



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

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

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

**CP No. (IB)- 77/7/JPR/2022**

*(Application under Section 7 read with 60(5) of the Insolvency and Bankruptcy Code, 2016 & Rule 11 of the NCLT Rules, 2016)*

**IN THE MATTER OF:**

**M/S FASHION SUITINGS PRIVATE LIMITED**

...Financial Creditor

Versus

**M/S NIRMAL CARS PRIVATE LIMITED**

...Corporate Debtor

**MEMO OF PARTIES**

**M/s Fashion Suitings Private Limited**

SPL-6, RIICO Growth Centre, Swaroopganj  
Bhilwara, Rajasthan-311025.

...Financial Creditor/Applicant

**VERSUS**

**M/s Nirmal Cars Private Limited**

**CIN- U50300RJ2011PTC034231**

Reg. Add: E-121 (B) V K I Area,  
Jaipur, Rajasthan-302013

...Corporate Debtor/Respondent

For the Applicant : Sandeep Taneja, Adv.  
Kartikeya Sharma, Adv.

For the Respondent : Varnali Purohit, Adv.

***CP No. (IB)-77/7/JPR/2022***

**Order Pronounced On: -15.06.2023**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This application is filed by M/s Fashion Suitings Private Limited ('Applicant' / 'Financial Creditor') against the Corporate Debtor namely M/s Nirmal Cars Private Limited ('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 Corporate Debtor is a Company incorporated in the year 2011 under the provisions of the Companies Act, 1956, having its registered office at E-12 (B) V K I Area, Jaipur-302013. The authorized share capital of the Respondent Company is Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only), and the paid-up share capital is Rs. 1,21,27,540/- (Rupees One Crore Twenty-One Lakh Twenty-Seven Thousand Five Hundred Forty Only). Copy of the Corporate Debtor's Master data along with details of Signatory as extracted from the portal the of Ministry of Corporate Affairs ([www.mca.gov.in](http://www.mca.gov.in)) is annexed as Annexure 2 of the Petition at Page No. 15.



3. The Financial Creditor, M/s Fashion Suitings Private Limited, is engaged in the business of textile manufacturing, and its registered office is situated at SPL-6, RICCO Growth Centre, Swaroopganj, Bhilwara, Rajasthan-311025.
4. The details of the transactions leading to the filing of this Application as averred by the Applicant are as follows:
  - a) The Corporate Debtor approached the Applicant to provide financial assistance of Rs. 2,00,00,000/- (Rupees Two Crore Only).
  - b) Accordingly, the Applicant had granted an unsecured loan of Rs. 2,00,00,000/- (Rupees Two Crore Only) on 01.08.2015 *vide* cheque no. 413813 and it was mutually agreed between the parties that the aforesaid loan would be repayable by 31.03.2021 along with 15% interest.
  - c) Subsequently, the Respondent had paid interest from 18.08.2015 till 31.03.2019 and TDS was also deducted from time to time. Afterwards, the Respondent repaid Rs. 50,00,000/- (Rupees Fifty Lakh Only) on 17.08.2016.
  - d) Further the Corporate Debtor *vide* letter dated 01.04.2021 has acknowledged the debt towards the Applicant and assured the Applicant to repay the due amount along with interest by 30.09.2021. With respect to the same, the Corporate Debtor also provided confirmation of account for a period from 01.08.2015 to 31.03.2021

wherein the Respondent acknowledged the liability. Copy of the confirmation of account annexed as Annexure-7 of the Petition.

5. As a consequence of the aforementioned default, this application has been filed seeking initiation of CIRP against the Corporate Debtor. The Applicant has stated the details of the amount due in Part IV of the Application which is as follows:

<b>Particulars of Financial Debt</b>		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	The total amount of debt: Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) (Principal)  Interest Rs. 51,37,063/- (Rupees Fifty-One Lakh Thirty-Seven Thousand Sixty-Three Only) @ 15% p.a. (From 01.04.2019 to 31.03.2021)
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 total amount claimed to be in default is Rs. 2,01,37,063/- (Principal amount of Rs. 1,50,00,000/- + Interest of Rs. 51,37,063/-)  The date of default is 01.10.2021

6. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its reply *vide* Diary No. 961/2023 dated 17.04.2023 stating as below:



