



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

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

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 16/7/JPR/2021

(Application under Section 7 read with 60(5) of the Insolvency and Bankruptcy Code, 2016 & Rule 11 of the NCLT Rules, 2016)

IN THE MATTER OF:

M/s Bhala Finance Private Limited **...Financial Creditor/Applicant**

Versus

M/s Tushar Realhome LLP **...Corporate Debtor/Respondent**

MEMO OF PARTIES

M/s Bhala Finance Private Limited

Having its registered office at: -

6-B, 4th Floor, Man Upasana Plaza, C-44, Sardar Patel Marg, C-Scheme Jaipur.

... Financial Creditor/Applicant

VERSUS

M/s Tushar Realhome LLP

501-503, Fifth Floor, Diamond Tower
Purani Chungi, Ajmer Road, Jaipur
Rajasthan-302019

... Corporate Debtor/Respondent

For the Applicant **: Shivangshu Naval, Adv.**

For the Respondent **: Jatin Chawla, Adv.**

Order Pronounced On: 27.02.2023



ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by M/s Bhala Finance Private Limited, ('Applicant/Financial Creditor'), through the authorised signatory Mr. Harsh Bhala, who is duly authorised to sign this Application *vide* Board Resolution dated 08.02.2021 at Annexure – 2 of the Application, under Section 7 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking to initiate a Corporate Insolvency Resolution Process ('CIRP') against M/s Tushar Realhome LLP ('Respondent' / 'Corporate Debtor').
2. The Corporate Debtor is a Limited Liability Partnership firm registered under the Limited Liability Partnership Act, 2008, having its registered office at 501-503, 5th Floor, Diamond Tower Purani Chungi, Ajmer Road, Jaipur-302019. Copy of the Corporate Debtor's Master data along with details of Signatory as extracted from the portal the of Ministry of Corporate Affairs (www.mca.gov.in) is annexed as Annexure 3 of the Application at Page No. 37.
3. The Financial Creditor, M/s Bhala Finance Private Limited, is a Company registered under the Companies Act, 2013 having CIN: U65992RJ2015PTC046989. The registered office of the Applicant is



situated at 6-B, 4th Floor, Man Upasana Plaza, C-44, Sardar Patel Marg, C-Scheme, Jaipur-302001, Rajasthan, India.

4. The details of the transactions leading to the filing of this Application as averred by the Applicant are as follows:
 - a. The Corporate Debtor approached the Applicant for availing a loan of Rs. 1,60,00,000/- (Rupees One Crore Sixty Lakh Only) for its business requirements *vide* loan application dated 13.06.2018.
 - b. Thereafter the Applicant sanctioned the loan of Rs.1,60,00,000/- (Rupees One Crore Sixty Lakh Only) to the Corporate Debtor for a tenure of 36 months *vide* sanction letter no. JAN/18/15 dated 20.06.2018. Copy of the sanction letter is annexed as Annexure-4 of the Application.
 - c. It is stated that the repayment of the aforesaid loan was agreed to be made by the Corporate Debtor in 36 equated monthly installments. The said loan was availed by the Corporate Debtor against the security of a mortgage of Flat No. 508, 509, 510, 511,610 & 611 in project 'SHIVALIKA' situated at Plot No. GH-5, Gokul Nagar, Gokulpura, Jhotwara, Jaipur-Rajasthan-302012, admeasuring total 8362.50 Square Feet. The Corporate Debtor and the Applicant executed a mortgage deed dated 05.07.2018 to secure the aforesaid loan.



