

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (Court-II), CHANDIGARH**

CP (IB) No.76 /Chd/Hry/2021

**Under Section 7 of the
Insolvency & Bankruptcy Code,
2016 read with Rule 4 and Rule 9
of the Insolvency and
Bankruptcy (Application to
Adjudicating Authority) Rules,
2016**

In the matter of:

Mr. Harsh Khanna

24, Shakuntala Farms,
Sultanpur, Mehrauli- Gurgaon Road.
New Delhi - 110030

...Petitioner/Financial Creditor

Vs.

Savyasachi Infrastructure Private limited

M-166, 2nd Floor,
South City 1 Gurgaon
Haryana 122001

...Respondent/Corporate Debtor

Judgment delivered on: 28.06.2024

**Coram: HON'BLE Dr. P.S.N. PRASAD, MEMBER (JUDICIAL)
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

Present:

For the Petitioner-Financial Creditor : Mr. Ankit Midha, Advocate

For the Respondent-Corporate Debtor : Mr. Gaurav Singh, Advocate

Per: Dr. PSN Prasad, Member (Judicial)

Mr. Umesh Kumar Shukla, Member (Technical)

JUDGMENT

1. The present petition has been filed by **Mr. Harsh Khanna**, (hereinafter referred to as '**Petitioner/Financial Creditor**') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 and Rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **Savyasachi Infrastructure Pvt. Ltd.** (hereinafter referred to as '**Respondent/Corporate Debtor**') for default in payment of INR 1,09,74,250 (One crore Nine Lakhs seventy-Four Thousand two Hundred and Fifty only) in terms of the Loan Agreement dated 27.02.2017 executed between inter alia the Corporate Debtor and the Petitioner.
2. The Corporate Debtor is stated to be incorporated on 22.06.2013 under the Companies Act, 1956. The company has its Registered Office at Haryana. Therefore, the jurisdiction lies with this Adjudicating Authority.
3. The brief facts of the case, as stated in the petition, are as follows:
 - I. The Corporate Debtor is engaged in the development of real estate projects and had approached the petitioner by way of its letter dated 27.02.2017 (attached as Annexure 6 of the main petition) apprising the petitioner of the fact that the Corporate Debtor is developing a housing society colony under Deen Dayal Jan Awas Yojna, 2016 and accordingly requesting the Petitioner for loan of INR 1,00,00,000/- (Indian Rupees one crore only) for a period of 9 (nine) months, for developing the said project.

- II. Pursuant to discussions, the petitioner, the corporate Debtor and Mr. Vijay Rajan (Managing Director of the Respondent, being the personal guarantor) have executed a Loan Agreement dated 27.02.2017, in terms of which the Petitioner agreed to grant a loan of INR 1,00,00,000/- (Indian Rupees one crore only) to the Corporate Debtor (Attached as Annexure 7 of the main petition). To ensure that the loan is not regarded as deposit from the director and to comply with the applicable law governing acceptance of deposits by private companies in terms of section 73 of the Companies Act, 2013 read with Rule 2(c)(viii) of the Companies (Acceptance of Deposits) Rules, 2014, the Petitioner Mr. Harsh Khanna was appointed as a 'Director' of the corporate Debtor on 01.03.2017.
- III. Petitioner became a director of the Corporate Debtor merely to satisfy the aforesaid provisions of the Companies Act, 2013, and he is not involved in the day-to-day operations, affairs and management of the corporate Debtor, nor he received any remuneration from the Corporate Debtor.
- IV. Further, the Managing Director of the Corporate Debtor, Mr. Vijay Rajan, stood as personal guarantor to the entire loan amount and the Corporate Debtor had handed over post-dated cheques to the Petitioner as security. As per the Loan Agreement, the entire loan was to be repaid by the Corporate Debtor within 9 months from the date of disbursement along with interest of 1.25% per month on the entire amount of the loan, till the date of repayment of the same. Further, in terms of Clause 3E of the Loan Agreement, the

determination made by Petitioner regarding the quantum of principal and/or interest payable by Corporate Debtor shall be conclusive and binding on the Respondent.

- V. In pursuance to the Loan Agreement, the loan amount of INR 1,00,00,000/- was given to the Corporate Debtor by way of RTGS (bearing reference no. SYN8R92017030600207429) on 06.03.2017, from the bank account of the Petitioner maintained with Canara Bank, International Business Branch, Delhi, having account no 90422010023050.
- VI. The aforesaid debt is admitted by the corporate Debtor in its audited financial statements filed with the Registrar of companies for the financial year ended March 31, 2017. (Attached as Annexure-8 of the petition)
- VII. At the time of the expiry of the term of the Loan Agreement on 06.12.2017, the Respondent had failed to make repayment of the principal amount of INR 1,00,00,000/- (Indian Rupees one crore Only) and interest amount of INR 1,25,000/- (Indian Rupees One Lakh twenty-Five Thousand only) by 06.12.2017 along with penal interest, levied @ 3% p.a. on delayed interest in terms of clause 3E of the Loan Agreement, to the tune of Rs. 1,75,000/- (Rupees one Lakh seventy-Five Thousand only). Thereafter, the corporate Debtor made certain interest payments from time to time in the calendar years 2018 and 2019.
- VIII. On account of the repeated failure of the corporate Debtor to repay the loan amount and pending interest payments, the Petitioner

presented the following cheques issued by the Corporate Debtor at Syndicate Bank, LCB Branch, Delhi; (i) cheque dated 03.04.2019 for an amount of INR 17,50,000/- (Indian Rupees Seventeen Lakhs Fifty Thousand only), drawn on Yes Bank, bearing number 658932; and (ii) cheque dated 15.01.2019 for an amount of INR 1,00,00,000/- (Indian Rupees One Crore only), drawn on Yes Bank bearing number 658931. The said cheques were dishonoured due to insufficient funds and returned along with memorandums of dishonour dated 05.04.2019. (Attached as Annexure 9 & 10 of the main petition).

