



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

ITEM No. 2
IB/696/ND/2022

IN THE MATTER OF:

Mrs. Priyanka Jain	...	Applicant
And		
M/s Mascot Overseas Private Limited	...	Respondent

Order under Section 7 of IBC, 2016.

Order pronounced on 25.05.2023

Coram:

MR. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

The IB/696/ND/2022 stands dismissed.

Sd/-

DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Mukesh

Sd/-

P.S.N. PRASAD
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

Company Petition No. (IB)-696(ND)/2022

**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:

MRS. PRIYANKA JAIN

.... Applicant / Financial Creditor

VERSUS

M/S. MASCOT OVERSEAS PRIVATE LIMITED

.... Respondent/ Corporate Debtor

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 25.05.2023

ORDER

PER: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

The instant Company Application is filed by Mrs. Priyanka Jain ('applicant') 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, for initiating the Corporate Insolvency Resolution Process ('CIRP') against M/s. Mascot Overseas Private Limited ('Respondent/Corporate Debtor') having CIN:



U45201DL1997PTC086709 on the ground that the Corporate Debtor had committed a default in payment of Rs.1,26,89,350/- (Rupees One Crore Twenty Six Lakhs Eighty Nine Thousand Three Hundred and Fifty only).

2. The Corporate Debtor i.e., M/s. Mascot Overseas Private Limited having CIN:U45201DL1997PTC086709 incorporated on 15.04.1997 under the provisions of the Companies Act, 1956 having its registered office situated at G-362, Preet Vihar, East Delhi -110092. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Succinctly stated the facts of the present case as averred by the applicant are that the applicant is the majority shareholder as well as Director of the Corporate Debtor who had invested into the paid-up Share Capital of the Corporate Debtor a sum of Rs. 1,46,83,120/- (Rupees One Crore Forty-Six Lakhs Eighty-Three Thousand One Hundred and Twenty) i.e., 54.82% of the total paid up share capital of the Company. It was further stated that the remaining paid - up share capital of Rs.1,24.49,380/- i.e., 45.18% of paid up equity share capital is held by Mr. Akhil Jain, the husband of the Applicant who is also the director of the Corporate Debtor.
4. Further, it was stated by the Applicant in her Section 7 application that despite her status of a majority shareholder, she has never been permitted to take active part in the affairs of the Corporate Debtor



and has throughout been denied all her legally vested and fundamental rights either as Director or as the Shareholder of the Corporate Debtor. It was stated that she has disbursed a sum of Rs.1,26,89,350/- (Indian Rupees One Crore Twenty Six Lakhs Eighty-Nine Thousand Three Hundred and Fifty only) as Unsecured Loan and same is reflected in the audited balance sheet for the F.Y. 2019 – 20 and F.Y. 2020-2021 of the Company showing Unsecured loan/ financial debt owed by the corporate debtor to the applicant under the Head “Loans & Advances-Related Parties”.

5. This Adjudicating Authority vide its order dated 29.11.2022 had directed the applicant to file a short affidavit as to how the petition is maintainable despite the petitioner being a shareholder and also a director and the loan stated to have been extended is not evidenced by a valid agreement. The Applicant in compliance of the order dated 29.11.2022 had filed an affidavit dated 05.12.2022 along with the judgments relied upon by the applicant to prove the maintainability of the present petition.
6. The applicant had placed reliance on the Hon'ble NCLAT, Chennai Judgement in the case **“Mrs. Jayanthi G Ravi vs. M/s Chemizol Additives P. Ltd.” Company Appeal (AT) (Ins) No. 553 of 2020; Judgement dated 03.01.2022** wherein it was held that, the entitlement of an executive director who had advanced the amount by way of loan to the Company fall under the definition of “financial debt”.
7. Furthermore, Applicant had argued that IBC nowhere prescribes the compulsory existence of an express agreement to prove the loan and its disbursement and the statement of accounts produced on record



are enough to prove the disbursement of the loan amount. To support the contention, the applicant had placed reliance on case **“M/s. Orator Marketing Pvt Ltd vs. M/s. Samtex Designz Pvt. Ltd.”[Civil Appeal No. 2231 of 2021; 26.07.2021]**.

