

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP (IB) No.46/ALD/2020**

*In the matter of:*

An application under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

*In the matter of:*

**ABHINAV AGARWAL**  
S/O SH. S.P. AGARWAL  
R/O 1127, BEGUM BAGH,  
MEERUT, U.P.

*...Financial Creditor*

*Versus*

**M/S CODEBLUE CLOTHING PRIVATE LIMITED**  
**REGD. OFFICE AT:-**

124, SECTOR - 28,  
NOIDA, UTTAR PRADESH

**ALSO AT**

H-35, LGF, SECTOR - 63,  
NOIDA-201307, UTTAR PRADESH

*...Corporate Debtor*

***Coram:***

Shri Praveen Gupta. : Member (Judicial)

Shri Ashish Verma : Member (Technical)

Order pronounced on: 21<sup>st</sup> December, 2023

**Appearances (through video conference):**

For Financial Creditor : Sh. P Nagesh Sr. Adv. Assisted  
By Sh. Sanket Gupta, Adv.

For Corporate Debtor : Sh. Sumant Batra, Adv.

## **ORDER**

1. The Present Application has been filed on 17.01.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "**I & B Code, 2016**") by the Applicant/Financial Creditor namely, **Abhinav Agarwal** seeking initiation of the Corporate Insolvency Process (hereinafter referred as "**CIRP**") against the Respondent/Corporate Debtor i.e. **M/s Codeblue Clothing Pvt. Ltd.** read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form.

2. M/s Codeblue Clothing Limited, (hereinafter referred as the ("Respondent/Corporate Debtor")) was incorporated on 08.06.2010 under the provisions of the Companies Act, 2013, and registered with the ROC-Uttar Pradesh Kanpur with CIN U18204UP2010PTC040927, having registered office at 124 Sector-28 Noida, UP-248001.

3. As per Part IV of the Application, the total amount of Financial Debt shown as due from the Corporate Debtor is Rs. 49,14,584/- including interest @ 27.5% p.a. computed up to

31.12.2019 and other charges as well as pendent lite and future interest @ 27.5% p.a. from the date of filing of the present application till the date of realization of payment to the Financial Creditor. The date of default as mentioned in the application is 30.07.2019. Copy of calculation sheet has been annexed as **Annexure-XI** with the Application.

4. While providing the details of the Financial Debt, the Financial Creditor stated in the Application that he was approached by the Corporate Debtor for obtaining a loan for running the business operations of the Corporate Debtor company which he extended to the Corporate Debtor as per the business requirement. The Financial Creditor advanced the sum of Rs. 35,00,000/- to the Corporate Debtor on 31.08.2018 and Rs. 10,00,000 on 27.11.2018. It is also stated that the Corporate Debtor has acknowledged the receipt of Rs. 25,00,000/-. Copy of said receipt letter dated 05.09.2018 issued by the Corporate Debtor has been annexed as **Annexure-V** with the Application.

5. It is further stated that it was mutually decided between the parties that initial six months, commencing from 01.09.2018 to 28.02.2019, would constitute a moratorium period for payment of interest on a loan amount of Rs. 25,00,000/- and the same is

also mentioned in the letter dated 05.09.2018 of the Corporate Debtor. As per the Financial Creditor, it has been agreed that throughout the moratorium period, interest will accrue on the loan amount but will not be due for payment. Subsequently, post the moratorium period, interest payments will be made on a quarterly basis to the Financial Creditor by the Corporate Debtor.

6. It is also stated that for Loan of Rs.10,00,000/-, initial six months starting from 27.11.2018 to 31.05.2019, would serve as a moratorium period. During this moratorium period, interest will accrue on the loan amount of Rs. 10,00,000/ but will not be due for payment. Subsequently, post the moratorium period, interest payments will be made on a quarterly basis to the Financial Creditor by the Corporate Debtor. It is also stated that the Corporate Debtor did not acknowledge the receipt of Rs. 10,00,000 even after repeated requests.