- d. Further the Corporate Debtor failed to maintain financial discipline in relation to a loan account by failing to pay the regular EMIs as per the terms and conditions of the loan agreement.
- e. Subsequently, the Corporate Debtor requested the Financial Creditor to restructure the Loan Facility. The Corporate Debtor assured the Applicant that the entire outstanding amount along with interest would be repaid i.e principal amount of Rs. 1,60,00,000/- (Rupees One Crore Sixty Lakh Only) along with interest of Rs. 29,44,520/- (Rupees Twenty-Nine Lakh Forty-Four Thousand Five Hundred Twenty Only).
- f. On the request of the Corporate Debtor the aforesaid loan facility has been restructured *vide* sanction letter No. MAR/BL/207 dated 25.03.2019 against the aforesaid mortgage property *vide* mortgage deed dated 05.07.2018.
- g. The Applicant executed a loan agreement dated 25.03.2019 upon an assurance of the Corporate Debtor that the restructured loan shall be repaid in 36 installments commencing from 07.04.2019 as per the schedule annexed with Sanction Letter-II. The restructured loan was repayable along with an interest rate of 22% per annum.
- h. However, despite the Applicant sanctioned and disbursed the aforesaid restructured loan upon the assurance of the Corporate Debtor. The Corporate Debtor failed to maintain financial discipline in relation to the Loan account.



- i. Since the Corporate Debtor has defaulted in the payment of the loan amount of Rs. 1,90,00,000/- (Rupees One Crore Ninety Lakhs Only), the Applicant has issued a Demand Notice dated 02.12.2019 to the Corporate Debtor. Subsequently, another demand notice dated 27.01.2021 has been issued demanding the repayment of the loan amount.
5. As a consequence of the aforementioned default, this application has been filed for seeking initiation of CIRP against the Corporate Debtor. The Applicant has stated the details of the amount due in Part IV of the Application which is as follows:

PART IV PARTICULARS OF FINANCIAL DEBT	
1.	<p>TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE</p> <p>Rs. 3,12,46,110/- (Rupees Three Crore Twelve Lakh Forty-Six Thousand One Hundred Ten Only)</p> <p>Dates of Default: 08.04.2019</p>
2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)</p> <p>The total amount claimed to be in default is Rs. 3,12,46,110/- which is inclusive of interest amounting to Rs. 61,67,656/- calculated @22%, penal interest amounting to Rs. 60,66,824/- calculated @36% and other charges of Rs. 11,630/- all calculated from 08.04.2019 till 11.03.2021</p> <p>Total Debt: Rs. Rs. 3,12,46,110/-</p>



		(Rupees Three Crore Twelve Lakh Forty-Six Thousand One Hundred Ten Only) The date on which the Default Occurred: 08.04.2019.
--	--	--

6. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its reply *vide* Diary No. 1882/2022 dated 27.06.2022 whereby it stated the following:
- a. The Corporate Debtor stated that the Applicant does not fall within the purview of the Financial Creditor. Further, the Corporate Debtor submits that before constituting the Applicant's Non Banking Financial Company, the Applicant's directors were engaged in the business of real estate under the name Bhala Operations Private Limited erstwhile named as Bhala Builders Private Limited.
 - b. The Corporate Debtor submits that the directors of the Applicant Company misuse the NBFC for personal gains as well as for the rotation of money.
 - c. The Respondent issued an e-mail dated 12.03.2020 and a letter dated 13.02.3021 for seeking settlement of accounts with regards to ongoing transactions from Applicant's Company and its directors. However, the Applicant has provided a false and fabricated ledger *vide* e-mail dated 18.03.2020.



- d. It is submitted that there is no default on the part of Respondent as amount alleged to be disbursed by the Applicant is rotated into a personal bank account of the Applicant's director. The Corporate Debtor submits that amount transferred by Applicant into Respondent's bank account was merely a rotation of the amount.
- e. As per the records available with the Respondent, the amount transferred to the Corporate Debtor by the Applicant was taken back into the Applicant's director's personal/other bank accounts, the details of several transactions are as under: -

<i>Date of Transaction</i>	<i>Account into which funds were transferred by Complainant/NBFC</i>	<i>Account details into which amount was transferred along with UTR Number.</i>	<i>Total Transaction Amount (in Rs.)</i>	<i>Ref No. (Annexure R/5)</i>
09.11.2015	Karur Vysya Bank of M/s Shivshakti Realhome Pvt. Ltd.	Bank Account No. 00611132000879 on the name of Ramakant Bhala HUF.	50,00,000/-	A1
Between 21.11.2015 and 26.07.2016	Received amount of Rs. 50,00,000/- into Bank Account of M/s Shivshakti Realhome Pvt. Ltd. on 25.07.2016 from NBFC	Shivshakti Realhome Pvt. Ltd. transferred an amount of Rs. 36,70,880/- and M/s Tushar Realhome LLP transferred an amount of Rs. 22,02,326/- into bank account of Ramakant Bhala, Ramakant Bhala HUF and NBFC bearing Bank Account No. 00611132000879 & 01205034693	50,00,000/- & Rs. 63,73,206/-	A2 to A9
In between 16.09.2016	An amount of Rs. 2,90,00,000/- and amount of Rs.	Shivshakti Realhome Pvt. Ltd. transferred an amount of Rs.	2,33,55,186/- & 52,50,000/-	A10 to A18



