



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

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*CP No. (IB) 50/ALD/2022*

**IN THE MATTER OF:**

(An application under Section 7 of the Insolvency & Bankruptcy Code, 2016)

**IN THE MATTER OF:**

Hadirah Steels Pvt.Ltd

... Financial Creditor

Vs.

Rana Heavy Engineering Ltd.

... Corporate Debtor

Order reserved on 10.02.2023

Order pronounced on 03.03.2023

***CORAM:***

Sh. Praveen Gupta

: Member (Judicial)

Sh. Ashish Verma

: Member (Technical)

**Appearances (via Video Conference)**

Sh.Sanjeev Panda, Adv.

: For the Financial Creditor

Ms. Babita Jain, Adv.

: For the Corporate Debtor

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1. The present Application has been filed on 30.05.2022 by the Financial Creditor namely Hadirah Steels Pvt Ltd. being Applicant under Section 7 of the Insolvency and Bankruptcy Code,2016 (hereinafter referred to as the “Code”). The Financial Creditor herein is seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against the Corporate Debtor namely Rana Heavy Engineering Ltd. being Respondent.
2. The Financial Creditor and Corporate Debtor entered into a loan facility agreement dated 11.10.2021 whereby it was agreed between the parties that the Financial Creditor will provide financial assistance upto a sum of Rs. 8,00,00,000/- (Rupees Eight Crores Only) in form of unsecured loan to the Corporate Debtor on the basis of direct transfer in monthly installments in the bank account of the financial Institution/bank in order to repay the loan taken by the Corporate Debtor from the said financial institution/bank. As per this loan facility agreement, the Corporate Debtor further agreed to make repayment of the outstanding dues of the loan from the 3<sup>rd</sup> month of each payment made to the financial institution by the Financial Creditor as mentioned in the recital clause of the loan agreement. It was also agreed in the said agreement that the Corporate Debtor shall pay an interest @12% p.a on the outstanding loan balance. The loan facility agreement is annexed as Annexure A-4 from pg no. 25 to pg no 30 of the present Application. The relevant portion of the said loan facility agreement dated 11.10.2021 is reproduced as under:-

*“This Loan Facility Agreement.....*

*By and Between*

*Hadirah Steels Private Ltd. as the “Lender” and  
Rana Heavy Engineering Ltd...as the “Borrower”*

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.....  
*WHEREAS the lender will provide financial assistance upto a sum of Rs.8,00,00,000/- (Rupees Eight Crores only) in form of unsecured loan to the Borrower in the form of direct transfer in monthly installments in the account of Financial Institution/Bank in order to repay the loan taken by the borrower from the said Financial Institution/Bank*

.....  
*2 The borrower has agreed to make payment to the lender from the 3<sup>rd</sup> month of each payment made to financial institution by the lender as mentioned in the recital clause.it is further agreed that the borrower shall pay an interest @12% per annum on the outstanding balance.*

...  
*4 the Loan is not secured by any assets or actionable claims of the borrower and is being extended by the lender to the borrower in good faith.The borrower promises to pay to the lender all sums due as per the said Loan Agreement in a timely manner.*

*5 In case of default by the borrower in repaying the outstanding amount due to the lender on the specified dates a penal interest @18% per month shall be levied from the due date to the date when the amount is received by the lender.*

*6 In case the borrower fails to repay the loan amount as per this loan agreement along with the due interest on the due date, the lender shall be at the liberty to recall the loan amount along with the interest due thereon. The lender shall not be required to give any prior intimation to the Borrower of his intention to recall the loan.*

...  
*8 The lender shall give notice to the Borrower in writing intimating him about the recall of the loan and shall grant the Borrower a period of minimum of*

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*15 days from the date of recall notice (“Recall Date”) to pay all outstanding amounts. The loan shall be considered as recalled on the Recall Date.*

*9 In case the loan is recalled by the lender, the borrower shall be liable to pay all outstanding amounts inclusive of principle and interest as on the date of recall within a period of 15 days from the recall date.”*