7. After the expiry of Moratorium period for both loans on 28.02.2019 and 31.05.2019 respectively, Interest became payable on the loan amount at the rate of 27.5% p.a. for the entire period. However, no payments towards interest or the loan amounts have been remitted to the Financial Creditor by the Corporate Debtor.

8. Due to non-payment of interest on loan, Financial Creditor issued Legal Notice dated 30.07.2019 to the Corporate Debtor. In the legal notice dated 30.07.2019, Financial Creditor demanded a sum of Rs. 5,15,625 as interest on the loan amount of R.25,00.000/ to which corporate debtor sent the reply dated 13.08.2019 and 16.08.2019 respectively. Copies of Legal notice dated 30.07.2019 and replies dated 13.08.2019 and 16.08.2019 have been annexed as **Annexure- VI and VII** respectively with the Application. For loan of Rs. 10 lacs, another legal notice dated 22.11.2019 was given to the Corporate Debtor for recovery of interest amount of Rs. 2,06,250/- thereon. Copy of the said legal notice has been annexed as **Annexure-IX** with the Application

9. In the reply dated 13.08.2019 and 16.08.2019, the Corporate Debtor refused paying of any interest demanded in the legal notice stating that the money paid by the Financial Creditor was for the purpose of making investment in the Corporate Debtor Company hence, no interest is payable and even stated that the amount of money paid by the Financial Creditor might be forfeited as necessary terms are not fulfilled by the Financial Creditor.

10. After receiving above reply from the Corporate Debtor, the Financial Creditor sent another letter dated 09.12.2019, specifying the amount of money given to the Corporate Debtor as unsecured loan out of which, Rs. 25 lac was paid on 31.08.2018 and further Rs. 10 lacs was paid on 27.11.2018. Further vide the letter dated 09.12.2019, the Financial Creditor called upon the Corporate Debtor to pay the total loan amount of Rs. 35,00,000/- along with interest of Rs. 11,34,375/- totaling to Rs. 46,34,375/- immediately, failing which it is stated by the Financial Creditor that it will take all action as available to him under the law against the Corporate Debtor thus, the entire loan amount of Rs. 35 lac has been recalled by the Financial Creditor along with the interest payable. As neither any payment was made by the Corporate Debtor nor any response to this recall notice was received, the Financial Creditor filed this application u/s 7 for starting CIRP against the Corporate Debtor.

### **REPLY ON BEHALF OF THE CORPORATE DEBTOR**

11. Against the above Application, the Corporate Debtor filed reply on 19.03.2021 vide its counter affidavit dated 15.03.2021 countering all the details provided in the Application and explaining the nature of transactions done between Financial

Creditor and Corporate Debtor. In this regard, it has been stated in the reply that Applicant and the Corporate Debtor are sharing old family friendship. It is contended that the Corporate Debtor did not initiate a request for a loan from the Applicant, as mentioned in the Application. Instead, it was the Applicant who approached the Corporate Debtor in August 2018, expressing an interest to invest in the business of the Corporate Debtor. Following numerous meetings, discussions, and deliberations, a mutual decision was reached between the parties. The Applicant and the Corporate Debtor agreed to become partners in the Corporate Debtor's business. Copy of various e-mails exchanged between Applicant and Corporate Debtor has been annexed as **Annexure C.A- 2** with the Reply.

12. In order to counter the claim of the Financial Creditor about the amount of Financial Debt being in the nature of loan, it is contended by the Corporate Debtor that as per Section 73 of the Companies Act, 2013, a private limited company is not entitled to receive money in the form of loan or deposit from any individual who is not the director of the Corporate Debtor without complying Section 73(2) of the Companies Act, 2013.