<i>to</i> 31.03.2017	<i>50,00,000/- was received from NBFC into Bank account of M/s Shiv Shakti Realhome Pvt. Ltd. and M/s Tushar Realhome Pvt. Ltd. respectively.</i>	<i>2,33,55,186/- into bank Account of NBFC. Tushar Realhome Pvt. Ltd. transferred an amount of Rs. 52,50,000/- into bank of NBFC bearing No. 01205034693</i>		
06.02.2018	<i>NBFC transferred an amount of Rs. 20,00,000/- into bank account of Tushar Realhome LLP bearing Bank Account No. 4501135000002117 maintained with Karur Vysya Bank.</i>	<i>On the same day at 12:21:13 Tushar Realhome LLP from its bank account bearing Bank Account No. 4501135000002117 maintained with Karur Vysya Bank has transferred an amount of Rs. 20,00,000/- into personal bank account of Mr. Ramakant Bhala bank account bearing No. 00611132000879</i>	20,00,000/-	A19
09.02.2018	<i>An amount of Rs. 30,00,000/- was transferred by NBFC into bank account of Tushar Realhome LLP bearing Bank Account No. 4501135000002117 maintained with Karur Vysya Bank</i>	<i>The said amount of Rs. 30,00,000/- was also taken by Ramkant Bhala into bank account bearing No. 00611132000879</i>	Rs. 30,00,000/-	A19
20.06.2018	<i>An amount of Rs. 55,00,000/- was transferred into bank account of Tushar Realhome LLP bearing Bank Account No. 450113500000211</i>	<i>The said amount of Rs. 55,00,000/- was taken by Ramkanat Bhala into bank account bearing No. 00611132000879</i>	Rs. 55,00,000/-	A20



	<i>7 maintained with Karur Vysya Bank</i>			
20.06.2018		<i>Over and above Rs. 55,00,000/- an amount of Rs. 50,00,000/- on 20.06.2018 was also transferred by Tushar Realhome LLP into bank account of Mr. Ramakant Bhala bearing No. 00611132000879</i>	50,00,000/-	A20
<i>In Between 21.06.2018 and 27.06.2018</i>	<i>On 25.06.2018 NBFC transferred an amount of Rs. 70,00,000/- into bank account of Tushar Realhome LLP. On 26.06.2018 NBFC transferred an amount of Rs. 35,00,000/- into bank account of Tushar Realhome LLP.</i>	<i>Tushar Realhome LLP transferred an amount of Rs. 35,50,000/- into bank account of Ramakant Bhala. On 27.06.2018 Tushar Realhome LLP transferred an amount of Rs. 10,00,000/- into bank account of NBFC</i>	<i>35,50,000/- 10,00,000/- & 70,00,000/- 35,00,000/-</i>	A20
<i>21.06.2018 and 22.06.2018</i>	<i>NBFC transferred an amount of Rs. 75,00,000/-, Rs. 90,00,000/- & Rs. 55,00,000/- into bank account of M/s Shivshakti Realhome Pvt. Ltd. bearing No. 450111500000290 2 maintained with Karur Vysya Bank</i>	<i>On 21.06.2018 an amount of Rs. 75,00,000/-, 45,00,000/- and 45,00,000/- was transferred into Bank account of Shri Ramakant Bhala bearing No. 00611132000879 by Shivshakti Realhome Pvt. Ltd. On 22.06.2018, an amount of Rs. 55,00,000/- was transferred into Bank Account of Shri Ramakant Bhala bearing No. 00611132000879 As such an amount of Rs. 2,20,00,000/- transferred</i>	<i>Rs. 2,20,00,000/-</i>	A21



