

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

Company Petition No. (IB)-426(ND)/2023

IN THE MATTER OF:

Shubhlaxmi Investment Advisory Private Limited

Unit No. 111, ACY- Aggarwal City Square
No.10, District Centre, Manglam Place,
Sector-3 Rohini, Delhi-110085

... Applicant

VERSUS

Sai Industries Limited

302-3rd Floor, C-2/4, Community Centre
Ashok Vihar, PH-2, New Delhi-110052

... Respondent

Section: 7 of IBC, 2016

Order Delivered on: 11.01.2024

CORAM

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Pradeep Kumar, Mr. Rishabh Jain Advs.

For the Respondent : Adv Yougander Singh

ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

The present petition has been filed by Shubhlaxmi Investment Advisory Private Limited (for brevity, the '**Applicant/ Financial Creditor**') 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 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Sai Industries Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s Sai Industries Limited is a Listed Company incorporated on 16.09.1991 with CIN L74999DL1991 PLC045678 under the provisions of the Companies Act, 1956 having its registered office at 302, 3RD Floor, C-2/4 Community Centre Ashok Vihar Phase-2, New Delhi-110052, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.5,00,00,000/- and Paid-up Share Capital is Rs.2,96,759/- as per the Master Data.

3. It is stated by the Applicant that in 2022, the Respondent approached the Applicant for business assistance of Rs.1,04,00,000/- @ 10% rate of interest. The Applicant has further averred that, after considering the request (it) "*..agreed to pay a sum of Rs. 1,04,00,000/- . And accordingly transferred a sum of Rs.20,00,000/- through Cheque/RTGS on 20.12.2022, further a sum of Rs.30,00,000/- was*

transferred on 21.12.2022, further purchased securities worth Rs.29,00,000/- from Financial creditor on 31.12.2022 and further a sum of Rs.25,00,000/- was transferred on 03.01.2023 in the bank account by the Corporate Debtor maintained @ 10% interest per annum.” Both parties also entered into a Mutual Loan Agreement and when the Respondent failed to pay back the loan amount, as per the terms and conditions, a legal notice was sent to the Respondent to recall the Loan, but the Respondent failed to comply with the same.

4. The particulars of the total unpaid financial debt and the date of default as mentioned in Part IV of the application are reproduced below:

PART IV		
PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED	<p>The amount of debt as advanced Loan by the Financial Creditor to the Corporate Debtor is Rs. 1,04,000,00/-</p> <p style="text-align: center;"><u>BRIEF FACTS OF THE CASE</u></p> <p>That the Financial Creditor is Limited Company having its registered office at 3/2, 75C, Park Street, 3rd Floor, Kamdhenu Building, Kolkata, West Bengal-700016</p> <p style="text-align: center;">Also at: Unit No.111, ACY-Aggarwal City Square, Plot No.10, District Centre, Mangalam Place,Sector-3, Rohini, Delhi-110085.</p> <p>That the Financial Creditor has empowered Sh. Anand Prakash, Director to sign, verify and file</p>

to sign, verify and file the legal proceedings on behalf of the Financial Creditor. The present Application has been signed, verified and filed by the Director of the Financial Creditor is duly authorized vide Board Resolution dated and is also well acquainted with the facts of the present case on the basis of record maintained by the Financial Creditor is due course of business. A true copy of Board Resolution of Financial Creditor dated 25.05.2023 marked and annexed as **ANNEXURE-A2**.

C. That Corporate Debtor is a Limited Company having CIN: L74110DL1987PLC350280 is a Non-Banking Finance Company and Sh.Anil Kumar Jain, Sh.Ajay, Sh.Yogender and Smt. Akansha Trivedi are the Directors.

D. That in the year 2022, The Financial Creditor and Corporate Debtor had a good and cordial relations with each other and the Corporate Debtor approached and requested the Financial Creditor for financial help for business /assistance for business for an amount of Rs.1,04,00,000/- (Rupees One Crore

FOR SHUBHLAXMI INVESTMENT ADVISORY PVT. LTD.

Four Lacs Only) @10% rate of interest. At the request of Corporate Debtor, Financial Creditor after considering the request agreed to pay a sum of Rs.1,04,00,000/. And accordingly transferred a sum of Rs.20,00,000/- through Cheque/RTGS on 20.12.2022, further a sum of Rs.30,00,000/- was transferred on 21.12.2022, further purchased securities worth Rs.29,00,000/- from financial creditor on 31.12.2022 and further a sum of Rs.25,00,000/- was transferred on 03.01.2023 in the bank account by the Corporate Debtor maintained @ 9% interest per annum. A copy Balance/Amount Confirmation statement of the Corporate Debtor is annexed herewith as **ANNEXURE-A3**

- E. That the Financial Creditor time & again called upon tphe advanced loan from the Corporate Debtor and when the Corporate Debtor failed to pay the advanced loan to Financial Creditor.

