



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.301

C.P.(IB)/17(AHM)2023

Order under Section 7 IBC

IN THE MATTER OF:

Elate Investments And Holdings Pvt Ltd
V/s
Takshashila Corporation LLP

.....Applicant

.....Respondent

Order delivered on: 04/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD**

CP(IB)/17(AHM)/2023

(An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of M/s. Takshashila Corporation LLP.

ELATE INVESTMENTS & HOLDINGS PRIVATE LIMITED

Registered Office at:

702, 7th Floor, Samudra Setu,
Near Parsi Agiary, Opp. Anand Bhavan,
Opp. BD Desai, Mumbai-400026

Corporate Office at:

906, Shapath V, Opp. Karnavati Club,
S. G. Highway, Ahmedabad-380015.

...Applicant/Financial Creditor

VERSUS

TAKSHASHILA CORPORATION LLP

Registered office at:

560, Silver ARC-B, Open Plot,
Near Ashima House, Behind Town Hall,
Medalpur, Ahmedabad, Gujarat-380006.

...Respondent/Corporate Debtor

Order pronounced on 04.10.2023

CORAM :

SH. SHAMMI KHAN, MEMBER (JUDICIAL)

SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance

For the Applicant : Mr. Aadit R Sanjanwala, Adv.

For the Respondent : Mr. Pavan Godiawala Adv.




ORDER

(Per: BENCH)

1. This is an Application filed on 05.01.2023 by **Elate Investments & Holdings Private Limited** (hereinafter referred to as “**the Applicant/Financial Creditor**”) against **Takshashila Corporation LLP** (hereinafter referred to as “**the Respondent/Corporate Debtor**”) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with request to initiate the Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) against the Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium.
2. Perusal of Part-I of the Application indicates that the Applicant is a Private Limited Company incorporated on 12.12.2002, having registered office at 702, 7th Floor, Samudra Setu, Near Parsi Agairy, Opp. Anand Bhavan, Opp. BD Desai, Mumbai-400026.
3. The application is affirmed by one Mr. Kamlesh Mafatlal Shah who is authorized vide Board Resolution dated 21.10.2022.




4. Perusal of Part-II of the Application indicates that the Respondent - Takshashila Corporation LLP was incorporated on 23.04.2014 under Identification No. AAC-2724. The registered office of the Respondent is situated at 560, Silver ARC-B, Open Plot, Near Ashima House, Behind Town Hall, Medalpur, Ahmedabad-380006.
5. Perusal of Part-III of the Application indicates that the Applicant/Financial Creditor has proposed the of Mr. Janak Jagjivan Shah, having Registration No. IBBI/IPA/0001/IP-P-02626/2022-2023/14085 to act as Interim Resolution Professional (IRP).
6. Perusal of Part-IV of the Application indicates that the Applicant has granted total amount of Rs.9,50,00,000/- (Rupees Nine Crore Fifty Lakh Only) to the Corporate Debtor from time to time, details of which are provided at Annexure "A". The debt was disbursed between year 2018 to 2020. The first disbursement was made on 27.09.2018 and the last disbursement was made on 07.10.2020.
7. It is stated that the Corporate Debtor defaulted for an amount of Rs.2,69,07,723/- (Rupees Two Crore Sixty-Nine Lakh Seven Thousand Seven Hundred and Twenty-Three Only) which includes the principal amount of Rs.2,50,00,000/- (Rupees Two Crore Fifty Lakh Only) and



interest of Rs.19,07,723/- (Nineteen Lakh Seven Thousand Seven Hundred and Twenty-Three Only).

8. It is stated that the Applicant-Financial Creditor is a company dealing in the business of real estate development and financing whereas the Respondent-Corporate Debtor is a company dealing in real estate. The Corporate Debtor approached the Financial Creditor with a request to sanction Short-Term Loan (“STL”). Pursuant thereto, a Loan Agreement dated 29.09.2018 was entered into between the parties which is annexed as Annexure “B”. The Short-Term Loan would be available for a period not exceeding 60 days from 27.09.2018 and was to carry interest @15% per annum. As security against the loan, the Corporate Debtor issued two Post Date Cheques (“PDCs”) towards principal and interest.
9. It is stated that the default clause records that in the event of Corporate Debtor committing the default in payment of interest on the due date, the entire loan would become due and payable.
10. A disbursement of Rs.7.50 Crore was made on 27.09.2018. The Corporate Debtor repaid certain amounts and also paid interest from time to time till the end of 2018. By a letter dated 23.01.2019, the Corporate Debtor acknowledged its liability to pay the balance





outstanding amount and requested for an extension up to 15.04.2019 and also enclosed three PDCs towards the principal sum than outstanding and towards the interest. The loan period was accordingly extended upto 15.04.2019.

