

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.201  
TP 57 of 2019 [CP(IB) 541 of 2019]

**Proceedings under Section 7 IBC**

**IN THE MATTER OF:**

Asha Goyal

.....Applicant

V/s

Pharma Traders Pvt Ltd

.....Respondent

**Order delivered on 15/12/2022**

**Coram:**

Dr. Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh Hon'ble Member(T)

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

Braj Mohan / Neeraj

-Sd-

**DR. MADAN B. GOSAVI  
MEMBER (JUDICIAL)**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH**

**TP 57 of 2019 [CP(IB) 541 of 2019]**

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**In the Matter of:**

**Asha Goyal**

C.R Dass Farm  
Gopalpura Mod, Tonk Road  
Jaipur, Rajasthan

**Applicant/  
Financial Creditor**

**Versus**

**Pharma Traders Private Limited**

18/2, Lasudia Mori Dewas Naka  
A.B. Road  
Indore-452010

**Respondent/  
Corporate Debtor**

**Order reserved on: 03.11.2022**

**Order pronounced on: 15.12.2022**

**Coram: Dr.Madan B. Gosavi, Member (J)  
Kaushalendra Kumar Singh, Member (T)**

**Present:**

For the Applicant: Ld. Adv. Mrs. Nivedita R. Sarada

For the Respondent: Ld. Adv. Mr.Vijayesh Atre

**ORDER**

1. The instant Application is filed by Mrs. Asha Goyal (**'Applicant'**) under section 7 of the Insolvency and Bankruptcy Code, 2016 (**'Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (**CIRP**) against M/s Pharma Traders Private Limited (**Respondent**) for the default amount of Rs.68,01,111/- (Rupees Sixty Eight Lakh One Thousand One Hundred and Eleven) wherein the outstanding principal amount is

Rs.50,30,000/- and interest amounting to Rs.17,71,111/-. The date of default is 05.11.2018.

2. The facts of the case as presented by the applicant are summarised hereunder:

(i) That at the request of the respondent, the applicant on 05.04.2013 advanced unsecured loan of Rs.50,00,000/- to the respondent through RTGS, for a period of 5 years at 12% per annum interest. The respondent has during 10.04.2013-04.02.2016 regularly paid the interest after deducting the TDS. The respondent issued a cheque dated 05.08.2017 (bearing No.233965) for an amount of Rs.25,00,000/-, however the same was returned by the bank with the reason funds insufficient.

The respondent failed to pay the interest and 1<sup>st</sup> installment towards principal amounting to Rs.25,00,000/- on 20.05.2016 and 05.08.2017 respectively, therefore, the applicant on 28.02.2018 filed an application [bearing CP(IB) No.106/7/NCLT/AHM/2018] under section 7 of the Code before the Adjudicating Authority, Ahmedabad. However, the same was rejected by the Adjudicating Authority vide its order dated 20.09.2018 due to some technical defects. The applicant filed an appeal before Hon'ble NCLAT which was also rejected vide its order dated 19.03.2019 on the ground of delay in filing the appeal.

(ii) Thereafter, the respondent issued another cheque dated 05.11.2018 bearing No.233991 amounting to Rs.25,00,000/- towards the payment of 2<sup>nd</sup> installment of principal amount in favor of the applicant, however the same was dishonored with the reason that drawers signature to operate account not

received. Therefore, the applicant initiated proceeding under section 138 of the Negotiable Instruments Act, 1881 against the respondent.

(iii) The respondent has issued the confirmation of accounts dated 01.04.2016 which also reflects that the amount is payable by the respondent to the applicant and the respondent has also issued two letters acknowledging due dates as 05.08.2017 & 05.11.2018 for the 1<sup>st</sup> and 2<sup>nd</sup> installment respectively in respect of the amount advanced by the applicant. Further, the cheques issued by the respondent along with bank return memo is placed on record.

(iv) The name of the Interim Resolution Professional (IRP) Mrs. Pratibha Khandelwal having registration No.IBBI/IPA-002/IP-N00031/2016-17/10068 is proposed and the consent of the IRP is also placed on record.

