



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

CP (IB) NO.102/ALD/2022

*In the matter of
An application 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:

**VINZEN FINANCE PRIVATE LIMITED
(FORMERLY KNOWN AS HAPUR MOTOR FINANCE
PRIVATE LIMITED)**

*Having its Registered Office at:
C-88, Ground Floor,
Lajpat Nagar-II,
New Delhi 110024*

..... Applicant/Financial Creditor

Versus

ACCORD HYDROAIR (PILKHUWA) PRIVATE LIMITED

*Having its Registered Address at:
Hinduwan Baroda, Mukimpur,
Tehsil-Hapur
Pilkhuwa Ghaziabad UP 245304*

.....Respondent/Corporate Debtor

Order pronounced on 7th November, 2023

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)



Appearances:

For the Financial Creditor : Sh Karan Gandhi, Adv along with Sh. Shivam Gautam

For the Corporate Debtor : Sh. Anand Prakash Srivastava with Sh. Jeewesh Prakash, Ms. Amrita Prakash, Ms. Ritu Dubey & Sh. Ratnesh Shukla, Advs.

ORDER

1. The Present Application has been filed on 01.10.2022 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “**I & B Code,2016**”) by the Applicant-Financial Creditor namely, M/s Vinzen Finance Private Limited (Formerly known as Hapur Motor Finance Private Ltd.) seeking initiation of the Corporate Insolvency Resolution Process (Hereinafter referred as “**CIRP**”) against the Respondent-Corporate Debtor i.e M/s Accord Hydroair (Pilkhuwa) Private Limited 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. The Applicant-Financial Creditor was incorporated on 21.11.1988 having CIN U65923DL1988PTC284663. It is a



Non-Banking Financial Company registered with the Reserve Bank of India having registered office at C-88, Ground Floor, Lajpat Nagar-II, New Delhi-110024. The Applicant is engaged in the business of giving loans and advances.

3. The Board of Directors of the Applicant-Financial Creditor Company has authorized Mr. Viplov vide Board Resolution dated 27.09.2022 to file this application before the NCLT. Copy of Board Resolution has been annexed as **Annexure-2** with this Application.
4. The Respondent-Corporate Debtor was incorporated on 06.11.2013, having CIN U74900UP2013PTC060447, having paid-up Capital of Rs.2,50,00,000/- and registered office located at Solid Waste Management Company Hinduwan Baroda, Mukimpur, Tehsil-Hapur Pilkhuwa, Ghaziabad-UP-245304.
5. A Loan Agreement dated 03.03.2020 has been entered into between Applicant-Financial Creditor and Respondent-Corporate Debtor to provide a loan amount of Rs. 5,00,00,000/- by the Financial Creditor to the Corporate Debtor. Copy of the Loan Agreement has been annexed as



Annexure-10 with the Application. As per the agreement, interest on the loan is at the rate of 12% p.a to be paid on monthly rest @1% and the loan was secured by Post Dated Cheques. As per the agreement, the term of the loan agreement is for a period of 2 (Two) years, however, the lender (Financial Creditor) may revoke the agreement after the expiry of two years and can recall the money from the borrower (Corporate Debtor).

6. The loan amount was disbursed on the followings dates as mentioned in the table below:-

Date of Disbursal	Amount (in Rs.)
02.03.2020	20,00,000
05.03.2020	10,00,000
01.05.2020	3,00,000
15.05.2020	6,00,000
22.05.2020	10,00,000
28.05.2020	5,00,000
02.06.2020	10,00,000
09.06.2020	23,50,000
19.06.2020	7,50,000
20.07.2020	75,00,000
24.07.2020	15,00,000
27.07.2020	5,00,000
29.07.2020	10,00,000
30.07.2020	25,00,000
06.08.2020	1,50,00,000
17.08.2020	2,50,000
24.08.2020	5,00,000
11.09.2020	3,00,000
16.09.2020	6,50,000
03.10.2020	10,00,000
31.10.2020	3,00,000



29.12.2020	10,00,000
30.12.2020	7,00,000
TOTAL	4,37,00,000/-

Copy of the Bank Statement evidencing the loan disbursement has been annexed as **Annexure-5** with the Application. As per the details of loan disbursement given above, the Corporate Debtor availed a loan facility of Rs. 4.37 crores up to 31.12.2020 but after availing the loan facility, Corporate Debtor failed to repay the loan as well as interest thereon.

