



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI, COURT-III  
(IB) – 482(ND)/2023**

Order 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:**

**Mr. SARISH KUMAR CHAUDHRY**

**..... Applicant/Financial Creditor**

**VERSUS**

**M/s. ELEGANT IT SOLUTIONS PRIVATE LIMITED**

**..... Respondent/ Corporate Debtor**

**Order Pronounced On: 10.01.2024**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER  
(JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Applicant : Mr. Anupam Lal Das, Sr. Adv., Mr. Manav P., Ms.  
Manasi, Mr. Anirudh Singh, Mr. Aditya Singh, Advs.

For the Respondent : Mr. Vipin Garg, Mr. Arun Agarwal, Mr. Abhishek  
Aggarwal, Mr. Ankit Kumar, Advs.

**ORDER**

**PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

- 1) This Application has been filed by Mr. Sarish Kumar Chaudhry, the Applicant before this Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,

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2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against M/s. Elegant It Solutions Private Limited, the Respondent on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding principal amount of a sum of Rs. 95,40,600/- (Rupees Ninety Five Lakh Forty Thousand Six Hundred Only) and Rs. 29,71,489/- (Rupees Twenty Nine Lakh Seventy One Thousand Four Hundred and Eighty Nine Only) as interest @9% p.a., totalling to Rs. 1,22,14,940/- (Rupees One Crore Twenty Two Lakh Fourteen Thousand Nine Hundred and Forty Only).

- 2) It is the Case of the Financial Creditor that the Corporate Debtor has neither paid the dues and accrued outstanding Interest towards advances/loans given to the Corporate Debtor nor responded to the demands.
- 3) The Applicant in order to substantiate its case has relied upon the record of Financial Information (Form-C) available with the Information Utility (NeSL).
- 4) It is submitted by the Applicant that the Lease Deed of the immovable property of the Corporate Debtor is cancelled by the relevant authorities due to default of payments by the Corporate Debtor. The Corporate Debtor has filed a Writ Petition (C) No. 8459 of 2022 before the Hon'ble Allahabad High Court which was disposed-off vide order dated 29.11.2022.  
Hence the present Application.
- 5) The Corporate Debtor i.e. M/s. Elegant IT Solutions Private Limited in its reply affidavit has submitted that the Applicant is one of the related parties under the common management in terms of the provisions of Section 5(24) of IBC and promoter of the Corporate Debtor.
- 6) The Corporate Debtor submitted that the Applicant-Sh. Sarish Kumar Chaudhary was the shareholder, promoter and ex-director of the Respondent Company. The Applicant was appointed as the Director on 01.10.2008 and resigned from the Respondent Company on 04.05.2022. It is evident from the audited balance sheet for FY 2020-21 (as at



31.03.2021) that the balance sheet bears the signature of Mr. Sarish Chaudhary (DIN: 00085707) as the Director of Corporate Debtor.

- 7) It is the case of the Respondent that Mr. Sarish Kumar Chaudhary has been controlling the management and managing affairs of the Corporate Debtor as its Director and thereafter Mr. Sarish Kumar Chaudhary was responsible for inter-alia managing the accounts and finances, operating bank accounts and all other day to day operations of the Corporate Debtor.
- 8) The Corporate Debtor also raised various contentions about the nature of the transaction between the Applicant and the Corporate Debtor and submitted that no evidence has been placed on record to show that there is any financial debt.
- 9) The Corporate Debtor contended that no demands were ever raised by the Applicant since 2012, as the Applicant was well aware that it was the promoter's contribution/quasi-equity and was never payable except on closure of the project and the Applicant was sharing profits therein, in capacity of promoters.
- 10) It is the case of the Corporate Debtor that the Directors of the Respondent Company i.e., Mr. Rakesh Garg and Mr. Rishabh Jain have been working hard to restore the said IT Plot back to the Respondent Company which is evident from the proceedings before the Hon'ble Allahabad High Court, wherein the Hon'ble High Court directed the Revisional Authority to decide the Revision Petition filed by the Respondent Company. After continuous and diligent efforts by the present management, the IT Plot has recently been restored back to the Respondent Company by the Uttar Pradesh Government (Industrial Development Section-4, Lucknow) vide order dated 03.05.2023 in Revision Proceedings Case No 2589/77-4-23-15 Appeal/2022.
- 11) We have heard the submissions made by the Ld. Counsel appearing for the Applicant as well as the Ld. Counsel appearing for the Corporate Debtor and perused the records.
- 12) The following issues emerge for Consideration:
  - a) Whether the Applicant is a related party in terms of Section 5(24) of IBC and

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b) Whether the present Section 7 application is complete in terms of the provisions of the IBC and Regulations thereunder.

