

**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**

**IA No. 138/JPR/2021**  
**And CP No. (IB)- 68/7/JPR/2021**

(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 CATALYST REFINERY SERVICES PRIVATE LIMITED**

**...Financial Creditor/Applicant**

**Versus**

**M/S GANPATI GLOBAL PRIVATE LIMITED**

**...Corporate Debtor/Respondent**

**MEMO OF PARTIES**

**M/s CATALYST REFINERY SERVICES PRIVATE LIMITED**

**CIN: U23209RJ2006PTC022594**

292/293, Goms Defence Colony,  
Vaishali Nagar, Jaipur, Rajasthan – 302021

**...Financial Creditor**

**VERSUS**

**M/s GANPATI GLOBAL PRIVATE LIMITED**

**CIN: U24233RJ1994PTC008485**

Flat No. B-9, Second Floor, Ganpati Enclave,  
Madrampura, Near Civil Lines Metro Station,  
Ajmer Road, Jaipur, Rajasthan – 302006

**...Corporate Debtor**

**For Petitioner (s)** : Rishabh Khandelwal, Adv.

**For Respondent (s)** : Nivedita R. Sarada, Adv.  
Gunjan Pathak, Adv.

**ORDER PRONOUNCED ON: 19.10.2022**

**ORDER**

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

1. This Application is filed by the M/s Catalyst Refinery Services Private Limited ('Applicant' / 'Financial Creditor'), through the director and authorized signatory, Mr. Ram Narayan Pareek, who is duly authorized to sign this application *vide* Board Resolution dated 30.06.2021 at Page No. 526 of the Application, claiming to be a Financial Creditor, 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') against the Corporate Debtor.
2. M/s Ganpati Global Private Limited ('Corporate Debtor' / 'Non-Applicant') is a private limited company incorporated on 15.06.1994 under the provisions of the Companies Act, 1956. The registered office of the Corporate Debtor is in Jaipur and hence falls under the jurisdiction of this Adjudicating Authority. Copy of the Corporate Debtor's Master Data is annexed as Annexure – 2 of the Application.

3. The Financial Creditor alleged default on the part of the Respondent in settling an amount of Rs. 2,73,51,364/- (Rupees Two Crores Seventy-Three Lakhs Fifty-One Thousand Three Hundred and Sixty-Four Only) inclusive of interest as of 31.08.2021. The details of transactions leading to the filing of this applications as averred by the Applicant are as follows:

a. A tripartite Memorandum of Understanding ('MOU') dated 27.08.2014 was executed among the Financial Creditor, the Corporate Debtor, and shareholders of the Corporate Debtor. Copy of the MOU is annexed as Annexure – 4 (Colly) of the Application. Following are the shareholders of the Corporate Debtor who are a party in the aforesaid MOU:

<i>Serial No.</i>	<i>Name of the Shareholder</i>	<i>Shareholding</i>
1.	Om Prakash Murarka (s/o Late Shri Mal Chand Murarka)	2,50,000
2.	Vishwanath Murarka (s/o Late Shri Rugh Lal Murarka)	10,100
3.	Kusum Devi Murarka (w/o Shri Vishwanath Murarka)	15,100
4.	Padma Tradecon Private Limited	1,88,800
5.	Supreme Commotrade Private Limited	13,43,000

b. As per the said MOU, the Shareholders of the Corporate Debtor agreed to sell and transfer their entire shareholding in Corporate Debtor to the Financial Creditor for a total consideration of Rs. 7,70,00,000/- (Rupees Seven Crores and Seventy Lakhs Only).  
The aforementioned total consideration would be used towards:

- i. Payment of Term Loan as on 31<sup>st</sup> August, 2014,
  - ii. Payment of Unsecured Loan as on 31<sup>st</sup> August, 2014,
  - iii. Payment of Other Current Liabilities
  - iv. Balance towards payment towards purchase of shares.
- c. In pursuance to MOU, an amount Rs. 1,39,00,000/- (Rupees One Crore and Thirty-Nine Lakhs Only) was paid by the Applicant *vide* cheques of 'The Hongkong and Shanghai Banking Corporation Ltd.' in following manner:

<i>Serial No.</i>	<i>Cheques No.</i>	<i>Date of Cheque</i>	<i>Amount (in INR)</i>
1.	097379	29.08.2014	25,00,000/-
2.	097380	29.08.2014	14,00,000/-
3.	097381	30.08.2014	25,00,000/-
4.	097382	30.08.2014	25,00,000/-
5.	097383	30.08.2014	25,00,000/-
6.	097384	31.08.2014	25,00,000/-
<b>Total</b>			1,39,00,000/-

Copy of the Cheques issued by the Financial Creditor is annexed as Annexure – 4 (Colly) of the Application.

