

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI ATUL CHATURVEDI,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 52/7/JPR/2022

(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 SULTANPUR MINING AND CRUSHERS LLP

...Financial Creditor

Versus

M/S SOLAR VOLTAIC POWER LLP

...Corporate Debtor

MEMO OF PARTIES

M/s Sultanpur Mining and Crushers LLP

Through its authorized signatory

Mr. Manish Kumar Jangid

Office at 64, Udai Nagar-B,

Near Mansarovar Metro Station,

Mansarovar, Jaipur-Rajasthan-

302020.

...Financial Creditor/Applicant

VERSUS

M/s Solar Voltaic Power LLP

Through its authorized signatory

Office at Navya Tower, P. No. 178,

District Shopping Centre,

Kamla Nehru Nagar, Jodhpur-342001

...Corporate Debtor/Respondent



For the Applicant : Akshita Koolwal, Adv.
For the Respondent : Mahima Kirori, Adv.

Order Pronounced On: -19.09.2023

ORDER

Per: Shri Atul Chaturvedi, Technical Member

1. This Application is filed by M/s Sultanpur Mining and Crushers LLP ('Applicant'/'Financial Creditor') against the Corporate Debtor namely M/s Solar Voltaic Power LLP ('Respondent' /'Corporate Debtor') 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') pursuant to the default in repayment of loan amount by the Corporate Debtor to the Applicant.
2. The Applicant is a Limited Liability Partnership ('LLP') registered under the LLP Act, 2008 having LLP identification number AAE-1478 engaged in the business of mining and quarrying. The registered office of the Applicant is situated at 64, Udai Nagar-B, near Kisan Dharma Kanta, Mansarovar Metro Station, Mansarovar, Jaipur-302020. The present application has been filed through Mr. Mahesh Kumar Jangid who has been duly authorised *vide* Board Resolution dated 02.05.2022 which is annexed as Annexure-1 of the Application.



3. The Corporate Debtor is also a Limited Liability Partnership registered under the LLP Act, 2008 having LLP identification number AAC-1312 engaged in the business of electricity, gas, steam, and hot water supply. The Corporate Debtor's registered office is located at Navya Tower, P. No. 178, District Shopping Centre, Kamala Nehru Nagar, Jodhpur, Rajasthan-342001.
4. The details of the transactions leading to the filing of this Application as averred by the Applicant are as follows:
 - a. The Corporate Debtor approached the Applicant for financial assistance. Pursuant to that the Applicant granted an unsecured loan of Rs. 1,00,00,000/- (Rupees One Crore Only) at an interest rate of 18% p.a. to the Corporate Debtor on the basis of mutual oral agreement.
 - b. Subsequently the Corporate Debtor agreed to repay the entire loan amount along with interest @ 18% p.a. Thereafter the Corporate Debtor made a part payment of Rs. 5,00,000/- (Rupees Five Lakh Only) on 17.08.2017.
 - c. The Corporate Debtor again requested the Applicant to grant a loan of Rs. 1,00,000/- (Rupees One Lakh Only). In accordance with the same, the Applicant granted a loan of Rs. 1,00,000/- (Rupees One Lakh Only) to the Corporate Debtor on 02.12.2017. Consequently, the Corporate Debtor repaid Rs. 22,00,000/- (Rupees Twenty-Two Lakh Only) to the

Applicant on 29.03.2018. The brief particulars of the payments between the Applicant and the Corporate Debtor are as follows:

Date of Transaction	Payment From	Payment to	Amount
07.06.2017	Applicant	Corporate Debtor	+1,00,00,000/-
02.12.2017	Applicant	Corporate Debtor	+1,00,000/-
Total Payment from Applicant to Corporate Debtor = Rs. 1,01,00,000/-			
Date of Transaction	Payment From	Payment to	Amount
17.08.2017	Corporate Debtor	Applicant	5,00,000/-
29.03.2018	Corporate Debtor	Applicant	22,00,000/-
Total Repayment from Corporate Debtor to Applicant= Rs. 27,00,000/-			

- d. The Applicant has sent recall letters on 22.11.2019 and 21.01.2020 to the Corporate Debtor to demand the outstanding payments. In response to the same, the Corporate Debtor submitted that there is no dispute regarding the due amount of the principal and interest however the Corporate Debtor is facing financial crisis.
- e. The Applicant again sent a recall notice on 21.01.2022 to the Corporate Debtor to release the outstanding debt however no response has been made by the Corporate Debtor. Subsequently, the Applicant sent a legal notice dated 24.02.2022 to the Corporate Debtor to demand the outstanding dues. The Corporate Debtor *vide* E-mail dated 10.03.2022

acknowledged the dues and requested seven days to repay the outstanding dues.

- f. Hence this Application has been filed by the Financial Creditor. The total debt amount of Rs. 1,29,15,636/- (Rupees One Crore Twenty-Nine Lakh Fifteen Thousand Six Hundred Thirty-Six Only) including interest charged at the rate of 18% p.a. for the period from 29.03.2018 to 20.05.2022.
- g. The details of the amount due in Part IV of the Application which is as follows:


<u>PART IV</u>		
<u>PARTICULARS OF FINANCIAL DEBT</u>		
1.	Total Amount of Debt Granted	Total Amount of Debt: The total amount of debt is Rs. 1,29,15,636/- (Rupees One Crore Twenty-Nine Lakh Fifteen Thousand Six Hundred Thirty-Six Only) including interest @18% per annum from the date of default i.e., 29.03.2018 till date i.e., 20.05.2022, which form part of the principal amount.
	Date(s) Of Disbursement	07.06.2017
2.	Amount Claimed to be in Default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form)	Total Amount of Debt: Rs. 1,29,15,636/- (Rupees One Crore Twenty-Nine Lakh Fifteen Thousand Six Hundred Thirty-Six Only) Date of Default- 29.03.2018



5. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its reply *vide* Diary No. 2885/2022 dated 29.09.2022 whereby the following is stated:

- a. The Corporate Debtor time and again assured that the claims of the Applicant would be settled however due to unforeseeable circumstances the outstanding debts were unpaid.
- b. Further the Corporate Debtor submitted that due to COVID-19 the business has been severely affected and could not make the payments to the Applicant. In spite of that the Corporate Debtor assured the Applicant to repay the outstanding debts.
- c. The Corporate Debtor contends that the Applicant unnecessarily dragged him into baseless litigation through the present Application. The Corporate Debtor is ready to repay the dues of the Applicant in due course of time.
- d. The Applicant has filed the insolvency petition without any reason, it is an abuse of the Insolvency and Bankruptcy Code by initiating the insolvency process and using it as a recovery tool to harass the Corporate Debtor.

6. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in the state of Rajasthan; therefore, this Adjudicating Authority has jurisdiction to entertain and try this application. Further, this matter is not within the



purview of the Laws of Limitation, as the last payment was made by the Corporate Debtor on 29.03.2018, and the Application was filed before this Adjudicating Authority on 01.06.2022. However, in view of the emerging situation of the COVID-19 pandemic, the Hon'ble Supreme Court of India in *Suo Motu Writ Petition (Civil) No(s). 3/2020 in Re: cognizance for extension of Limitation*, vide order dated 23.03.2020 the period of limitation has been extended. Hence, the period of three years from the last payment had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.

7. The basic ingredients to be looked into while passing an order under Section 7 of the code is: (i) there must be a disbursement of loan amount, such dispersal should be made for a consideration of time value of money; (ii) when the debt (whole or any part of instalment) becomes due and payable and; (iii) the same is not paid by the Corporate Debtor i.e., default committed by the Corporate Debtor.
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 the following 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.*

9. The above conditions are to be satisfied by the Financial Creditor in order to consider the Application under section 7 of the IBC and initiate the CIRP against the Corporate Debtor. In the present case, it is perused from the documents placed on record that the Financial Creditor initially disbursed a loan of 1,00,00,000/- (Rupees One Crore Only) to the Corporate Debtor on 07.06.2017. Thereafter the Corporate Debtor had repaid Rs. 5,00,000/- (Rupees Five Lakh Only) on 17.08.2017. Once again, the Corporate Debtor made a request to the Applicant to disburse Rs. 1,00,000/- (Rupees One Lakh Only). On 29.03.2018 the Corporate Debtor had repaid Rs. 22,00,000/- (Rupees Twenty-Two Lakh Only) to the Applicant. Copies of the Bank Statement of the Applicant reflecting the money advanced by the Applicant to the Corporate Debtor are annexed as Annexure-2 of the Application.
10. Accordingly, the Applicant states that a sum of Rs. 1,29,15,636/- (Rupees One Crore Twenty-Nine Lakh Fifteen Thousand Six Hundred Thirty-Six Only) including 18% per annum from 29.03.2018 is due and payable as against the Corporate Debtor.
11. The second essential condition is that the loan disbursal is made for consideration of the time value of money. The Hon'ble Supreme Court of India, in *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd., Civil Appeal*



No. 2231 of 2021 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 the present matter herein, the loan was repayable along with interest @18% per annum.


12. The final essential condition is that the debt (whole or any part or instalment) becomes due and payable. In the present case at hand, the Corporate Debtor has clearly acknowledged the debt *vide* e-mail dated 10.03.2022 wherein it is stated that *“Kindly grant us 7 days time to pay off your outstanding amount along with interest.”* Copy of the E-mail dated 10.03.2022 annexed as Annexure-7 of the Application.
13. Moreover, the Corporate Debtor in its reply has admitted that due to unforeseeable and unfortunate events, the payments have not been made to the Applicant. Further, the Corporate Debtor also states that certain amounts are due and payable towards the Financial Creditor.
14. Therefore, in the present matter at hand, the loan has been given for the consideration of the time value of money, the default has been created and additionally acknowledgement made by the Corporate Debtor.
15. In view of the aforementioned, we are of the view that the Corporate Insolvency Resolution Process ought to be initiated against the Corporate Debtor.
16. The Applicant has named one Mr. Prashant Agarwal, the registration number of the proposed Interim Resolution Professional (‘IRP’) is



IBBI/IPA-001/IP-P00053/2017-18/10127 (email: ippa@gmail.com), duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.

17. Consequences of initiation of CIRP shall be inter-alia as follows:

- a) The Insolvency Resolution Professional proposed by the Applicant is Mr. Prashant Kumar Agrawal, who is an IP registered with ICSI Insolvency Professional Agency having Registration No. IBBI/IPA-001/IP-P00053/2017-18/10127. He is hereby appointed as the Interim Resolution Professional to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016, including the issue of the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.
- b) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly



as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

- c) The said IRP shall act strictly in compliance with the provisions of IBC, 2016 and defray his expenses to be incurred and fees on the account. The Applicant is directed to deposit a sum of Rs. 2,00,000/- (Rupees Two Lakh Only) to the bank account of IRP within a week from the date of this Order. The Applicant is directed to act in accordance with Regulation 33(1) of the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The IRP shall duly file a status report from time to time appraising this Adjudicating Authority about the progress of CIRP unfolded in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- d) In terms of Section 7 of IBC, 2016, this order shall be communicated to the Applicant, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority to carry out the CIRP at the earliest, not exceeding one week from today.



18. Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.
19. In the circumstances, CP No. (IB) 52/7/JPR/2022 is admitted.

-Sd-
DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

-Sd-
ATUL CHATURVEDI,
TECHNICAL MEMBER