to note as stated by the Respondent in its reply/objection that, if the claimed default has been occurred on 24.01.2008 and the legal proceedings were initiated by the Petitioner on 01.06.2017, by sending a notice. However, the present **petition is filed in this bench on 09.01.2018** and on this ground also, the Limitation Act, 1963, does not permit the petition to be admitted.

26. In view of the decision of Hon'ble Supreme Court in the matter of Mobilox Innovations Pvt. Ltd. vs. Kirusha Software ^{wherein it is held} ~~has~~ categorically stated that this Code cannot be used as debts recovery mechanism.

27. We duly considered the above stated averments made by the Petitioner in the present I.B. Petition as well as in the reply / objection filed by the Respondent / Corporate Debtor.

28. By perusal of the materials available on record, it is evident that the Petitioners in these three I.B. Petitions have issued some cheques towards unsecured loan to the Corporate Debtor Company between the period of 13.12.2006 to 24.01.2007 (in respect of CP(IB) No.36 of 2018) and further, between 29.01.2007 to 18.05.2010 (in respect of CP(IB) No.37 of 2018) while the Petitioner in CP(IB) No.35 of 2018 has contended that he made payment of rupees three (03) lakh towards investment to the company during the year 2006 - 2007. Thus, all the petitioners in these petitions have contended that they are entitled to receive their money back along with 2% interest per month (i.e. 24% per annum) which was deposited with Corporate Debtor. However, it is found that the petitioners have issued notice for repayment of money deposited (given as unsecured loan) only on 28.07.2017 and 11.10.2017 which is apparently beyond three (03) years of date of disbursement of loan or issuance of cheque. Hence, their such claim/debt is barred by the Limitation. It is now the well settled legal position by the Hon'ble Supreme Court in respect of the I.B. proceedings that the limitation prescribed for filing an I.B. Petition is three (03) years from the date when default has occurred ("**B.K. Education Services Private Limited Vs. Parag Gupta and Associates - MANU/SC/1160/2018**", **Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company**

(India) Ltd. and Ors. decided on 18.09.2019). Hence, on such count also, the present I.B. Petition is not maintainable. That apart, the Corporate Debtor has placed reliance on a decision of Hon'ble NCLAT in the matter of Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. in company appeal (AT) (Insol.) No. 89 of 2017, wherein, their Lordship has held that the object of the Code is not the recovery of dues. Whereas, the code is made for the revival of debt ridden company. The relevant paragraph of the above stated decision is reproduced herein below:

“It is made clear that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors. I. & B. Code, 2016 is an Act relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including the Government dues. Such being the object of 17 the I & B Code, 2016, if the interest of all the stakeholders are balanced and satisfied then to promote entrepreneurship and to ensure that the company continue to function as on going concern, it is desirable to close such proceeding without delay and going into technical rigour of one or other provisions, which are all otherwise futile for all purpose.”

29. In addition to the above, the Hon'ble Supreme Court in its judgment in the matter of K.Kishan vs M/S Vijay Nirman Company Pvt. Ltd. Civil Appeal No. 21824 of 2017 has also held that the theme and object of the code is not meant for the recovery of debt but to bring the resolution/ revival of the company by a resolution plan. The relevant portion of the decision of Hon'ble Supreme Court is reproduced herein below:

*13) Following this judgment, it becomes clear that operational creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. The alarming result of an operational debt contained in an arbitral award for a small amount of say, two lakhs of rupees, cannot possibly jeopardize an otherwise solvent company worth several crores of rupees. Such a company would be well within its rights to state that it is challenging the Arbitral Award passed against it, and the mere factum of challenge would be sufficient to state that it disputes the Award. Such a case would clearly come within para 38 of Mobilox Innovations (supra), being a case of a pre-existing ongoing dispute between the parties. **The Code cannot be used in terrorem to extract this sum of money** of Rs. two lakhs even though it may not be finally payable as adjudication proceedings in respect thereto are still pending.*

" We repeat that the object of the Code, at least insofar as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist.

30. By following the above stated judicial precedent, we are of the view that the present petitioners ^{it have these} ~~has~~ filed ~~this~~ petition with ^a ~~a~~ ^{some} malafide intention only to create pressure on the Corporate

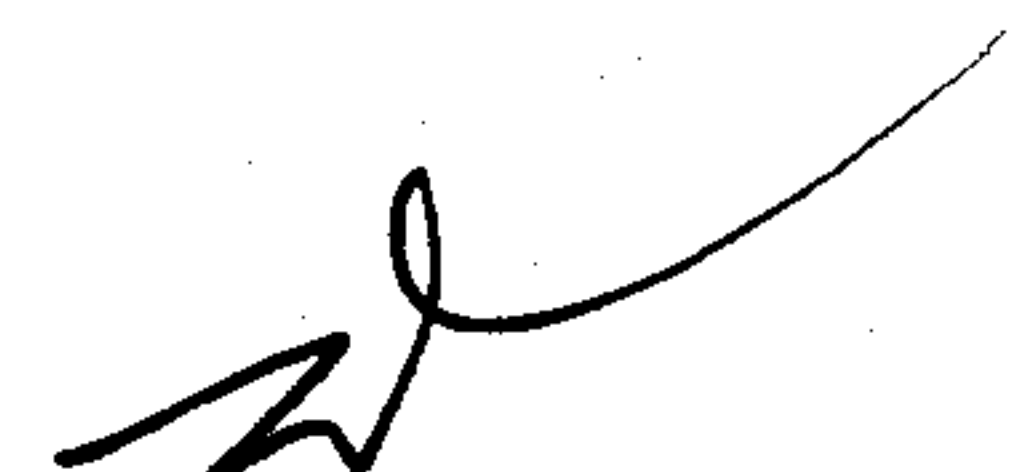
Debtor for recovery of its amount invested or unsecured loan given to the Corporate Debtor without having a formal and written contract and that is too with an exorbitant rate of interest of 24% per annum, which cannot be treated as fair and legally sustainable. Moreover, it appears that the present petition is result of some family dispute arose among them and merely to harass the Respondent/ Corporate Debtor. The Corporate Debtor is showing a positive net-worth as per its last balance sheet, hence, it cannot be termed that the company is unable to pay its debts but there may be some dispute with regard to "oppression and mismanagement" in the company, which is not the subject matter of the present I.B. Petition. The parties are at a liberty to approach competent court(s) including this NCLT under Section 241-242 of the Companies Act, 2013.