		<i>by NBFC on 21.06.2018 was duly transferred back into bank account Mr. Ramakant Bhala by Shivshakti Realhome Pvt. Ltd. on 21.06.2018 and 22.06.2018.</i>		
<i>22.06.2018 and 25.06.2018</i>	<i>NBFC transferred an amount of Rs. 45,00,000/- into bank account of M/s Shivshakti Realhome Pvt. Ltd. bearing No. 450111500000290 2 maintained with Karur Vysya Bank</i>	<i>On 25.06.2016 an amount of Rs. 45,00,000/- was transferred into Bank account of Shri Ramakant Bhala bearing No. 00611132000879</i>	<i>45,00,000/-</i>	<i>A21</i>
<i>27.06.2018</i>		<i>An amount of Rs. 25,00,000/- was transferred by Shivshakti Realhome Pvt. Ltd. into Bank account of Ramakant Bhala bearing No. 00611132000879</i>		
<i>20.08.2018 and 29.08.2018</i>		<i>Shivshakti Realhome Pvt. Ltd. has transferred an amount of Rs. 10,00,000/- on 20.08.2018 into Bank Account of NBFC</i>	<i>10,00,000/-</i>	<i>A22</i>
<i>28.09.2018 and 20.10.2018</i>	<i>On 28.09.2018 an amount of Rs. 14,93,500/- was received by Shivshakti From NBFC</i>	<i>On 20.10.2018 an amount of 15,00,000/- was duly transferred back into bank account of said NBFC from Shivshakti Realhome Pvt. Ltd.</i>	<i>14,93,500 & 15,00,000/-</i>	<i>A23 & A24</i>
<i>28.03.2019 and 29.03.2019</i>	<i>On 29.03.2019, NBFC has transferred an amount of Rs. 9,95,030/-</i>	<i>An amount of Rs. 10,00,000/- each was transferred into bank account of NBFC on 28.03.2019 and 29.03.2019</i>	<i>20,00,000/- & 9,95,030/-</i>	<i>A25 & A26</i>
<i>24.05.2019</i>		<i>An amount of Rs. 20,00,000/-, 20,00,000/-</i>	<i>20,00,000/- 20,00,000/-</i>	<i>A27</i>



		& 18,00,000/- was transferred by Shivshakti Realhome Pvt. Ltd. into bank account of NBFC.	& 18,00,000/-	
In June 2019	An amount of 2,64,77,750/- was transferred by NBFC, directors and their affiliates Company and their company.	In between same period Respondent transferred an amount of Rs. 2,49,47,000/- into different accounts of NBFC, directors and their company.	2,49,47,000/-	A28 to A30

- f. The Applicant is failed to annex any documents evidencing disbursement of any such loan. The Corporate Debtor availed a financial facility on 13.06.2018. The details of the entries under the Bank Account statement are as follows:

Date	From	To	Amount
20.06.2018	Petitioner	Corporate Debtor	50,00,000/-
20.06.2018	Petitioner	Corporate Debtor	55,00,000/-
20.06.2018	Corporate Debtor	Ramakant Bhala (Director of the Applicant)	55,00,000
21.06.2018	Petitioner	Corporate Debtor	35,50,000/-
25.06.2018	Corporate Debtor	Ramakant Bhala (Director of the Applicant)	70,00,000/-
26.06.2018	Corporate Debtor	Ramakant Bhala (Director of the Applicant)	35,00,000/-

- g. The Corporate Debtor submits that the above-stated entries took place between 20.06.2018 to 26.06.2018, and the following amount for the purpose of entries came to be transferred by the Corporate Debtor into the bank account of Applicant: -

From	To	Date	Amount
Corporate Debtor	Applicant	27.06.2018	10,00,000/-
Corporate Debtor	Applicant	16.08.2018	590.00/-