3. The objections raised by the Respondent/Corporate Debtor are summarized hereunder:

(i) The application based on the similar facts filed by the applicant on 28.02.2018 under section 7 of the Code was rejected by the Adjudicating Authority as well as by the Appellate Tribunal and therefore, the same issue cannot be agitated once again unless there is any new question of law. The applicant has filed the present application with the same facts and documents and therefore, the present application being barred by the principle of res-judicata is liable to be dismissed.

Further, the applicant has not placed on record any document proving that an amount of Rs.50,00,000/- was advanced to the respondent as unsecured loan.

(ii) According to section 11-B of the M.P. Money Lenders Act, 1934, every person who carries on or intends to carry on the business of money lending shall get himself registered by an application made to the Registering Authority of that area. However, no such registration detail has been placed on record by the applicant and therefore, the applicant cannot be considered as financial creditor.

(iii) That based on the averment of the applicant, the applicant advanced a loan of Rs.50,00,000/- on 05.04.2013, however the same is barred by limitation. Further, the respondent has never issued the confirmation of accounts and letter of acknowledgement as placed on record by the applicant.

4. The applicant through its rejoinder submitted that the present application is filed for the default made by the respondent in the payment of 2<sup>nd</sup> installment (towards principal) due on 05.11.2018 amounting to Rs.25,00,000/-. The date of default for the 2<sup>nd</sup> installment is 05.11.2018 and the present application is filed on 03.07.2019. Therefore, the present application is within limitation and the cause of action in the present application is entirely different, from the application filed earlier [bearing CP(IB) No.106/7/NCLT/AHM/2018] which was rejected by the Adjudicating Authority vide order dated 20.09.2018, therefore, the principle of res-judicata cannot be applied in the present application. Further, the applicant is not required to be registered under M.P. Money Lenders Act and the said Act is a state legislation and it cannot override the Code.

5. We have heard the learned counsel for the financial creditor as well as for the corporate debtor and perused the relevant documents available on record. It is noted that the applicant advanced an amount of Rs.50,00,000/- on 05.04.2013 which is evident from the bank statement placed on record by the applicant. The said bank statement also reflects regular payment towards interest upto 04.02.2016. It is further noted that the respondent had issued two cheques- one bearing No. 233965 dated 05.08.2017 amounting to Rs.25,00,000/- (1<sup>st</sup> instalment) and the 2<sup>nd</sup> cheque bearing No. 233991 dated 05.11.2018 amounting to Rs.25,00,000/- (2<sup>nd</sup> instalment). The issuance of the cheques also supports the claim of the applicant that she had advanced the money to the respondent.

6. The 1<sup>st</sup> cheque dated 05.08.2017 got dishonored following which the applicant filed an application [bearing CP(IB) No.106/7/NCLT/AHM/2018] under section 7 of the Code against the respondent, however the same was rejected by the Adjudicating Authority vide its order dated 20.09.2018, stating that the applicant failed to produce any document on record to show the disbursement of the claimed amount and also due to some technical defects.

Subsequently, the applicant filed an appeal before the Appellate Authority, however the same was also rejected vide its order dated 19.03.2019 on the ground of delay in filing the appeal beyond the prescribed period of 45 days.

7. Thereafter, the 2<sup>nd</sup> cheque dated 05.11.2018 that was issued after the rejection of the earlier application also got dishonored. Following that the present application has been filed. The date of default as mentioned in Part-IV of the application is 05.11.2018 i.e. the date of 2<sup>nd</sup> cheque and the applicant has also initiated the

proceedings against the respondent under section 138 of the negotiable Instruments Act, 1881.

8. Further, the applicant has also placed on record the confirmation of accounts and the letters received by it from the respondent, wherein the respondent has acknowledged the advance received from the applicant and has also mentioned the due date along with the cheque number; however the respondent denies to have given any such confirmation of account and letters acknowledging the debt to the applicant.