- a) The Corporate Debtor submits that the Applicant has failed to demonstrate how the alleged demand can be considered as Financial Debt. Further, it is stated that the affairs of the Respondent Company were undertaken by the *erstwhile* director, Shri Rajan Mehra. Subsequently, to the death of the erstwhile Director, the operations of the Respondent Company reduced and presently, is being controlled by the wife of the erstwhile director Smt. Ruby Mehra.
  - b) It is stated that the Applicant does not quantify as a Financial Creditor defined under Code, 2016 and the alleged debt claimed by the Applicant is not Financial Debt.
7. 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. Further, this matter is within the purview of Laws of Limitation, as the debt fell due in 2021, and the Application was filed before this Adjudicating Authority in 2022. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
8. We have gone through the pleadings presented before us, and documents filed by both the parties and heard the arguments made by the counsels, the



applicant has filed the present application stating default of loan amount of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) + interest of Rs. 51,37,063/- (Rupees Fifty-One Lakh Thirty-Seven Thousand Sixty-Three Only).

9. The mere plain reading of the provisions under Section 7 of the IBC shows that to initiate CIRP under Section 7 of the Code, the Applicant must establish that there is a financial debt and that default has been committed in respect of that financial debt by the Corporate Debtor. While dealing with an application under Section 7, the Adjudicating Authority is not required to see the question of a dispute between the parties as long as debt and default is proved.
10. In the case of *Pawan Kumar v. Utsav Securities Private Limited & Ors., Company Appeal (AT) (Ins) No. 251 of 2020*, the Hon'ble NCLAT has stated the following to be essential conditions to be satisfied by a Financial Creditor under Section 7 read with Section 5 (7) and (8) of the Code:
  - a. *There must be disbursal of loan amount.*
  - b. *Such disbursal should be made for a consideration for time value of money, and*
  - c. *When the debt (whole or any part or instalment) become due and payable and is not paid by the Corporate Debtor means committed default.*



11. All the aforementioned conditions are to be satisfied by the Financial Creditor in order to consider the Application under section 7 of the IBC and initiate the CIRP against the Corporate Debtor. In the present case, it is perused from the documents placed on record that the Financial Creditor disbursed a loan of Rs. 2,00,00,000/- (Rupees Two Crore Only) which would be repayable by 31.03.2021 at the rate of 15% interest per annum. Subsequently, the Respondent made a payment of Rs. 50,00,000/- (Rupees Fifty Lakh Only) towards the alleged claim of the Applicant.
12. It is seen that the application has been filed for default of repayment of loan which was granted to the Corporate Debtor and repayable by 31.03.2021 along with 15% interest.
13. The second essential condition is that the loan disbursement is made for consideration of the time value of money. The Hon'ble Supreme Court of India, in *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd., Civil Appeal No. 2231 of 2021* held that the Time Value of money means that the money which is being lent, when returned will have more value. The same can be through the interest levied on the principal amount. In the present matter herein, the loan was repayable along with interest @15% per annum.
14. The final essential condition is that the debt (whole or any part or instalment) becomes due and payable. In the present case at hand, the Corporate Debtor has clearly acknowledged the debt by way of confirmation of account. No



payment has been received from the Corporate Debtor on or after the aforesaid due date. Copy of confirmation of account and letter dated 01.04.2021 annexed as Annexures 6 and 7 of the Petition.

15. In view of the aforementioned, we are of the view that Corporate Insolvency Resolution Process ought to be initiated against the Corporate Debtor.
16. The Applicant has named one Mr. Sourabh Malpani, the registration number of the proposed Interim Resolution Professional ('IRP') is IBBI/IPA-001/IP-P01265/2018-19/12047 (email: malpanijpr@gmail.com), duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.
17. Consequences of initiation of CIRP shall be inter-alia as follows:
  - a) The Insolvency Resolution Professional proposed by the Applicant is Mr. Sourabh Malpani, who is an IP registered with ICSI Insolvency Professional Agency having Registration No. IBBI/IPA-001/IP-P01265/2018-19/12047. He is hereby appointed as the Interim Resolution Professional to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issue of the publication in widely circulated



Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.

- b) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- c) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray his expenses to be incurred and fees on the account. The Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rs. Two Lakh Only) to the bank account of IRP within a week from the date of this Order. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all



cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- d) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.
18. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.
19. In the circumstances, CP No. (IB) 77/7/JPR/2022 is admitted.

*-Sd-*  
**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

*-Sd-*  
**ATUL CHATURVEDI,  
TECHNICAL MEMBER**