<i>Corporate Debtor</i>	<i>Applicant</i>	<i>07.09.2018</i>	<i>27,131/-</i>
<i>Corporate Debtor</i>	<i>Applicant</i>	<i>20.10.2018</i>	<i>1,000,000/-</i>
<i>Corporate Debtor</i>	<i>Applicant</i>	<i>27.11.2018</i>	<i>11,000/-</i>
<i>Corporate Debtor</i>	<i>Applicant</i>	<i>27.06.2019</i>	<i>5,00,000/-</i>
<i>Corporate Debtor</i>	<i>Applicant</i>	<i>27.06.2019</i>	<i>15,00,000/-</i>
<i>Corporate Debtor</i>	<i>Applicant</i>	<i>27.06.2019</i>	<i>2,55,000/-</i>
<i>Corporate Debtor</i>	<i>Applicant</i>	<i>02.12.2020</i>	<i>50,000/-</i>

- h. The amount of Rs. 43,43,721/- (Rupees Forty-Three Lakh Forty-Three Thousand Seven Hundred Twenty-One Only) is transferred into the personal bank account of the director of the Applicant. The Corporate Debtor submits that there were several ongoing transactions between the parties and the amount claimed to be Financial Debt was nothing but a mere rotation of amount.
- i. The Corporate Debtor submits that to ascertain a true and proper pith of the substance of the transaction, Corporate Veil is required to be lifted. By lifting the Corporate Veil, it becomes clear that funds were routed into the Bank Account of the person behind the Applicant.
- j. The Corporate Debtor contends that there is no proper statement of loan account annexed with the Application. Moreover, the Applicant has not served a statement of account to the Corporate Debtor.
- k. The Corporate Debtor submits that this Hon'ble Tribunal has no jurisdiction to entertain the present application, Hon'ble Civil Court has settled the account of the Applicant.



1. It is pertinent to note that the Corporate Debtor is currently working as a going concern and no resolution process is required for the Corporate Debtor further there is no default on the part of the Corporate Debtor.
7. The Applicant has filed its rejoinder *vide* Diary No. 2339/2022 dated 04.08.2022 and stated that:
 - a. The Applicant submits that a sum of Rs. 1,90,00,000/- (Rupees One Crore Ninety Lakh Only) was advanced as financial debt and the said amount is unpaid till date and the Corporate Debtor is evading repayment of the said amount under the garb of attempting to draw a nexus between the present transaction at hand with other transaction of the Applicant's director /or related entities.
 - b. The said financial debt was secured by the Corporate Debtor by mortgaging flat nos. 508,509, 510, 511, 610 & 611 in project SHIVALIKA situated at Plot No. GH-5, Gokul Nagar, Gokulpura, Jhotwara, Jaipur-Rajasthan 302012, admeasuring total 8362.50 Square Feet (Mortgaged Property) by way of Mortgage Deed dated 05.07.2018 entered between the Corporate Debtor and the Applicant.
 - c. The Applicant further submits that the Corporate Debtor is a defaulter and failed to repay the amount of the financial debt. The communications and replies relied upon by the Corporate Debtor have no significance on the present transaction.



- d. Further the Corporate Debtor issued cheques to the Applicant in the discharge of its liability which clearly depicts that the Applicant has admitted its liability.
 - e. The Corporate Debtor is interlinking different transactions to suit its vested interest and attempting to depict the repayment of the financial debt in the personal account of the directors.
 - f. The Corporate Debtor has not been able to establish that it had not availed any loan from the Applicant nor it has been able to show that the amount has been repaid.
 - g. The Applicant states that the requirement under law is to provide the bank account statements and not the loan account statements as alleged by the Corporate Debtor.
8. The Applicant has filed written submissions *vide* diary No. 3431/2022 dated 22.11.2022 that state the following:
- a. The Applicant submitted that there is an existence of financial debt which is being due and payable, and the Corporate Debtor has failed to repay.
 - b. Further the Applicant states that the alleged defaulted amount is also reflected in the master data of the Corporate Debtor on the website of the Ministry of Corporate Affairs ('MCA') and the same has been acknowledged in the LLP Form No. 8 acknowledging the creation of charge with the Registrar of Companies ('RoC') in favour of the



Applicant for a sum of Rs. 1,90,00,000/- carrying interest rate of 22% per annum.