- d. The shareholders of the Corporate Debtor were required to repay the term loan, the unsecured loan and all other current liabilities outstanding in the Balance Sheet of the Corporate Debtor as of 31<sup>st</sup> August, 2014 and director(s) shall be responsible for all the conduct of the Corporate Debtor till aforesaid period.
- e. The remaining payment as per MOU and oral understanding of the parties remained pending. Such payment was to be made full upon

handling over of possession of the share transfer deeds, share certificate, final balance sheet and No Objection Certificate ('NOC') from the lenders of term loans, unsecured loans, and other current liabilities. However, shareholders and Corporate Debtor failed to perform their obligations. Thus, the MOU ended in a stalemate.

- f. As per an oral agreement between the Financial Creditor and Corporate Debtor, it was agreed that the payment made towards the acquisition of shares shall be treated as an unsecured loan with interest payable at 11% per annum on the amount paid to the Corporate Debtor. The acknowledgment of the same is shown under the Long-Term Borrowings and Copy of the Audited Financial Statement of Financial Years 2014-15 to 2019-20 is annexed as Annexure – 3 of the Application.
- g. Consequently, the Corporate Debtor deducted Tax Deduction at Source ('TDS') of interest amount *vide* Tax Deduction and Collection Account Number ('TAN') JPRG07380C under Section 194A of the Income Tax Act, 1961. The details of amount of TDS being deducted and interest accrued till 31<sup>st</sup> March, 2018 is reproduce for ease of reference:

<i>S. No.</i>	<i>Transaction Date</i>	<i>Date of Booking</i>	<i>Total Amount Paid/ Credited (in INR)</i>	<i>Total Tax Deducted &amp; Deposited (in</i>
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				<b>INR)</b>
1.	March 31 <sup>st</sup> 2015	May 20 <sup>th</sup> 2015	5,67,493/-	56,749/-
2.	March 31 <sup>st</sup> 2016	May 16 <sup>th</sup> 2016	15,85,182/-	1,58,518/-
3.	March 31 <sup>st</sup> 2017	May 19 <sup>th</sup> 2017	17,41,015/-	1,74,102/-
4.	March 31 <sup>st</sup> 2018	May 11 <sup>th</sup> 2018	19,09,230/-	1,90,923/-
<b>Total</b>			<b>58,02,920/-</b>	<b>5,82,292/-</b>

Copy of the Form 26AS – Annual Tax Credit Statement under Section 203AA of the Income Tax Act, 1961 of M/s Catalyst Refinery Services Private Limited is annexed as Annexure – 6 (Colly) of the Application.

- h. The Financial Statement of the Corporate Debtor from 2014-15 to 2019-20 shows that the Corporate Debtor is treating the said payment as unsecured loan and crediting interest thereon. Copy of the confirmation of outstanding loan amount is annexed as Annexure – 5 of the Application. However, the said amount of interest or principal was never paid to the Financial Creditor. Copy of the Bank Account Statement of the Financial Creditor from 29.08.2014 to 26.08.2021 of various banks is annexed as Annexure – 9 (Colly) of the Application.
- i. As there was no written agreement executed between the parties with respect to the due date of the loan amount, the loan was payable on demand. Thus, after several empty assurances and promises, the Applicant issued a Demand cum Legal Notice dated 20<sup>th</sup> February,

2019 for repayment of an outstanding amount of Rs. 2,10,01,361/- (Rupee Two Crore Ten Lakh One Thousand Three Hundred and Sixty-One Only) including interest at 11% per annum. Copy of the Legal Notice dated 27.02.2019 is annexed as Annexure – 7 of the Application. The total outstanding amount of the aforesaid financial debt along with interest, as enumerated under Part IV is as follows:

**Part IV**  
**PARTICULARS OF FINANCIAL DEBT**

1.	Total amount of debt granted  Date(s) of Disbursement	<u>Amount of Debt Granted:</u>		
		Total Principal Amount: Rs. 1,39,00,000/-		
		<b>S. No.</b>	<b>Amount</b>	<b>Date</b>
		1.	Rs.14,00,000	29.08.2014
		2.	Rs.25,00,000	29.08.2014
		3.	Rs.25,00,000	30.08.2014
		4.	Rs.25,00,000	30.08.2014
5.	Rs.25,00,000	31.08.2014		
<b>Total</b>		<b>Rs.1,39,000</b>	-	
2.	Amount claimed to be in default and the date on which the default occurred	<u>Amount Claimed:</u> Rs.2,73,51,364/-*		
		Total Principal Amount: Rs.1,39,00,000/- Total Interest Due: Rs.1,34,51,364/-*		
		Date from which Debt fell Due: 20.02.2019#		

\* Calculated as per the Terms & Conditions of the Loan Agreement between the parties.

# Date of default as mentioned by the Applicant is same date as that of the demand notice. However, the actual date of demand notice is 27.02.2019.

4. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed in its reply *vide* Diary No. 1148/2022 dated 18.04.2022 and has stated the following:

- a. The Applicant does not fall under the provisions of Section 7 of the Code as the claim made does not qualify as ‘financial debt’ under Section 5(8) of the Code. The Application for the alleged amount is not supported by any document executed between the parties regarding the tenure, terms of repayment, rate of interest payable thereon.
- b. The transaction between the Corporate Debtor and the Applicant was a related party transaction as Mr. Gauri Shankar Pareek is the director of both Applicant and Respondent Companies. Such disclosure is made in Audited Financial Statement of 2014-15. Copy of the director’s details is annexed as Annexure – 1 of the Reply.
- c. As per Section 185 of the Companies Act, 2013 (*as existed prior to Companies (Amendment) Act, 2017*), prohibited the companies from advancing any loan and/or giving any security or guarantee in relation to the loan taken by the directors of the company or any other person in whom the director is interested. Thus, such lending of unsecured loans was strictly prohibited and the concerned director along with the Company was liable to fine and imprisonment. Further, the Article of Association (‘AOA’) of the Applicant Company does not confer any power on to the Management to provide unsecure loans to other companies.

- d. Furthermore, the Applicant had not produced on record any resolution passed at the meeting with the consent of all the directors present and prior approval of the Public Financial Institutions, where any term loan is subsisting, which is violative of Section 186 (5) of the Companies Act, 2013.
- e. Financial Creditor disbursed the money to the Corporate Debtor as a Share Application Money converted into unsecured loan. However, the Applicant did not furnish any documentary evidence for alleging that the share application money shall be treated as an unsecured debt. In the present case, converting Share Application Money into unsecured loan by way of oral agreement is against Section 21 of the Companies Act, 2013. Therefore, when the original alleged debt itself was illegal, there exist no default as defined under Section 3 (12) of the Code. Additionally, according to MOU, the total consideration value was Rs. 770 Lakhs, which was never fully paid.
- f. Respondent never entered in a financial contract with the Applicant for borrowing money, merely because the Applicant had deposited certain amount in the bank account of the Corporate Debtor or deducting TDS, it cannot be said to have created a financial debt towards the Applicant.
- g. The Respondent has erroneously shown the said amount as unsecured loan. Moreover, the Applicant has not disclosed such transaction in its

Annual Financial Statement. Copy of the Annual Financial Statement for the Financial Year 2014-15 is annexed as Annexure – 2 of the Reply.

5. The Applicant has filed its rejoinder *vide* Diary No. 1573/2022 dated 23.05.2022 and stated that:
  - a. The Corporate Debtor in its reply has accepted and acknowledged the said amount. It is not only treating the said amount as Unsecured Loan in its books of accounts but also it is deducting TDS on the payable loan interest. The admission of debt, payment of interest, demand notice dated 20.02.2019 raised for payment of debt and default by the Corporate Debtor has been duly accepted.
  - b. The said amount paid as a part consideration for purchase of total shareholding of the Corporate Debtor through MOU dated 27.08.2014 and nowhere in the MOU it is mentioned or shown as Share Application Money. Further, the MOU was executed for the transfer of entire share of the Corporate Debtor through the directors and shareholders of the Corporate Debtor in which Corporate Debtor was also a party to the agreement.
  - c. Mr. Gauri Shankar Pareek was appointed as director in Respondent Company on 01.09.2014. The MOU is signed between the parties on 27.08.2014 and the said amount was disbursed on or before 31.08.2014. The purpose of appointment was only to facilitate the

smooth execution of MOU, howbeit when the Corporate Debtor failed to perform his part of the promise, Mr. Gauri Shankar Pareek ceased himself from the post *w.e.f.* 15.01.2015. Hence, there is no default under Section 185 of the Companies Act, 2013.