7. As per Part-IV of the application, the total amount of debt outstanding is Rs. 5,84,82,635/- (Rupees Five Crore Eighty Four Lacs Eighty Two Thousands Six Hundred Thirty Five Only) which comprises of Rs. 4,37,00,000/- (Rupees Four Crores Thirty Seven Lacs Only) towards principal amount given as loan and Rs. 1,47,82,635/- (Rupees One Crore Forty Seven Lacs Eighty Two Thousands Thirty Five Only) towards simple interest calculated @12% p.a from the date of disbursement till 05.09.2022.
8. As discussed in Part IV of the application, the date of default has occurred 2 years after the date of agreement in



accordance with the term of loan mentioned in the Loan Agreement. As the date of agreement is 03.03.2020, the date of default mentioned in Part IV is 02.03.2022 by which date neither any repayment of loan amount nor any payment of interest amount which was to be paid on monthly basis, has been made.

9. Necessary details and documents evidencing the debt and default have been attached in Part IV and Part V of the application. Copy of the ledger of the Corporate Debtor in the books of Financial Creditor for the period 02.03.2020 to 05.09.2020 giving the total outstanding amount of Rs. 5,84,82,635/- is annexed in **Annexure 6** of the application. It is also mentioned that the Corporate Debtor has admitted its liability towards the Applicant-Financial Creditor in its financial statement for the period 2020-21 and for evidence, the copy of the audited financial statement of the Corporate Debtor for the financial year 2020-21 is annexed as **Annexure 7** with the application.
10. The above application filed by the Applicant has been considered in the hearing held on 21st November, 2022 in



which one Ms. Akansha Kapoor, Adv appeared on behalf of the Respondent-Corporate Debtor and she was directed to file vakalatnama along with reply within three weeks by serving advance copy of the reply to the Applicant-Financial Creditor. Then, on the next date of hearing i.e. 25.01.2023, there was no appearance on behalf of the Corporate Debtor. Last opportunity was given to the Corporate Debtor to file reply on the next date of hearing i.e. 24.02.3023 but no reply was filed on that date also, and hence, right to file reply has been struck off in this hearing and next date of hearing was fixed 23.03.3023 for arguments. Again, there was no appearance on behalf of the Corporate Debtor on 23.03.2023 and thereafter, on subsequent dates also, there was no representation on behalf of the Corporate Debtor, therefore, the Respondent was set ex-parte vide order dated 25th April 2023, and ex-parte order has continued. However, on 8th August, 2023, when the matter came up for hearing, there was a second counsel, Sh. Yatharth Nath Pathak, Advocate who appeared on behalf of the Corporate Debtor and sought time of one day to file Vakalatnama and to join the



proceedings henceforth, for the purpose of making his arguments on behalf of the Corporate Debtor.

- 11.** Since the proceedings were continuing, the said counsel was allowed to join the proceedings for the purpose of making his arguments on behalf of the Corporate Debtor on the next date of hearing fixed on 10th August, 2023. Then, on 10th August, 2023, there was no representation on behalf of the Corporate Debtor, and the Ld. Counsel representing the Financial Creditor advanced his arguments, whereby he sought a short adjournment to file revised written submissions specifying the date of disbursement, amount of loan disbursed on each date and correlating the same with the debit entry in the bank statement to show the disbursement of the loan. The revised written submission has been subsequently filed by the Ld. Counsel representing the Financial Creditor.
- 12.** On 25.08.2023, yet a third counsel, Sh. Anand Prakash Srivastava Advocate, appeared on behalf of the Corporate Debtor and has furnished his Vakalatnama duly authorized by one Mr. Manoj Tiwari, the Director of the Respondent-Corporate Debtor company. It is stated by the Ld. Counsel



representing the Corporate Debtor that he would now be representing the Corporate Debtor and would make his submissions on behalf of the Respondent-Corporate Debtor and sought a short adjournment to address his submissions on behalf of the Corporate Debtor. As after the proceedings in this case had got adjourned on subsequent two dates, the matter was finally heard on 6th October.