8. Heard the arguments advanced by Ld. Counsel for the Applicant. The necessary documents and judgments relied upon are meticulously perused. From the factual conspectus, it is evident that the Board of Corporate Debtor comprised of only two directors i.e., Mrs. Priyanka Jain (applicant) and Mr. Akhil Jain (husband of applicant) who are also undergoing matrimonial dispute and resultantly, of which there exists a deadlock between the parties.
9. It is pertinent to note that though the outstanding loan is reflected in the Balance sheet, there is no evidence placed on record as to when the said loan was to become due and payable, so as to decide the date of default. Moreover, from the perusal of the Part-IV of Form-I of the present application, the date of default is mentioned as 22.07.2022, the date on which the failure of mediation proceedings held/conducted at Crime against Women (CAW) Cell, East Delhi, Mr. Akhil Jain, director of the Corporate Debtor and husband of the Applicant had refused to pay/return anything to the Applicant. Moreover, no record of default or any exclusive demand letter demanding the payment of outstanding loan amount is placed before this Adjudicating Authority.



10. It transpires from the present application filed under Section 7 of the Code, 2016 that there were disputes, discords and differences besides grievances of the Applicant of varied and personal nature including that she was not being permitted to take any part in the affairs of the Corporate Debtor and only that prior to filing of and initiating the present process under the provisions of Code, 2016, the Applicant had endeavored to seek redressal of her grievances through an amicable manner and with that objective in mind, she sent Special Notice dated 21/03/2022, as mandated under the provisions of the Companies Act, 2013 calling for and seeking convening of Extra Ordinary General Meeting. The Applicant had placed on record the correspondence from 03.03.2022 to 10.03.2022 between the Applicant and the Corporate Debtor.

11. The correspondence relied by the Applicant shows that the notices issued as well as the correspondences made are related for various purposes including (a) seeking her appointment as Managing Director for five years w.e.f. 15th April, 2022 with NIL remuneration and other fair and reasonable terms and (b) seeking her inclusion in the list of Authorized Signatories in all Bank Operations / Bank Accounts of the Corporate Debtor & (c) considering and seeking appointment of an independent director of the Corporate Debtor to break the present ongoing deadlock (d) seeking the inspection/possession of books of accounts (e) Demand for interim or other maintenance or other headers, accounts, of her stated/ disclosed expenditures of her and her children's day to day living, educational expenses (f) Refund of Rs.1,26,89,350/- & additionally a sum of Rs.7,20,000/- (Rupees Seven Lakhs Twenty Thousand only)



shown as payable to her towards her Salary/Remuneration for three financial years .

12. The applicant has relied upon NCLAT decision in the matter of Mrs. Jayanthi G Ravi vs. M/s Chemizol Additives P. Ltd. (supra), the facts in that case and the applicant's case are distinguishable on the count that, in the case relied upon the issue before the Hon'ble NCLAT was, "Whether a loan amount by the Director to a Company recorded as a Loan in the Minutes of the Meeting of the Board of Directors is a Financial Debt or not?" which is not the issue in present case. Accordingly, the decision relied upon by the Applicant is not helpful to the applicant as the facts and circumstances are different in both the cases.

13. It is very essential to note that the prime objective of the IBC is to provide relief to the distressed corporate debtors. The Statement of Objects and Reasons of Insolvency and Bankruptcy Code, 2016 provides that the Code was proposed with the objective of consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of the value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders, including alteration in the priority of payment of Government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto.



14. The facts which are borne on record and statements made in the application show that the present application is devoid of merits as there is no bona fide intention of the applicant to resolve insolvency of the Corporate Debtor and from the averments made in the application, it seems that the failure of settlement of a family dispute had lead to filing of the present application. Further, the essential spirit of resolution is also not established by the applicant.
15. Furthermore, as observed earlier, the applicant has failed to establish that the impugned unsecured loan had become 'due and payable' on a particular date and was not repaid by the Corporate Debtor, thereby committing a 'default'. Thus we are of the considered view that the present application filed under Section 7 of the Code, 2016 is not maintainable.
16. Accordingly, the present application i.e., **IB/696/ND/2022** filed under Section 7 of the Code, 2016 stands **dismissed at the pre-notice stage**. No order to costs.

Sd/-
(DR.BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(SH. P.S.N PRASAD)
MEMBER (J)