31. During the course of hearing on 12.08.2019, the present Petition, it is a matter of record that the Corporate Debtor has come forward with demand draft(s) as mentioned below:

Petition No.	Draft Amount (in Rs.)	Rate of interest
CP (IB) No. 35 of 2018	1,25,000/-	Along with 12% interest.
CP (IB) No. 36 of 2018	96,000/-	
CP (IB) No. 37 of 2018	4,80,000/-	

Which were not accepted by the Petitioner towards the satisfaction of the debt. Therefore, the arguments, on merits of the present case were heard and the order was reserved.

←



32. By taking into consideration the above stated facts and circumstances of the present case, we find that there seems bonifiedy on the part of the Corporate Debtor for making payment of debts and by offering the demand draft in the open court, which was refused to be received by the Petitioner for the reason best known to them. It gives such impression that the petitioner is not having any bonafide intention to seek revival or resolution of the debt stressed company and want to use this forum as a court of recovery of its disputed debts.

33. This Court under the discipline of the I.B. Code is not expected to adjudicate the Civil Disputes including the issue of contractual rate ^{of interest} ~~agreement~~ because there is no such written agreement made available to this Bench from either side. So, as to prove that the Corporate Debtor Company has agreed for making payment of interest as claimed by the Petitioner while accepting such unsecured loan. Such dispute can be decided only by a competent court of law or by the Civil Court.


34. Notwithstanding the above, this Court cannot lose sight from the fact of the case that the Petitioner are shareholders of the Corporate Debtor Company and they paid the money as an investment in the company by way of deposit. It is also contended that such deposit has been treated as unsecured loan(s) and the Corporate Debtor has shown bonafide for returning the amount by issuing cheques earlier in favour of the

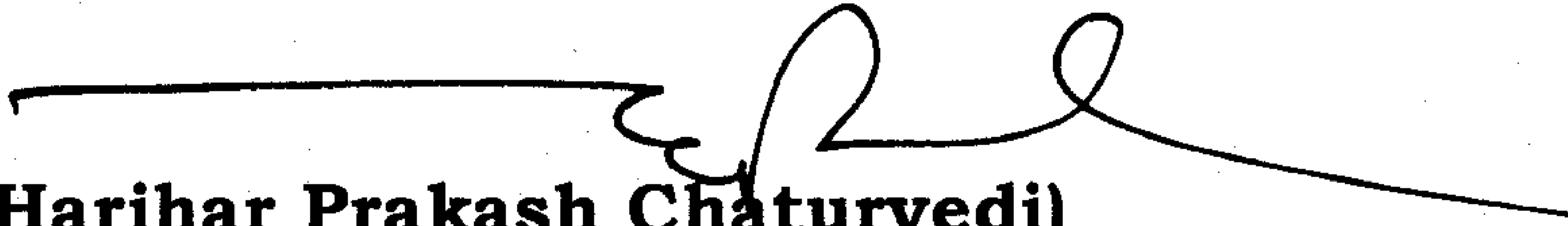
- petitioner which was not encashed by the Petitioner as there was a dispute on the rate of interest to be paid.
35. Considering such circumstances, we are of the view that there is no proof of default of the debt on the part of the Corporate Debtor because it earlier has tendered a cheque in favour of the petitioner as discussed in the preceding Paras of this judgment, specifically the averments made in reply of the Corporate Debtor to the respective petitions.
36. Moreover, during the course of hearing, the petitioner has agreed to pay 12% interest and came forward with the demand draft(s), but the same was refused by the Petitioner in-front of the open Court. That means, the Petitioner has no intention to settle the matter nor seeking resolution or revival of the company under the I.B. Code but it is their sheer attempt to harass the Corporate Debtor which may amount that the present Petitioner ^{we have file the present Petition with such intention} ~~filed~~ other than the intention of bringing the resolution plan ^{for the company. Such} ~~and this~~ **may attract the Penal Provision under Section 65 of the Insolvency and Bankruptcy Code, 2016.**
37. However, at this stage we are not inclined to initiate such proceedings, but in order to meet the end of the justice, the **present Petitions are hereby rejected with an exemplary cost of Rs.30,000/- in each matter, which are payable to the**

**Prime Minister's Relief Fund for Corona Virus Relief Fund
(COVID-19 Care).**

38. Accordingly, the present I.B. Petitions, CP(IB) No.35 of 2018, CP(IB) No.36 of 2018 and CP(IB) No.37 of 2018 are rejected and disposed of.

39. A copy of this order be communicated to the **Registrar of Companies, Ahmedabad.**


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Technical)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)

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