13. Corporate Debtor in order to show the amount claimed to be Financial Debt in the Application as being actually the amount invested in the Corporate Debtor Company, relied on certain WhatsApp messages between the Financial Creditor, Mr Abhinav Agarwal and the representative of the Corporate Debtor Company, Mr Vaibhav in which there is talk of releasing a minimum fund of Rs. 2 Crores. The WhatsApp messages have been annexed as **Annexure C.A-3** with the Reply. In this regard, certain emails have also been relied upon attached with reply as **Annexure C.A.2** and **Annexure C.A-4** with the Reply. One hand written note of the father of the Corporate Debtor, Shri S P Agarwal giving breakup of Rs. 2.00 crore in five tranches, two of Rs. 25 lacs and three of Rs. 50 lacs also been relied upon, which has been annexed as **Annexure C.A-5** with the Reply. One draft agreement for investment in Corporate Debtor Company has also been annexed as **Annexure-CA-6** with the Reply.

14. By referring to the abovementioned communications and documents, the Corporate Debtor tried to argue in the reply that it becomes evident that the agreement in question does not align with the characterization of a financial loan, as indicated in the Application. Instead, it distinctly outlines an investment for

equity. The annexed documents strongly support the Applicant's expressed intent to be a long-term investor and business partner with the Respondent.

15. As regards the letter dated 05.09.2018 of the Corporate Debtor acknowledging receipt of loan of Rs. 25 lacs from the Financial Creditor at the rate of annual interest 27.5%, It is contended by the Corporate Debtor that following the initial disbursement of Rs. 25 lakhs, the Corporate Debtor was pressurized to agree to exceptionally high rate of return on the invested amount. This was coupled with the stipulation that subsequent tranches or investments would only be released if the Corporate Debtor acquiesced to these elevated rates of return. As per the Corporate Debtor, the acknowledgment of Rs. 25 lakhs by the Respondent, serves as evidence of this pressure. It is stated that the release of Rs. 10 lakhs occurred only after the Respondent provided this acknowledgment. Subsequently, the Applicant failed to fulfill their commitment by not disbursing funds according to the mutually agreed-upon timelines. The acknowledgment was indicative of the maximum rate of return on the invested capital, considering the ongoing discussions surrounding equity or convertible debt, as outlined in the draft

agreement sent by the Financial Creditor on 13.09.2018. Copy of the mail dated 13.09.2018 has been annexed as **Annexure CA-7** with the Reply. The agreed rate of return was based on a minimum invested capital of Rs. 2 crores, as agreed by both the parties. Subsequent to the first tranche, the Corporate Debtor was subjected to pressure to enter into piecemeal agreements, each amounting to 50 lakhs. It is also in line with that the letter dated 05.09.2020 of the Corporate Debtor was issued acknowledging the loan of Rs. 25 lacs which is relied upon by the Financial Creditor but it has no evidentiary value as it is not registered under the Stamp Act 1899 being in the nature of Instrument of debt or Promissory Note.

16. The Corporate Debtor after relying on the communications and documents discussed in its reply, finally contended that the alleged transaction is an equity-based investment by the applicant with the intent of deriving profit from the corporate debtor's business. Given the absence of a genuine 'debt,' the concept of 'default' becomes irrelevant. It is stated that there is no default on the part of the corporate debtor. In addition to this. The financial creditor has seemingly overlooked the terms outlined in the letter dated 05.09.2018, purportedly serving as an

acknowledgment. According to this document, the principal amount of Rs. 25 lakhs was stipulated to be repayable only after a four years, specifically on 31.08.2022 and there is no provision of repayment of interest or any amount on demand. Therefore, it does not fulfill the eligible criteria of debt and default as defined under section 3(11) and 3(12) of the IBC,2016.

17. It is further contended that alleged document dated 05.09.2018 refers to an acknowledgment of a loan transaction solely to the receipt of Rs. 25 lakhs. The applicant, in the submission of their application, asserts a claim amounting to Rs. 35 lakhs, which according to the Corporate Debtor is not admissible.