9. The due date for 2<sup>nd</sup> payment of Rs.25,00,000/- is specifically mentioned as 05.11.2018 in the letter issued by the respondent, for which the cheque dated 05.11.2018 bearing No.233991 is also issued by the respondent in favour of the applicant.

If at all the contention of the respondent that the confirmation of accounts and the said letters acknowledging the debt is not issued by the respondent is accepted, then the respondent failed to prove as to for what reason the respondent issued the cheques in favour of the applicant and paid interest (on the borrowed amount) for a certain period of time. Even otherwise if the said letter of acknowledgement is not considered and the date of default is calculated from the date of 1<sup>st</sup> cheque i.e. 05.08.2017 then also the present application is within limitation, as it was filed in the year 2019.

10. The respondent has raised a issue that the bank statement reflecting the transfer of Rs.50,00,000/- from the applicant to the respondent is not as per Banker's Books Evidence Act, 1891 as the same is not a certified copy as required by the said Code. In this context it is noted that though the respondent has taken the same plea in the earlier application as well as once again in the present

application, the respondent has not stated that the entries in the said bank statement is incorrect.

The subsequent act of the respondent in issuing the 2 cheques amounting to Rs.25,00,000/- each were nothing but towards repayment, which has not been denied by the respondent and that also support the existence of the debt.

11. The default as defined under Section 3(12) of the Code includes the non-payment of debt as a whole or any instalment which is due and payable but not paid. For ready reference Section 3(12) is reproduced hereunder:

3.

*(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;*

Further, with respect to the contention of the respondent that the present application is barred by principle of res-judicata as the matter [bearing CP(IB) No.106/7/NCLT/AHM/2018] has been earlier rejected by the Adjudicating Authority between the same parties is not sustained, since the application rejected was filed for the 1<sup>st</sup> instalment, however, the present application is filed with respect to the default in 2<sup>nd</sup> instalment on account of dishonour of cheque dated 05.11.2018 which was due on 05.11.2018 and therefore, the cause of action of the present application is different from that of the application filed earlier though the subject matter is same. Hence, we are of the considered view that the principle of res-judicata cannot be applied in the present application.

12. As regards claim of the respondent that in the absence of registration being obtained by the lender as required under the

provisions of the M.P. Money Lenders Act, 1934, the applicant cannot be considered as financial creditor and the present application cannot be admitted under section 7 of the code is devoid of merits. The claimed amount falls under the definition of the debt and the financial debt as defined under the Code, since the amount is borrowed by the respondent against the payment of interest. Further, section 238 of the Code provides overriding effect and the provisions of IBC are a self-contained code and any law being in contradiction to IBC would not be applicable.

13. In view of the material available on record, the respondent committed default of the financial debt of Rs.25,00,000/-, although the applicant has in the present application stated its financial debt as Rs.68,01,111/- which includes interest. The same is within the threshold as per Section 4 of the IBC, since the application was filed on 03.07.2019 and the amendment to section 4 was w.e.f 24.03.2020. The Financial Creditor has established the existence of financial debt payable by the corporate debtor and its default by the corporate debtor. This application is filed within limitation and is defect free.

14. In view of the above, we admit this application and pass the following order as under:

(i) The Corporate Debtor M/s Pharma Traders is admitted in Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

*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 Securitisation 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.*

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iv) We hereby appoint Pratibha Khandelwal, Registration No. IBBI/IPA-002/IP-N00031/2016-17/10068, having address at: F 2/14, LIC Flats, Sector 2, Vidhyadhar Nagar, Jaipur-302039 to act as an Interim Resolution Professional under Section 13(1)(c) of the Code. She shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP shall perform all her functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further

made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(vi) This Adjudicating Authority directs the IRP to make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

(vii) It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Financial Creditor is directed to pay an advance of **Rs.1,00,000/-** (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(ix) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

15. Accordingly, **TP 57 of 2019 [CP(IB) 541 of 2019]** stands admitted.

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**Kaushalendra Kumar Singh**  
**Member (Technical)**

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**Dr.Madan B. Gosavi**  
**Member (Judicial)**

Swati