

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 77/7/JPR/2021

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

RIMURA FINLEASE AND TECHNOLOGY LIMITED

...Financial Creditor

Versus

JAWAN CONSTRUCTION PRIVATE LIMITED

...Corporate Debtor

MEMO OF PARTIES

Rimura Finlease and Technology Limited

R/o 6, 'Ashirwad' Ajmer Road,
Jaipur, Rajasthan- 302006

...Financial Creditor/Applicant

VERSUS

Jawan Construction Private Limited

C/O M/S Jawan Automobiles,
Opp. Panchdeo Mandir, Jhunjhunu,
Rajasthan- 333001

...Corporate Debtor/Respondent

For the Applicant : Prakul Khurana, Adv.

For the Respondent : Shashank Kasliwal, Adv.

Order Pronounced On: - 16.09.2022

ORDER**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This application is filed by M/s Rimura Finlease and Technology Private Limited ('Applicant' / 'Financial Creditor') through Mr. Rohit Goyal authorised vide Board Resolution dated 17.02.2020 against the Corporate Debtor namely M/s Jawan Construction Private Limited ('Respondent' / 'Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') pursuant to the default in repayment of loan amount by the Corporate Debtor to the Applicant.
2. The Applicant is a public company incorporated under the provisions of Companies Act, 1956 and duly registered with the Registrar of Companies, Jaipur having CIN: U65910RJ1994PLC009207. The registered office of the Applicant is situated at 6, 'Ashirwad' Ajmer Road, Jaipur, Rajasthan.
3. The Corporate Debtor is a private limited company, incorporated under the provisions of the Companies Act, 1956 on 10.09.2004 and duly registered with the Registrar of Companies, Jaipur having CIN: U45201RJ2004PTC019689. The registered office of the Corporate Debtor is situated at C/O M/s Jawan Automobiles, Opp. Panchdeo Mandir, Jhunjhunu, Rajasthan. The Authorised share capital of the Company is Rs.

2,00,00,000 (Rupees Two Crores Only) and the Paid-up share capital of the Company is Rs. 1,00,00,000 (Rupees One Crore Only).

4. The details of the transactions leading to the filing of this Application are averred by the Applicant are as follows:

- a) In the year 2017, the Corporate Debtor approached the Financial Creditor requesting financial assistance for their working capital requirement. Accordingly, the Financial Creditor granted a short-term loan of Rs. 50 lakhs to the Corporate Debtor vide Loan Agreement dated 22.03.2017. The said loan was given for a period of 3 months and it was stated in the agreement that an interest at the rate of 22 % per annum will be charged on the loan amount.
- b) As per terms of the loan agreement, the principal amount was to be repaid on or before 20.06.2017 and it was also mentioned that in case of any default or overdue of the outstanding amount, a liquidity damage of 3 % per month over and above the normal rate of interest shall be charged on monthly basis on the amount overdue, from the date of default until such over dues fully paid.
- c) The Corporate Debtor issued cheques bearing No. 001120 dated 28.12.2020 amounting to Rs. 50 lakhs towards the principal amount and cheque bearing 001119 dated 28.12.2020 towards the interest amounting to Rs. 1,14,49,180 (calculated till 31.12.2020) to the Financial Creditor with an assurance that the said cheques shall be duly

honoured whenever presented for clearance. On 22.03.2021, the Financial Creditor presented both the aforementioned cheques for encashment, however, the same were returned as dishonoured with remarks “Exceeds Arrangements” vide return memo dated 24.03.2021. The said was brought into the notice of the Corporate Debtor but no action was taken. Consequently, proceedings against the Directors of the Corporate Debtor under Section 138 of the Negotiable Instruments Act, 1881 were initiated.

d) The Financial Creditor has submitted that handing over of two separate cheques for principal and amount of interest is a clear admission of liability and acknowledgement of the debt on part of the Corporate Debtor.

5. As a consequence of the aforementioned default, this application has been filed seeking initiation of CIRP against the Corporate Debtor. The Applicant has stated the details of the amount due in Part IV of the Application which is as follows:

Particulars of Financial Debt		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	The total amount of deposit is Rs. 50,00,000 + Rs. 1,14,49,180 (22% Interest on delay payments). Total Debt: Rs. 1,64,49,180/- Dates of disbursement: 24.03.2017 29.03.2017

		03.04.2017 10.04.2017
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	The total amount claimed to be in default is 50,00,000 + Rs. 1,14,49,180 (22% Interest on delay payments). Total Debt: Rs. 1,64,49,180/- Date of Default: 06.05.2021

6. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its reply vide Diary No. 320/2022 dated 03.02.2022 whereby the following is stated:

- a) The Corporate Debtor has submitted that two cheques were handed over to the Financial Creditor bearing No. 001120 (for repayment of principal amount) and 001118 (for repayment of interest amount) which makes it clear that neither cheques were given as security in the year 2020 and nor given for the limited purpose in the year 2017. The total payable amount of these cheques is limited to Rs. 54,50,000/- that is principal amount of Rs. 50,00,000/- and interest of 3 months at the rate of 3 % amounting to Rs. 4,50,000/-. It was further contended that the Financial Creditor has placed on record a new cheque bearing No. 001119 which in reality is a forged document and was never issued by the Corporate Debtor. Thus, the Financial Creditor has misused and forged the cheques.

