

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

IA No.204/2020 & IA No. 276/2020

**In
CP (IB) No.71/Chd/Pb/2018**

**Under Section 60(5) of the IBC 2016
read with Rule 11 of NCLT Rules,
2016**

In the matter of:

Ram Kumar Yadav
(now deceased)
Through his LRs
Mr. Sahab Ram and Mr. Vijay Pal

...Petitioner-Financial Creditor

Versus
M/s Jindal Buildsys Ltd.

....Respondent-Corporate Debtor

And in the matter of:-

IA No.204/2020

Ram Kumar Yadav
(now deceased)
Through his LRs
Mr. Sahab Ram and Mr. Vijay Pal
Resident of House no.119, VPO Nathupur,
Gurugram, Haryana

...Applicant/Financial Creditor

Vs.

M/s Jindal Buildsys Ltd.
having its registered office at
Circular Road, Naba, Patiala, Punjab
having its corporate office at,
Behind Bestech, Cyber park, NH-8, 39 KM Stone
Village-Narshinghpur, Delhi-Jaipur Highway, Gurugram, Haryana

....Respondent/Corporate Debtor

IA No.276/2020

Ram Kumar Yadav
(now deceased)

IA No.204/2020 & IA No. 276/2022
In
CP (IB) No.71/Chd/Pb/2019

Through his LRs
Mr. Sahab Ram and Mr. Vijay Pal
Resident of House No.119, VPO Nathupur,
District Gurugram, Haryana

...Applicant/Financial Creditor

Vs.

M/s Jindal Buildsys Ltd.
having its registered office at
Circular Road, Naba, Patiala, Punjab
also having its corporate office at,
Behind Bestech, Cyber park, NH-8, 39 KM Stone
Village-Narshinghpur, Delhi-Jaipur Highway, Gurugram, Haryana

....Respondent/Corporate Debtor.

Judgment delivered on: 24.02.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present

**For the Petitioner in main CP : Ms. Eshna kumar, Advocate
and Applicant in IA Nos. 204/2020
and 276/2020**

For the Respondent : Mr. Pulkit Goyal, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr **Ram Kumar Yadav** (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/s Jindal Buildsys Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr Ashu

Arora, Authorized Representative of the Financial Creditor, and the affidavit verifying the contents of the petition is on pages 13 to 15 of the petition. The Authorization Letter is attached as Annexure-A.

2. It is submitted that the petitioner has provided an amount of Rs. 5 Crores as Short term loan in the year May 2016 to the Corporate Debtor, which is to be paid within a period of one year with the assured return along with interest @ 18% p.a thereon. The Corporate Debtor, against the assured return of the loan amount, issued five cheques of Rs. 1 crore each, all dated 01.09.2016, but when presented, all were returned unpaid. On 28.11.2016, post the dishonour of cheques, an amount of Rs. 2 crores was paid by the Corporate Debtor as part of payment towards the aforesaid loan. The petitioner/ financial creditor has submitted that the financial debt due as of 15.03.2020 amounts to Rs. 6.04 crores inclusive of interest.

3. It is stated that The respondent-corporate debtor has admitted the liability of Rs. 3 Crores and has deposited the amount of default of Rs. 3 crores by way of Fixed Deposit with the Registrar of this Adjudicating Authority, the proof of the same has been attached at Annexure-A of the affidavit filed vide Diary No. 00793/1 dated 11.08.2020. Further, it is stated by the respondent that Corporate Debtor is a solvent company and willing to settle the matter.

4. We have heard the learned counsel for the applicant and the respondent and carefully perused the record available.

5. We note that in its order dated 26.06.2020, this Adjudicating Authority directed the respondent-corporate debtor to deposit Rs. 3 Crores being undisputed and admitted part of the debt, by way of fixed deposit for one year

in the name of Registrar, National Company Law Tribunal, Chandigarh Bench. Pursuant to the above, the Corporate debtor has deposited Rs. 3 Crores by way of Fixed Deposit with the Registrar of this Adjudicating Authority, the proof of the same has been attached at Annexure-A of the affidavit filed vide Diary No. 00793/1 dated 11.08.2020.

