

**NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**(IB) - 1593(ND)/2019**

**IN THE MATTER OF:**

**Utsav Securities Private Limited  
Cin: U65993dl1995ptc063997  
16/121-122, Jain Bhawan Faiz Road,  
W.E.A. Karol Bagh,  
New Delhi - Central Delhi - 110005**

**....Financial Creditor/Applicant**

**Versus**

**Vogue Clothiers Private Limited  
(Cin - U18204dl2007ptc161281)  
110, 1<sup>st</sup> Floor, Plot No. 5, Lsc  
Mohan Complex, H Block  
Ashok Vihar Phase - I, Delhi - 52**

**....Corporate Debtor**

**Order delivered on: 30.01.2020**

**CORAM:**

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)  
SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**Present.: Ms. Reema Jain, PCS, Mr. Ankur Dugar, PCA for the  
Petitioner  
Mr. Aman Bhalla and Mr. Vivek Sandhu, Advocates  
for the Respondent.**

**ORDER**

**PER SMT. INA MALHOTRA, MEMBER (J)**

1. The petitioner, a non-banking financial corporation, had granted financial assistance to the Corporate Debtor for a total sum of Rs.

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6,10,00,000/- in February, 2017. As the Corporate Debtor has failed to service the interest. The said loan was recalled by the Financial Creditor vide notice dated 27.04.2019. The Corporate Debtor has neither liquidated this outstanding liability nor reduced the same, constraining the Financial Creditor to seek initiation of their Corporate Insolvency Resolution Process vide the present petition.

2. The Financial Creditor has submitted that they disbursed the following amounts to the Corporate Debtor in various tranches as per table detailed below: -

| DATE         | MODE   | AMOUNT (INR)  |
|--------------|--|---------------|
| 16.02.2017   | Vide RTGS from the Bank A/c of our Client maintained with the HDFC Bank Branch Old Rajinder Nagar Market, Delhi.               | 90,00,000     |
| 17.02.2017   | Vide RTGS from the Bank A/c of our Client maintained with the State Bank of India of Bikaner & Jaipur Branch Faiz Road, Delhi. | 90,00,000     |
| 18.02.2017   | Vide RTGS from the Bank A/c of our Client maintained with the State Bank of India of Bikaner & Jaipur Branch Faiz Road, Delhi. | 1,00,00,000   |
| 20.02.2017   | Vide RTGS from the Bank A/c of our Client maintained with the State Bank of India of Bikaner & Jaipur Branch Faiz Road, Delhi. | 90,00,000     |
| 21.02.2017   | Vide RTGS from the Bank A/c of our Client maintained with the State Bank of India of Bikaner & Jaipur Branch Faiz Road, Delhi. | 1,00,00,000   |
| 21.02.2017   | Vide RTGS from the Bank A/c of our Client maintained with the HDFC Bank Branch Old Rajinder Nagar Market, Delhi.               | 50,00,000     |
| 22.02.2017   | Vide RTGS from the Bank A/c of our Client maintained with the State Bank of India of Bikaner & Jaipur Branch Faiz Road, Delhi. | 90,00,000     |
| <b>TOTAL</b> |  | 6,10,00,000/- |

3. The entire amount was disbursed between 16.02.2017 to 22.02.2017. It is submitted that in terms of availment, the Corporate

Debtor as paid interest of Rs. 6,05,718/-only once on 14.02.2018 after deduction of TDS which was duly deposited and is reflected in Form 26AS of the Financial Creditor.

4. Upon appearance in Court the Corporate Debtor has filed its reply through its counsel. Their resistance to the present petition is based on various grounds inter alia, lack of any contractual agreement, an undefined period of loan, absence of any agreement for payment of interest at any specific rate, and above all, it is argued that the said financial transaction does not tantamount to a financial claim. In support of his argument, Ld. counsel has relied upon the decision of the coordinate Bench of the NCLT in the matter of Prayag Politech Private Limited versus Good Marketing and sales Private Limited. in the IB No. 219/(ND)/2019.

5. Per contra, Ld. Company Secretary in practice appearing for the Financial Creditor has relied upon the decision of this Bench in the matter of Mrs. Tripat Kaur versus Kaliber Associates Pvt. Ltd. in (IB)- 51(ND)/2017 and in the matter of Neelkanth Township and Construction Pvt. Ltd. vs. Urban Infrastructures Trustees Limited in Company Appeal (AT)(Insolvency) No. 44 of 2017. In support of their claim, the Financial Creditor has relied upon the bank statement evidencing that the total amount of Rs. 6.10 crores had been duly transferred to the Corporate Debtor. Reliance is also placed on Form 26AS of the Income Tax which reflects that interest of Rs. 6,11,836/- accrued to the Financial Creditor (@

