



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)- 318/7/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:

MR. NAWAL KISHORE DANGAYACH

...Financial Creditor

Versus

**GURU PRAGYA INFRA
PRIVATE LIMITED & ANR.**

...Corporate Debtor

MEMO OF PARTIES

Mr. Nawal Kishore Dangayach
S/o Shri Jugal Kishore Dangayach
R/o A-34A, Ram Nagar, Shastri
Nagar, Jaipur-Rajasthan-302016

...Financial Creditor/Applicant

VERSUS

1. Guru Pragma Infra Private Limited

CIN: U45201RJ2007PTC024637

R/O: at Flat No. 102, I Floor,
Gurupragya, Sumeru, P.No. 7,
Green Triveni, Nindar, Near Sun
City, Sikar Road, Jaipur-302013

...Corporate Debtor/Respondent

**2. Union Of India, Ministry of Corporate Affairs**

Through the Secretary, A Wing
Shastri Bhawan Garage, No. 14,
Dr. Rajendra Prasad Road, New
Delhi-110001.

...Respondent No. 2

For the Applicant : Shivangshu Naval, Adv.
Ayush Sharma, Adv.

For the Respondent : Rahul Fatehpuria, Adv.

Order Pronounced On: - 13.01.2023**ORDER****Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application is filed by Mr. Nawal Kishore Dangayach ('Applicant'/'Financial Creditor') against the Corporate Debtor namely M/s Guru Pragya Infra 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 private limited company, incorporated under the provisions of the Companies Act, 1956 on 22.06.2007 and duly registered with the Registrar of Companies, Jaipur having CIN: U45201RJ2007PTC024637. The registered office of the Corporate Debtor



is situated at Flat No. 102, 1st Floor, Gurupragya Sumeru, P. No. 7, green Triveni Nindar, near Sun City, Sikar Road, Jaipur, RJ 302013 India. The Authorised share capital of the Company is Rs. 5,00,00,000/- (Rupees Five Crore and the Paid-up share capital of the Company is Rs. 4,01,00,000/- (Rupees Four Crore and One Lakh only).

3. The details of the transactions leading to the filing of this Application as averred by the Applicant are as follows:
- a. The Corporate Debtor through one of the directors namely Mr. Subhash Saini approached the Applicant to lend money upon verbal communication and assured to repay it by 30.09.2019 along with 15% interest per annum.
 - b. Consequently, the Applicant has given a sum of Rs. 10,00,000/- (Rupees Ten Lakhs Only) to the Corporate Debtor by way of RTGS on 20.03.2019.
 - c. Thereafter the Corporate Debtor has requested to furnish further short-term financial assistance. The Applicant has provided an additional loan facility of Rs. 35,00,000/- (Rupees Thirty-Five Lakh Only) as follows:

Date	Amount Disbursed (In Rupees)
27.08.2019	5,00,000/-
27.08.2019	5,00,000/-



28.08.2019	10,00,000/-
28.08.2019	5,00,000/-
28.08.2019	5,00,000/-
29.08.2019	5,00,000/-
Total	35,00,000/-

- d. Accordingly, the Applicant in total has disbursed Rs. 45,00,000/- (Rupees Forty-Five Lakh Only) to the Corporate Debtor along with interest calculated @ 15% per annum from 20.03.2019 to 30.11.2019 is Rs. 2,32,562/- (Rupees Two Lakh Thirty-Two Thousand Five Hundred Sixty-Two Only). Copy of the Bank Statement has been attached as Annexure 2 at Pg. 26-41 of the Application as on 30.11.2019, the total amount of debt stands at Rs. 47,38,562/- (Rupees Forty-Seven Thousand Thirty-Eight Thousand Five Hundred Sixty-Two Only) including the interest being charged @ 15% p.a.
- e. For repayment of the said loan, the Applicant had approached the Corporate Debtor though, no response has been received from the Corporate Debtor. Subsequently, the Applicant issued a letter dated 23.10.2019, demanding repayment of the due amount, and also a follow-up has been made through an email dated 23.10.2019. The Corporate Debtor neither responded nor repaid the said loan amount.



