

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

**SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER**

CP No. (IB)- 332/7/JPR/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

PADMAVATI AGRICO (INDIA) PRIVATE LIMITED

...Financial Creditor

Versus

GREEN TEAK (INDIA) PVT. LTD. & ANR.

...Corporate Debtor

MEMO OF PARTIES

Padmavati Agrico (India) Private Limited

CIN: U15533RJ2009PTC029216

R/o: 1, Ground Floor, Suraj Mension,
Anand Nagar, Ajmer, Rajasthan-
305001, India

...Financial Creditor/Applicant

VERSUS

1. Green Teak (India) Pvt. Ltd.

CIN: U20211RJ1990PTC005264

R/O: G-718, Road No- 9F-3,
V.K.I Area, Jaipur, RJ 302023
India

...Corporate Debtor/Respondent

2. Secretary, Ministry of Corporate Affairs

Union of India, New Delhi,

E-mail: secy.mca@nic.in ,

Contact No. 011-23382324

...Respondent No. 2

For the Applicant : Sakshi Jain, Adv.

For the Respondent : Sandeep Taneja, Adv.
Karan Pratap Singh, Adv.

Order Pronounced On: - 20.10.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This application is filed by M/s Padmavati Agrico (India) Private Limited ('Applicant'/'Financial Creditor') against the Corporate Debtor namely M/s Green Teak (India) Pvt. Ltd. ('Respondent' /'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') pursuant to the default in repayment of loan amount by the Corporate Debtor to the Applicant.
2. The Applicant is a private company incorporated under the provisions of Companies Act, 1956 and duly registered with the Registrar of Companies, Jaipur having CIN: U15533RJ2009PTC029216. The registered office of the Applicant is situated at 1, Ground Floor, Suraj Mension, Anand Nagar, Ajmer, Rajasthan- 305001, India. The present application has been filed through Mr. Yogesh Jain who has been duly authorised vide Board

Resolution dated 26.08.2019 which is annexed as Annexure K of the Application.

3. The Corporate Debtor is a private limited company, incorporated under the provisions of the Companies Act, 1956 on 10.01.1990 and duly registered with the Registrar of Companies, Jaipur having CIN: U20211RJ1990PTC005264. The registered office of the Corporate Debtor is situated at G-718, Road No- 9F-3, V.K.I Area, Jaipur, RJ 302023 India. The Authorised share capital of the Company is Rs. 2,25,00,000/- and the Paid-up share capital of the Company is Rs. 1,19,12,800/-.
4. The details of the transactions leading to the filing of this Application as averred by the Applicant are as follows:
 - a. The Financial Creditor lent an amount of Rs. 70 Lacs on 18.12.2015 at an interest rate of 16.20% p.a. by way of bank transfer to the Corporate Debtor. Copy of the Bank Statement has been attached as Annexure C at Pg. 20 of the Application. As on 31.03.2019, the total amount of debt stands at Rs. 1,09,11,607/- (Rupees One Crores Nine Lacs Eleven Thousand Six Hundred and Seven Only) including the interest being charged @ 16.20% p.a. The same has been duly acknowledged by the Corporate Debtor as on 01.04.2019 by signing the confirmation of account sent by Financial Creditor, which is annexed as Annexure D of the Application.

- b. For repayment of the said loan, the Corporate Debtor issued 4 cheques worth Rs. 5,00,000/- each to the Applicant which were dishonoured due to insufficient balance in the account of the Corporate Debtor. The details of the cheques are as below:

<i>Sr. No.</i>	<i>Cheque No.</i>	<i>Cheque Date</i>	<i>Amount (in Rs.)</i>	<i>Date on which cheque returned unpaid</i>
1.	002505	27.05.2019	5,00,000/-	27.08.2019
2.	002506	27.06.2019	5,00,000/-	09.09.2019
3.	002507	27.08.2019	5,00,000/-	20.09.2019
4.	002504	27.09.2019	5,00,000/-	01.10.2019

- c. The Applicant sent a legal notice dated 24.10.2019, demanding repayment of the due amount to the registered office of the Corporate Debtor and its directors namely, Mr. Vinod Kumar Jain and Mrs. Sangeeta Devi Jain, although till date neither any reply nor any payment has been received by the Corporate Debtor.
- d. Hence this Application has been filed by the Financial Creditor. The Total Debt due as on 31.10.2019 amounts to Rs. 1,19,48,000/- (Rupees One Crore Nineteen Lacs Forty-Eight Thousand Only) including interest charged at the rate of 16.20% p.a. for the period 01.04.2019 to 31.10.2019 i.e. Rs. 10,36,393/- (Rupees Ten lacs Thirty-Six Thousand Three Hundred and Ninety-Three Only).
- e. The Applicant has stated the details of the amount due in Part IV of the Application which is as follows:

