



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.403 - C.P.(IB)/149(AHM)2024

Order under Section 7 of IBC, 2016

JHAVERI TRADING AND INVESTMENT PRIVATE LIMITED
Vs
SUNPOINT TRADING LIMITED

.....Applicant

....Respondent

Order delivered on 29/08/2024

Coram:

Mr. Shammi Khan, Hon'ble Member (J)
Mr. Sameer Kakar, Hon'ble Member (T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER
(Hybrid Mode)

The case is fixed for the pronouncement of the order. The order is pronounced in open Court, vide separate sheet.



SAMEER KAKAR
MEMBER (TECHNICAL)



SHAMMI KHAN
MEMBER (JUDICIAL)

SEN

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
COURT-I, AHMEDABAD BENCH**

CP (IB)/149(AHM)2024

(An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

*In the matter of **M/s. Sunpoint Trading Limited***

Jhaveri Trading and Investment Private Limited

Having address at:

410 Wall Street, Opp. Orient Club,
Ellisbridge, Ahmedabad,
Gujarat-380006.

...Applicant/Financial Creditor

VERSUS

Sunpoint Trading Limited

[CIN: L46109GJ1988PLC010293]

Having its Registered Office at:

3, Ravipushp Apartment,
B/s. Navneet House Memnagar,
Ahmedabad, Gujarat-380052.

...Respondent/Corporate Debtor

Order Pronounced on 29.08.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)



APPEARANCE:

For the Applicant : Mr. Vikram Choudhary, Advocate
For the Respondent : Mr. Arjun Padhiyar, Advocate

ORDER
[Per: Bench]

1. The Present application is filed on 02.04.2024 by the Applicant- M/s. Jhaveri Trading and Investment Private Limited (hereinafter referred to as “**Financial Creditor**”) against the Respondent- M/s. Sunpoint Trading Limited, formerly known as Sun Finlease (Gujarat) Limited (hereinafter referred to as “**Corporate Debtor**”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC, 2016**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as “**IB (AAA) Rules, 2016**”) for initiation of Corporate Insolvency Resolution Process (**CIRP**), to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of its outstanding dues of **Rs.1,37,10,424/-** including interest.



2. Perusal of Part-I of the Form-1 reveals that Financial Creditor – M/s. Jhaveri Trading and Investment Private Limited was incorporated on 23.02.2000 under CIN: U51909GJ2000PTC037411, having registered office at 410 Wall Street, Opp. Orient Club, Ellisbridge, Ahmedabad 380006.
3. This application has been filed by one Mr. Rajesh Nanubhai Jhaveri, being Director and authorised representative of M/s. Jhaveri Trading and Investment Private Limited who was authorised vide Board Resolution Dated 27.03.2024. A copy of the Board Resolution is annexed as **Annexure-A**.
4. Perusal of Part-II of the Form-1 reveals that the Corporate Debtor - M/s. Sunpoint Trading Limited was incorporated on 21.01.1988 under CIN: L46109GJ1988PLC010293, having its registered office at: 3, Ravipushp Apartment, B/s. Navneet House Memnagar, Ahmedabad, Gujarat-380052.
5. Perusal of Part-III of the Form-1 reveals that the Financial Creditor has named **Mr. Gomti Ramchandra**



Choudhary, having Reg. No. IBBI/IPA-001/IP-P-02625/2022-2023/14275, (email id- cagomitrarchoudhary@gmail.com) under section 13(1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He has filed his written communication annexed with the Application as Form-2 as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 whose AFA is valid till 30.06.2025. A copy of Form-2 is annexed with the application as **Annexure-C**.

6. Part-IV of the Form-1 reveals that the date of default is 27.05.2023 and the total amount in default is Rs.1,37,10,424/- (Principal amount of Rs.1,25,00,000/- + interest of Rs.9,68,219/- + delay interest of Rs.2,42,205).
7. Financial Creditor has relied upon the following documents:-



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LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF FINANCIAL DEBT AND THE AMOUNT IN DEFAULT