- 13.** As right to file reply had already been struck off vide order dated 24.02.2023, filing of reply by the Corporate Debtor was not allowed but as proceeding was continuing, the arguments of the Counsel of the Corporate Debtor was heard. Written submissions have also been filed by both parties as allowed in the order dated 06.10.2023 passed on the date of final hearing. Written submissions as filed by both parties are discussed in subsequent paras.

WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT

- 14.** The Applicant earlier filed a written submission on 05.05.2023 and later on 23.08.2023, correlating the disbursement of loan with the bank statement and the same is discussed as below: -



i. A loan of Rs. 4.37 crore was disbursed by the Financial Creditor to the Corporate Debtor from 02.03.2020 to 30.10.2020 with interest rate of 12% p.a payable at the monthly rests @ 1% as per the Loan Agreement dated 03.03.2020 for a period of two years from the date of agreement, which fell due on 02.03.2022. Corporate Debtor failed to repay the said loan amount as well as interest thereon on the due dates, which now stood as Rs.5.87 crores.

ii. It is also submitted by the Applicant-Financial Creditor that the Respondent-Corporate Debtor has acknowledged the loan taken from the application in its financial statements for the period 2020-21 which is filed before the Registrar of Companies. In this regard, the Applicant has placed reliance on the judgment passed by the **Hon'ble Supreme Court in Dena Bank versus C. Sivakumar Reddy Anr. – Civil Appeal No. 1650 of 2022** contending that the Hon'ble Supreme Court in the above judgment held that Financial Statement and Balance Sheet constitute acknowledgement of liability which extend the



limitation of 3 years As per the Applicant, the Corporate Debtor in the present case has made acknowledgement of its debt in its Financial Statement and Balance Sheet for 2020-21 extending the period of limitation for 03 years and the application filed on 01.10.2022 is well within the limitation period as per the Limitation Act, 1963.

- iii.** The details of the date of disbursement along with the amount of loan disbursed on each date correlating the same with the debit entry in the bank statement showing disbursement of the loan as filed vide dairy no.2331 dated 23.08.2023 by the Applicant is tabulated as below:-

Date of disbursal	Amount	Transaction Number	Entry no in bank statement
02.03.2020	20,00,000/-	RTGS / SK / UTIBR25020030 300351 839 / 126/ ACCORD/ BANK O	Entry no 4 from the top on page no 33 of Section 7 Application
07.03.2020	10,00,000/-	RTGS / SK / UTIBR25020037 003600 97 / 126/ ACCORD/ BANK O	Entry no 6 from the top on page no 33 of Section 7 Application
01.05.2020	3,00,000/-	RTGS / SK / UTIBR52020050	Entry no 1 from the top on page



		100352 566 / 126/ ACCORD/ BANK O	no 34 of Section 7 Application
15.05.2020	6,00,000/-	RTGS / SK / AXSK20136001 5596 / 126/ ACCORD/ BANK O	Entry no 2 from the top on page no 34 of Section 7 Application
28.05.2022	5,00,000/-	RTGS / SK / UTIBR52020052 800350 392 / 126/ ACCORD/ BANK O	Entry no 10 from the top on page no 34 of Section 7 Application
02.06.2020	10,00,000/-	RTGS / SK / UTIBR52020060 200533 99 / 126/ ACCORD/ BANK O	Entry no 12 from the top on page no 34 of Section 7 Application
09.06.2020	23,50,000/-	RTGS / SK / UTBR52020060 900354 898 / 126/ ACCORD/ BANK O	Entry no 15 from the top on page no 34 of Section 7 Application
19.06.2020	7,50,000/-	RTGS / SK / UTBR52020061 900353 810 / 126/ ACCORD/ BANK O	Entry no 4 from the top on page no 34 of Section 7 Application
18.07.2020	75,00,000/-	RTGS / SK / UTBR52020071 800351 191 / 126/ ACCORD/ BANK O	Entry no 17 from the top on page no 37 of Section 7 Application
24.07.2020	15,00,000/-	RTGS / SK / UTBR52020072 400355 477 / 126/ ACCORD/ BANK O	Entry no 23 from the top on page no 37 of Section 7 Application
27.07.2020	5,00,000/-	RTGS / SK / UTBR52020072 700356 165 /	Entry no 26 from the top on page no 37 of Section 7 Application