- d. The Financial Creditor has duly followed the process of law including adoption of additional object clause in its Memorandum of Association ('MOA') *vide* Special Resolution dated 25.08.2014 for carrying the business of guar gum and *vide* Board Resolution dated 26.08.2014 for inter corporate loan under Section 186 of Companies Act, 2013. Copy of the Special Resolution dated 25.08.2014 and Board Resolution dated 26.08.2014 is annexed as Annexure – 1 & 2, respectively of the rejoinder.
6. The Corporate Debtor *vide* Dairy No. 2775/2022 dated 16.09.2022 has its written submissions and relied on following case laws:
- a. Sanjay Kewalramani v. Sunil Parmanand Kewalramani & Ors., Company Appeal (AT) (Insolvency) No. 57 of 2018.
  - b. Pawan Kumar v. Utsav Securities Private Limited & Ors., Company Appeal (AT) (Ins) No. 251 of 2020.
  - c. Prayag Polytech Private Limited v. Gem Batteries Private Limited, Company Appeal (AT) (Ins) No. 713 of 2020.
  - d. Prayag Polytech Private Limited v. I WORLD Digital Solution Private Limited, Company Appeal (AT) (Ins) No. 625 of 2019.

- e. Prayag Polytech Private Limited v. Bon Lon Petrochem LLP, Company Appeal (AT) (Insolvency) No. 705 of 2019.
  - f. Agarwal Polysacks Limited v. K. K. Agro Foods & Storage Limited, IB-1705/(ND)/2019.
  - g. Avail Financial Services v. Sunworld City (P) Limited, 2019 SCC Online NCLT 23165.
  - h. Priyanka Kumar Jain v. Spencer's Travel Services Limited, 2020 SCC Online NCLT 6386.
  - i. Prayag Polytech Private Limited v. Beoworld Private Limited, 2019 SCC Online NCLT 13933.
  - j. Pankaj Piyush Trade & Investment Private Limited v. Kamal Ideal Infratech Private Limited, 2020 SCC Online NCLT 8472.
  - k. Utsav Securities Private Limited v. Sunworld Luxury Suites Private Limited, 2020 SCC Online NCLT 7442.
  - l. Three C Universal Developers Pvt. Ltd. v. Gulshan Homz Pvt. Ltd., (IB)-890/(ND)/ 2020.
  - m. Agarwal Associates & Agencies v. Vinay Fabrics Private Limited, CP No. 4376/IBC/NCLT/MB/MAH/2018.
  - n. UKG Steel Private Limited v. Erotic Buildcon Private Limited, (IB)/1050(PB)/2020.
7. The Hon'ble National Company Law Appellate Tribunal ('NCLAT') in Sanjay Kewalramani versus Sunil Parmanand Kewalramani & Ors.,

Company Appeal (AT) (Insolvency) No. 57 of 2018 laid down a critical distinction between a 'Debt' and a 'Financial Debt'. In accordance with Section 5(8) of the Insolvency and Bankruptcy Code, 2016, the essential requirement of a 'Financial Debt' is that it should have been disbursed against the consideration for the time value of money. The principle is applied in the case of Pankaj Piyush Trade (*Supra*), Utsav Securities (*Supra*).

8. In the case of Pawan Kumar v. Utsav Securities Private Limited & Ors., Company Appeal (AT) (Ins) No. 251 of 2020, the Hon'ble NCLAT has stated following to be essential conditions to be satisfied by a Financial Creditor under Section 7 read with Section 5 (7) and (8) of the Code:

- a. There must be disbursement of loan amount.*
- b. Such disbursement should be made for a consideration for time value of money, and*
- c. When the debt (whole or any part or instalment) become due and payable and is not paid by the Corporate Debtor means committed default.*

This position is adopted in the case of Avail Financial (*Supra*), Agarwal Associates & Agencies (*Supra*).