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12% per annum) on which TDS was deducted by the Corporate Debtor and deposited. Though it is confirmed by the Financial Creditor that no agreement was executed, it is submitted that the same is not mandated in cases pertaining to NBFCs. Reliance is placed on Provision of Section 186(11) of the Companies Act, 2013. Section 186(11) provides as under:

**186. Loan and investment by company**

(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(b) to any acquisition—

(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:

**Provided** that exemption to non-banking financial company shall be in respect of its investment and lending activities;

6. It is therefore explained that execution of an agreement for pursuing the business of granting financial assistance is not a sine-qua-non. It is argued that fair accounting practices have been adhered to and a mere denial by the Corporate Debtor cannot demolish their claim.

7. From the facts of the case, the constitution of Financial Creditor as an NBFC is evidenced by the certificate of registration issued by the RBI. The grant of financial assistance is evidenced by the banking transactions. The accepted liability to pay interest thereon finds corroboration by tender of interest and deduction of TDS duly deposited with the Income Tax Authority and substantiated by Form 26AS of the Financial Creditor. The resistance raised by the Corporate Debtor that the same was not a loan, finds no merit with this Bench. It is the business of an NBFC to grant financial assistance on interest. The Corporate Debtor is at a loss to explain the nature of the transaction. The arguments advanced by the Ld. Counsel for the Corporate Debtor that there was no tenure fixed for re-payment may be factually correct, but under such circumstances the law provides that a claim for recovery would crystalize upon recall of the said loan which was done vide legal notice dated 27.04.2019.

8. This Bench has taken note of the fact that a record of disbursal of the amount by the petitioner, a Non-Banking Financial Company, to the Corporate Debtor is vide a Banking transactions. The Corporate Debtor

therefore cannot dispute the same. It has also not been repudiated that the debt has not been repaid.

9. For determination of whether the claim of the petitioner is a financial one, we find the present transaction is squarely covered by the definition as defined in Section 5(8)(a): -

Definition: -

(8) "financial debt" means a debt along with interest, if any, which is disbursed against consideration for the time value of money and includes -

(a) money borrowed against payment of interest

10. The business of the Operational Creditor is that of Non-Banking Finance, a fact which is not repudiated by banking record by the Corporate Debtor, and duly corroborated by the Certificate of Registration issued by the RBI, liability to pay interest is acknowledged vide disbursement of Rs. 6,05,718/- after deduction of the TDS which was deposited. Form 26As reflects the TDS deposited by the Corporate Debtor. Despite the aforesaid facts, the insistence of the Corporate Debtor that the transaction is not a financial debt is inexplicable. The Act does require that a financial obligation shall only arise upon the terms being reduced into writing. Ld. PCS has cogently explained that the transaction does not get vitiated for want of an agreement in terms of Section 186(11) of the Companies Act, 2013.

11. The resistance of the prayer by the Corporate Debtor has no legs to stand upon. The defence is frivolous raised in a desperate attempt to resist initiation of the CIR process. This Bench is therefore of the opinion that Operational Creditor is entitled to seek initiation of the CIR process of the Corporate Debtor for its inability to liquidate its dues. Accordingly, this petition is Admitted. A moratorium in terms of Section 14 of the Code shall come into effect forthwith, staying:

*“the institution of suits or continuation of any pending legal proceedings, transferring or disposing of any asset of the Corporate Debtor, foreclosure or enforcement of any security or recovery of any property by the owner or lessor of the property occupied or in possession of the Corporate Debtor.*

*Further, in terms of Section 14 of the Code, the supply of essential goods or services shall not be terminated. The moratorium shall remain in effect till completion of the CIR Process.*

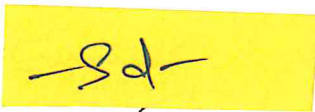
12. The Operational Creditor has proposed the name of Interim Resolution Professional. Accordingly, we appoint Ms. Karuna Sharma, Registration No. IBBI/IPA-002/IP-N00340/2017-18/10944, E-mail Id: - [sharma.karuna@gmail.com](mailto:sharma.karuna@gmail.com) Mob: - 987114577 duly empanelled with the IBBI as the IRP. Her consent in Form 2A copy of the certificate of registration with the IBBI are on record. She is directed to take such steps



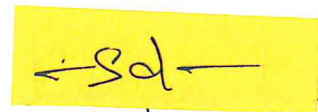
as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and file her report.

13. Copy of the order be communicated to both the parties as well as to the IRP who may file his consent in the required format within 1 week of intimation.

14. Report be filed before this Bench on 11<sup>th</sup> March, 2020.



**(L.N. GUPTA)**  
**MEMBER (T)**



**(INA MALHOTRA)**  
**MEMBER(J)**