		126/ ACCORD/ BANK O	
29.07.2020	10,00,000/-	RTGS / SK / UTBR52020072 900355 561 / 126/ ACCORD/ BANK O	Entry no 31 from the top on page no 37 of Section 7 Application
30.07.2020	25,00,000/-	RTGS / SK / UTBR52020073 000359 691 / 126/ ACCORD/ BANK O	Entry no 34 from the top on page no 37 of Section 7 Application
06.08.2020	1,50,00,000/-	RTGS / SK / UTBR52020080 600358 437 / 126/ ACCORD/ BANK O	Entry no 5 from the top on page no 37 of Section 7 Application
17.08.2020	2,50,000/-	RTGS / SK / UTBR52023008 240035 3240 / 126/ ACCORD/ BANK O	Entry no 2 from the top on page no 38 of Section 7 Application
24.08.2020	5,00,000/-	RTGS / SK / UTBR52020082 400353 240 / 126/ ACCORD/ BANK O	Entry no 6 from the top on page no 38 of Section 7 Application
11.09.2020	3,00,000/-	INB/ NEFT/ AXIC202555526 634 / ACCORD HYDROAIR PILKHUW	Entry no 4 from the top on page no 39 of Section 7 Application
03.10.2020	10,00,000/-	INB/ RTGS/ UTIBR52020100 30063 943/ ACCORD HYDROAIR PILKHUW	Entry no 14 from the top on page no 39 of Section 7 Application
31.10.2020	3,00,000/-	INB/ RTGS/ UTIBR52020102 05330 1130/ ACCORD	Last Entry on page no 39 of Section 7 Application



		HYDROAIR PILKHUW	
29.12.2020	10,00,000/-	INB/ NEFT/ AXIC203640499 715/ ACCORD HYDROAIR PILKHUW	Entry no 3 from the end on page no 41 of Section 7 Application
30.12.2020	7,00,000/-	INB/ NEFT/ AXIC203651020 204/ ACCORD HYDROAIR PILKHUW	Last entry on page no 41 of Section 7 Application

WRITTEN SUBMISSIONS ON BEHALF OF THE CORPORATE DEBTOR

15. The Corporate Debtor vide dairy no. 2665 dated 11.10.2023 has filed written submissions wherein the following submissions has been made in support of his claim: -

- i.** It is contended by the Corporate Debtor that neither the loan agreement was revoked nor financial creditor informed the Corporate Debtor for payment of alleged dues. Moreover, there has been no averments made by the Financial Creditor regarding default made by the Corporate Debtor prior to 03.03.2022 with respect to payment of monthly interest at 12% p.a.
- ii.** It is also contended by the Corporate Debtor that Financial Creditor has failed to file any evidence with



respect to existence of default committed by the Corporate Debtor in repayment of the loan amount. The documents mentioned in Part-V of the Application do not substantiate existence of Financial Debt.

iii. It is further contended by the Corporate debtor that postdated cheques were given as security for the debt and the due date would have been the date on which the said post-dated cheques were presented for payment of loan amount and the same got rejected/dis-honoured. It is further pointed out that there was no submission much less any allegation of the Financial Creditor that the said “Post Dated Cheques” were ever presented by the Financial Creditor for repayment of the loan amount, which got rejected/dis-honoured. The date of rejected/dishonored of the PDS should be date of default. Thus, in view of the above, it is contended that it can be safely submitted that the said “due date” never arrived as the said cheques were never presented for encashment. In support of the arguments made in the written submission, the Corporate Debtor has placed reliance on *Pawan Kumar versus Utsav Securities Private Limited*



[2021] 131 taxmann.com 211 and Vidarbha industries power Limited versus Axis Bank Limited 2022(8) SCC 352.

- iv.** Furthermore, Corporate Debtor contends that as per the term clause of the said agreement, due date was never arrived and in view of this situation, there has been no default committed by the Corporate Debtor. Moreover, Financial Creditor failed to issue any notice for recalling of the outstanding loan amount for alleged default on due date and no submission is made in this regard. Therefore, as per the terms of the loan agreement, no default has been committed by the Corporate Debtor.
- v.** In view of the aforesaid contentions raised in the written submission, it is pleaded by the Corporate Debtor that the Application filed by the Corporate Debtor is not maintainable and hence, is liable to be dismissed.

FINDINGS AND ORDER

- 16.** 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.



