IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)-74/7/JPR/2019

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF

Anand Kumar Gupta
Residing at: Plot No. 161,
Gali No.7, Barkat Nagar, Tonk Phatak,
Lal Kothi, Jaipur- 302015,
Rajasthan

...Applicant/Financial Creditor

Versus

Adelson Pharma Private Limited
Registered office at:
Plot No. 84 F/2, Kasturba Nagar, Hirapura,
Ward No. 14, Jaipur- 302019,
Rajasthan

...Respondent/ Corporate Debto

Counsel for Applicant: Mr. Nitesh Shrivastava, Advocate
Mr. Mudit Manohar, Advocate
Mr. Ankit Juneja, Advocates

Sd–

Sd

Counsel for Respondent: Mr. Sushil Dagga, Advocate
Mr. Anurag Kalavitaya, Advocate
Ms. Akansha Noval, Advocate

Order pronounced on: 21.12.2021

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This application is filed by Mr. Anand Kumar Gupta, claiming to be a Financial Creditor, against Adelson Pharma Private Limited ('Respondent' / Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules'), seeking initiation of Corporate Insolvency Resolution Process ('CIRP'), under alleged default on part of the Respondent in repayment of the loan to the Applicant.
2. The Respondent is a Private Limited Company, incorporated under the Companies Act, 2013 on 06.08.2015 and duly registered with the Registrar of Companies, Jaipur bearing CIN: U51109RJ2015PTC048033. The Registered Office of the Company is at Plot No. 84 F/2, Kasturaba Nagar, Hirapura, Ward No. 14, Jaipur - 302019 (Rajasthan). The Authorised Share Capital of the Respondent is Rs. 1,00,000/- (One Lakh Only) and the Paid-up Share Capital is

Sd-

Sd-

Rs. 1,00,000/- (One Lakh Only). The Respondent is engaged in the pharmaceutical business as a wholesaler of medicines.

3. The Financial Creditor is settling an amount of Rs. 27,30,136/- (Rupees Twenty-Seven Lakh Thirty Thousand One Hundred Thirty-Six). The details of transactions leading to the filing of this Application as averred by the Applicant are as follows:

   i. That the Applicant advanced a sum of Rs. 25,00,000/- to the Respondent. The Applicant stated that an oral agreement was entered between the Applicant and the Respondent through the Directors of the Corporate Debtor in April 2016, wherein, an unsecured loan of Rs. 25,00,000/- was advanced to the Respondent at the interest rate of 12% per annum for two years.

   ii. The Applicant submitted that for complying with the provisions of the Companies Act, 2013 and to prevent the present transaction from being considered as public deposit, Mrs. Kalpana Singh, Director of the Respondent Company transferred 1,250 equity shares of the Respondent Company of the nominal value of Rs. 10/- each held by her to the Applicant; thus, making the Applicant a shareholder of the Respondent Company to the extent of 12.5%. The said transaction was made on

Sd

Sd -

30.06.2016 as per the Annual Return filed by the Respondent Company for the financial year 2016-2017.

iii. The Applicant further submitted that the Loan Amount of Rs. 25,00,000/- was credited in the account of the Respondent Company in two equal tranches, first of Rs. 12,50,000/- which was credited on 28.04.2016 vide cheque bearing No. 435856; and second of Rs. 12,50,000/- on 08.06.2016 vide cheque bearing No. 435859 issued on UCO Bank, Chandpole Bazaar, Branch Jaipur.

iv. The Applicant submitted that the Respondent made payments of Rs. 3,00,000/- on 04.05.2017 towards interest for the first year of the loan, i.e., from 08.06.2016 to 08.06.2017 and interest of Rs. 2,70,000/- (after deduction of Rs. 30,000/- towards TDS) on 01.05.2018 towards interest for the second year of the loan, i.e., from 08.06.2017 to 08.06.2018 without any default. The Applicant further submitted that after the expiry of the period of loan tenure on 08.06.2018, the Applicant requested the Respondent to repay the loan amount, however, the Respondent failed in repaying the said loan amount.

v. As a consequence, this Application was filed. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 30,00,000/- as reflected in Part IV of Form- 1 file.