PART IV PARTICULARS OF FINANCIAL DEBT		
1.	Total Amount of Debt Granted Date(s) Of Disbursement	Rs. 70,00,000/- (Rupees Seventy Lacs Only) 18.12.2015
2.	Amount Claimed to be in Default and The date on which the default occurred (attach the workings for computation of amount and days of default in tabular form)	The amount claimed to be in default is Rs. 1,09,11,607/- (Rupees One Crores Nine Lacs Eleven Thousand Six Hundred and Seven Only) being amount of debt confirmed as per confirmation of account for the period ended 31.03.2019 plus an amount of Rs. 10,36,393/- (Rupees Ten lacs Thirty-Six Thousand Three Hundred and Ninety-Three Only) being interest charged at the rate of 16.20% p.a. for the period 01.04.2019 to 31.10.2019 aggregating Rs. 1,19,48,000/- (Rupees One Crore Nineteen Lacs Forty-Eight Thousand Only) Date of Default- 27.08.2019 Being the first cheque dishonour date

5. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its reply vide Diary No. 1144/2020 dated 22.12.2020 whereby the following is stated:

- a. The Corporate Debtor has submitted that the Application for the alleged amount is not supported by any document executed between the parties regarding the tenure, terms of repayment, rate of interest

payable thereon. The Application has been filed without occurrence of default and therefore is not maintainable.

- b. The Corporate Debtor further stated that the Applicant has failed to establish the existence of 'Debt' within the meaning of Section 3(11) of the Code. The alleged amount was never availed by the Corporate Debtor as a loan; the families of the Corporate Debtor and Applicant are related as Mr. Bhag Chand Jain is one of the directors of the Applicant Company whereas his daughter namely Ms. Bharti Jain is married to Mr. Deepak Jain S/o Mr. Mal Chand Jain who happens to be the elder brother of Mr. Vinod Kumar Jain, director of Corporate Debtor. In short, the daughter of a director of Applicant Company is married to nephew of director of Respondent Company. In lieu of the companies being family owned; the Applicant company having surplus funds expressed to make long term investment in the Corporate Debtor for a period of 10 years. It was agreed that the amount shall become due and payable only upon expiry of the said period of 10 years.
- c. Uptill 2018, all the three (3) brothers of Mr. Vinod Kumar Jain along with him, together, were holding joint businesses in the name and style of different entities. Thereafter, a family understanding was reached between the brothers and businesses of the family were divided and

segregated. Accordingly, the business of Respondent Company has come to the share of Mr. Vinod Kumar Jain. Since Mr. Mal Chand Jain and Mr. Deepak Jain have no interest in the Corporate Debtor now, it has resulted in the Applicant moving the present application in gross abuse of process of law.

- d. The Corporate Debtor has relied upon rule 3(1)(d) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and submitted that the Applicant has failed to produce any document with respect to the existence of a financial contract between the parties to the matter. Hence, the purported amount allegedly lent by the Applicant is not a financial debt that has become payable.
- e. The Corporate Debtor contended that the Applicant in the additional affidavit has failed to mention the tenure of the investment and terms of repayment. Non-disclosure of the tenure of the investment and terms of repayment in the aforesaid documents is for the obvious reason that the Applicant has made a long-term investment for a period of 10 years. Apparently, the alleged debt has not become due and payable and there is no default in the repayment on part of the Respondent. In absence of any default in repayment of Financial Debt, the Application is not maintainable.
- f. The Corporate Debtor also submitted that the Application is based on fabricated document alleging acknowledgement on part of the

Corporate Debtor. The document alleging acknowledgement of the claim of the Applicant has not been signed on behalf of the Corporate Debtor. The signature of Mr. Vinod Kumar Jain (Director of Respondent Company) is entirely different from the signature appearing on the document alleged as acknowledgement. Further, the Applicant has failed to establish that the cheques collectively amounting to Rs. 20,00,000/- (Rupees Twenty Lacs) were issued against a legally enforceable debt. Also, the date of default is calculated from the date of dishonour of the first cheque whereas the alleged cheques have no relation to the alleged amount.