17. Under the I & B Code, 2016, an application under section 7 can be admitted only when there is an existence of financial debt and the subsequent default in repayment of the said financial debt. The term “**financial debt**” in I&B Code, 2016 has been defined in Section 5(8) as below: -

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 against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.

[Explanation, -For the purpose of this sub-clause, -

- i. any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and



ii. the expression, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

18. The term “**default**” has also been defined in I&B Code, 2016 in Section 3(12) as below: -

3(12) ‘default’ means non-payment of debt when whole or any part or 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;

19. In the light of above two definitions, we have examined the existence of “financial debt” and “subsequent default in repayment of financial debt” in this case. As shown by the Applicant/Financial Creditor, there is a loan agreement dated 03.03.2020 and as per this loan agreement, Rs.



4,37,00,000/- has been disbursed by the Financial Creditor to the Corporate Debtor from 02.03.2020 to 30.12.2020 as per the details given in tabular form in para 11(iii) of this order. As per the terms of this loan agreement, the loan was given for a period of two years period starting from the date of loan agreement. Therefore, as per the learned Counsel for the Financial Creditor, this loan became due for repayment after the expiry of two years from the date of loan agreement i.e. from 02.03.2020 and hence, the principal amount of loan will fall due for payment on 02.03.3022 (after two years). The learned Counsel for the Financial Creditor has also mentioned that the interest on the loan was payable @ 12% per annum on a monthly rest @ 1% but all the interest payments have not been made by the Corporate Debtor till 02.03.2022 i.e. the date on which the repayment of the loan has become due for payment. Therefore, as contended by the Learned Counsel for the Financial Creditor, the default has occurred on 02.03.2022. It has also been stated that the outstanding loan amount has been shown in the balance sheet of the Corporate Debtor for the Financial year 2020-21 filed along with its Financial statement with the RoC.



20. In the counter to the above arguments of the Ld. Counsel for the Financial Creditor, the Learned Counsel for the Corporate Debtor argued that according to the provisions of the said loan agreement, the loan was granted for the period of two years on the completion on which, the petitioner was vested with the right to either revoke the agreement or to call for the payment of the outstanding loan amount. However, it is further pointed out by the Learned Counsel for the Financial Creditor that neither the loan agreement was revoked nor there has been any communication by the Petitioner/Applicant calling for payment of the alleged dues. As regards the interest payment, it has been contended that as per the agreement, interest was to be paid @ 12% per annum on monthly rest @ 1% but as per him, there is no allegations from the Petitioner Financial Creditor that Respondent/Corporate Debtor has committed default on any date prior to 03.02.2022. He also pointed out that in part V of the petition filed by the Financial Creditor, there are no averments as regards the Documents, Records and Evidence of Default. It has also been contended that the loan was secured by the post-dated cheque but without presenting the



post-dated cheques, no default can be said to have occurred as in view of the Corporate Debtor, the said “**due date**” has never arrived. On the basis of his above arguments, the Learned Counsel for the Corporate Debtor pleaded in the present case that the Financial Creditor has miserably failed to demonstrate as to on which date the said debt became “**due**” and further the date on which the Corporate Debtor has committed “**default**”. In this regard, he relied on a judgment of the Hon’ble National Company Law Appellate Tribunal, New Delhi in the case of ***Pawan Kumar versus Utsav Securities Private Limited reported in [2021] 131 taxmann.com 211 (NCL-AT)/ [2021] 168 SCL 692 (NCL-AT) [03-08-2021]***.

21. We have considered above arguments as advanced by the learned Counsels of both parties and we find that there is no dispute about the existence of Financial Debt as the loan charging the interest was disbursed being for the time value of money and was also reflected as payable under the head “Unsecured Borrowings” in the Balance Sheet of the Corporate Debtor for financial year 2020-21. However, the Corporate Debtor has been disputing the said debt as not having



become due for repayment taking the plea that the loan agreement *vide* which this debt has arisen, has not been revoked by the Financial Creditor and also there is no recall notice by the Financial Creditor. We find no force in the argument of the Ld. Counsel for the Corporate Debtor about the debt as having not become due for repayment due to loan agreement has not been revoked or recalled. As per the term of the loan agreement, we clearly find that the loan agreement is for a period of two years meaning thereby that any loan taken by the Corporate Debtor as per this loan agreement would be required to be repaid after the expiry of two years. Moreover, interest was required to be paid @ 12% p.a. on monthly rest of 1%, which clearly indicates that interest was required to be paid on monthly basis, however even the interest amount has not been fully paid by the Corporate Debtor and the amount of interest itself is Rs. 1,47,82,635/- from the date of disbursement till 05.09.2022 as per the calculation given in the application filed u/s 7, which itself is more than the threshold limit of Rs. 1 crore. As regards the argument of the Corporate Debtor about the due date has not arrived because of not presenting the post-dated cheques for