### **REJOINDER ON BEHALF OF THE APPLICANT**

18. The Applicant has filed rejoinder on 25.04.2022 wherein they have denied all the allegation raised in the reply and submitted that a sum of Rs. 35,00,000/- was given to the Corporate Debtor owing to his old family friendship. With respect to investment in share capital of the Corporate Debtor Company as alleged in the reply, the Applicant asserts that Corporate Debtor did not transfer any equity share of the Company because

the entire share capital of the Corporate Debtor Company is fully paid-up share capital. The Letter dated 05.09.2018 is an acknowledgement of debt and would not attract any stamp duty as it is not an instrument of debt or promissory note. Therefore, it is out of the ambit of the Indian Stamp Act,1899.

19. With reference to the agreement dated 13.09.2018 CorporateDebtor contends that such agreement was never executed between the parties and is not even signed therefore, it is not admissible in the present matter

20. During the course of the hearing of the case, the Corporate Debtor has filed Supplementary Affidavit for bringing on record the amount remitted to the Financial Creditor.On 29.03.2022, the Corporate Debtor vide letter dated 23.09.2022 communicated to have made a payment of interest on the principal amount of Rs. 25 lakhs. A copy of the communication dated 29.03.2022 addressed by the Corporate Debtor to the Financial Creditor has been annexed as Annexure **S.A.-1** with the Supplementary Affidavit.

21. The Corporate Debtor has remitted an amount of Rs. 8,64,919.40 on 29.03.2022 to the Financial Creditor which

represented interest from 31.03.2018 till 04.01.2020. A copy of the remittance receipt indicating the aforesaid transaction has been annexed as **Annexure S.A.-2** with the Supplementary Affidavit. Subsequently, on 18.05.2022, the Corporate Debtor has further remitted a sum of Rs. 14,72,950.27 being interest at the @27.5% from 05.01.2020 till 28.02.2022. A copy of the remittance receipt dated 18.05.2022 has been annexed as **Annexure S.A.-3** with the Supplementary Affidavit.

22. The Corporate Debtor has further filed Additional Supplementary Affidavit wherein it is submitted that an acknowledgment of a Rs. 25,00,000/- debt, lent by the Financial Creditor to the Corporate Debtor, specifies that this sum was to be payable on or after 31.08.2022. However, the Financial Creditor charged an exorbitant interest at a rate of 27.5% p.a. This interest rate, significantly surpassing market norms, does not reasonably serve as the basis for initiating the Insolvency Petition. The principal amount of Rs. 25,00,000/- was stipulated to be due only on or after 31.08.2022. The Corporate Debtor deposited Rs. 8,64,919.40 on 29.03.2022 and Rs. 14,72,950.27 on 18.05.2022 with the Financial Creditor. This payment does not imply acceptance or acknowledgment of any liability but is

made to signify that the Corporate Debtor deposited the alleged interest contested by the Financial Creditor, forming the crux of the Insolvency Petition against the Corporate Debtor.

23. In response to the additional supplementary affidavit, the financial creditor has filed its reply wherein it is contended that additional supplementary affidavit filed by the Corporate Debtor is not maintainable as interest amount paid by the Corporate Debtor is on Rs. 25,00,000 whereas loan amount given to the Corporate Debtor is Rs. 35,00,000. The said loan amount of Rs. 35,00,000 along with interest, has been recalled vide letter dated 09.12.2019.

### **FINDINGS AND ORDER**

24. We have perused the materials available on record along with the written submissions filed by both parties and also taken into account the arguments advanced by the Ld. Counsels of both parties.