13) **Related Party**

- a) It is a trite law that the company once incorporated, holds a separate legal entity in the eyes of law where the company acts under its own name, has a seal of its own and sues or gets sued in the same manner as an individual. A company is governed by the Board of Directors who are primarily responsible for managing the affairs of the Company. From the records, it is evident that the Applicant-Mr. Sarish Kumar Chaudhary has been controlling the management and managing the affairs of the Corporate Debtor as its Director.
- b) For better appreciation Section 5(24) of the IBC, 2016 is reproduced below for ready reference:

*5. In this Part, unless the context otherwise requires,—*

*(24) "related party", in relation to a corporate debtor, means—*

*(a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;*

*\*\*\*\*\**

*(h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;*

- c) In view of the factual position that the Applicant-Mr. Sarish Kumar Chaudhary has been controlling the management and managing the affairs of the Corporate Debtor as its Director. We are of the considered view that the Applicant is one of the related parties under the common management in terms of the provisions of Section 5(24) of IBC.

14) **Section 7 Application**

- a) We find force in the contentions raised by the Corporate Debtor that the Applicant has claimed that there are different default dates for loan advanced in different transactions and to substantiate his case, the Applicant submits no date of default and no last latest default in Form-1 Part-IV.



- b) Further, the Applicant filed a running ledger account for the period from 01.04.2012 to 31.03.2023 in the Books of Corporate Debtor. It is submitted that the said Ledger Account is not signed by anyone and thus cannot be relied upon as evidence in support of any financial debt alleged by the Applicant.
- c) The Applicant has stated in Form-1 Part-IV that there is a lease deed but details of the lease deed have not been given and the said lease deed is not Annexed.
- d) The Applicant has stated in Form-1 Part-IV that a copy of the Order dated 29.11.2022 passed by the Hon'ble Allahabad High Court in writ petition is enclosed. However, no such document is enclosed and the column (*"A copy of the order dated 29.11.2022 is annexed herewith and marked as annexure -"*) is left blank.
- e) On perusal of the Form-1, we are of the considered view that the present Section 7 application is incomplete in nature.
- 15) The Corporate Debtor has questioned the correctness of the record of Financial Information (Form-C) available with the Information Utility (NeSL) and submitted that no Record of Default with Information Utility in Form-D has been furnished in terms of Regulation 21(4) of IBBI (IU) Regulations 2017, which is a requirement as per Section 7(3)(a) of IBC.
- 16) On perusal of the Financial Information in Form-C of the Corporate Debtor maintained by the Information Utility namely National E-Governance Services Limited (NESL) dated 01.06.2023, we find that the mere filing of record of Financial Information in Form-C with the Information Utility (NeSL) does not constitute the record of default. Therefore, we are satisfied that there exists no debt and there is no default on the part of the Corporate Debtor.
- 17) We are of the opinion that the Applicant is not a Financial Creditor holding any financial debt which is in default of payment by the Corporate Debtor. Therefore, we are satisfied that there exists no debt and no default and the same is corroborated by the averments made within the application. It is therefore clear that the Corporate Debtor has been able to raise a plausible contention regarding that the Corporate Debtor is not in default in respect



of the debt due and payable. We therefore hold that the present application is not maintainable and devoid of merits.

18) In light of the above facts and circumstances, we are satisfied that the present Applicant fails to fulfill the criteria under Section 7 of the Code. It is accordingly ordered as follows:

- i.** The Application bearing **(IB)-482(ND)/2023** filed by the Applicant under Section 7 of the Code read with Rule 4 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed.**
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-

**(ATUL CHATURVEDI)  
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**