6. In the case at hand, the respondent had taken an amount of Rs. 5,00,00,000/- (Five Crores) on 02.05.2016 and had issued five post-dated cheques of Rs. 1,00,00,000/- (One Crore) each. There was no written agreement, and the respondent denies the fact of any oral agreement also with respect to the chargeability of interest on the above-mentioned advance. The applicant has claimed that he had made mention of the interest @ 18% in the legal notice to the corporate debtor dated 30.12.2016 and 11.10.2018, respectively, though the same has not been replied to. We also note the fact that no post-dated cheque was issued for any possible liability of interest by the respondent when the loan of Rs. 5,00,00,000/- was taken. We, therefore, hold that there is no evidence before us that the parties initially contemplated charging interest in the present case.

7. The Hon'ble Supreme Court, in the case of ***Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407: 2017 SCC OnLine SC 1025 : (2018) 1 SCC (Civ) 356*** at page 437 has held that:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins.

Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment

amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

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where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the Application must be admitted unless it is incomplete, in which case it may give notice to the Applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such Application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the

adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

8. We are conscious of the decision of the Hon'ble Apex Court in the case of **Innoventive Industries Ltd. v. ICICI Bank (Supra)**. However, this Authority is not applicable to the facts and circumstances of the present petition, thus, distinguishable, particularly in view of the decision of the Hon'ble Supreme Court in the case of **Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd.** (2022) ibclaw.in 91 SC, the relevant part of which is extracted below:

75. Significantly, Legislature has in its wisdom used the word 'may' in Section 7(5)(a) of the IBC in respect of an application for CIRP initiated by a financial creditor against a Corporate Debtor but has used the expression 'shall' in the otherwise almost identical provision of Section 9(5) of the IBC relating to the initiation of CIRP by an Operational Creditor.

76. The fact that Legislature used 'may' in Section 7(5)(a) of the IBC but a different word, that is, 'shall' in the otherwise almost identical provision of Section 9(5)(a) shows that 'may' and 'shall' in the two provisions are intended to convey a different meaning. It is apparent that Legislature intended Section 9(5)(a) of the IBC to be mandatory and Section 7(5)(a) of the IBC to be discretionary. An application of an Operational Creditor for initiation of CIRP under Section 9(2) of the IBC is

mandatorily required to be admitted if the application is complete in all respects and in compliance of the requisites of the IBC and the rules and regulations thereunder, there is no payment of the unpaid operational debt, if notices for payment or the invoice has been delivered to the Corporate Debtor by the Operational Creditor and no notice of dispute has been received by the Operational Creditor. The IBC does not countenance dishonesty or deliberate failure to repay the dues of an operational creditor.

77. On the other hand, in the case of an application by a Financial Creditor who might even initiate proceedings in a representative capacity on behalf of all financial creditors, the Adjudicating Authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the Corporate Debtor. The Adjudicating Authority may in its discretion not admit the application of a Financial Creditor.

78. The Legislature has consciously differentiated between Financial Creditors and Operational Creditors, as there is an innate difference between Financial Creditors, in the business of investment and financing, and Operational Creditors in the business of supply of goods and services. Financial credit is usually secured and of much longer duration. Such credits, which are often long term credits, on which the operation of the Corporate Debtor depends, cannot be equated to operational debts which are usually unsecured, of a shorter duration and of lesser amount. The financial strength and nature of business of a Financial Creditor cannot be compared with that of an Operational Creditor, engaged in supply of goods and services. The impact of the non-payment of admitted dues could be far more serious on an Operational Creditor than on a financial creditor.