25. In Part IV of the application u/s 7 filed by the Financial Creditor, the amount of Financial Debt in default is claimed to be Rs. 49,14,584/- including interest @ 27.5% p.a. computed upto 31.12.2019 and other charges as well as pendent lite and future

interest @ 27.5% p.a. from the date of filing of the present application till the date of realization of payment to the Financial Creditor. The date of default is mentioned to be 30.07.2019 on which the legal notice was sent to the Corporate Debtor. This legal notice was issued after six months of moratorium period as the Corporate Debtor defaulted in paying the interest on the loan given to it after the moratorium on payment of interest has expired, demanding interest of Rs. 5,15,625/- for the period of 01.09.2018 till 31.05.2019. However, the interest demanded in the legal notice was not paid and the Corporate Debtor sent reply to the legal notice vide reply dated 13.08.2019 disputing the claim of the Financial Creditor giving loan to it as well charging of interest on such loan, stating that the money given by the Financial Creditor to the Corporate Debtor is not loan but invested in the business of the Corporate Debtor.

26. Another letter dated 16.08.2019 has also been sent by the Corporate Debtor to the Financial Creditor stating that the amount given by the Financial Creditor was part of the equity subscription money agreed upon by him to be invested in the Corporate Debtor and it is contended by the Corporate Debtor that the claim of Financial Creditor that the amount was in

default is false and afterthought. It is then further mentioned in the said reply of the Corporate Debtor that the unilateral failure of the Financial Creditor to honor his commitment to the company caused huge loss of money and goodwill and the Corporate Debtor himself was landed in a situation of forfeiture of his money. Thereafter, it is specifically mentioned that the Corporate Debtor has no legal claim of money or interest or otherwise and his claim of interest is denied in view of the law on receiving the above reply.

27. The Corporate Debtor sent another letter dated 09.12.2019, specifying the amount of money given as loan to the Corporate Debtor stating that the amount of Rs. 25 lac given to the Corporate Debtor on 31.08.2018 is unsecured loan and further Rs. 10 lacs was given as loan on 27.11.2018 and another legal notice dated 22.11.2019 was given to the Corporate Debtor for recovery of interest amount of Rs. 2,06,250/- on the second loan amount of Rs. 10 lac. Further vide the letter dated 09.12.2019, the Financial Creditor called upon the Corporate Debtor to pay the total loan amount of Rs. 35,00,000/- along with interest of Rs. 11,34,375/- totaling to Rs. 46,34,375/- immediately, failing which it is stated by the Financial Creditor that it will take all

action as available to him under the law against the Corporate Debtor thus, the entire loan amount of Rs. 35 lac has been recalled by the Financial Creditor along with the interest payable.

28. In the Application u/s 7, the outstanding amount comprising of principal amount of unsecured loan and interest upto 31.12.2019, has been computed at Rs. 49,14,584/- for which the computation has being enclosed in Annexure- XI and the same is reproduced as under: -

Sr. No.	Date of Payment By Financial Creditor	Principal Amount Paid <b>(A)</b>	Interest till date @ 27.5% P.A. till 31.12.2019 <b>(B)</b>	Mental Agony & Legal charges <b>(C)</b>
1.	31.08.2018	Rs. 25,00,000/-	Rs. 9,16,667/-	Rs. 2,00,000/-
2.	27.11.2018	Rs. 10,00,000/-	Rs. 2,97,917/-	
	Total Amount	Rs. 35,00,000/-	Rs. 12,14,584/-	Rs. 2,00,000/-

29. The above outstanding debt amount as mentioned in the Application filed u/s 7 has been disputed by the Corporate Debtor in its reply filed against the said Application vide its counter affidavit dated 15.03.2021. The Corporate Debtor has stated that debt amount under consideration is the money invested by the Financial Creditor in its business and it is not the unsecured loan. However, it is pertinent to mention that the Financial Creditor has attached an Annexure- V along with the