- g. With respect to the filing of Form-26AS along with affidavit dated 30.12.2019, the Corporate Debtor stated that it is a settled law whereby payment of TDS does not amount to payment of interest or acknowledgement of liability. The TDS returns are primarily to acknowledge the deduction of tax at source and do not refer to any amount of loan or even the rate of interest payable on the principal amount. Therefore, the said transaction does not by any means translate into default in terms of the Code. Lastly, the Corporate Debtor submits that the Applicant is treating the Code as a tool for recovery.
6. The Applicant filed Rejoinder in reply to the aforementioned vide Diary No. 90/2021 dated 06.01.2021 submitting as follows:

- a. The Applicant relied on the definitions of “*debt*”, “*financial creditor*” and “*financial debt*” as enumerated under the Code, to state that the fulfilment of the above criteria can be proved by the fact that loan was given by the applicant against payment of interest. The Financial Statements of the Corporate Debtor very well depict that it has availed loan from body corporates and is shown as loan from body corporates under the Head of “Long term Borrowings” in Financial Statements of the year 2014-15 and 2015-16 thereby clearly proving that respondent has availed loan during financial year 2015-16.
- b. The Applicant further claims that the deduction of TDS on interest amount by the Corporate Debtor clearly shows its acceptance of the loan amount being taken from the Applicant. Further it has been submitted that nowhere in the Insolvency and Bankruptcy Code and Rules & Regulations, it is mentioned that a financial contract is necessarily required to provide the existence of Financial Debt. Also, the Indian Contract Act, 1872 doesn’t mention that an agreement to be valid has to be in written format only. The applicant herein granted loan to the Corporate Debtor on mutual trust basis which was repayable on demand. Also, it is pertinent to note that non-mentioning of particular period for repayment of the due amount itself makes the loan repayable on demand.

- c. With respect to the difference in signature on acknowledgement slip, the Applicant averred that the applicant never mentioned that the signature on the acknowledgment slip was of Mr. Vinod Kumar Jain (Director of Corporate Debtor). The Applicant has further attached another acknowledgment which is duly signed and sealed by the authorised representative of the Corporate Debtor on 01.04.2017 via mail 04.04.2017. The said is attached at pg. 68 of the Rejoinder. Also, it is contended that issuance of cheques by Corporate Debtor itself makes it clear that the amount has become due and payable.
- d. Moreover, the Applicant submits that the Corporate Debtor has showed the due amount as unsecured loan in its financial statements, though not bifurcated. The due amount was also acknowledged by the Corporate Debtor via statements of accounts dated 01.04.2019 and 01.04.2019 duly signed by authorised signatory. Even Form 26AS filed by the Applicant vide Diary No. 10/2020 dated 06.01.2020 shows that TDS has been deducted on "*Interest other than 'Interest on Securities'*". Further there exists only one transaction between the parties related to the due loan amount and hence the TDS deducted by the Corporate Debtor on interest is for the Interest to be paid on the said loan amount.
7. It is also noteworthy that the Applicant had filed Form 26AS for the Financial Creditor for the Financial Year 2015-16, 2016-17, 2017-18 and

2018-19 vide Diary No. 10/2020 dated 06.01.2020. The Applicant has also filed Written Submissions vide Diary No. 1854/2022 dated 22.06.2022 whereby the following has been submitted:

- a. The Applicant has reiterated that the loan of Rs. 70,00,000/- (Rupees Seventy Lacs) was given to the Corporate Debtor via bank transfer on 18.12.2015 at an interest rate of 16.20% p.a. The following instances substantiate the said loan having being defaulted by the Corporate Debtor:
 - i. The Applicant has showed the said loan amount in its Balance Sheet under the head of 'Short Term Loans and Advances' since Financial Year 2015-16 which substantiates the fact that the said amount was given for a short period and was agreed to be repayable on demand.
 - ii. The Corporate Debtor has on the other hand showed the said amount under the head of 'Long Term Borrowings' since Financial Year 2015-16.
 - iii. Vide e-mail dated 04.04.2017, the Respondent gave an account confirmation dated 01.04.2017.
 - iv. On 01.04.2019, the Financial Creditor had sought another confirmation of accounts from the Corporate Debtor towards interest amount to the tune of Rs. 15,42,800/-.