11. The Corporate Debtor was unable to clear the outstanding amount by 15.04.2019 and sought five extensions from time to time which were allowed by the Financial Creditor. The last extension was sought by letter dated 21.10.2021 and the period sought was upto 30.04.2022.
12. It is stated that some of the cheques issued by the Corporate Debtor bounced due to which the Financial Creditor did not extend the loan agreement beyond 30.04.2022 and, thus, the loan agreement came to an end on 30.04.2022.
13. Notice under Section 138 of the Negotiable Instruments Act, 1881 (“NI Act”) was issued by the Financial Creditor on the Corporate Debtor which is dated 09.05.2022 (Annexure “L”).
14. It is stated that in the reply to aforesaid notice dated 09.05.2022, the Financial Creditor received a letter dated 23.05.2022 whereby the Corporate Debtor acknowledged its liability and requested for the last and final opportunity to repay the loan and enclosed therewith five PDCs. The first of them being dated 30.06.2022 and the last being dated



31.08.2022. No extension was granted, however, PDCs were accepted. Subsequent to the arrangement, the Corporate Debtor paid a sum of Rs.13,98,082/- towards interest after TDS. On 23.09.2022, the Corporate Debtor addressed a letter to the Financial Creditor stating that it would clear the outstanding dues only after the Occupation Certificate in one of their buildings/flat would be cleared. The Financial Creditor, thereafter, deposited the PDCs payment of which was stopped by the Corporate Debtor and another notice dated 16.01.2022 was issued under Section 138 of the NI Act. The remaining cheques also suffered the same fate.

15. The Financial Creditor is relying on the following documents

8.	LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT, THE AMOUNT AND DATE OF DEFAULT	<u>List of Documents</u> Ann A: Tabular chart showing detailed particulars of the Financial Debt Ann B: Loan Agreement dated 29.09.2018 executed between the parties Ann C: Extension letter dated 23.01.2019 addressed by the Corporate Debtor to the Financial Creditor Ann D: Extension letter dated
For, Elate Investment & Holding Pvt. Ltd.  Director / Authorised Signatories		



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	<p>08.07.2019 addressed by the Corporate Debtor to the Financial Creditor</p> <p>Ann E: Extension letter dated 21.12.2019 addressed by the Corporate Debtor to the Financial Creditor</p> <p>Ann F: Extension letter dated 25.09.2020 addressed by the Corporate Debtor to the Financial Creditor</p> <p>Ann G: Extension letter dated 31.05.2021 addressed by the Corporate Debtor to the Financial Creditor</p> <p>Ann H: Extension letter dated 21.10.2021 addressed by the Corporate Debtor to the Financial Creditor</p> <p>Ann I: Ledger of the Corporate Debtor maintained by the Financial Creditor</p> <p>Ann J: Return memo for cheque no. 002496 and cheque no. 607754</p> <p>Ann K: Return memo for cheque no. 002527 and cheque no. 002528</p> <p>Ann L: Section 138 notice dated 09.05.2022 issued by the Financial Creditor on the Corporate Debtor</p> <p>Ann M: Reply letter dated 23.05.2022 by the Corporate Debtor to the section 138 notice</p> <p>Ann N: Letter dated 23.09.2022 sent by the Corporate Debtor to the Financial</p>
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By, Elate Investment & Holding Pvt. Ltd

Director / Authorized signatories



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		<p>Creditor</p> <p>Ann O: Letter dated 17.10.2022 sent by the Financial Creditor to the Corporate Debtor</p> <p>Ann P: Return memo for cheque no. 002537</p> <p>Ann Q: Notice under section 138 of the Negotiable Instruments Act, 1881 for 002537</p> <p>Ann R: Reply dated 28.11.2022 by the Corporate Debtor</p> <p>Ann S: Return memo for cheque no. 002538 and 002539</p> <p>Ann T: Notice under section 138 of NI Act for cheque nos. 002538 and 002539</p>
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16. Affidavit in reply was filed on 27.07.2023 under inward Dairy No. 2680 which is affirmed by one Mr. Kamleshbhai K Gondialia in his capacity as partner of Takshashila Corporation LLP. The main contentions of the Respondent are summarized below:-

- a) The Applicant is not a Financial Creditor;