b) The Corporate Debtor has submitted that the application is barred by limitation as the alleged defaults ought to have occurred as follows;

- i. For advance interest : 24.03.2017
- ii. For principal amount : 20.06.2017

Since, the caption application has been filed in the year 2021, it is barred by limitation. The averment of the Financial Creditor that the default occurred on 06.05.2021 is based on the misuse of cheques and the petition deserves to be dismissed.

c) The Corporate Debtor stated that there was no default on part of the Corporate Debtor which has been brought to the notice of this Authority. Further, the cheque dated 28.12.2020 numbered as 001120 for repayment of principal amount ought to be dated 22.03.2017; and has been wrongly dated 28.12.2020.

d) The Corporate Debtor has submitted that the computation sheet does not take into consideration the amount which has been paid by the Corporate Debtor to the Financial Creditor. Further, the calculation of interest is against the spirit of the loan agreement. Thus, the default amount as provided by the Financial Creditor cannot be relied upon.

7. The Financial Creditor filed Rejoinder vide Diary No. 1541/2022 dated 19.05.2022 whereby it has been submitted that the Corporate Debtor has not provided any proof establishing that cheque No. 001119 is a forged document. Therefore, as per the loan agreement the rate of interest agreed

between the parties was 22 % per annum and in case of any default or overdue of outstanding amount a liquidity damage of 3 % per month over and above the normal rate shall be charged on monthly basis on the amount over due. Hence, the interests as per the aforementioned details amounts to Rs. 1,14,49,180/- (i.e. Rs. 61,62,383/- Interest @ 22% p.a. + Rs. 52,59,297/- Interest @ 3% ODI + Rs. 27,500/- TDS) with respect to the limitation. It is being mentioned that the Corporate Debtor approached the Financial Creditor seeking more time to honour the default committed by them and promised to keep making payments towards interest in terms of the clauses of the loan agreement. In furtherance of the same, the Corporate Debtor issued a cheque bearing No. 001119 dated 28.12.2020 and a fresh period of limitation commenced from the date this cheque was issued. Also, the Hon'ble Supreme Court in Suo Moto Writ Petition 3/2020 had extended the limitation expiring between 15.03.2020 to 30.05.2022; even it is assumed that the limitation was supposed to expire on 24.03.2020 and 26.06.2020. Then also in view of the order of the Hon'ble Supreme Court, the instant application having been filed on 11.10.2021 is within the limitation period prescribed under the statute. The date of default has been computed in terms of the expiration of the legal notice dated 21.04.2021 issued under Section 138 of the Negotiable Instruments Act, 1881 that is 06.05.2021. There is no payment whatsoever made by the Corporate Debtor towards discharging the contended loan.

8. The Financial Creditor has filed two sets of written submissions vide diary No. 2209/2022 dated 22.07.2022 and diary No. 2395/2022 dated 10.08.2022, whereby the following has been mentioned:

- a) The Financial Creditor has stated that the financial loan assistance was disbursed on 23.03.2017 and the date of repayment of the same was 20.06.2017. Further, as per the interest clause, the interest amount was payable in advance for a period of 3 months. Hence, for the first 3 months the interest amounts to Rs. 2,75,000/- which was to be paid in advance. This amount of Rs. 2,75,000/- has been mentioned to be paid on 06.04.2017. Thereafter, the Financial Creditor has annexed the table for calculation of interest on the outstanding amount whereby it is seen that the principal amount was Rs. 50 lakhs, the interest amount that is calculated at the rate of 22% per annum for 3 months amounts to a total of Rs. 61,62,383 and the 3 % interest on overdraft amounts to a total of Rs. 52,59,297/-. Hence, the total due of interests is Rs. 1,14,49,180/-.
- b) The Financial Creditor has submitted that it is a settle position of law whereby the issuance of cheque is an acknowledgement of debt on part of the drawer. Hence, there was clear debt as the same was acknowledged by the Corporate Debtor by issuance of cheques.
- c) It is submitted that the Corporate Debtor has misused the co-operation received from the Financial Creditor by stating that the Financial Creditor did not take any action from the year 2017 i.e. the date from

which the actual amount felt due. Further, the claim of forgery is a baseless allegations as the Corporate Debtor has neither explained the kind of forgery committed nor produced any document with respect to any action taken by the Corporate Debtor against such alleged forgery.

9. The Corporate Debtor has also preferred written submissions vide diary No. 2201/2022 dated 22.07.2022 and 2429/2022 dated 16.08.2022 stating the following:

- a) The Corporate Debtor has submitted that as per the loan agreement in case the loan facility is not repaid within 10 days of becoming due the said agreement shall be deemed to be terminated. Further, it mentions that any kind of notice to either party shall be specifically in writing and not otherwise. There is no written communication between the parties stating that the Financial Creditor had granted time to the Corporate Debtor for repayment of its dues beyond the period prescribed under the agreement.
- b) The Corporate Debtor has submitted that the application is time barred on various aspects. The cheques dated 28.12.2020 are after the expiry of limitation i.e. 23.06.2020 and as such the limitation ought not to be allowed by issuance of such cheques. The delay is of more than a year which should not be considered while computing the limitation as the Financial Creditor has not provided any reasons for such delay.