	DATE(S) OF DISBURSEMENT	<p>F. The Financial Creditor issued a legal notice dated 29.04.2023 to the Corporate Debtor for payment of Rs.1,06,34,000/- including interest. A copy of Legal Notice dated 29.04.2023 is annexed herewith as ANNEXURE-A4</p> <p>G. Total outstanding of Rs.1,06,34,000/- as on 31.03.2023 Rs.20,00,000/- dated 20.12.2022 Rs.30,00,000/- dated 21.12.2022 Rs.29,00,000/- dated 31.12.2022 Rs.25,00,000/- dated 03.01.2023 In Total Rs.1,04,00,000/-</p>
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED	Amount claimed to be in default is Rs,1,06,34,000/- accounts as on 31.03.2023

5. Thus, as per Part IV of the Application, the Applicant has claimed a debt of Rs.1,06,34,000/- as on 31.03.2023 (including principal amount of Rs.1,00,00,000/- along with unpaid accumulated interest @ 8.25% per annum along with penal interest @ 2% per annum as on 16.01.2023 and Miscellaneous Expenses) and relied on 02.05.2022 as the 'date of default'.

6. To prove the existence of financial debt, the Applicant has relied on the following documents:

- i) A copy of the Board Resolution dated 25.05.2023
- ii) A Copy of Balance/Amount Conformation statement.
- iii) A Copy of Legal notice dated 29.04.2023
- iv) A Copy of letter dated 30.09.2022 issued by the Applicant.
- v) A copy of Statement of amounts of Financial Creditor from 2022-23

7. Basing on the aforesaid facts and documents, the Applicant has prayed for initiation of CIRP against the Respondent.

8. On issuance of the notice, the Respondent filed its reply and has admitted its liability towards claim of the Applicant.

9. During the hearing on 14.09.2023, the Ld. Counsel for the Respondent again admitted the debt. In the backdrop, the parties were directed to file affidavits stating that the Petition is not a collusive one and the parties are not related with each other.

10. In compliance of the aforesaid directions, both parties filed their respective affidavits stating that the Petition is not a collusive one and they are not related with each other.

11. From the record it is noticed that the Applicant vide its affidavit dated 22.10.2023 has averred that RBI vide its press release dated 10.12.2018 had cancelled the Certificate of Registration of the CD as

NBFC and currently, the CD is not an NBFC. Further, according to the Ld. Counsel for the Applicant, the present loan amount was disbursed to the respondent in the year 2020, whereas the NBFC license of the CD was cancelled by the RBI in the year 2018 itself.

12. The Respondent, in its reply as well as during hearing, has admitted the claim of the Applicant. However, we would like to examine whether there is an unpaid Financial debt subsisting over the threshold limit for which the CIRP could be initiated against the Respondent and whether the Section 7 Application is complete in all respects.

13. The transactions for which the Applicant has filed the present Section 7 Application is stated to be a loan advanced in 04 tranches by the Applicant to the Respondent. The details of the disbursements made by the Applicant to the Respondent, as provided, reads thus:

S.No	Date	Amount (Rs)
1	20.12.2022	20,00,000
2	21.12.2022	30,00,000
3	31.12.2022	29,00,000
4	25,00,000	03.1.2023
Total		1,04,00,000

14. With respect to the amount of Rs. 29,00,000/- appearing at serial no.(iii), it has been stated by the Applicant in Part IV of its Application that securities were purchased from the Applicant of the aforesaid

amount by the Respondent on 31.12.2022. This fact indicates that the amount of Rs.29,00,000/- is not arising out of the alleged Loan transaction. To examine the genuineness of the transaction and find more particulars of the transaction about purchase of Securities of Rs.29,00,000/-, we visit the Legal notice dated 29.04.2023 (on record) issued by the Applicant Company to the Respondent, which reads thus:

Registered A.D. / speed post

Dated: 29.04.2023

To,

**SAI INDUSTRIES
THROUGH ITS DIRECTOR SH.ANIL KUMAR JAIN
REGD OFFICE AT :-302, 3rd Floor, C-2/4, Community Centre,
Ashok Vihar, Ph-II, New Delhi-110085**