- A copy of request letter dated 22.02.2023 from the Corporate Debtor is annexed herewith and marked as **ANNEXURE G**
- A copy of Sanction letter dated 25.02.2023 issued from the Financial Creditor is annexed herewith and marked as **ANNEXURE H**
- A copy of letter dated 26.02.2023 from the Corporate Debtor requesting disbursement of ICD loan facility is annexed herewith and marked as **ANNEXURE I**
- A copy of the Inter-Corporate Deposit (short-term loan) agreement is annexed herewith and marked as **ANNEXURE J**
- A copy of Demand Promissory Note in favour of Financial Creditor is annexed herewith and marked as **ANNEXURE J-1**
- A copy of Inter-Corporate Deposit receipt is annexed herewith and marked as **ANNEXURE J-2**
- A copy of letter of confirmation of ICD loan facility in favour of Financial Creditor is annexed herewith and marked as **ANNEXURE J-3**
- A copy of Board Resolution dated 22.02.2023 passed by Corporate Debtor for availing ICD Loan facility is annexed herewith and marked as **ANNEXURE J-4**
- A copy of list of Board of Directors of Corporate Debtor with PAN/Address/DRN is annexed herewith and marked as **ANNEXURE J-5.**
- A copy of MGT14 Form is annexed herewith and marked as **ANNEXURE J-6.**





8. The Financial Creditor has placed the facts though this Petition in the following manner:-

- I. The Corporate Debtor vide its request letter dated 22.02.2023 has applied for availing Inter Corporate Deposit (for short "**ICD**") of Rs. 1,25,00,000/- from the Financial Creditor on proposed terms and conditions. A copy of the request letter is annexed as Annexure-G, page. No. 40 of the application.
- II. The Financial Creditor vide its Sanction Letter dated 25.02.2023 had sanctioned an ICD of Rs. 1,25,00,000/- on such terms and conditions as enclosed in Annexure - I of sanction letter. A copy of Sanction Letter for ICD is annexed as Annexure-H ate page no. 41-42 of the application.
- III. The Corporate Debtor vide its letter dated 26.02.2023 had requested the Financial Creditor to disburse the ICD of Rs. 1,25,00,000/- on following terms and dates as mentioned below:

SR. NO.	AMOUNT (Rs)	DISBURSEMENT DATE
1	50,00,000/-	27.02.2023



2	25,00,000/-	28.02.2023
3	50,00,000/-	04.03.2023

- *Loan Amount: Rs. 1,25,00,000/-*
- *Loan Type: Inter Corporate Deposit*
- *Loan Maturity Date: 180 Days*
- *Purpose of Loan: Business Requirement*
- *Interest Rate: 12% P.A*
- *Default Rate: 12+3% P.A, if delayed compounded Monthly.*

A copy of the said letter is annexed as Annexure-I at page no. 40 of the application.

IV. The Short-Term Loan (ICD) Agreement came to be executed between the Financial Creditor and Corporate Debtor on 27.02.2023 wherein the Corporate Debtor against the said ICD, has executed Demand Promissory Note in favour of the Financial Creditor. Copies of the agreement and Demand Promissory Note are annexed as Annexure-J and J-1.

V. The Financial Creditor has disbursed the ICD amount to the Corporate Debtor on the agreed date and terms and conditions. A copy of Bank



Statement evidencing disbursement is annexed as Annexure-F at page no. 30-31.

- VI. As per terms of ICD (Short-term Loan) Agreement, the Corporate Debtor was to repay ICD amount within 180 days in 3 installments as listed hereunder:-

<i>Date</i>	<i>Amount (Rs.)</i>	<i>Particulars</i>
27.05.2023	50,00,000	BY RTGS
31.05.2023	25,00,000	BY RTGS
30.06.2023	50,00,000	BY RTGS

- VII. Upon failure of repayment of ICD, the Financial Creditor vide its letter dated 01.07.2023, 01.10.2023, 01.01.2024 and 04.02.2024 has demanded the payment of overdue Inter-Corporate Deposit along with interest as per agreed terms and conditions.

- VIII. As on 31.01.2024, an amount of Rs.1,37,10,424/- remains due and payable by the Corporate Debtor against the ICD loan facility which consists Principal Amount: Rs.1,25,00,000/-, Interest:



Rs.9,68,219/- @ 12.00% Per Annum and Delay Interest: Rs. 2,42,205/- @ 3.00% P.A compounded monthly.

IX. Pursuant to the issuance of the demand letter dated 01.07.2023, 01.10.2023, 01.01.2024 and 04.02.2024, the Financial Creditor has neither received reply from the Corporate Debtor nor received payment against its Outstanding ICD loan facility.

9. On issuance of the notice, the Corporate Debtor appeared through it's Counsel and filed Affidavit in reply on behalf of the Corporate Debtor through one Mr. Paras Kamleshbhai Sharma, being the Director of the Corporate Debtor under inward diary no. D3853 dated 06.05.2024. A copy of Board Resolution is filed under inward diary no. D4701 dated 18.06.2024.

10. In the reply, it is stated that:-

I. The Corporate Debtor is engaged in the business of providing financial services and trading/investing shares, securities and short term inter corporate



financial ventures. During the course of F.Y. 2023-24, due to sudden need of liquidity, the Corporate Debtor vide its letter dated 22.02.2023 requested the ICD of Rs.1,25,00,000/- from the Financial Creditor on proposed terms & conditions. The same ICD came to be accepted and disbursed by the Financial Creditor as per ICD agreement.