application, attaching a letter from the Corporate Debtor, M/s Codeblue Clothing Pvt. Ltd. dated 05.09.2018 in which, it has been clearly stated that the sum of Rs. 25 lac is taken by the Corporate Debtor at the annual rate of interest of 27.5% to be paid on quarterly basis with a moratorium of six months from the date of receipt i.e. 31.08.2018. This loan amount has been duly acknowledged by the Corporate Debtor vide letter dated 05.09.2018 therefore, we find that the dispute regarding nature of amount claimed to be a Financial Debt in the application u/s 7 as being raised by the Corporate Debtor, has no basis. In fact, during the course of the proceedings, no conclusive evidence could be produced by the Ld. Counsel of the Corporate Debtor to show that the amount under dispute was paid by the Financial Creditor for the purpose of making investment in Corporate Debtor Company. Only certain conversation made between the Financial Creditor, Mr. Abhinav Agarwal and the representative of the company, Shri Vaibhav has been shown, which is attached along with the reply of the Corporate Debtor to show that some talk was going on for payment of 2 crore in installment and in this respect, a hand written paper by the father of the Financial Creditor, Sri S.P. Agarwal has also been shown in which he has

given the break-up of Rs. 2 crore for making payment to the Corporate Debtor, however, with these WhatsApp conversation and written paper purportedly made by the father of the Financial Creditor, Shri S.P. Agrawal, it could not be established that the payment of Rs. 2 crore was for the purpose of investment. It is simply written that they will make the funds available at ease in five tranches i.e. two tranches of Rs. 25 lac and three tranches of Rs. 50 lac. The Financial Creditor categorically stated that no reliance can be placed on any hand written paper purported to be written by his father, as his father was not authorized to take any decision with respect to his financial matters and even in the hand written paper, only making of the funds available has been stated. Nowhere, it has been stated that these funds are going to be invested in the Corporate Debtor. It has also been pointed out by the Financial Creditor that even after going through the WhatsApp conversation between the Financial Creditor, Shri Abhinav Agrawal and the representative of the company, Shri Vaibhav, it cannot be established that these talks were in respect of any investment. Rather, it has been shown that in these messages at various places, it has been mentioned that the funds were given

as a loan. These messages are specifically shown to us as reproduced below:-

“Page 28 of Reply dated 16.03.2021 – It will also give us funds within our required working capital plan

➤ Page 28 of Reply dated 16.03.2021 – [31/08/18, 11:26:31 AM] Vaibhav: PI make RTGS to the following account from your ACC:

➤ Page 28 of Reply dated 16.03.2021 – [31/08/18, 11:27:22

AM] Vaibhav: Name: Codeblue Clothing Pvt. Ltd

Bank: ICICI Bank Ltd,

Branch: Sector 18, Noida

A/C No: 003105032370

IFSC: ICIC0000031

➤ Page 29 of Reply dated 16.03.2021 – [11/19/18, 11:30:06 AM] Vaibhav: Debt receipt n acknowledged document sent to you on your email. I will carry the hard copy with me n give to you in Meerut.

➤ Page 35 of Reply dated 16.03.2021 – [19/11/18, 11:35:43 AM] However, since you seemed more comfortable with debt to begin with, I accepted and

totally agreed on your terms to give you comfort that you required

➤ Page 36 of Reply dated 16.03.2021 – [26/11/18, 10:34:50 AM] Vaibhav: PI do rtgs in code blue account in ICICI bank today itself

➤ Page 36 of Reply dated 16.03.2021 – [19/11/18, 10:39:29 AM] Vaibhav: Codeblue Clothing Pvt. Ltd

A/C No 003105032370

ICICI Bank Ltd, K-1, Senior mall, Sector 18, Noida

IFSC # ICIC0000031

30. Some draft agreement made for making investment in the equity share capital of the Corporate Debtor Company has also been referred, which was sent by the Corporate Debtor to the Financial Creditor by email. However, there is no such agreement available, which is signed by the Financial Creditor to prove that any such investment was made by the Financial Creditor in the Corporate Debtor Company. The Financial Creditor in the Rejoinder denied making any such investment in the Corporate Debtor.