- f. Subsequent to that the Applicant has sent a legal notice dated 02.11.2019 to the Corporate Debtor demanding the aforesaid alleged sum.
- g. Hence this Application has been filed by the Financial Creditor. The Total Debt due as on 30.09.2019 amounts to Rs. 47,38,562/- (Rupees Forty-Seven Lakh Thirty-Eight Thousand Five Hundred Sixty-Two Only) including interest charged at the rate of 15% p.a. for the period 20.03.2019 to 29.08.2019 i.e., Rs. 2,32,562/- (Rupees Two Lakh Thirty-Two Thousand Five Hundred Sixty-Two Only).
- h. The Applicant has stated the details of the amount due in Part IV of the Application which is as follows:

<u>PART IV</u> <u>PARTICULARS OF FINANCIAL DEBT</u>		
1.	Total Amount of Debt Granted Date(s) Of Disbursement	Rs. 45,00,000/- (Rupees Forty-Five Lacs Only) 20.03.2019
2.	Amount Claimed to be in Default and	Debt Amount is Rs. 45,00,000/- (Rupees Forty-Five Lakh Only) with interest @ 15% per annum from the respective dates of disbursing the amount i.e. 20.03.2019 and 29.08.2019 amounting to Rs. 2,32,562/- (Rupees Two Lakh Thirty-Two Thousand Five Hundred Sixty-Two Only) calculated up to 30.11.2019.



	The date on which the default occurred (attach the workings for computation of amount and days of default in tabular form)	Total Debt-Rs. 47,38,562/- (Rs. Forty-Seven Lakh Thirty-Eight Thousand Five Hundred Sixty-Two Only) along with 15% interest per annum. Date of Default- 30.09.2019 A tabular chart showing the manner in which the amount is paid to the Corporate Debtor by the Financial Creditor along with interest calculations is annexed as Annexure-2A of the Application.
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4. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its reply *vide* Diary No. 1163/2021 dated 15.06.2021 whereby the following is stated:
- a. The Corporate Debtor has submitted that the Applicant had entered into a purchase agreement with the Respondent for the purchase of Unit Number R-1 Ground Floor, GURU SHIKHAR SEKHAWATI Plot No.2 Neendar Village, Patvar Neendar Tehsil Amer District Jaipur for a land admeasuring built-up area of 978.00 Square Feet and Super Built-Up area of 1271.00 Square Feet for the consideration of Rs. 1,14,45,300 (Rupees One Crore Fourteen Lakh Forty-Five Thousand Three Hundred Only). Copy of the sale agreement is annexed as Annexure-1 of the Reply.
 - b. The Corporate Debtor contends that the Applicant had only paid Rs. 45,10,000/- (Rupees Forty-Five Lakh Ten Thousand Only) in



consideration of the purchase of the said immovable property. Further Rs. 69,35,300 (Rupees Sixty-Nine Lakh Thirty-Five Thousand Three Hundred Only) along with 18% interest still remains due in total consideration of the purchase of immovable property.

- c. Subsequently, the Corporate Debtor has issued a legal notice for the payment of a remaining amount i.e., Rs. 69,35,300 (Rupees Sixty-Nine Lakh Thirty-Five Thousand Three Hundred Only) in consideration of the purchase of the said immovable property.
- d. It is pertinent to note that as a result of non-payment of the total amount till date as agreed between the Applicant and Corporate Debtor the agreement of sale stands terminated and the amount which is already paid i.e., Rs. 45,10,000/- (Rupees Forty-Five Lakh Ten Thousand Only) is liable to forfeit.
- e. The Corporate Debtor submits that the Applicant has never given any loan of the alleged amount to the Respondent rather the Applicant is a customer of the Corporate Debtor.
- f. Further there is no relationship between the Applicant and Respondent. The Applicant is merely a customer of the Corporate Debtor.
- g. Moreover, the Corporate Debtor submits that there is no agreement between the Applicant and Respondent for any financial assistance. Therefore, there is no question of returning the alleged amount.