- v. Record of Default with NeSL on 22.06.2020 which was authenticated by the NeSL on 15.07.2020 thereby evidencing a debt of Rs. 70,00,000/- chargeable @ 16.20% p.a. interest being repayable on demand.
- b. The Applicant averred that firstly, Regulation 8(2) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which provides for 'Claims by financial creditors' requires furnishing of various documents to prove the existence of debt due. Thus, the existence of 'Financial Contract' being only one of such sources from where a debt gets establish is not a sine qua non. A Financial Contract defined under Rule 3(1)(d) is also a contract; in terms of section 10 of the Indian Contract Act, 1872, a contract can be oral in nature. The availing of loan by the Corporate Debtor can be proved from the transactions mentioned above. Further the four cheques issued by the Corporate Debtor to the tune of Rs. 20,00,000/- (Rupees Twenty Lacs) as part payment of the said loan, were dishonoured which amounts to default.
- c. The Applicant has relied on a series of judgments which are not being reiterated for the sake of brevity. The Corporate Debtor has time and again signed acknowledgment of debt of the company, therefore, the limitation was extended in view of Section 18 of the Limitation Act, 1963. It is also seen that the Corporate Debtor has been running into

losses as reflected in the Balance Sheet. Hence, there exists urgent need for an effective resolution process for the Corporate Debtor.

8. The Corporate Debtor in its reply has filed 2 sets of written submissions vide Diary No. 1812/2022 dated 20.06.2022 and Diary No. 2708/2022 dated 09.09.2022 whereby the following has been submitted:

- a. The Corporate Debtor submits that the essential ingredients of a financial debt are: (i) disbursement of the amount as loan; (ii) disbursement of loan against time value of money; (iii) default. The Applicant has failed to provide any documentary evidence to establish the ingredients of financial debt. As per the definitions in the Code, debt is a liability in respect of a claim which is due. Since the amount of Rs. 70 Lakhs was given as an investment and the Applicant has failed to establish disbursement of amount as loan and the tenure or the terms of repayment of alleged debt, this application is not maintainable. In absence of any debt, there can be no occurrence of a default.
- b. The Corporate Debtor has reiterated that there is no Financial Contract as in terms of Rule 3(1)(d) and in absence of financial contract, the amount invested by the Applicant cannot in any stretch of imagination be considered to be a financial debt under Section 5(8) of the Code. Also, the contention raised by the Application stating that the debt is repayable on demand has only been raised in the rejoinder as an afterthought. Furthermore, no board resolution was passed by the

Financial Creditor for granting loan as enshrined under Section 186 of the Companies Act, 2013.

- c. It is averred by the Corporate Debtor that the Applicant has failed to establish that the said cheques were being given against a legally recoverable debt. The fact that the cheques were dated prior to legal notice dated 24.10.2019 establishes that the cheques were not given against any demand. With respect to the alleged acknowledgement of debt, the Applicant itself has admitted that the same was not signed by Mr. Vinod Kumar Jain (Director of Corporate Debtor). Neither the name of the authorised person nor the name who the director who allegedly signed has been mentioned by the Applicant.
 - d. The Corporate Debtor has also submitted that the Applicant has grossly abused the provisions of the Code as a tool for recovery of the dues. To negate the NeSL report, the Corporate Debtor has relied on judgments whereby it is stated that record of information utility is not conclusive proof of any default.
9. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this application.
 10. Before we delve into the matter at hand, it is important to refer to the following definitions:

*“3(11) **debt** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;”*

*“3(12) **default** means non-payment of debt when whole or any part of instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;”*

*“5(7) **financial creditor** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;”*

*“5(8) **financial debt** means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes –*

- (a) money borrowed.....*
- (i).....”*

*“Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016- Rule 3(d) **financial contract** means a contract between a corporate debtor and a financial creditor setting out the terms of the financial debt, including the tenure of the debt interest payable and date of repayment;”*

11. From the documents produced before us, there is a clear transaction of Rs. 70 Lacs dated 18.12.2015, which has been admitted by both the parties to the case wherein the Applicant has made a payment of Rs. 70 Lacs to the Corporate Debtor. The Applicant has contended that the transaction is a loan and since there is no written document, the loan is a short-term loan repayable on demand. The Corporate Debtor on the contrary has submitted that the said transaction is an investment made by the Applicant for a long period of time and repayable after 10 years. It is observed that books of

accounts as filed by the Applicant can only be treated as corroborative evidence and such corroborative evidence must be supported by other evidence to establish the existence of a valid debt and default thereof.