9. In Prayag Polytech Private Limited v. Gem Batteries Private Limited, Company Appeal (AT) (Ins) No. 713 of 2019, the Hon'ble NCLAT has held:

*'6. We have gone through the records and the impugned order. Merely pointing out that TDS was deducted would not be sufficient to conclude that there was financial debt. TDS can be deducted for various reasons.*

*7. As regard relying on Section 10 of the Contract Act, 1872, in our view IBC is a complete code in itself. Section 238 of IBC has overriding effect on provisions inconsistent with IBC. The 'Financial contract' is defined in 'Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016' Rule 3 (1)(d) requires setting out the terms of the financial debt including tenure etc.'*

This view point is further followed in the case of Agarwal Polysacks (*Supra*), Priyanka Kumari Jain (*Supra*), Beoworld Private Limited (*Supra*).

10. In Prayag Polytech Private Limited v. I WORLD Digital Solution Private Limited, Company Appeal (AT) (Ins) No. 625 of 2019, the Hon'ble NCLAT has held that in case where there is no Financial Loan Agreement and no Board Resolution is filed in regard to advance/loan to Corporate Debtor as per Section 186 of the Companies Act, 2013. The Adjudicating Authority is not required to admit the Application under Section 7 solely on the ground of acknowledgment under Financial Statements of the Corporate Debtor. The same is reiterated in Three C Universal (*Supra*), UKG Steel (*Supra*).
11. The Corporate Debtor *vide* Dairy No. 2749/2022 dated 14.09.2022 has its written submissions and relied on following case laws:

- a. Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd., Civil Appeal No. 2231 of 2021.
  - b. Swiss Ribbons Pvt. Ltd. & Ors. v. Union of India & Ors., Writ Petition (Civil) No. 99 of 2018.
  - c. Innoventive Industries v. ICICI Bank & Anr., (2018) 1 SCC 407.
  - d. Mahabir Cold Storage v. Commissioner of Income Tax, Patna, 1991 AIR 1357.
  - e. Anchor Leasing Private Limited v. Euro Ceramics, CP No. 66/IBC/NCLT/MB/MAH/2018.
  - f. Tomorrow Sales Agency Pvt. Ltd. v. Raipur Power & Steel Ltd., CP (IB)/09(PB)/2017.
  - g. Sushant Aneja v. J. D. Aneja Edibles (P) Ltd., CP – IB 571/ND/2017.
  - h. VR Polyfab Pvt. Ltd. v. Sadbhav Enterprises Pvt. Ltd., CP (IB) No. 115/7/NCLT/AHM/2017.
12. The Hon'ble Supreme Court of India, in Orator Marketing (*Supra*) held that the Time Value of money means that the money which is being given will be more at the time of return. This would be through the interest on the principal amount, in case of absence of interest the debt is still qualifies as Financial Debt. Supplementarily, in Swiss Ribbons (*Supra*), it held '*Section 7 petition does not leave any scope for the Corporate Debtor to*

*raise a dispute unlike in Section 9. As long as there is a 'Debt' and a 'Default' has occurred, the petition under Section 7 is to be admitted.'*

13. In the case of Mahabir Cold Storage (*Supra*), the Hon'ble Apex Court held the entries in the books of accounts would amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act, 1963. The said case is not applicable to present set of the circumstances.
14. The corresponding benches of NCLT in Tomorrow Sales Agency (*Supra*), Anchor Leasing Pvt. Ltd. (*Supra*) as held that there is no requirement of the express agreement for the loan arrangement or payment of interest thereon. Disbursement of Principal and receipt of interest payment from time to time; confirmation of accounts and outstanding dues is an acknowledgement by Corporate Debtor. The same is sufficient for admission of Application under Section 7 of the Code. In Sushant Aneja (*Supra*) and VR Polyfab (*Supra*), it was held deduction of tax on interest on loan amount itself shows that there is a financial debt.
15. In the present case, it was contended that there was an oral agreement between the parties, although this oral agreement can not *per se* be enforced by the court unless corroborated with other substantive documents. The Financial Creditor has provided Financial Statements of the Corporate Debtor alleging whereby the Corporate Debtor is treating the said loan amount as an unsecured loan and deducting TDS for number of financial years. However, there was no receipt of the payment of interest

by the Financial Creditor either in its bank account or otherwise. It is settled that in absence of any document to demonstrate the disbursement of loan, demand and default with qualities as mentioned under Section 5 (8) of the IBC, no application lies under Section 7 of the Code.