5. The Applicant filed Rejoinder in reply to the aforementioned *vide* Diary No. 2352/2021 dated 15.11.2021 submitting as follows:
- a. The Applicant submits that the sale agreement on which the Corporate Debtor is relying does not contain any date and signature of the concerned parties and witnesses.
 - b. Moreover, the agreement of sale was neither executed nor concluded further Applicant never made any payment towards the purchase of immovable property.
 - c. The Applicant contends that the Corporate Debtor is acknowledging the receipt of Rs. 45,10,000/- (Rupees Forty-Five Lakh Ten-Thousand Only). The Corporate Debtor alleges that payment of Rs. 10,000/- was made in cash in relation to an agreement to sell however, there is no payment schedule purported to the agreement to sale.
 - d. The Applicant submits that there was no occasion or obligation on the Financial Creditor to advance a sum of Rs. 45,00,000/- out of the alleged total sale consideration of Rs. 1,14,45,300 (Rs. One Crore Fourteen Lakh Forty-Five Thousand Three Hundred Only).
 - e. The Corporate Debtor acknowledges that Rs. 45,00,000/- has been received nevertheless the alleged amount has been given by Applicant as a loan not towards the sale consideration. The Corporate Debtor has failed to produce any alleged communication/reminders with regard to



the payment of the remaining sale consideration of Rs. 69,35,300/- (Rs. Sixty-Nine Lakh Thirty-Five Thousand Three Hundred Only).

- f. The Applicant submits that at a later stage after filing the present petition the Corporate Debtor issued a legal notice dated 20.01.2020 demanding the remaining payment of sale consideration of immovable property. Pursuant to that, the Applicant replied to that legal notice on 25.02.2020 and reiterated the same as mentioned in its rejoinder.
 - g. It is pertinent to note that the agreement to sale has been misused by the Corporate Debtor it is nothing but an afterthought to avoid paying the legitimate dues of the Applicant.
6. The Applicant has filed Written Submissions *vide* Diary No. 2905/2022 dated 30.09.2022 whereby it reiterated the same as mentioned in the rejoinder and relied on the following judgments:
- a. *Anand Kumar Gupta Vs Adelson Pharma Private Limited in CP(IB) 74/7/JPR/2019 dated 21.12.2021, NCLT Jaipur Bench*
 - b. *Nishit B. Patel, Shareholder of Peacock Construction Pvt. Ltd. Vs Good Value Financial Services Private Limited & Ors. in Company Appeal (AT) (Insolvency) No. 198/2020 dated 14.02.2022*
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 fall due in 2019, and the Application was filed before this Adjudicating Authority in 2019. 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. 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;”*



7. From the documents produced before us, there is a clear transaction of Rs. 45,00,000/- (Rs. Forty-Five Lacs) on numerous occasions, which has been seen in the Bank Statements of the Financial Creditor (page no. 26-41) filed in the Application. 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 Applicant has paid the alleged sum in part consideration of the purchase of immovable property situated at Unit Number R-1 Ground Floor, GURU SHIKHAR SEKHAWATI Plot No. 2 Neendar Village, Patvar Neendar Tehsil Amer Dist. Jaipur.
8. 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.
9. The basic ingredients to be looked into while passing an order under Section 7 of the code is: (i) there must be a disbursal of a loan amount, such dispersal should be made for a consideration of time value of money; (ii) when the debt (whole or any part of installment) 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 a disbursal of Rs. 45,00,000/- (Rupees Forty-Five 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 Rs. 45,00,000/- (Rupees Forty-Five 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 was able to prove through either corroborative evidence or in their oral understanding that there is a 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 sale consideration by the Corporate Debtor.

10. 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*.
11. It is an established rule of law that the 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.

12. A 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 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.
13. The transaction of Rs. 45,00,000/- (Rupees Forty-Five 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 acknowledged that the said alleged amount has been received as sale consideration of the immovable property made by the Applicant. Hence, we are not inclined to commence the CIRP of the Corporate Debtor.
14. 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.

15. Accordingly, in the circumstances, CP No. (IB) 318/7/JPR/2019 is dismissed as rejected.

**DEEP
CHANDRA
JOSHI** Digitally signed by DEEP
CHANDRA JOSHI
Date: 2023.01.13
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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

**PRASANTA
KUMAR
MOHANTY** Digitally signed by
PRASANTA KUMAR
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Date: 2023.01.13
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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**