**Also At:-C-97, Antriksh Apartment, Sector-14,
Rohini, New Delhi-110085**

Under the instructions on behalf of my client, namely **Subhlaxmi Investment Advisory Pvt. Ltd.** is a private Ltd. Company having its registered office at 3/2, 75C, Park Street, 3rd Floor, Kamdhenu, Building, Kolkata, West Bengal-700016 Also At: Unit No.111, ACY-Aggarwal City Square, Plot No.10, District Centre, Mangalam Place, Sector-3, Rohini, Delhi-110085 through its duly appointed Authorized person namely Sh. Anand Prakash, we hereby serve you with the following statutory legal notice:-

1. That my client is a private Limited company that deals in Financial services, advisory and Share Trading and is working under the name and style of **Subhlaxmi Investment Advisory Pvt. Ltd.**
2. That in the year 2022, you approached and requested my client for financial help for business /assistance for business for an amount of Rs.1,04,00,000/- (Rupees One Crore Four Lac Only) @10% rate of interest. At your request of my client, the Financial Creditor after considering the request agreed to pay a sum of Rs.1,04,00,000/. And accordingly, my client has transferred a sum of Rs.20,00,000/- through Cheque/RTGS on 20.12.2022, further a sum of

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For SUBHLAXMI INVESTMENT ADVISORY PVT. LTD.
Anand Prakash
Director/Auth. Signator

Rs.30,00,000/- was transferred on 21.12.2022, further a sum of Rs.29,00,000/- was transferred on 31.12.2022 and further a sum of Rs.25,00,000/- was transferred on 03.01.2023 in the bank account maintained by you @ 10% interest per annum.

3. That you the Notice's have failed to pay the interest against the said unsecured Loan from the date of disbursal till date i.e. 20.12.2022 to 31.03.2023 and an amount of Rs.1,06,34,000/- is outstanding into the ledger account maintained by my client.
4. That my client have approached and requested you the Notice's several times by telephone and other modes to your office to clear the outstanding payment, but you have always been dilly delaying the same on one pretext or another and so far have not paid even a single penny out of the said outstanding undisputed amount.
5. Thus you are liable to pay the total amount of Rs.1,06,34,000/- Rupees One Crore Six Lacs Thirty-Four Thousand only) to my client and my client is entitled to recover the same from you.
6. That you are liable and bound to pay the said or steel the matter with you. You may also bear that the transaction is commercial in nature and it is trade custom and usage in such dealings to reimburse for damages caused to my client for wastage of time, money, and mental harassment. The unsecured loan you remained not full-filled in spite of several demands and calls from the client and undue loss to me.
7. That now my client has approached me to file or to initiate recovery proceedings against you in the appropriate Court of Law, but before doing so, I have instructions from my client to issue and serve upon with the Legal Notice.

I, therefore, through this Notice finally call upon you to pay my client Rs.1,06,34,000/- Rupees One Crore Six Lacs Thirty-Four Thousand only) along with interest from the date of notice till actual realization of the said amount, with a notice fee of Rs. 21,000/- to my client either in cash or by demand draft

or Cheque whichever mode suits you better, within clear 10 days from the date of receipt of this notice.,

A copy of this Notice has been preserved in my office for record and future course of action.

Best regards



PVR COUNSELS

PRADEEP KUMAR ADVOCATE

CHAMBER NO. 726, ROHINI COURT, CHAMBER BLOCK

DELHI-110085

8700-433-424

EMAIL:adv.pradeepkr@gmail.com

15. On perusal of the aforesaid legal notice, we find that the amount of Rs.29,00,000/- alleged to have arisen on account of purchase of securities from the applicant as per part IV of the application, has been treated as a part of the Loan Transaction and there are no particulars provided or mentioned regarding the alleged purchase of securities.

16. The Applicant has also annexed the Bank Statements to depict disbursements of alleged loan amount to the Respondent. We would therefore like to visit the Bank statement to find any trace of the transaction of Rs.29,00,000/-. The banks statements annexed by the Applicant are reproduced overleaf:

STATEMENT OF ACCOUNT
CENTRAL BANK OF INDIA

KAROLB_KAROL BAGH ,NEW DELHI
PLOT NO 4/54, SIR SORABJI BHAWAN,
DESH BANDHU GUPTA ROAD,
KAROLBAGH, DISTRICT NEW DELHI
Pin:110005 Ph:45633075

Branch Code : 309
SUBHLAXMI INVESTMENT ADVISORY PVT LTD
3/23rdFLOOR
Account No. : 5132427210
KAMDHENUBUILDING
Product : CD-GEN-PUB-OTH-METRO-INR
75CPARKSTREET
Currency : INR

0016

Nomination:N

Date : 05/26/2023

Time : 16:14:37

E-mail :

subh.investment2008@rediffmail.com

Uncleared

Cleared Balance :

68,463.55Cr

Amount :

0.00

Limit :

0.00

Drawing Power :

0.00

Int. Rate : 0.0000 % p.a.