- b) The motive of the Application is to disrupt the affairs of the Respondent which is going concern.
 - c) The Applicant has not denied the existence of the Loan Agreement Dated 29.09.2018.
 - d) The Applicant has not disclosed its entitlement/authorization to lend money since the Applicant cannot undertake the business of the loan.
 - e) The Applicant is not an NBFC.
 - f) The date of default mentioned is not correct.
 - g) The record of default with Information Utility is not attached.
17. The Corporate Debtor relied upon the decision of the Hon'ble Supreme Court in the case of *Vidarbha Industries Ltd. V. Axis Bank Ltd. (Civil Appeal No. 4633/2021)*.
18. Rejoinder was filed by the Financial Creditor which is dated 18.08.2023 under inward Dairy No. 3148. The summary of the rejoinder is as under:
- a) The Corporate Debtor has not denied the loan agreement for the receipt of money.
 - b) In various correspondences appearing on the page. 35, 37, 41, 42, 44, 48 and 63 filed with the application which are letters of the Corporate Debtor, they have categorically admitted that they received money as Inter-Corporate Deposit.



- c) No profit-sharing was contemplated between the parties as per the Loan Agreement. The Financial Creditor relies on the Balance Sheet of the Corporate Debtor which is filed along with the reply of the Corporate Debtor for the Years 2018-19 to 2021-22 wherein the Financial Creditor is shown under the head of 'Unsecured Loan'.
- d) No statute prohibits Financial Creditor to grant Inter-Corporate Deposit.
- e) The Financial Creditor has attached the record of default with Information Utility along with rejoinder.
19. Additional affidavit was filed by the Financial Creditor under inward Dairy No. 3596 dated 19.09.2023 attaching therewith Form 26AS for the Financial Year 2018-19 evidencing that the Corporate Debtor has paid interest amounting to Rs.18,49,315/- and Tax deducted and deposited as TDS amounting to Rs.1,84,932/-. Along with additional affidavit, the Financial Creditor has filed Form-D issued by National E-Governance Services Limited ("NeSL") with status "Deemed to be Authenticated".
20. Reply to the additional affidavit was filed under inward no. D3705 across the Bar on 22.09.2023. Written submissions were also filed and the same have been considered



21. We have heard the counsels and perused the pleadings. Perusal of the Loan Agreement which is attached at page no. 29-34 of the application manifests that at the request of the borrower (Corporate Debtor), a Short-Term Loan of Rs.7.50 Crore was granted by the Applicant herein for a period of 60 days. At page no. 30 of the said Loan Agreement, the rate of interest is mentioned as 15% per annum. The existence of the Loan Agreement is not denied by the Corporate Debtor. Perusal of the Audited Financial Statement for the Year 2018-19 reveals that the Corporate Debtor continued to acknowledge the liability as Unsecured Loan. There is no quarrel between the parties regarding the amount of debt. As such, the Corporate Debtor conclusively proves that there is a debt exceeding Rs. 1.00 Crore.
22. As regards the “Investment” or “Interest”, we rely on the Loan Agreement especially page no. 30 wherein the rate of interest is mentioned as 15% per annum and also the Form 26AS filed by the Financial Creditor for the period 2018-19 wherein the receipts from the Corporate Debtor are shown under Section 194A which pertain to interest and TDS deposit is confirmed. The above two, conclusively establish that the amount was given towards interest.



23. As regards to the default, repeated letters from the Corporate Debtor seeking an extension of time by itself prove that the Corporate Debtor has been defaulting on the repayment of the obligation.
24. In conclusion, the Financial Creditor has proved beyond doubt that there is debt, there is default and that the default amount is more than more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016.
25. Further, the Hon'ble Supreme Court in the case of *Innoventive Industries Limited v. ICICI Bank Limited*, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.


28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim



resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

26. In view of the above, we are forced to admit the Respondent/Corporate Debtor to CIRP. The Application filed by the Applicant/financial Creditor under Section 7(2) of the IBC, 2016 for the initiation of the



Corporate Insolvency Resolution Process against the Respondent/Corporate Debtor deserves to be admitted.

27. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-

(i) The Respondent/Corporate Debtor- **Takshashila Corporation LLP** is admitted in the Corporate Insolvency Resolution Process under section 7 of the IBC, 2016.

(ii) As a consequence thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.

- a. *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, 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. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements 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.

- (iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- (iv) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- (v) As proposed by the Financial Creditor, **we appoint Mr. Janak Jagjivan Shah, having Registration No. IBBI/IPA/0001/IP-P-02626/2022-2023/14085, email-iprvcajanakshah@gmail.com** under section 13 (1)(c) of the Code to act as Interim Resolution Professional (“IRP”) of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. He shall conduct the Corporate Insolvency Process as per



the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.
- (viii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court



hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- (ix) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (x) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.
- (xi) The Financial Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per the Rules.
- (xii) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of



necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

28. Accordingly, **CP (IB)/17(AHM) 2023** stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Rajeev/PS