- II. However, owing to volatility and downfall of market, Corporate Debtor was unable to service the interest and principal ICD amount. The Corporate Debtor was much hampered and also due to lack of funds, Corporate Debtor is facing difficulty to communicate its business as going concern.
- III. Considering the business relation with Financial Creditor and prevailing market situation, the Corporate Debtor pleads some reasonable time of further 6-8 months' time to fully repay the entire outstanding amount.
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11. Rejoinder was also filed on behalf of Financial Creditor vide inward diary no. D4702 dated 18.06.2024. In the rejoinder, it is stated that:-

- I. Financial Creditor has issued numerous demand letters i.e., 01.07.2023, 01.10.2023, 01.01.2024 & 04.02.2024 to the Corporate Debtor. However, the Corporate Debtor neither responded to the aforesaid letter nor sought further time for the repayment of outstanding debt. Through this reply, the Corporate Debtor for the first time raised frivolous issues i.e., volatility and downfall of market for the purpose of non-payment of financial debt.
- II. As per the ICD agreement, the Corporate Debtor has not made single payment towards the ICD after the date on which debt become due and payable i.e., 27.05.2023. Therefore, this Tribunal may not be pleased to grant any further time to the Corporate Debtor for the repayment of ICD.

12. Written submissions were filed by the Financial Creditor as well as by the Corporate Debtor vide inward no.



D5545 dated 11.07.2024 and D5551 dated 11.07.2024 respectively. We have considered the same.

13. We have heard the counsels and perused the material on record. It is noted that the Corporate Debtor vide its letter dated 22.02.2023 requested Financial Creditor for availing ICD for a sum of Rs.1,25,00,000/-. The said ICD was executed between the Financial Creditor and the Corporate Debtor on 27.02.2023. The said ICD amount was duly disbursed in favour of the Corporate Debtor and the Corporate Debtor vide its letters dated 27.02.2023, 28.02.2023 and 04.03.2023 accepted the loan receipt for an amount of Rs.50,00,000/-, Rs.25,00,000/- and Rs.50,00,000/- respectively. Further, perusal of Bank Statement of Financial Creditor reveals that ICD amount was duly disbursed in favour of the Corporate Debtor on abovementioned dates.
14. It is also noted that in compliance of the order dated 22.08.2024 wherein this Tribunal has directed both the sides to place original complete Minutes Book of board



resolutions of their respective companies, both the sides have produced their original minutes before this Tribunal. The order dated 23.08.2024 records as under:-

"Today, in terms of extended directions dated 22.08.2024, the applicant as well as the respondent have produced their original minutes of the book of board resolution, which, after perusal, were returned to them. On 22.08.2024, some of the minutes of book of resolutions were kept in the file were also returned to the Respondent".

15. The Financial Creditor has also e-filed on 28.03.2024 the Record of Default issued by **NeSL** in Form D wherein the Status of Authentication of Default is mentioned as AUTHENTICATED and date of default is mentioned as 27.05.2023 for an outstanding amount of Rs.1,37,10,424/-.
16. As the date of default is mentioned as 27.05.2023 and the application is filed on 02.04.2024 for an outstanding amount of Rs.1,37,10,424/- which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application.



17. The present application is complete in terms of Section 7 (5) of the Code. Hence, the application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor deserves to be admitted.
18. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-
- (i) The Respondent/Corporate Debtor- **M/s. Sunpoint Trading Limited**, is admitted in the Corporate Insolvency Resolution Process under Section 7 of the IBC, 2016.
 - (ii) As a consequence thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.
 - 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.*
 - e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*
- (iii) The order of moratorium under section 14 of the Code shall come to 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 the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.



- (v) As proposed by the Financial Creditor, we appoint CA **Mr. Gomti Ramchandra Choudhary**, having Reg. No. IBBI/IPA-001/IP-P-02625/2022-2023/14275, **Email** **id-** cagomtirchoudhary@gmail.com under section 13(1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate,



the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of



issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.

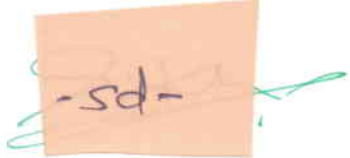
(xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

19. In view of the above directions, **CP(IB)/149(AHM)2024** is hereby admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.


SAMEER KAKAR
MEMBER (TECHNICAL)

SEN


SHAMMI KHAN
MEMBER (JUDICIAL)

