

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.521/MB-IV/2023**

Under Section 7 of the IBC, 2016

*In the matter of*

ARHAM JEWELLERY.

through its proprietor

Mr. Vishal Ramesh Jain

[AEDPJ2552B]

...Financial Creditor

v/s.

GOLDEN WEALTH ADVISORY  
PRIVATE LIMITED.

[CIN: U74110MH2012PTC237832]

...Corporate Debtor

**Order Delivered on: 06.10.2023.**

*Coram:*

Ms. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances:*

For the Operational Creditor:

Mr. Yahya Batatawala, Ld. Counsel.

For the Corporate Debtor:

Mr. Tejas Nadhavi, Ld. Counsel.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Arham Jewellery (“Financial Creditor”) through its proprietor Mr. Vishal Ramesh Jain, seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Golden Wealth Advisory Private Limited., the Corporate Debtor.

1.1 The petition is filed on 18/06/2023 and the total outstanding amount of Rs. 39,73,79,600/- in default has been disbursed by the Financial Creditor to the Corporate Debtor towards short term unsecured loan. The date of default as Specified in Part IV of the petition is 06.12.2022.

**Submissions of the Financial Creditor:**

2. On 31.01.2013, Memorandum of Understanding was executed between the Financial Creditor and the Corporate Debtor. The Financial Creditor had disbursed Rs. 39,73,79,600/- (Rupees Thirty-Nine Crore Seventy-Three Lakhs Seventy-Nine Thousand Six Hundred only) to Corporate Debtor towards short term unsecured loan for a period of 12 months on the simple interest which can be extended at the will of both the parties and it was agreed between the parties that the amount of interest shall be recovered for the extended period along with the principal amount. The details of such disbursement are as under.

Date	Amount (Rs.)
29/01/2013	9,50,04,595
29/01/2013	9,50,05,375
29/01/2013	9,50,02,870
30/01/2013	9,50,01,970

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30/01/2013	1,73,64,790
<b>Total</b>	<b>39,73,79,600/-</b>

2.1. In view of the failure on part of Corporate Debtor to repay the loan despite letter dated 05.12.2022 sent by the Financial Creditor of the outstanding dues since January 2013, the Financial Creditor has filed the petition under section 7 of the IBC Code.

2.2. As directed by the erstwhile bench vide order dated 10.08.2023, an Additional Affidavit has been also filed by the Financial Creditor on 09.09.2023 to place on record Financial Statements of the Corporate Debtor which is duly acknowledged by the Corporate Debtor in the present case.

**Submissions of the Corporate Debtor:**

3. This bench noticed that the Financials filed were in the different name, so vide order dated 10.08.2023 the Corporate Debtor was directed to file additional affidavit regarding change in the name of the Company. The Corporate Debtor has filed an Additional Affidavit dated 12.09.2023, stating that ***“PURNIYA GOLD JEWELLERY PRIVATE LIMITED, NISIDDH VISION PRIVATE LIMITED AND GOLDEN WEALTH ADVISORY PRIVATE LIMITED are one and the same entity”***.

3.1. The Corporate Debtor is involved in the business of providing Corporate Advisory Services, Consultancy Services, Financial Advisory Services, Management and Facilitation Services, and in Investment Advisory Services.

3.2. The Corporate Debtor vide its Affidavit in reply dated 08.08.2023 states that, the Corporate Debtor has failed to make repayment of any amount of

the Unsecured Borrowing availed from the Financial Creditor and an amount of Rs.39,73,79,600/- is still due and payable; the Financial Creditor on several occasions have communicated and recalled the outstanding amount. The Corporate Debtor sought time on several occasions to make the payment as the Corporate Debtor is facing Financial difficulties; the Corporate Debtor in the month of the November, 2022 had sought last opportunity to make payment and had agreed to provide with the chart of repayment schedule.

***Findings:***

4. We have heard the arguments of Learned Counsel for Financial Creditor and the Corporate Debtor.
5. The bench observes that, the Corporate Debtor is in business of Investment Advisory Services.
6. On perusal of MOU dated 31.01.2013, as stated “*The BENEFICIARY has approached the INVESTOR to INVEST a sum of Rupees (397379600.00) as an Unsecured Borrowing for a period of 12 months on simple interest which can be extended at the will of both parties.....*”. The Financial Creditor has filed this application u/s 7 of the Code claiming that this investment payment is in nature of financial debt which is defined u/s 5(8)

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

*(a) money borrowed against the payment of interest;*

*(b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*

*(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*

*(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*

*(e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*

*(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*

*(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*

*(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

*(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;*

7. Form the reading of above definition we find that such investment made by the Financial Creditor does not fall within the inclusive definition part as contained in clause (a) to (i).

8. Considering the facts placed before us, this bench is of the considered view that in such circumstances, that the present case deserves to be dismissed under Section 7 of the Insolvency and Bankruptcy Code, 2016.

**ORDER**

9. The petition bearing CP(IB) 521/MB-IV/2023 filed by Arham Jewellery (“Financial Creditor”) through its proprietor Mr. Vishal Ramesh Jain, seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Golden Wealth Advisory Private Limited., the Corporate Debtor is **Rejected**.
10. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-  
**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**  
**06.10.2023.**

Sd/-  
**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**