31. From the above letter dated 05.09.2018 issued by the Corporate Debtor and certain WhatsApp Messages exchanged

between both parties, it is quite clear that the amount paid by the Financial Creditor to the Corporate Debtor is unsecured loan. It is further corroborated with a subsequent event leading to the filing of Additional Supplementary Affidavit by the Corporate Debtor dated 08.09.2022, informing that the Corporate Debtor had deposited an amount of Rs. 8,64,990/- on 29.03.2022 an another amount of Rs. 14,72,950/- on 18.05.2022, totaling to an amount of Rs. 23,37,869/. Despite making these two payments against the outstanding Financial Debt, it has been stated by the Corporate Debtor in its Additional Supplementary Affidavit that the payment nowhere suggests that the alleged Corporate Debtor accepts or acknowledges any liabilities but the amount so paid shows that the Corporate Debtor had intention to the reflect that it had deposited the alleged interest which was being charged by the Financial Creditor and which form the actual genesis of filling of the insolvency petition against the Corporate Debtor. It is further mentioned in the Additional Supplementary Affidavit that it is after having deposited the amount which is almost equal to the principal amount, the captioned petition is certainly not maintainable. It has also been asserted in the Additional Supplementary Affidavit that the alleged loan of Rs. 25 lac was

given on 31.08.2018 for a tenure of 4 years starting from August 31, 2018 and therefore, the alleged principal amount of Rs. 25 lac would have been due and payable on or after 31.08.2022.

32. All the assertions made in the Additional Supplementary Affidavit, have been considered by us and we find that the total payment of Rs. 23,37,869/- would not be sufficient to cover the entire Financial Debt in default. Even after adjusting Rs. 23,37,869/- against the principal amount of Rs. 25 lac, the remaining amount will be Rs. 1,62,131/- which would be more than the threshold limit of Rs. 1 lac that was applicable as per Section 4 of the I&B Code, 2016 when this application was filed. Looking to the fact that the present application was filed on 17.01.2020 and the threshold limit was enhanced from Rs. 1 lac to Rs. 1 crore vide notification of the Ministry of Corporate Affairs dated 24.03.2020, the threshold limit of Rs. 1 lac would apply in the present case. However, by making subsequent payments to the Financial Creditor after filing of petition u/s 7 will not change the position of the default committed by the Corporate Debtor for the purpose of the admissibility of the application u/s 7 unless the Financial Creditor itself withdraws the application filed u/s 7. The subsequent payments made by the Corporate

Debtor proves the case of the Financial Creditor that the amount paid by him to the Corporate Debtor was in form of unsecured loan with interest but it will not help the Corporate Debtor to support its contention that the application u/s 7 is not maintainable, considering its submission that the amount paid is almost equivalent to the principal amount as the amount more than Rs. 1 lac is still outstanding. It is also worth to note that the Corporate Debtor in its subsequent submission, has acknowledged the debt amount of Rs. 25 lac but the fact is that the total amount paid by the Financial Creditor to the Corporate Debtor is of Rs. 35 lac and if the first amount of Rs. 25 lac is admitted to be in the nature of unsecured loan, it would be logical to consider the second payment of Rs. 10 lac also as a unsecured loan because even with respect to the payment of Rs. 10 lac, the Corporate Debtor could not produce any evidence for this amount also to show that this payment was made for the purpose of investment.

33. As far as the disbursement of the amount of Rs. 35 lac is concerned, there is no dispute on the disbursement and it is clearly reflected in the bank statement of the Financial Creditor

attached as **Annexure IV** at Page No. 24 and 25 of the application.

34. The Corporate Debtor has also raised the point on premature recall of the principal amount of loan relying on the letter dated 05.09.2018 issued by it to the Financial Creditor in which, the duration of loan is mentioned as four years. In this regard, we find that the loan was recalled by the Financial Creditor vide its letter dated 9<sup>th</sup> December, 2019 after the Corporate Debtor threatened forfeiture of the entire amount of money paid by the Financial Creditor to the Corporate Debtor in its letter dated 16.08.2009 as we have already discussed in para no. 25. We have also gone through the letter dated 05.09.2018 issued by the Corporate Debtor wherein it is mentioned that the tenure of the debt is four years starting from August 31, 2018 and the entire amount shall be repaid with interest on or before the expiry of this tenure. Therefore, we find that the tenure of the loan was not strictly for four years and it could have been asked for the repayment even before expiry of the tenure itself therefore, the letter dated 16.08.2019 of the Corporate Debtor to the Financial Creditor pointing out the possibility of forfeiture of his money, in our view is a sufficient cause for recalling of the entire

loan therefore, we do not find any legal infirmity in recalling of the loan by the Financial Creditor.

