

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH-VI**

**IB-271/(ND)/2021**

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

**In the matter of:**

**M/s GOGIA LEASING LIMITED**  
(CIN: U74899DL1992PLC050733)  
Registered office at:  
A-203, Ansal Chambers-1,  
Bhikaji Kama Place,  
New Delhi- 110066

*... Financial Creditor/Applicant*

Versus

**M/s XION GEMS & JEWELLERS PRIVATE LIMITED**  
(CIN: U36910DL2006PTC144318)  
Registered office at:  
Unit No. 14, Plot No.31, Lower Ground Floor,  
Road No. 44, Vikas Tower Building, Rani Bagh,  
Pitampura, New Delhi- 110065

*...Corporate Debtor/Respondent*

**Coram:**

**SH. P.S.N. PRASAD, Hon'ble Member (Judicial)**

**DR. BINOD KUMAR SINHA, Hon'ble Member (Technical)**

Counsel for Financial Creditor: Mr. Sanjeev Kumar Kataria, Advocate  
Counsel for Corporate Debtor: Mr. Varun Jain, Advocate

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M/s Gogia Leasing Ltd. vs M/s Xion Gems and Jewellers Pvt. Ltd.

**ORDER**

**Per P.S.N. PRASAD, MEMBER (JUDICIAL)**

**Date: 13.10.2021**

1. This is an application filed by 'M/s Gogia Leasing Limited', through its Authorized Representative Mr. Hemant (Senior Manager Credit) to initiate Corporate Insolvency Resolution Process ("CIRP") against 'Xion Gems and Jewellers Pvt. Ltd.' under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an amount of Rs. 1,13,35,203/- (Rupees One Crore Thirteen Lakh Thirty Five Thousand Two hundred Three only) including interest as on 14.05.2021. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the Applicant i.e., M/s Gogia Leasing Limited is a private limited company carrying on the business of leasing, lending etc., and is registered as a NBFC within the provisions of Reserve Bank of India Act, 1934. The Respondent Company i.e., M/s Xion Gems and Jewellers

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Pvt. Ltd. is engaged in the business of gems and jewellers, apparel and ornaments etc.

- ii. The applicant submitted that to avail the short-term business loan, the Respondent approached the Applicant. Subsequently, both the parties entered into a loan agreement dated 28.01.2021 for extending the Loan of Rs. 1,10,00,000/- by applicant to the Respondent at the Interest rate of 12% P.a. (Interest payable on monthly rests).
- iii. That in accordance with the terms and conditions of the aforesaid loan agreement, the applicant paid an amount of Rs. 1,10,00,000/- in two tranches i.e., on 28.01.2021 and 16.02.2021. Copy of the Bank statement have been annexed with the application.
- iv. The Applicant submitted that as per the terms of loan agreement dated 28.01.2021, the principal loan amount along with interest therein had to be repaid to the applicant on or before 16.04.2021. It was further submitted that the Respondent against their



abovementioned liability did not make any repayment of loan and interest thereon.

- v. The Applicant sent a loan recall notice dated 17.04.2021 upon the Respondent requesting to make the repayment of loan. The Respondent vide its letter dated 23.04.2021 expressed their inability to repay the loan amount citing the financial stress. Copies of the letter dated 23.04.2021 and 17.04.2021 has been annexed with the application.

2. Consequent to the notice issued to the Respondent by this Adjudicating Authority, the Respondent filed its reply and submitted that the debt on which the present petition has been filed is not a financial debt and the said application has not been presented by the proper authorized representative. Another contention raised by the respondent in its reply is that due to Pandemic crisis, the financial viability of the Respondent went low as the respondent could not run its business in view of the pandemic.

3. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The Financial



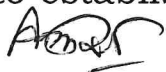
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Creditor has claimed the default on part of the Corporate Debtor for the Loan amount of Rs. 1,13,35,203/- (Rupees One Crore Thirteen Lakh Thirty Five Thousand Two hundred Three only) including interest as on 14.05.2021.

4. The Corporate Debtor in its reply raised contention regarding debt not being financial debt whereas, the perusal of Loan Agreement dated 28.01.2021 clearly substantiates that the amount was disbursed alongwith interest and against the consideration for the time value of money. Hence, the debt is to be classified as a financial debt. Another contention raised by the Corporate Debtor is regarding application not been presented by the proper authorized representative. However, a certified true copy of the resolution passed by Board of Directors dated 30.04.2021 authorizing Mr. Hemant, Senior Manager Credit has been duly annexed with the present application therefore, no contentions of the Corporate Debtor deserve any merit. Mere plain reading of the provisions under section 7 of IBC and Judicial Pronouncements thereon shows that in order to initiate CIRP Under Section 7 the applicant is required to establish that there is a financial debt and that a

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default has been committed in respect of that financial debt. That while dealing with the above said matter, the financial creditor has clearly established that a financial debt in form of Short-Term Loan has been advanced to the Corporate Debtor which can be clearly substantiated by the copies of the Bank statement showing disbursal of Loan amount by the financial Creditor (Annexure-8) and the letter dated 23.04.2021 wherein, the Corporate Debtor expresses its inability to clear dues. (Annexure-10).

5. It is also pertinent to mention that as the date of default mentioned in the Form 1 part- IV is 16.04.2021, therefore the present matter will not be barred by the provisions of Section 10A of IBC 2016.
6. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has defaulted on repayment of the debt amount, also as the Corporate Debtor himself submitted that due to financial strain they are unable to pay the amount.



7. In light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Adjudicating Authority **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
8. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Deepak Kumar Garg, for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00796/2019-2020/12560 having address at Shanti Niketan, Street No. 4, Tibra Road, ModiNagar- 201204. Deepak Kumar Garg has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere.

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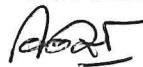
Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

9. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

10. It is pertinent to mention here that, the Code requires the Adjudicating Authority to only ascertain and record satisfaction in a summary adjudication, as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

11. Mr. Deepak Kumar Garg, having registration number IBBI / IPA-002 / IP-N00796/ 2020-21 /12560, with address at Shanti Niketan, Street No. 4, Tibra Road, Modinagar- 201204 is appointed as the Interim Resolution Professional.

12. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution

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Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

13. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(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.*

14. *It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.*

15. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium



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shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

16. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order. The Interim



Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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**(DR. BINOD KUMAR SINHA)**  
**MEMBER (TECHNICAL)**

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**(SH. P.S.N. PRASAD)**  
**MEMBER (JUDICIAL)**

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