- c. Further the Applicant states that the Corporate Debtor has not filed its financial statements with the RoC since 2019-20 which shows that it is besides non-compliant entity besides defaulting in repayment of loan of the Applicant. Resultantly ROC has issued notice to the Corporate Debtor dated 23.09.2022 further RoC has issued notice dated 21.10.2022 to the Regional Director, MCA, Ahmedabad. Copy of the notice dated 23.09.2022 is enclosed as Enclosure-A of the written submissions filed by the Applicant.
 - d. Additionally, the Applicant has relied on the judgment of *Anchor Leasing Private Limited Vs Euro Ceramics Limited*, NCLT Mumbai bearing *CP No. 66/IBC/MB/MAH/2018* dated 25.02.2019.
9. The Corporate Debtor has also filed written submissions *vide* diary No. 3518/2022 dated 02.12.2022 that state the following:
- a. The amount alleged to be disbursed by the Applicant came to be rotated into the personal bank account of the Applicant's director. Further, it states that the amount transferred by Applicant into Respondent's bank account was merely a rotation of the amount.
 - b. The Corporate Debtor submitted that on 13.06.2018 a financial facility of Rs. 1,60,00,000/- has been sanctioned which came to disbursed from 20.06.2018 to 26.06.2018. It is pertinent to note that, in this regard page



no. 16 of the reply depicts a rotation of alleged disbursed amount into bank account of the Applicant's director.

c. Additionally, the Corporate Debtor has relied on the judgment of Hon'ble Supreme Court in the matter of *Vidarbha Industries Power Limited Vs Axis Bank Limited*; 2022 LiveLaw (SC) 587.

10. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of Laws of Limitation, as the debt fell due in 2019, and the Application was filed before this Adjudicating Authority in 2021. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
11. The basic ingredients to be looked into while passing an order under Section 7 of the code is: (i) there must be a disbursement of loan amount, such dispersal should be made for a consideration of time value of money; (ii) when the debt (whole or any part of instalment) becomes due and payable and; (iii) the same is not paid by the Corporate Debtor i.e., default committed by the Corporate Debtor.
12. In the case of *Pawan Kumar v. Utsav Securities Private Limited & Ors., Company Appeal (AT) (Ins) No. 251 of 2020*, the Hon'ble NCLAT has stated



the following to be essential conditions to be satisfied by a Financial Creditor under Section 7 read with Section 5 (7) and (8) of the Code:

- a. There must be disbursal of loan amount.*
- b. Such disbursal should be made for a consideration for time value of money, and*
- c. When the debt (whole or any part or instalment) become due and payable and is not paid by the Corporate Debtor means committed default.*

13. The above all conditions are to be satisfied by the Financial Creditor in order to consider the Application under section 7 of the IBC and initiate the CIRP against the Corporate Debtor. In the present case, it is perused from the documents placed on record that the Financial Creditor disbursed a loan of Rs. 1,60,00,000/- through RTGS between 20.06.2018 to 26.06.2018 to the Corporate Debtor's bank account. However, at the request of the Corporate Debtor, the above loan facility was restructured vide sanction letter No. MAR/BL/207 dated 25.03.2019. Copy of the Sanction Letter-II and Loan Agreement-II are annexed as Annexure-6 of the Petition.

14. The second essential condition is that the loan disbursal is made for consideration of the time value of money. The Hon'ble Supreme Court of India, in *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd., Civil Appeal No. 2231 of 2021* held that the Time Value of money means that the money which is being given will be more at the time of return. This would be



through the interest on the principal amount, in case of absence of interest the debt still qualifies as Financial Debt. In the present matter herein, the restructured loan was repayable along with interest @22% per annum.

15. The next essential condition is that the debt (whole or any part or instalment) become due and payable. In the present case in hand, the first instalment became due on 07.04.2019 but no payment has been received from the Corporate Debtor on or after the aforesaid due date.
16. It is observed from the documents placed on record that the loan of Rs. 1,60,00,000/- has been given by the Applicant *vide* Sanction Letter No. JAN/18/15 dated 20.06.2018. The loan of Rs. 1,60,00,000/- was disbursed in the following manner:

Date	Mode of disbursement (For RTGS)	Amount Disbursed (INR)	Relevant page no. and annexure of the Petition
20.06.2018	RTGS	55,00,000/-	Pg no. 166 Annexure-10
25.06.2018	RTGS	70,00,000/-	Pg no. 166 Annexure-10
26.06.2018	RTS	35,00,000/-	Pg no. 166 Annexure-10
Total Amount of Initial Loan disbursed = Rs. 1,60,00,000/-			

17. Subsequently, the Respondent did not maintain financial discipline in the repayment of the loan amount. Consequently, at the request of the Corporate Debtor on the account of the failure of the said loan the existing loan facility was restructured *vide* Sanction Letter No. MAR/BL/207 dated 25.03.2019.
18. There were certain transactions that have taken place between the Applicant and Corporate Debtor however no payments have been done subsequent to



the restructuring of a loan dated 25.03.2019. From the bare perusal of the pleading on the record, it is seen that there are numerous transactions that have taken place between the Applicant, Corporate Debtor, and other related parties from the period of 2015 to 2018. Nevertheless, no payments have been made towards the loan facility provided by the Applicant after the restructuring of the loan.

19. Moreover, as per the repayment schedule annexed to the sanction letter II the Corporate Debtor has to make the payment of Rs. 1,90,00,000/- in tune with the loan facility provided by the Applicant. From the statement of account annexed by the parties, it is seen that there are various transactions that have been exchanged between parties to the case however we are not able to establish any correspondence to the payments made by the Corporate Debtor towards the repayment of the loan and the amount which is to be repaid as per the repayment schedule.
20. Since it is submitted by the Corporate Debtor the amount of Rs. 1,40,50,000/- (Rupees One Core Forty Lakh and Fifty Thousand Only) has been transferred into the bank account of the director of Applicant from the date of disbursement till 2018. However, it is admitted fact that the loan facility has been restructured *vide* Sanction Letter No. MAR/BL/207 dated 25.03.2019 and as per the repayment schedule of the same the Corporate Debtor has to repay the loan amount of Rs. 1,90,00,000/-



21. When we take a closer look at the same it is observed that the payments which are made by the Corporate Debtor are not corresponding with the amount as disbursed by the Applicant.
22. In view of the aforementioned, we are of the view that Corporate Insolvency Resolution Process ought to be initiated against the Corporate Debtor.
23. The Applicant had has proposed the name of Mr. Satyendra Prasad Khorania as Interim Resolution Professional ('IRP') whereas, during the course of proceedings, the Applicant has filed an additional affidavit *vide* Dairy No. 3459/2022 dated 24.11.2022 wherein the Applicant sought to change the name of the proposed IRP to Mr. Babu Lal Gurjar having Registration Number IBBI/IPA-003/IP-N00297/2020-21/13260 (email: cmablgurjar@gmail.com), duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional ('IRP'). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.
24. Consequences of initiation of CIRP shall be inter-alia as follows:
 - a) The Interim Resolution Professional proposed by the Applicant is Mr. Babu Lal Gurjar, who is an Insolvency Professional ('IP') registered with ICSI Insolvency Professional Agency having Registration No. IBBI/IPA-003/IP-N00297/2020-21/13260. He is hereby appointed as



the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.

- b) Further, as a sequel of admission, the moratorium, as envisaged under Section 14 of IBC, 2016, is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly per the timelines specified and as envisaged under the provisions of IBC, 2016, concerning the Corporate Debtor.
- c) The said IRP shall act strictly in accordance with the provisions of IBC, 2016, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rs. Two Lakh Only) to the bank account of IRP within a week from the date of this Order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding in relation to the Corporate Debtor.
- d) In terms of Sections 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor, including promoters and the Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the



IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- e) 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, and the IRP appointed by this Adjudicating Authority to carry out the CIRP. A copy of this Order shall also be communicated to IBBI for its records.

24. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.

25. In the circumstances, CP No. (IB) 16/7/JPR/2021 is admitted.

DEEP
CHANDRA
JOSHI

Digitally signed by
DEEP CHANDRA
JOSHI
Date: 2023.02.27
18:04:20 +05'30'

**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANTA
KUMAR
MOHANTY

Digitally signed by
PRASANTA KUMAR
MOHANTY
Date: 2023.02.27
18:31:12 +05'30'

**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**