35. After considering the entire facts and circumstances of the case, we clearly find that there is a Financial Debt owed by the Corporate Debtor to the Financial Creditor amounting to Rs. 35 lac and the default has been committed by the Corporate Debtor in not paying the interest as per the terms prescribed in the letter dated 05.09.2018 of the Corporate Debtor and replying to the Financial Creditor for forfeiture of entire amount of the money paid by Financial Creditor, the entire loan amount was recalled and a total Financial Debt of Rs. 49,14,584/- thus became due as on 31.12.2019. In view of the default committed by the Corporate Debtor because of non-payment of interest on such Financial Debt as well as the principal amount of debt after it is recalled, the debt and default are established.

36. Though, the Corporate Debtor has made the payment of Rs. 23,37,869/- to resolve the matter but this by itself would lead to irresistible conclusion about the admittance of default notwithstanding the fact that even after this payment, the default amount remains outstanding more than the threshold limit of Rs.

1 lac or not. Hence, we find that this is a fit case for admitting the Corporate Debtor under CIRP due to the outstanding Financial Debt being more than the threshold limit of Rs. 1 and default has been established by the Financial Creditor.

37. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the “**debt**” and the “**default**”, which is more than the threshold limit of one lac rupees hence, the application u/s 7 is found to be fit for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor. The application is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.

38. In Part III of Form 1, the Financial Creditor has proposed the name of Mr.Arunava Sikdar, as Interim Resolution Professional. His Registration no. isIBBI/IPA-001/IP-P00022/2016-2017/10047, R/o C-10, LGF, Lajpat Nagar -3,New Delhi,National Capital Territory of Delhi,110024, Email: asikdar1990@gmail.com. He has duly given the consent in Form

No.2 dated 02.01.2020 annexed as **Annexure III** with the Application. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Mr. Arunava Sikdar, and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also, there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 11December 2024. After considering these details, we appoint Mr.Arunava Sikdar, Registration No. IBBI/IPA-001/IP-P00022/2016-2017/10047, as Interim Resolution Professional (IRP).

39. In view of our above findings, we are satisfied that the present application under Section 7, has been found fit to be admitted as per Section 7(5)(a) of the I & B Code, 2016 and hence, the application is admitted in terms of Section 7(5)(a) of the I & B Code, 2016 against the Corporate Debtor, M/S, **Codeblue Clothing Private Limited** and accordingly, moratorium is declared in terms of Section 14 of the Code.

40. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the

commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of I & B Code, 2016.

41. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors (hereinafter referred as 'CoC') and shall file a report certifying the CoC to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the CoC within seven days of filing the report of CoC.

42. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- a.** The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

- b.** Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c.** Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d.** The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.
- e.** It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
- f.** The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

43. The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process (CIRP) or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

44. The CoC shall appoint a Resolution Professional as per section 22 of the I & B Code, 2016. A monthly progress report shall be filled by the Resolution Professional providing the details of work done in respect of completing the CIRP within the timeline as prescribed under the provision of section 12 of the I & B Code, 2016.

45. We direct the Financial Creditor to deposit a sum of Rs. 1,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

46. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Ordered accordingly.

47. List the matter on 30.01.2024 for further proceedings.

-Sd/-

**(Ashish Verma)**  
**Member (Technical)**

**Dated: 21.12.2023**

-Sd/-

**(Praveen Gupta)**  
**Member (Judicial)**