Statement From

01/12/2022

to

26/05/2023

Page No. : 1

Value	Post	Details	Balance	Chq.No.
Debit		Credit		
Date	Date			

BROUGHT FORWARD :

8,323.90Cr

08/12/22

08/12/22

BY TRF.

58,323.90Cr

50,000.00

IMPSP2A23421483616

TRF FROM 51188049827

08/12/22

08/12/22

STMT CHG

58,136.90Cr

187.00

08/12/22

08/12/22

GST

58,103.24Cr

33.66

08/12/22

08/12/22

TO REMIT

8,103.24Cr

350632

50,000.00

08/12/22

08/12/22

NEFT JDS FINANCE COM
BANK COMMISSION

BY SUBHLAXMI INVESTMENT ADVISORY PVT. LT
Prakash

				8,098.24Cr	
5.00	08/12/22	08/12/22	GST		
				8,097.34Cr	
0.90	08/12/22	08/12/22	BY TRF.		
			50,000.00	58,097.34Cr	
				IMPSP2A23421619747	
			TRF FROM 51190049822		
08/12/22	08/12/22	08/12/22	CHQ XFER WD		350633
50,000.00				8,097.34Cr	
			CORRECTION TRF TO A/C		
			TRF TO 03605481222		
13/12/22	13/12/22	13/12/22	BY TRF.		
			35,00,000.00	35,08,097.34Cr	
			RTGSRAJSONIA CONSULTANCY		
			TRF FROM 59116232661		
13/12/22	13/12/22	13/12/22	TO REMIT		350635
35,00,000.00				8,097.34Cr	
			RTGS SEASIDE VANIJYA		
			BANK COMMISSION		
13/12/22	13/12/22	13/12/22		8,047.84Cr	
49.50					
13/12/22	13/12/22	13/12/22	GST		
8.91				8,038.93Cr	
13/12/22	13/12/22	13/12/22	BY TRF.		
			40,00,000.00	40,08,038.93Cr	
			RTGSTRUMP INFOMATICS LLP		
			TRF FROM 59116232661		
13/12/22	13/12/22	13/12/22	TO REMIT		350636
40,000.00				39,68,038.93Cr	
			NEFT SEASIDE VANIJYA		
			BANK COMMISSION		
13/12/22	13/12/22	13/12/22		39,68,033.93Cr	
5.00					
13/12/22	13/12/22	13/12/22	GST		
0.90				39,68,033.03Cr	
13/12/22	13/12/22	13/12/22	TO REMIT		350637
39,60,000.00				8,033.03Cr	
			CARRIED FORWARD :		
				8,033.03Cr	

Statement Summary Dr. Count 13 Cr. Count 04
76,00,290.87 76,00,000.00

In Case Your Account Is Operated By A Letter Of Authority/Power Of Attorney Holder, Please Check The Transaction With Extra Care.
****Toll Free No. 18002001911****