12. The basic ingredients to be looked into while passing an order under Section 7 of the code is: (i) there must be a disbursement of loan amount, such disbursement should be made for a consideration of time value of money; (ii) when the debt (whole or any part of instalment) becomes due and payable and; (iii) the same is not paid by the Corporate Debtor i.e., default committed by the Corporate Debtor. Presently, in the case before us, there is disbursement of Rs. 70,00,000/- (Rupees Seventy Lacs Only) which is corroborated by bank entries filed by the Applicant and the Corporate Debtor has not denied the receipt of such amount. Thus, we observe that the amount of Rs. 70,00,000/- (Rupees Seventy Lacs) was disbursed by the Applicant to the Corporate Debtor. However, there is no written financial contract placed by the parties on record before us. During the hearing of the matter, neither of the parties were able to prove through either corroborative evidence or in their oral understanding that there is financial contract entered into between the parties to set out the terms of the above transaction which has been alleged as a loan by the Applicant and as investment by the Corporate Debtor.
13. The Applicant has contended that when no date of repayment is mentioned, the loan is repayable on demand. In the present case there is no financial contract as envisaged under Rule 3(d) of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 to substantiate the claim of the Applicant. It is also seen that in absence of any written document indicating the purpose of the said transaction, it cannot be assumed to have been towards a loan as claimed by the Financial Creditor. The same transpires from the judgment of the Hon'ble NCLAT in *Prayag Polytech Pvt. Ltd. vs. Gem Batteries Pvt. Ltd. Company Appeal (AT)(Insolvency) No. 713 of 2019*.

14. It is an established rule of law that burden of proof lies on the party who asserts except when the law states otherwise. It has been observed by the Hon'ble Supreme Court in the matter of *Rajendra Narottamdas Sheth vs. Chandra Prakash Jain (2022) 5 SCC 600* that the primary obligation of making out a prima facie case of default is on the financial creditor. There is no necessity for the corporate debtor to provide any information at the stage of admission of the application under Section 7 of the Code, as the burden of showing non-payment of a legally recoverable debt, which is not time-barred, is on the financial creditor. The Applicant herein has failed to provide any document to prove that the said transaction amounts to a loan. Consequently, there is no default committed by the Corporate Debtor so as to trigger CIRP under Section 7 of the Code.
15. To prove the existence of a debt, the Applicant has relied on the 4 dishonoured cheques amounting to Rs. 20,00,000/- but at the same time the Applicant has failed to provide a link between the said cheques being given

for discharge of liability to the tune of Rs. 70,00,000/- (Rupees Seventy Lacs). We cannot in any circumstances attribute a liability which is greater in amount than the numbers mentioned on the cheques which have been dishonoured.

16. Further, merely bringing it to the knowledge that TDS was deducted does not constitute a financial debt or loan in the present case. TDS can be deducted for various reasons and mere payment of TDS towards interest payable does not amount to acknowledgement of debt. The same cannot be treated as an acknowledgement of debt, more so a default of the alleged loan.
17. It is seen that vide order dated 19.12.2019, the Applicant was directed to file an affidavit denoting the nature of transaction underlining the money advanced to the Corporate Debtor and supporting documents thereof. The Applicant in compliance of the same had filed an Affidavit vide Dairy No. 10/2020 dated 06.01.2020 whereby the Applicant has stated that the loan was provided to the Corporate Debtor for business purposes. Thereafter, the Applicant has also filed a report of the National E-Governance Services Limited vide Dairy No. 682/2020. The said report states that the record of default has been triggered by the voluntary action of the Applicant to generate and download the report. A mere plain reading of the provisions under Section 7 of the IBC show that to initiate CIRP under Section 7 of the Code, the Applicant must establish that there is a financial debt and the default has been committed in respect of that financial debt by the Corporate

Debtor. All of these aforementioned documents annexed by the Applicant are unable to prove any default of any debt which was owed by the Corporate Debtor to the Applicant.

18. The transaction of Rs. 70,00,000/- (Rupees Seventy Lacs Only) effected between the Corporate Debtor and the Applicant but in absence of any Financial Contract, it cannot be categorised as a loan. The Corporate Debtor has admittedly stated that the said is an investment made by the Applicant repayable after 10 years against which the Applicant will be entitled to avail remedy when the amount becomes due. Hence, we are not inclined to commence CIRP of the Corporate Debtor.
19. The Order in the present matter is made in terms of Section 7 of IBC, 2016 based on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority. This order shall not act as a bar to the Applicant in pursuing any other remedies available to it, under the prescribed provisions of law.
20. Accordingly, in the circumstances, CP No. (IB) 332/7/JPR/2019 is dismissed as rejected.

DEEP
CHANDRA
JOSHI

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANTA
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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**