- c) It is submitted that the present application does not fall under the ambit of the Code as the same has been filed for recovery of money and not for resolution of the Corporate Debtor.
10. We have gone through the pleadings presented before us, documents filed by both the parties and heard the arguments made by the counsels, the applicant has filed the present application stating default of loan amount of Rs. 50 lakhs + interest of Rs. 1,14,49,180/- calculated upto 30.12.2020.
11. The mere plain reading of the provisions under Section 7 of the IBC show that to initiate CIRP under Section 7 of the Code, the Applicant must establish that there is a financial debt and the default has been committed in respect of that financial debt by the Corporate Debtor. While dealing with an application under Section 7, the Adjudicating Authority is not required to see the question of dispute between the parties as long as debt and default is proved.
12. It is seen that the application has been filed for default of repayment of loan which was granted to the Corporate Debtor vide short term loan agreement dated 21.03.2017. As per the loan agreement, the loan was granted for a period of maximum 3 months and an interest at the rate of 22 % per annum ought to be charged on the loan amount. In case of any default or overdue of the outstanding amount a liquidity damage of 3 % per month over and above the normal rate of interest shall be charged on monthly basis on the amount overdue from the date of default until such over dues fully paid. It

was also stated in the agreement that the date of repayment was 20.06.2017 and the interest amount shall be payable in advance for the period of 3 months. It was also mentioned that the principal repayment shall be made through cheque No. 001120 and the interest shall be paid in advance through cheque No. 001118. Without taking into consideration the interest on ODI i.e. 3% per month over and above the normal rate, the Applicant seeks a total of the principal amount of Rs. 50,00,000/- along with normal interest as agreed between the parties i.e. @ 22% i.e. Rs. 61,62,383/- amounts to a total of Rs. 1,11,62,382/-. Since the interest on delayed payment was clearly stipulated in invoice; it entitles the Financial Creditor to enforce its 'right to payment' as provided under Section 3(6) of the Code and hence will form part of 'Debt' under Section 3(11) of the Code. Therefore, this petition falls within the threshold limit as prescribed by law.

13. As far as the point of limitation goes, it is seen that the loan agreement was dated 21.03.2017, and the repayment was due on 20.06.2017. Therefore, computing 3 years from the said date in accordance with the laws of limitation, the limitation expires on 20.06.2020. In the year 2020, there was Covid Pandemic and hence the Supreme Court extended the limitation vide *Suo Moto Writ Petition No. 03/2020* from 15.03.2020 to 22.02.2022 vide order dated 10.01.2022. It is pertinent to take into account Section 18 & 19 of the Limitation Act also, according to which a fresh period of limitation will be computed from the time when the acknowledgement of debt was so

signed and when the last payment was made before the expiration of the prescribed period. In the present case, the Applicant has given the cheques dated 28.12.2020 which amounts to acknowledgement of debt and therefore the same cannot be overlooked. It was also submitted that these cheques were presented in the Bank and returned on 15.02.2021. Thereafter a Legal Notice dated 21.04.2021 was also sent to the Corporate Debtor to honour the said cheques. The Corporate Debtor failed to honour its amount and hence the default was committed. Also, in view of the order of the Supreme Court, the limitation was extended with respect to all matters. Hence, the present application is well within limitation.

14. A bare perusal of the documents shows that the cheques given to the Financial Creditor against repayment of the loan were returned by the Bank which amounts to clear default on part of the Corporate Debtor. The Corporate Debtor has failed to show any proof of the sums given as alleged in the reply. All the more, the Corporate Debtor in its reply has admitted that the Corporate Debtor took a loan from the Financial Creditor which also amounts to admission of the debt and default has already been proven on account of dishonoured cheques.
15. In view of the aforementioned, we are of the view that Corporate Insolvency Resolution Process ought to be initiated against the Corporate Debtor.
16. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of Corporate Debtor is situated in

Jaipur, and therefore this Adjudicating Authority has jurisdiction to entertain and try this application.

17. The Applicant has named one Mr. Prashant Agarwal having Registration Number IBBI/IPA-001/IP-P00053/2017-18/10127 (email: ippa@gmail.com), duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.
18. Consequences of initiation of CIRP shall be inter-alia as follows:
 - a) The Resolution Professional proposed by the Applicant is Mr. Prashant Kumar Agrawal, who is an IP registered with ICSI Insolvency Professional Agency having Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127. He is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.
 - b) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor,

which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

- c) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray his expenses to be incurred and fees on the account. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant shall deposit the fees to the account of IRP within three days from the date of this order. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- d) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.

19. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.
20. In the circumstances, CP No. (IB) 77/7/JPR/2019 is admitted.

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**