

Bhanu Mishra, Adv.

Order Pronounced On: 04.11.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by Rupal Bhupendra Shah ('Applicant/Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 on 13.08.2021, seeking to initiate a Corporate Insolvency Resolution Process ('CIRP') against Sahaj Fashions Limited ('Respondent' / 'Corporate Debtor').
2. The Applicant Mr. Rajesh Agrawal is a resident 302, Horizon Spandan, RHB Road, Mulund, West Mumbai-400080 who gave an unsecured loan of Rs. 12,00,000/- to the Corporate Debtor on 17.04.2017 at mutually agreed interest rate of 1.5% per month payable on monthly basis.
3. The Corporate Debtor is a Private Company incorporated on 20.05.2011, having its registered address at Shree Bhawan, Ajmer Road, Madanganj, Kishangarh, Rajasthan – 305801. Copy of the Corporate Debtor's Master data is Annexed as Annexure A-1 of the Application. at Page No. 11.
4. The Financial Creditor has submitted that the Corporate Debtor had approached the Financial Creditor and sought for financial assistance. In pursuance of the same, the Financial Creditor gave an unsecured loan of Rs. 12,00,000/- to the Corporate Debtor on 17.04.2017 at mutually agreed



interest rate of 1.5% per month payable on monthly basis. The Corporate Debtor paid Rs. 4,87,500/- as interest till April, 2019 on monthly basis.

5. It is observed that the Financial Creditor made a request via E-mail on 09.11.2020 to the Corporate Debtor to pay Rs. 16,51,000/- (including principal amount and interest due) as outstanding as on 31.10.2020, but the Corporate Debtor failed to pay the said amount. Thereafter, on 10.12.2020, the Financial Creditor sent a demand notice for Rs. 16,70,500/- (including principal amount and interest due) as on 30.11.2020. However, the Corporate Debtor neither replied to the demand notice nor paid the unpaid financial debt. The copy of the demand notice dated 10.12.2020 is annexed with this application as Annexure A-2.
6. The Corporate Debtor filed his reply vide diary No. 1460/2022 dated 12.05.2022 in which objection regarding the maintainability of the petition has been raised. The Corporate Debtor submitted that the application does not meet the minimum threshold limit as prescribed under the IBC for initiation of CIRP and therefore, is liable to be dismissed. It was further stated that as per the notification dated 24.03.2020, the minimum threshold limit under Section 4 of IBC has been fixed as Rs. 1,00,00,000/- (Rupees One Crore) for initiation of CIRP. However, the present application is filed on 13.08.2021 and the Applicant claimed the defaulted amount of Rs. 12,18,500/- (Rupees Twelve Lacs Eighteen Thousand Only) which is less than the minimum threshold limit as prescribed under Section 4 of IBC,



therefore, the present application is liable to be rejected. Further, the Corporate Debtor also submitted that there is no proof of financial debt in terms of the provisions of the Code.

7. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this application.

8. It is necessary to refer to Section 4 of the IBC which reads as follows :

“4. Application of this Part –

(1) This part shall apply to matters relating to the Insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees.

***Provided** that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.”*

9. The Ministry of Corporate Affairs vide Notification dated 24.03.2020 specified Rupees One (1) Crore as the minimum amount of default for the purposes of Section 4 of the Code. Hence, as per the Code, the minimum amount of default against which applications under Part II of the Code can be moved, in lieu of the notification dated 24.03.2020, is revised to Rs. 1,00,00,000/- (Rupees One Crore Only).

10. Therefore, all the applications that are filed after the notification dated 24.03.2020 came into existence, have to fall within the amended threshold



limit of Rs. 1,00,00,000/- (Rupees One Crores Only) even if the debt existed or default occurred before 24.03.2020. The Hon'ble NCLAT has further clarified in the judgment of *Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd., Company Appeal (AT) (Im.) No. 813 of 2021* that the threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.03.2020 even if debt is of a date earlier than 24.03.2020.

11. It is necessary to examine whether the present insolvency application is maintainable in terms of Section 4 of the Code as the Applicant in Part IV of the Application has claimed an amount of Rs. 12,18,000/- (Rupees Twelve Lacs Eighteen Thousand Only) from the Corporate Debtor. The Applicant has filed the present application before this Adjudicating Authority on 13.08.2021.
12. A bare perusal of the law makes it clear that the amount of default as on date of filing of the application should be within the prescribed threshold when the application is filed. In view of the foregoing, we are not inclined to allow the present application for CIRP of the Corporate Debtor as the Application does not fall within the pecuniary jurisdiction of this Adjudicating Authority. This order shall not act as a bar to the Applicant in pursuing any other remedies available to it, under the prescribed provisions of law.



13. Accordingly, *CP No. (IB)55/7/JPR/2021* is dismissed being not maintainable.

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**DEEP CHANDRA JOSHI
JUDICIAL MEMBER**

PRASANT
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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**