79. *As observed above, the financial strength and nature of business of Financial Creditors and Operational Creditors being different, as also the tenor and terms of agreements/contracts with financial creditors and operational creditors, the provisions in the IBC relating to commencement of CIRP at the behest of an Operational Creditor, whose dues are undisputed, are rigid and inflexible. If dues are admitted as against the Operational Creditor, the Corporate Debtor must pay the same. If it does not, CIRP must be commenced. In the case of a financial debt, there is a little more flexibility. The Adjudicating Authority (NCLT) has been conferred the discretion to admit the application of the Financial Creditor. If facts and circumstances so warrant, the Adjudicating Authority can keep the admission in abeyance or even reject the application. Of course, in case of rejection of an application, the Financial Creditor is not denuded of the right to apply afresh for initiation of CIRP, if its dues continue to remain unpaid.*

81. *The title “Insolvency and Bankruptcy Code” makes it amply clear that the statute deals with and/or tackles insolvency and bankruptcy. It is certainly not the object of the IBC to penalize solvent companies, temporarily defaulting in repayment of its financial debts, by initiation of CIRP. Section 7(5)(a) of the IBC, therefore, confers discretionary power on the Adjudicating Authority (NCLT) to admit an application of a Financial Creditor under Section 7 of the IBC for initiation of CIRP.*

“86. *Even though Section 7 (5)(a) of the IBC may confer discretionary power on the Adjudicating Authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of*

discretion in a particular manner, discretion would have to be exercised in that manner.

87. *Ordinarily, the Adjudicating Authority (NCLT) would have to exercise its discretion to admit an application under Section 7 of the IBC of the IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the Corporate Debtor in payment of the debt, unless there are good reasons not to admit the petition.*

88. *The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realisation. The example is only illustrative.*

89. *In this case, the Adjudicating Authority (NCLT) has simply brushed aside the case of the Appellant that an amount of Rs.1,730 Crores was realizable by the Appellant in terms of the order passed by APTEL in favour of the Appellant, with the cursory observation that disputes if any between the Appellant and the recipient of electricity or between the Appellant and the Electricity Regulatory Commission were inconsequential.*

90. *We are clearly of the view that the Adjudicating Authority (NCLT) as also the Appellate Tribunal (NCLAT) fell in error in*

holding that once it was found that a debt existed and a Corporate Debtor was in default in payment of the debt there would be no option to the Adjudicating Authority (NCLT) but to admit the petition under Section 7 of the IBC.

9. In the present case, the respondent-corporate debtor's debt will be fully paid if the amount of Rs. 3 Crores held as the fixed deposit is transferred to the applicant. In view of such facts, we direct that the amount of Rs. 3 Crores kept by way of fixed deposit in the name of Registrar NCLT, Chandigarh Bench along with interest thereon be transferred to the account of the applicant and the advance amount of Rs. 5,00,00,000/- (Five Crores) be treated as repaid by the respondent.

10. We have already noted that there is a claim of interest which is not supported by any evidence on record. The corporate debtor has claimed in its written submissions filed by diary No. 291 dated 13.09.2022 that it is fully solvent, and no case to the contrary has been made out by the applicant. Thus, in the event that CIRP is allowed to be initiated, it will only unjustifiably penalise a solvent company and de-stabilise the same. Moreso, it would be against the aims and objectives of the Code.

11. We are, therefore, of the considered view that the respondent also does not deserve to be penalized, especially when the loan has been effectively re-paid.

12. In IA No. 276/2020, a prayer is made to cancel the sale deed dated 11.05.2020 executed by the corporate debtor, and in IA No. 204/2020, the prayer is for an ad-interim injunction against the corporate debtor restraining them from selling, alienating or disposing of the assets of the corporate debtor

or creating any third party interest therein during the pendency of the present proceeding. In view of the order in the main company petition bearing CP (IB) No.71/Chd/Pb/2019 rejecting the prayer of the petitioner for initiation of CIRP proceedings, these applications i.e., IA No. 276/2020 & IA No. 204/2020 are rendered infructuous. The order dated 09.06.2020 of this Adjudicating Authority in IA No. 204/2020, wherein the respondent-corporate debtor is directed to maintain status-quo with regard to the immovable assets of the corporate debtor stands vacated. Therefore, both these i.e., IA Nos. 204/2020 & 276/2022 are disposed of accordingly.

13. In the result, the main company petition bearing CP (IB) No.71/Chd/Pb/2019 fails and is dismissed accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

February 24, 2023
PB/ASH