3. Pursuant to this loan agreement, the Financial Creditor disbursed an amount of Rs.3,15,45,000.00/- in eight trenches starting from 30.11.2021 to 29.03.2022 by direct transfer to the financial institution in monthly installments. The said disbursement is reflected in the ledger account of the Corporate Debtor in the books of the Financial Creditor. The Ledger account of the Corporate Debtor i.e. (Rana Heavy Engineering Ltd.) in the books of the Financial Creditor (Hadirah Steels Pvt. Ltd.) is annexed as Annexure A-6 at pg no. 33 of the present Application showing disbursement to financial institution M/s Edelwise on behalf of Corporate Debtor towards repayment of the loan from 30.11.2021 to 29.03.2022 totaling to Rs.3,15,45,000/-
4. It is stated in the present Application that the Corporate Debtor defaulted in repayment of the loan disbursed on 30.11.2021 and 29.12.2021 which became due for payment on 02.03.2022 and 29.03.2022 respectively, In this regard, the Financial Creditor issued loan recall notice dated 15.04.2022 against the Corporate Debtor, wherein the Financial Creditor apprised the Corporate Debtor about the default in repayment of the loan which was disbursed on the aforementioned date and by way of this recall notice, the Financial Creditor requested the Corporate Debtor to repay the entire balance outstanding amount which was disbursed during 30.11.2021

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to 29.03.2022 of Rs.3,15,45,000/- along with the interest at 12% p.a as well as the penal interest in terms of the loan agreement within 15 days from the date of receipt of the recall notice. The said recall notice was delivered to Corporate Debtor by hand and duly received by the Corporate Debtor on 17.04.2022. It is further stated that the Corporate Debtor did not respond to the said loan recall notice. The loan recall notice is annexed as Annexure A-5 at pg no. 31 of the present Application and the relevant portion of the said recall notice is reproduced as under:-

*“you have failed to repay the amount disbursed as mentioned in serial 1 to 2 of the aforesaid table in terms of the loan agreement despite repeated requests/reminders.*

*Under the circumstances, we hereby call upon you to repay the entire balance outstanding of Rs. 3,15,45,000/- (Rupees Three Crore Fifteen Lakhs Forty-five Thousand Only) together with the interest at the rate of 12 percent per annum as well as the penal interest in terms of the loan agreement within 15 days from the date of receipt.”*

5. As the Corporate Debtor did not respond to the above recall notice, the Financial Creditor filed application U/s 7 of the Code in Form 1 filling all its parts from Part I to V, showing the amount claimed to be in default at Rs.3,16,89,269.59/- and dates of default as shown in the following table:-

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Sl No.	Date of Disbursement	Total Disbursement Amount INR	Amount in Default (INR)	Date of Default	No of days from the date of default to 15.04.2022	Interest @ 12% pa from the date of default to 15.04.2022	Total claim Amount as on
1.	30-Nov-21	74,00,000.	74,00,000.	2-MAR-22	44	1,07,046.58	75,07,046.58
2.	29-DEC-21	66,60,000	66,60,000	29-MAR-2022	17	37,223.01	66,97,223.01
3.	31-JAN-22	29,85,000	29,85,000	15-APR-22	0	-	29,85,000
4.	8-FEB-22	25,00,000	25,00,000	15-APR-22	0	-	25,00,000
5.	24-FEB-22	50,00,000	50,00,000	15-APR-22	0	-	50,00,000
6.	9-MAR-22	35,00,000	35,00,000	15-APR-22	0	-	35,00,000
7.	15-MAR-22	10,00,000	10,00,000	15-APR-22	0	-	10,00,000
8.	29-MAR-22	25,00,000	25,00,000	15-APR-22	0	-	25,00,000
		3,15,45,000.00	3,15,45,000.00		61	1,44,269.59	3,16,89,269.59

As per the above table, the date of default is 15.04.2022.

6. On filing of the application U/s 7 by the Financial Creditor as discussed in the foregoing paras, a notice has been issued to the Corporate Debtor. In reply to the notice, the Corporate Debtor submitted that the functioning of the Corporate Debtor is at standstill and it is under liquidity crises due to the spread of Covid-19 and on account of the lockdown. Therefore, The Corporate Debtor could not pay the amount which was due to the Financial Creditor and is trying its best to revive itself. Para 8 and 9 of the reply of the Corporate Debtor to the present application is reproduced as under:-

*“8 That the Corporate Debtor faced financial crunch on account of the lockdown declared by the Union Government as well as the State Government on account of spread of covid-19 infection*

*9 That the business of the Corporate Debtor almost came to a standstill and as a result of the aforesaid, the Corporate Debtor could not pay the amount which was due to the Financial Creditor and is trying its best to revive itself.*