Sd-

Sd-

Part IV

S. No.	Particulars of Financial Debt	
1.	The total amount of debt granted Date(s) of Disbursement	Amount of Debt Granted: Principal Amount Rs. 25,00,000/- Amount of Rs. 12,50,000/- Date: 28.04.2016 Amount of Rs. 12,50,000/- Date: 08.06.2016
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed: Rs. 27,30,136.99/- (Rupees Twenty Seven Lakh Thirty Thousand One Hundred and Thirty-Six and Ninety Nine Paise Only) Date from Which Debt Fell Due: 22.12.2019

4. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply in which the following contentions were made:

   i. That the present application has been filed by the Applicant only after the Respondent served a Legal Notice dated 23.01.2019 on the Applicant, demanding payment of dues arising out of a business transaction to the tune of Rs. 55,98,342/- (Annexure 6).

   ii. That the alleged default amount has not been substantiated by the Applicant as to how the relevant default has occurred as per the Code.

Sd Sd-

The Respondent submitted that the Applicant does not fall within the ambit of the definition of 'Financial Creditor' as defined under section 5(7) of the Code. Hence, the Applicant is incapacitated under this Code to apply under Section 7 read with Rule 4. It is contended that to ascertain whether a person would fall within the definition of a Financial Creditor, the debt owed to such a person must fall within the definition of financial debt as defined under Section 5(8) of the Code.

iii. In this regard, the Respondent has placed reliance on *Nikhil Mehta and Sons vs. AMR Infrastructure Limited*[1]. The Respondent submitted that the amount extended in the instant matter does not qualify as a disbursement against the consideration for the time value of money. The amount was extended by the Applicant because of a long-standing trade relationship along with a lengthy transaction history with the Respondent in addition to personal relations prevailing with the former Director i.e., Mr. Arvind Kumar Gupta, of the Respondent. The amount was extended to the Directors of the Respondent by a relative of a Key Managerial Person having a transaction history with the Respondent Company. The same has nothing to do with the requirement of Section 5(8) of IBC, 2016.

[1] Nikhil Mehta and Sons v. AMR Infrastructure Limited, Company Appeal (AT) (Insolvency) No. 07 of 2017.

Sd-

Sd-

5. The contention raised by the Corporate Debtor is that there has been no actual disbursement of any amount for consideration for the time value of money, hence the alleged debt does not fall within the meaning of 'Financial Debt' as defined under section 5(8) of the IBC, 2016.
6. A mere plain reading of the provision under section 7 of IBC shows that to initiate CIRP under Section 7, the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. While dealing with an application under section 7, the Adjudicating Authority is not required to consider the question of the dispute between the parties as long as the 'debt' and 'default' is proved.
7. We have gone through the documents filed by both parties and heard the arguments made by the counsels. As per the pleadings made by the parties, documents placed on the record, we find merits in the case. The granting of the loan amount, even without any written agreement, is not barred under the law[2]. As per Annexure 2 and 3 of the application, it is clear that the Financial Creditor has disbursed the amount of Rs. 25,00,000/- in two equal instalments and the same is reflected in the Corporate Debtor's Financial Statements which support the Financial Creditor's *prima facie* case. Further, as per Annexure 4 of the Financial Creditor's application, we find that the Corporate Debtor has deposited interest in the bank account of the Applicant, and further deducted & deposited

[2] Section 10, Indian Contract Act, 1872.

Sd Sd-

TDS for the Second Loan Year from 08.06.2017 to 08.06.2018 as per Annexure 5.

