

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
BENCH COURT-I**

C.P. (IB) No. 612/2024

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016.

In the matter of

**Disha Land Developers Private
Limited**

CIN: [U70100MH1993PTC075677]

...Financial Creditor/ Applicant

Versus

**Laxmiramuna Investments Private
Limited**

CIN: [U67120MH1996PTC102139]

...Corporate Debtor/Respondent

Order Delivered on: 02.01.2025

Coram:

Sh. Prabhat Kumar

Hon'ble Member (Technical)

Sh. Justice V.G Bisht

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Mr. Rohit Agarwal, Advocate

For the Corporate Debtor : Mr. Gaurav Jalendra, Advocate

ORDER

1. This Company Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") by **Disha Land Developers Private**

Limited ("Financial Creditors") seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Laxmiramuna Investments Private Limited ("Corporate Debtor")**.

Brief Facts of the case:

2. The **Financial Creditor, Disha Land Developers Private Limited** is a company incorporated on 20.12.1993 under the provisions of the Companies Act, 1956 and it is engaged in the business of is involved in real estate activities, having its registered office at 401 - 402, Square One, Gulmohar Road No.1, Vile Parle (West), Mumbai - 400 049.
3. The **Corporate Debtor, Laxmiramuna Investments Private Limited** is a private company incorporated on 26.08.1996, under the provisions of the Companies Act, 1956 and it is engaged in the activity auxiliary to financial intermediation, except insurance and pension funding, having its registered office at B-11/1101, Oberoi Sky Garden, 3rd Cross Lane, Lokhandwala Complex, Andheri (West), Mumbai, 400053. Therefore, this Bench has territorial jurisdiction to deal with this petition.
4. The present Petition was filed on 08.05.2024 before this Tribunal for claiming an aggregate amount of Rs. 1,51,31,667/- (Rupees Five Crore, Fifty One Lakhs, Thirty One Thousand Nine Hundred and Six Hundred and Sixty Seven only) as on April 2024 comprising Rs. 1,40,00,000/- as the Principal amount, interest at 9% p.a. amounting to Rs. 9,45,000/- and additional penalty interest at 2% p.a. amounting to 1,86,667/- arising out of the Loan Agreement dated 04.05.2023. The Date of Default as specified in part IV is 14.02.2024.

Submissions made by the Financial Creditor:

5. The Financial Creditors submit that the Corporate debtor approached the Financial creditor for availing unsecured loan and pursuant to rounds of discussion and negotiations the Financial Creditor agreed to

sanction an amount of Rs. 1,50,00,000/- (One Crore Fifty Lakhs only) on simple interest at 9% p.a. to the Corporate Debtor for a period of 30 months. Subsequently, a loan agreement dated 04.05.2023 was executed between the Financial Creditor and Corporate debtor. The loan amount of Rs. 1,50,00,000/- was disbursed in two tranches on 04.05.2023 to the Corporate debtor. The principal and interests were regularly paid initially amounting to Rs. 11,99,125/-. However, from 10.07.2023, the Corporate debtor started defaulting and failed to oblige to the clauses of the loan agreement.

6. The Financial creditor reports that a letter via email dated 09.09.2023 was sent to the Corporate debtor addressing the issue and calling upon to pay the instalment for the months of August 2023 and September 2023 along with an additional interest at 2% p.a. towards dishonoring charges for delay in payment of instalment. The Corporate debtor responding to the mail issued a letter via email dated 14.09.2023 acknowledging the liability for an extension of time of 6 months for payments towards the instalments and further requested the Financial Creditor to waive the amount of interest.
7. It is further submitted by the Financial creditor that even during the additional time the Corporate debtor wasn't initiating for payments of the outstanding amount or providing any satisfying assurance for the delay. Hence, even after giving repeated opportunities the Corporate debtor failed to repay the liability. Therefore, the Financial creditor issued a Demand Notice dated 04.02.2024 which was hand delivered, calling upon the Corporate Debtor to release the outstanding amount, however, the Corporate debtor neglected and did not respond to the said notice.
8. The Financial creditors submits that even when default was established, the Financial creditors had meetings with the Corporate debtors for the early release of the outstanding amounts and maintaining the account

regularly. Even then, the Corporate debtor failed to comply to its obligation of payment. Hence, the Financial Creditor is left with no alternative but to file the present petition under Section 7 of Code for initiating CIRP.

Submissions made by the Corporate Debtor:

9. The Corporate debtors denying all the allegations provided by the Financial creditor in the Company petition, filed a reply submitting that the present petition has been filed with mala fide and ulterior motives to harass the Corporate debtor. The Corporate debtor has further contested the Petition on the following grounds:
10. The petition is not maintainable under Code as this special law has not been construed to act as a recovery forum:
 - a) The Corporate debtor submits that terms and conditions of rate of interest (especially the high interest rate & additional penalty interest) provided in the Loan Agreement which forms the basis of the transaction are unreasonably and onerously imposed on the Corporate debtor by the Financial creditor demonstrating clear malice and bad faith in Financial creditor's approach to recovering the debt, further- pushing the company towards insolvency.
 - b) Furthermore, it is submitted that the Financial Creditor has deliberately designed this structure to create a scenario where, upon default, the Financial creditor can immediately trigger the CIRP process with the ulterior motive of liquidating the Corporate Debtor's assets for wrongful gains, thus disregarding the true purpose of the Code and also constituting an abuse of the CIRP for personal financial gains, violating the principles of fairness and equity.
11. This Tribunal has powers to refer the parties to an experienced

mediator for the purposes of effective settlement:

- a) It is further submitted by the Corporate debtor that there were financial difficulties faced by Corporate debtor and as acknowledged in the Letter dated 14.09.2023, it was primarily the result of external economic conditions, including the challenges inherent in the financial intermediation sector which was adversely impacting auxiliary service providers like the Corporate Debtor.
 - b) The Corporate debtor further states that the communication to the Financial creditor was not a blanket admission of their insolvent state but a transparent disclosure of temporary setbacks faced due to the prevailing economic environment and that it doesn't establish that Corporate Debtor has become unviable as a going concern. The Corporate debtor further reports that they are taking the remedial measures, including exploring restructuring options and negotiating alternate financing arrangements, to overcome its financial difficulties.
 - c) The Corporate debtor directing to the powers of this Tribunal to refer the matter to mediation for effective and expeditious resolution of disputes states that it is not evading its obligations but is actively seeking avenues for resolution.
12. The present petition is not maintainable in view of the existence of specific remedy in case of dispute:
- a) The Corporate debtor submits that the Loan Agreement specifically provides remedy for disputes in the Arbitration and Dispute Settlement clause and the parties shall abide by the terms of the agreement hence being party to the agreement the Financial creditor cannot approach this Tribunal under Section 7 of the Code for the alleged default under the said agreement. Thus, since such mutually

agreed remedy is available with the Financial creditor the action on the basis of an alleged default under the loan agreement is bad in law and is liable to be rejected prima facie.

13. The present petition is not maintainable on the grounds of non - registration of the agreement:

- a) The Corporate debtor further submits that the petition is liable to be rejected due to technical deformities. The Loan agreement is not registered and cannot be legally enforced, thus the proceedings based on such documents cannot be moved forward. Also, it is ultra vires to the jurisdiction of this Tribunal to adjudicate this issue. It is further reported by the Corporate debtor that failure to observe the procedural safeguards established by law and reliance upon unregistered agreement to support the Financial Creditor's claims becomes the very ground for dismissal of the present petition.

Findings:

1. Heard the submissions of learned Counsel for the Financial Creditors & Corporate debtor. Perused the records.
2. The Bench vide order dated 26.11.2024, had directed the Corporate debtor to “*file and place on record Latest Audited Financial Statements*”. The Corporate debtor has placed on record the financial statement for the year ending 31st March 2024. Upon perusal of document, it has been observed by this Bench that the Corporate Debtor has been incurring losses during the financial year under review amounting to Rs. 36,24,731/- and the preceding year as well, an excerpt of the same is given as below:

Particulars	Year ended 31 st March, 2024	Year ended 31 st March, 2023
Profit/(Loss) before interest, depreciation, tax and Extra-Ordinary Items	(3087.503)	(632.564)
Depreciation/amortization	145.759	161.584
Profit/(Loss) before interest, tax and Extra Ordinary Items	(3233.262)	(794.148)
Finance Costs	362.493	150.294
Profit/(Loss) before tax and Extra Ordinary Items	(3595.755)	(944.442)
Less: Provision for taxes on income		
--Current tax	0	0
--Deferred tax liability / (asset)	3.664	2.339
--Tax for Earlier years	25.312	0
Profit/(Loss) before Extra-Ordinary Items	(3624.731)	(946.781)
Extra Ordinary Items (Net of Tax)	0	0
Profit/(Loss) for the year	(3624.731)	(946.781)

3. It has been observed by this Bench that a Loan Agreement dated 04.05.2023 was executed between the Financial creditor and Corporate debtor. The total amount of Rs 1,50,00,000 was extended to the Corporate Debtor disbursed in 2 tranches on the same day for a consideration in time value of money on the basis of the said Loan Agreement and hence is a Financial Debt within the meaning of Section 5(8) of the Code.

4. It has been also been observed by this Bench upon perusal of the Statement of Accounts of the Financial Creditor for the period 01.04.2023 to 31.03.2024 and the Corporate debtor for the period 01.04.2023 to 07.02.2024, that the Corporate Debtor has made full payment of interest for the month of June 2023 and July 2023 for the aggregate amount of Rs. 11,99,125/-. The Bench also takes note upon perusal of the financial statement of the Financial creditor that on 10.07.2023, the amount paid by the Corporate debtor was rejected by the bank due to insufficient fund in the Corporate debtor's account.

5. Upon perusal of the documents on record, it can be observed that the Corporate debtor shared an email dated 14.09.2024 along with a response letter of even date, in response to the email by the Financial

creditor calling upon to pay the payments due for the months of August & September 2023, wherein the Corporate debtor has acknowledged the existence of the debt and is requesting for an extended period to repay the same along with exemption on interest due to financial difficulties, which is reproduced below:

“We are in receipt of your notice dated 09/09/2023 regarding overdue EMI for our Loan Account No. DLDPL/MAY/2023/001. We are writing to request your consideration in the matter. Due to the current economic situation, the company is going through a financial crunch and is unable to make the payments at this time. Request you to kindly give us a six month extension on our EMI payments and if possible, kindly waive the interest on the same.”