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7. We have heard the Ld. Counsel Representing the Financial Creditor and the Corporate Debtor and perused the material on record in the light of the provisions of Section 7 of the I&B Code,2016, and its other connected provisions and judicial pronouncements.
8. First, we have examined the filing of this application being within limitation period or not. As per the Limitation Act,1963 filing of an application U/s 7 of the Code is to be within 3 years from the date of default. We find from Part IV of the application in form 1, the date of default is 15.04.2022 and this application is filed on 30.05.2022. Thus, this application is well within the time limit.
9. As regards the financial debt, for which default has occurred, it is declared in sl. No.2 of part IV of the present application in form 1 to be Rs.3,16,89,269.59/-. Details are already discussed from para 2 to para 5 of this order. This financial debt is supported with the loan facility agreement dated 11.10.2021 alongwith the board resolution dated 08.10.2021 of the Financial Creditor to grant loan to the Corporate Debtor annexed as Annexure A-4 of the present application as mentioned in sl. no.5 and 8 of Part V of the present application. It is further supported with the loan recall notice dated 15.04.2022 issued by the Financial Creditor duly received by the Corporate Debtor, the ledger account of the Corporate Debtor in the books of the Financial Creditor annexed as Annexure A-5 and A-6 respectively in sl. No.8 of Part V of the present application in Form 1. Moreover, the Corporate Debtor in its reply very clearly admitted in para 8 and 9 while stating that the Corporate Debtor could not pay the amount which was due to the Financial Creditor. This reply of the Corporate Debtor is already discussed in para 6 of this order.

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10. After analyzing the above facts, we find that the amount of debt infused by the Financial Creditor to the Corporate Debtor along with interest for which the total amount under default is computed at Rs. 3,16,89,269.59/- in Part IV of the present application, is on the basis of “time value of money” in terms of Section 5 (8) of the Code. Based on the documents attached by the Applicant/Financial Creditor in Part V of Form 1, it has been clearly shown to us that the repayment of this financial debt is admittedly under default as per the reply of the Corporate Debtor. The application filed by the Financial Creditor in Form 1 is also found to be complete in all respect. Hon’ble Supreme Court in the order dated 31.08.2017 in the case of **M/s Innovative Industries Ltd. Vs Icici Bank & Anr (Civil Appeal No. 8337-8338 of 2017)** has held that if there is a financial debt owed to any Financial Creditor of the Corporate Debtor and the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted if such application is made under Sub-Section (1) in Form 1 as prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 accompanied by documents and records required therein and complete in all respect. Considering the facts of the case, provisions of Section 7 of the Code and the decision of the Apex Court in this regard as discussed above, we find this application in Form 1 filed by the Financial Creditor fit for initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

11. In the given facts and circumstances, the present Application being complete and having established the default in payment of the Financial

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Debt and the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, the moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (a) 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;
- (b) Transferring, encumbering, alienating, or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.
- (e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.
- (f) The provisions of Section 14(3) shall however, not apply to such transactions  
as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

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(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 as the case may be.”

12. As regards the Interim Resolution Professional (IRP), the Applicant/Financial Creditor proposed the name of Mrs. Hemi Gupta as IRP in Part III of the present application in Form 1. Consent of the IRP Mrs. Hemi Gupta is annexed in Form 2 at pg No.37 in the present Application. The Law Research Associate, Mr. Sarvesh Shukla, has checked the credentials of said proposed IRP and there is nothing adverse against her. Therefore, we hereby appoint Mrs. Hemi Gupta, having Registration No. IBBI/IPA-002/IP-N00147/2017-18/10383 R/o 24, Medi Centre, Opp. Eves Petrol Pump, Hapur Road, Meerut, 250002, U.P Email: [hemigupta@rediffmail.com](mailto:hemigupta@rediffmail.com), Mobile No. 9359911588, as IRP. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016. Page 20 of 21 CP (IB) No.70/ALD/2021

13. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The

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Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

14. We also direct the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The Interim Resolution Professional is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and by completing the resolution process in a time-bound manner.
15. We direct the Financial Creditors to deposit a sum of ₹1,50,000/- (Rupees One Lakh Fifty thousand Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors (CoC) as accounted for by the Resolution Professional (RP) on the conclusion of CIRP. CoC shall appoint RP at the earliest as per the terms of Section 22 of the I&B Code,2016
16. A copy of order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at her e-mail address forthwith.

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18. The present petition is allowed and admitted accordingly. List the matter on 12.04.2023 for filling of the progress report/further proceeding.

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**(Ashish Verma)**

**Member (Technical)**

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**(Praveen Gupta)**

**Member (Judicial)**