encashment, this is also not tenable in view of the facts that if the Corporate Debtor was not able to pay the interest on the loan amount, no purpose would have been served by presenting the post-dated cheques given as security to the loan. Default on payment of interest itself has been found to be more than Rs. 1 crore. Therefore, we are satisfied that there is a default on repayment of the loan of Rs. 4,37,00,000/- and interest of amount Rs. 1,47,82,635/- and this default is still continuing and it is sufficient to prove that the Corporate Debtor has no financial resources to repay the loan as well as the interest thereon as mentioned in the application u/s 7. Date of default as per the terms of the loan agreement has also been found to be 02.03.2022 as mentioned in para IV of the application u/s 7. In view of our above findings, we are satisfied that the condition of Section 7(5)(a) as there being a “**Financial Debt**” and there is a “**default**” in repayment the said debt are met and hence, this application has been found to be fit for being admitted for initiating CIRP against the Corporate Debtor.

- 22.** The Corporate Debtor in its written submission has placed reliance on a judgement of the Hon’ble NCLAT, New Delhi in



case of ***Pawan Kumar versus Utsav Securities (P.) Ltd. (2021) 131 taxmann.com211 (NCLAT)***. However, we find that this decision is delivered taking into account the fact that there was no written loan agreement in that case and the Financial Creditor in that case, could not establish the date of default on the basis of the reference to an oral agreement as pleaded during the appeal. We find that this decision will not apply in the present case as in this case, there is a written agreement clearly defining the terms for repayment of loan along with the interest.

- 23.** The Corporate Debtor has also placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd. (Civil Appeal No. 4633 of 2021) dated 12.07.2022*** taking a plea that the Adjudicating Authority has discretion u/s 7 to admit or not to admit the petition u/s 7 and hence, considering the facts of the present case, the petition u/s 7 may not be admitted as the Corporate Debtor has not been provided sufficient opportunity to repay the loan. We don't find that the facts of the present case is similar to the facts of the ***Vidharbha Industries (supra)*** as in the present case, the



Corporate Debtor has not been found to be financial viable even to pay the interest on the loan amount and no evidence could be produced by the Corporate Debtor during the proceeding to show that the Corporate Debtor has any financial resources available with it make the repayment of loan and interest thereon as it was found in the case ***Vidharbha Industries(supra)***. Therefore, we don't find that this judgment is also of any help to the Corporate Debtor.

- 24.** 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 crore rupees and 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.



25. In Part III of Form 1, the Financial Creditor has proposed the name of Mr. Bhim Sain Goyal, as Interim Resolution Professional. His Registration Number is IBBI/IPA-002/IP-N00726/2018-2019/12216, R/o M-215, Greater Kailash-II, New Delhi, New Delhi, 110048, Email: bsgoyal1@gmail.com. He has duly given the consent in Form No.2 dated 29.09.2022 annexed as **Annexure 4 (Colly)** with the Application. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Mr. Bhim Sain Goyal, 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 10 November 2023. After considering these details, we appoint Mr. Bhim Sain Goyal, Registration No. IBBI/IPA-002/IP-N00726/2018-2019/12216, as Interim Resolution Professional (IRP).

26. 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, **ACCORD HYDROAIR (PILKHUWA) PRIVATE LIMITED** and accordingly, moratorium is declared in terms of Section 14 of the Code.

- 27.** 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.
- 28.** 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.
- 29.** 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.
- 30.** 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.
- 31.** 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.
- 32.** We direct the Financial Creditor to deposit a sum of Rs. 2,00,000/- 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.

- 33.** 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.
- 34.** List the matter for 15.12.2023 for further proceedings.

Sd/-

(Ashish Verma)
Member (Technical)

Dated: 07.11.2023

Ankita Sharma
(LRA)

Sd/-

(Praveen Gupta)
Member (Judicial)