16. In the case at hand, it is seen through Bank Statements that the Financial Creditor transferred Rs. 139 Lakhs to the bank account of the Corporate Debtor for the initial purposes of the acquiring shares and transfer of business of the Corporate Debtor. However, there is no documentary proof indicating that said disbursal can be considered as loan transaction. Although, the TDS was deducted and accounted for in his books of accounts by the Corporate Debtor, the Corporate Debtor never deposited the accrued interest on the loan amount in bank account of the Financial Creditor. The Demand cum Legal Notice dated 27.02.2019 in Para 9 that read as follows:

*'... however, it is even shocking to note that despite of deducting the TDS on the interest portion, the Noticee failed to deposit the interest amount in the bank account of Our Client and continuously defaulted in making payment of the principle amount payable along with the accrued interest and showing the cumulative sum of the principle plus interest amount in its all respective year's Financial Statements as filed with Registrar of Companies, Rajasthan under the head 'Unsecured Loan' payable to Our Client.'*

17. The date of default in Part IV is stated as 20.02.2019 whereas date of Demand cum Legal Notice is 27.02.2019. Section 7(3)(a) of IBC, provides that the Financial Creditor, shall along with the Application, is a required to furnish a record of default recorded with the information utility or such other record or evidence of default as may be specified. The Financial Creditor has failed to file any evidence or instance whereby the Corporate Debtor has defaulted in re-payment of the alleged loan.
18. To prove the oral contractual obligation on the part of the Corporate Debtor to repay the loan on demand, the Financial Creditor has relied on payment of unspecific irregular rate of interest and deduction of TDS whereas this neither reveals when the debt became due and payable nor it proves the default on part of the Corporate Debtor thereon. In the absence of a 'Financial Contract' specifying what is the actual amount disbursable, tenure of the debt, interest payable and date of repayment, such contention of the Financial Creditor is not-tenable.
19. The Financial Creditor has relied on the audited financial statements of the Corporate Debtor from 2014-15 to 2019-20 and Form 26AS. It has already been held by the higher fora that mere deduction of TDS does not amount to Financial Debt. Further, it is an establish principle that *Vigilantibus Non Dormientibus Jura Subveniunt*, i.e. the Law assists only those who are vigilant, and not those who sleep over their rights. The Applicant herein has failed to justify its non-action to take prompt steps for a long period of

time even after being aware of continuous defaults by the Corporate Debtor.

20. Additionally, Section 186(9) of Companies Act, 2013 provides for the maintenance of a register of loans containing such particulars and its manner of maintenance as prescribed under Rule 12 of Companies (Meetings of Board and its Powers) Rules, 2014 in Form No. MBP 2. The entries in the said Register are required to be duly authenticated. Thus, the production of 'Financial Contract' *prima facie* establishes the essential agreement arrived at between the parties including its tenure and repayment period, the same can be corroborated by the production of the Form No. MBP 2 for granting loan duly passed by all the directors of the Financial Creditor and production of register containing the essential terms of the loan.
21. The mere plain reading of the provisions under Section 7 of the IBC shows that to initiate CIRP under Section 7 of the Code, the Applicant must *prima facie* establish that there is a financial debt and the default has been committed in respect of that financial debt by the Corporate Debtor. All of these documents annexed by the Applicant are unable to prove any default of any debt which was owed by the Corporate Debtor to the Applicant.
22. In view of the foregoing, *inter-alia* including no financial contract and absence of any other documentary proofs of acknowledgement, we have no

option but to reject the prayer of the Financial Creditor to initiate proceedings under Section 7 of IBC, 2016.

23. Hence, the Application is dismissed. The Order in the present matter is made in terms of Section 7 (5) (b) of IBC, 2016 and based on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority.

24. Let the copy of the Order be served to the parties and IBBI.

**IA No. 138/JPR/2022**

The Corporate Debtor filed this IA under Section 60(5) of the Code read with Rule 11 of the NCLT Rules, 2016, seeking dismissal of CP (IB) No. 68/7/JPR/2021 on the maintainability of the subject petition.

In light of the foregoing, this Interim Application is infructuous and is disposed of accordingly.

DEEP  
CHANDRA  
JOSHI

Digitally signed by  
DEEP CHANDRA  
JOSHI  
Date: 2022.10.19  
17:52:53 +05'30'

**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

PRASANTA  
KUMAR  
MOHANTY

Digitally signed by  
PRASANTA KUMAR  
MOHANTY  
Date: 2022.10.19  
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**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**