8. Furthermore, we also noticed that under Annexure R-2 of the reply filed by the Corporate Debtor, the Balance Sheet and related working notes[3] to the Financial Statements reflect the true nature of the transaction. The Hon'ble NCLAT[4] held that *"Merely pointing out that TDS was deducted would not be sufficient to conclude that there was financial debt. TDS can be deducted for various reasons."* However, in this instant application, the TDS is deducted for interest.

9. As observed by the Hon'ble NCLAT[5] that a mere grant of loan by the Financial Creditor and its admission by the Corporate Debtor in the absence of substantive evidence to prove the disbursement of loan amount by the alleged Financial Creditor, will not classify the Applicant as a Financial Creditor, till it is shown that the arrangement falls under the ambit of the substantive definition as provided under Section 5(8).

10. It is noted that as per the averments made in the Corporate Debtor's Written Statement, the audited balance sheet(s) finalized and signed as per Schedule III of Section 129[6]; the loan amount of Rs. 25,00,000/- and accrued interest at the rate of 12% p.a. has been duly acknowledged.

---

[3] Working Notes 27, Annexure R-2.
[4] Prayag Polytech Pvt. Ltd. v. Gem Batteries Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 713 of 2019.
[5] Sanjay Kewalramani v. Sunil Parmanand Kewalramani & Ors., Company Appeal (AT) (Insolvency) No. 57 of 2018.
[6] Section 129, Companies Act, 2013.

Sd-

Sd-

11.Moreover, the true intent of any legislation is to do justice to the parties in suits and in the present application, the real answer to the matter lies in the fact that at the time of giving of the sum, whether the creditor had the intention to receive back the said sum, the same may or may not be accompanied by interest, and is not done as a matter of charity.

12.Furthermore, the Section 7 application does not leave any scope for the Corporate Debtor to raise a dispute unlike in Section 9. As long as there is a 'Debt' and a 'Default' has occurred, the Financial Creditor has the right to proceed against the Corporate Debtor[7]. Additionally, the payment of interest is not the only criteria that would enable 'Financial Creditor' to sustain his claim and such a loan can be without interest as well. In Mack Soft[8] it was held:

> *"Grant of loan can be also to get benefit of development is object of the Respondent- ('Financial Creditor'), as apparent from their 'Memorandum of Association'. Thus, we find that there is a 'disbursement' made by the Respondent- ('Financial Creditor') against the 'consideration for the time value of money."*

13.Further, to say that the same is a Financial Debt, the most important words that are required to be considered in the definition is 'interest, if any' which means a loan or a liability which is required to be payable by the Corporate Debtor to the Financial Creditor or Operational Creditor, need not bear any interest. That simply means a loan advanced even without interest is a Financial Debt.

---

[7] Swiss Ribbons Pvt. Ltd. & Ors, v. Union of India & Ors., Writ Petition (Civil) No. 99 of 2018.
[8] Mack Soft Tech Pvt. Ltd. v. Quinn Logistics India Ltd., Company Appeal (AT)(Insolvency) No. 143 of 2017.

Sd

Sd -

14.The loan advance should be disbursed against the consideration for the time value of money[9] – there can be a mutual understanding between the parties to waive the right to receive interest for the possible growth of the value of shares, business expansion or to meet the business requirements, etc.

15.The defenses raised by the Corporate Debtor, in the view of this bench, do not hold any substance. Moreover, the acknowledgements of the Corporate Debtor to the debts, be it in the statement of accounts, or the statement of confirmation of accounts duly signed by the Corporate Debtor, or the reply to this application, the Corporate Debtor has time and again acknowledged the outstanding dues payable to the Financial Creditor.