6. Hence, it can be inferred from the combined reading of the email response by the Corporate debtor and the repayments for the months of June and July 2023 that there exists a debt, an acknowledgement of debt and that the Corporate debtor has defaulted in the payment of the outstanding liability. The amount thus repayable along with interests as provided in the Form 1 of the present petition and with reference to Exhibit E annexed to the Company petition, there stands no dispute over the fact that the Corporate Debtor defaulted in paying the financial debts of more than Rs. 1 Crore (as per Section 4 of the Code). From evidence and material on record, we also hold that the application is filed by properly authorized person.

7. The contention of the Corporate debtor that the petition is not maintainable as this Tribunal is not a recovery forum is not tenable in the present case as the debt in question is a financial debt as per Section 5(8) of the Code and there is a default of the financial debt for which the Financial creditor has got remedy under the provisions of the Code. Also, upon perusal of the records, it can be observed that the debt is outstanding since September 2023 and even after repeated discussions

and serving the Demand notice dated 04.02.2024, the Corporate debtor still fails to comply its financial obligations.

8. With respect to the contention of the Tribunal referring the matter to mediation, the Bench is of the view that Tribunal has limited powers under Section 7 of the Code to admit or dismiss the petition upon existence of debt and default under the Code. It is relevant to mention that as per the jurisdiction envisaged under the Code, the existence of 'debt' and 'default' is a sine qua non for the admission of an application under Section 7 of the Code. As per the judgment of the Hon'ble Supreme Court in the **Innoventive Industries Ltd. Vs. ICICI Bank and Anr., (2018) 1 SC 407**, which clearly held that:

“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 receipt of a notice from the adjudicating authority.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of 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 it may reject an application and not otherwise”

9. Furthermore, the contentions of the Corporate debtor with respect to the non-registration of the Loan Agreements is also not tenable since the existence of financial debt can be proved by other documents, which in the present case, stands proved dehors the agreement. Therefore, we are satisfied that the present petition is maintainable and that the financial debt is due and there is a default in payment of debt.

10. The Bench takes note that despite the Corporate debtor been given opportunities to pay and regularize the loan account, the Corporate debtor has taken no steps after the initial request letter by the Financial creditor for the repayment of the debt amount. In our considered view, given the facts and circumstances of the present matter, there exist debt as well default on the part of the Corporate debtor in complying with the terms of the Loan Agreement. That upon perusal of records, this Bench is of the considered opinion that there is no dispute regarding the fact that the Corporate Debtor owes debt to the Financial Creditor. Thus, the debt due and default is established. Hence, this Company Petition is liable to be admitted.

11. The Petition is filed in May 2024 thus is well within the limitation period in accordance to Article 137 of Limitation Act, 1963. Also, it is observed by the Bench that the date of default provided in Part IV of the Company petition is given as 14.02.2024 while the IU certificate provide the date of default as 10.07.2023, hence since both the dates falls within the 3 years duration of the limitation period, the petition is not barred by limitation.

12. The Financial Creditor has proposed the name of Mr. Pankaj Bhattad, Registration No: IBBI/IPA-001/IPP-02841/2023-2024/14362, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.

13. It is, accordingly, hereby ordered as follows: -

- a) We are hereby directing the Board of Directors to Co-operate with the RP/IRP for smooth functioning of CIRP proceeding with

providing necessary documents/information as required by the RP/IRP.

b) There shall be a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (“Code”), in regard to the following:

- (i) *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (ii) *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
- (iii) *Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;*
- (iv) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

Notwithstanding the above, during the period of moratorium:

- (i) *The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;*
- (ii) *That the provisions of sub-section (1) of section 14 of the Insolvency and Bankruptcy Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;*

c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Section 31(1) of the Code or passes an order for

liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

- d) Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Mr. Pankaj Bhattad, Registration No: IBBI/IPA-001/IPP-02841/2023-2024/14362**, Email Id: rppankajbhattad@gmail.com, having registered address at A 903 Maruti Bhavan, Parsi Panchayat Road, Andheri East, Mumbai City, Maharashtra ,400069, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (“IBBI”). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The Financial Creditor shall deposit a sum of Rs. 2,00,000/- with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC) and the amount deposited by the financial creditor shall be refundable in priority over the other debts out of funds available with the Corporate Debtor.

- h) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- i) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Order

In the above circumstances the petition bearing CP (IB) 612/MB/2024 filed by **Disha Land Developers Private Limited** the Financial Creditor, under section 7 of the Code for initiating Corporate Insolvency Resolution Process against **Laxmiramuna Investments Private Limited**, the Corporate Debtor, is **Admitted**.

Sd/-

Sh. Prabhat Kumar
Member (Technical)

/JJ/

Sd/-

Sh. Justice V.G Bisht
Member (Judicial)