Page No. : 2

Value	Post	Details	Balance	Chq.No.
Debit		Credit		
Date	Date			

		BROUGHT FORWARD :		8,033.03
13/12/22	13/12/22	RTGS SEASIDE VANIJYA		
49.50		BANK COMMISSION		7,983.53Cr
13/12/22	13/12/22	GST		7,974.62Cr
8.91				
15/12/22	15/12/22	BY TRF.		
		28,94,000.00	29,01,974.62Cr	
		RTGSRAJSONIA CONSULTANCY		
		TRF FROM 59116232661		
20/12/22	20/12/22	BY TRF.		
		20,00,000.00	49,01,974.62Cr	
		RTGSTRUMP INFOMATICS LLP		
		TRF FROM 59116232661		
20/12/22	20/12/22	TO REMIT		350638
25,00,000.00			24,01,974.62Cr	
		RTGS SEASIDE VANIJYA		
20/12/22	20/12/22	BANK COMMISSION		
49.50			24,01,925.12Cr	
20/12/22	20/12/22	GST		
8.91			24,01,916.21Cr	
20/12/22	20/12/22	CHQ XFER WD		350640
20,00,000.00			4,01,916.21Cr	
		TRF TO 05228401758		
20/12/22	20/12/22	MICR CHQ ISSUE		
400.00			4,01,516.21Cr	
20/12/22	20/12/22	GST		
72.00			4,01,444.21Cr	
21/12/22	21/12/22	BY TRF.		
		26,50,000.00	30,51,444.21Cr	
		RTGSTRUMP INFOMATICS LLP		
		TRF FROM 59116232661		
21/12/22	21/12/22	CHQ XFER WD		350641
30,00,000.00			51,444.21Cr	
		CORRECTION TRF TO A/C		
		TRF TO 05228401758		
26/12/22	26/12/22	BY TRF.		
		6,00,000.00	6,51,444.21Cr	
		RTGSJDS FINANCE COMPANY		
		TRF FROM 59116232661		
26/12/22	26/12/22	TO REMIT		350643
40,000.00			6,11,444.21Cr	
		NEFT ADWEALTH STOCK		
26/12/22	26/12/22	BANK COMMISSION		
5.00			6,11,439.21Cr	
26/12/22	26/12/22	GST		
0.90			6,11,438.31Cr	
		CARRIED FORWARD :		
			6,11,438.31Cr	

Statement Summary Dr. Count 12 Cr. Count 04

07/01/23	07/01/23	GST		
2.70				13,380.16Cr
07/01/23	07/01/23	STMT CHG		
210.00				13,170.16Cr
07/01/23	07/01/23	GST		
37.80				13,132.36Cr
12/01/23	12/01/23	BY TRF.		
		20,00,000.00		20,13,132.36Cr
		RTGSTRUMP INFOMATICS LLP		
12/01/23	12/01/23	TRF FROM 59116232661		
20,00,000.00		TO REMIT		350649
				13,132.36Cr
12/01/23	12/01/23	RTGS SEASIDE VANIJYA		
49.50		BANK COMMISSION		13,082.86Cr
12/01/23	12/01/23	GST		
8.91				13,073.95Cr
13/01/23	13/01/23	BY TRF.		
		15,00,000.00		15,13,073.95Cr
		RTGSWISH WELL FINANCE AN		
		TRF FROM 59116232661		
		CARRIED FORWARD :		
				15,13,073.95Cr

Statement Summary Dr. Count 13 Cr. Count 04
22,00,335.71 37,02,088.17

In Case Your Account Is Operated By A Letter Of Authority/Power Of Holder, Please Check The Transaction With Extra Care.
****Toll Free No. 180

Page No. : 5

Value	Post	Details	Balance	Chq.No.
Debit		Credit		
Date	Date			
		BROUGHT FORWARD :	15,13,073.95Cr	
16/01/23	16/01/23	TO REMIT		350650
15,00,000.00				13,073.95Cr
16/01/23	16/01/23	RTGS TRUMP INFOMATIC		
49.50		BANK COMMISSION		13,024.45Cr
16/01/23	16/01/23	GST		
8.91				13,015.54Cr
18/01/23	18/01/23	BY TRF.		
		23,72,500.00		23,85,515.54Cr
		RTGSARICIA INDIA INTERNA		
		TRF FROM 59116232661		

17. On perusal of the bank statement (ibid), we find no trace of the alleged transaction of Rs.29,00,000/-. Hence, we find no document on record which supports the claim of the Applicant of Rs.29,00,000/-

towards the Respondent. Further, the Applicant has not mentioned what type of securities were purchased by the Respondent, how much amount was paid, whether any allotment was made, and how the Applicant is claiming a default committed by the respondent towards the security. All these material facts/particulars have not been disclosed by the Applicant. In view of the above, the said amount of claim i.e. towards Rs.29,00,000/- as a Debt is not free from doubts.

18. If this amount of Rs.29,00,000/- is ignored/excluded from the total amount claimed by the Applicant, the Applicant fails to meet the minimum threshold limit of Rs one Crore prescribed under Section 4 of IBC, 2016. Hence, we are of the considered view that the present Application is not maintainable in terms of Section 4 of IBC, 2016.

19. Further, in Part-III of the Application, the Applicant has suggested the name of Mr. Tanveer Ilahi as the proposed IRP. However, the Applicant has annexed the consent in Form-II of Mr. Mohd Nazim Khan. Hence, the proposal regarding the name of IRP is not clear.

20. Nevertheless, the Application is not meeting the minimum threshold limit, the question of going into the appointment of IRP is obviated.

21. **In the sequel to the above, the Application is dismissed being barred by Section 4 of IBC, 2016.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)