16.In the case of Anchor Leasing,[10] NCLT, Mumbai Bench has rightly observed and read the same with Section 21[11] and Section 115[12] that

> *"Admissions are the best proof of the facts admitted. Admissions in pleadings or judicial admissions, made by the parties during the hearing of the case are fully binding on the that makes them and constitute a waiver of proof."*

17. It is a fact that in the present case, there were certain business obligations of the Corporate Debtor and thus the same is reflected in the books of accounts of the Corporate Debtor under the head Long Term Borrowings in Balance Sheet, Profit and Loss statements for the period between 2016-17 and 2017-18, with

9 Shailesh Sangani v. Joel Cardoso ors Company Appeal (AT) (Insolvency) No. 616 of 2018.
10 Anchor Leasing Pvt Ltd v. Euro Ceramics Ltd CP No. 66/IBC/NCLT/MB/MAH/2018.
11 Section 21, Indian Evidence Act, 1872.
12 Section 115, Indian Evidence Act, 1872.

Sd-

Sd-

the interest being paid and reflected in the Financial Statements which favours the arguments advanced by the Financial Creditor.

18. On consideration of the arguments of both sides and the documents and evidence placed on record, this Bench finds that although there is no express written agreement with respect to the loan arrangement as aforesaid or the payment of interest thereon, there is an acknowledgement by the Corporate Debtor, not once but many times, which reveals the relationship between Financial Creditor and Corporate Debtor as loaner and loanee. Further, the statement of accounts produced on record proves the disbursement of the loan amount of Rs. 25,00,000/- and is further substantiated by the fact that the Corporate Debtor has also paid the interest for two years as was agreed under the Oral Agreement between the parties.

19. Hence, in the present case, by admitting the liability in the affidavit in reply to this application, the Corporate Debtor is estopped to prove the non-existence of debt by raising any kind of dispute or defense for the present proceedings. The Applicant's claim of the existence of debt and default has been corroborated with ample evidence and is enough to hold the decision in his favour.

20. The application filed in the prescribed Form No. 1 is found to be complete.

21. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon the appreciation of the

Sd-

Sd

documents placed on record to substantiate the claim, this Adjudicating Authority allows this application of the Financial Creditor.

22. The proposed Interim Resolution Professional ('IRP'), Mr. Mahendra Prakash Khandelwal has filed Form No.2 (Annex II of the Application), stating therein that no disciplinary proceedings are pending against him.

23. The conditions provided by Section 7(5)(a) of the Code being satisfied in the present case, we direct that the application for initiation of CIRP against Adelson Pharma Pvt. Ltd. be admitted. The directions regarding the moratorium and appointment of IRP are given below.

24. We declare Moratorium in terms of sub-section (1) of Section 14 of the code as under:

> (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

Sd-

Sd-

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.

25. 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. 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.

26. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or pass an order for liquidation of Corporate Debtor under Section 33 as the case may be.

27. The following directions are also issued in respect of the appointment of the Interim Resolution Professional:

i) Mr. Mahendra Prakash Khandelwal, resident of 202, Prism Tower, Opp. Rajasthan Police Mukhyalaya, Gate No. 2, Lalkothi, Jaipur, Rajasthan - 302015 having Registration No. IBBI/IPA-002/IP-N00446/2017-2018/11275 and email address

Sd

Sd-

mahendra927@gmail.com is appointed as an Interim Resolution Professional;

ii) The term of appointment of Mr. Mahendra Prakash Khandelwal, shall be in accordance with the provisions of Section 16(5) of the Code;

iii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to inter-alia prepare a complete list of inventories of assets of the Corporate Debtor;

Sd-

Sd-

iv) The Interim Resolution Professional shall strictly act under the Code, all the rules and regulation framed thereunder by the Board or the Central Government and following the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morality;

v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

vi) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of

Sd Sd

the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying the constitution of the committee 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 committee within seven days of filing the report of the constitution of the committee; and

viii) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every month.

29. In terms of Section 7 of IBC, 2016, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Tribunal to carry out the CIRP. A copy of this order shall also be communicated to IBBI for its records.

Sd-

(RAGHU NAYYAR)
MEMBER (TECHNICAL)

Sd-

(DEEP CHANDRA JOSHI)
MEMBER (JUDICIAL)