- IX. Thereafter, the Petitioner issued a letter dated 09.04.2019 to the corporate Debtor (attached as Annexure 11 of the main petition) informing the latter of the instances of dishonour of cheques and requesting for the pending payments. Despite multiple requests, the corporate Debtor failed to repay the pending principal amount and interest payments. Thereafter, the Petitioner, through his advocate, sent legal notice dated 15.10.2019 to (i) the corporate Debtor, seeking repayment of the loan; and (ii) Mr. Vijay Rajan (Managing Director of the corporate Debtor) as personal guarantor, invoking the guarantee given by him. (Attached as Annexure 12 of the main petition) Pursuant to the above, the corporate Debtor entered into negotiations with the Petitioner and requested for an additional period of time to make the pending payments. In this regard, the corporate Debtor once again provided post-dated cheques to the Petitioner as security for the same.

- X. On account of the failure of the corporate Debtor for the second time to repay the loan amount, the Petitioner presented the cheque issued by the Respondent for an amount of INR 25,00,000/-, drawn on yes Bank, dated 30.01.2020, bearing Cheque No. 572444 in his account maintained at Syndicate Bank, Kadirpur branch, Gurugram. The said cheque was dishonoured due to insufficient funds and returned along with a memorandum of dishonour dated 05.02.2020. (Attached as Annexure 13 of the main petition)
- XI. The Petitioner presented another cheque issued by the corporate Debtor for an amount of INR 25,00,000/-, drawn on yes Bank, dated 01.02.2020, bearing cheque No. 572445 in his account maintained at Syndicate Bank, Kadirpur branch, Gurugram. The said cheque was dishonoured due to insufficient funds and returned along with a memorandum of dishonour dated 21.02.2020. (Attached as Annexure 14 of the main petition).
- XII. Thereafter, legal notices under section 138 of the Negotiable Instruments Act, 1881 dated 05.03.2020 and 07.03.2020 respectively were issued by the petitioner's counsel to the Corporate Debtor. (Attached as Annexure 15 of the main petition) The corporate Debtor, through its counsel, has replied vide its letter dated 19.03.2020 to the aforesaid legal notices issued by the Petitioner. In terms of the said reply, the corporate Debtor has acknowledged the existence of the debt and its failure to repay the same. (Attached as Annexure 16 of the main petition) The Petitioner, through its counsel,

has replied to the corporate Debtor, vide its letter dated 22.04.2020, requesting for payment of the outstanding amounts.

- XIII. While certain delayed payments have been made from time to time by the corporate Debtor up to August, 2019, amounting to Rs. 55,00,00,000 / - (Indian Rupees Fifty-Five Lakhs only), the amount of INR 1,06,24,250/- (Indian Rupees one crore six Lakhs TwentyFour Thousand Two Hundred and Fifty Only) remained outstanding. Till date and even after multiple requests, the corporate Debtor has not made the payments due to the petitioner.
4. It is stated in the prescribed application for CIRP, Part-IV of Form No.1 that the total amount claimed to be in default is INR 1,09,74,250 (Indian Rupees One Crore Nine Lakhs Seventy four Thousand Two Hundred and Fifty Only).
5. The Respondent filed its reply via diary no. 01019/2 dated 29.06.2022. It is stated that the present application is not maintainable in view of the fact that the loan transaction has taken place between two individuals namely the applicant Mr. Harsh Khanna and Shri Vijay Ranjan. The respondent company and Shri Vijay Rajan are two separate and distinct legal entities.
- I. It is submitted that the applicant has not filed any document to show that the respondent company has passed a resolution to call for loan or deposits as on or prior to 27.02.2017 in terms of chapter V section 73 of the companies act 2013. No such board resolution for borrowing of money by the company or declaration has been brought on record by the applicant to show that it was the company that borrowed money from him. Had it been a transaction between the applicant and the Respondent, the applicant would

have brought on record his statutory declaration which he is required to give in terms of Rule 2(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014.

- II. It is submitted that the applicant became director of the respondent company on the recommendations of Mr. Vijay Rajan. Form 12 shows that Mr. Harsh Khanna as one of the promoter director, making it clear that the personal loan given by him to Mr. Vijay Rajan was to be later one adjusted as his stake in the company so as to become a promoter.
- III. It is submitted that the applicant is trying to recover money from the company despite knowing fully well that his dispute has no direct nexus with the company.
- IV. It is also stated that the disputed amount is below the threshold limit of Rs. one crore, as the applicant in its legal notices dated 05.03.2020 and 07.03.2020 it is claimed that the 'legal accruing and admitted liability is to the tune of Rs. 25 lakh each' totalling an amount of Rs. 50 lakhs.
6. The petitioner in its rejoinder has submitted that the reply filed on behalf of the corporate debtor is baseless and devoid of substance or merit. The loan agreement dated 27.02.2017 clearly shows that the agreement was entered into with the Corporate debtor. Even the letter inviting the loan is written on behalf of the corporate debtor, on its own letterhead. It is submitted that the Hon'ble Supreme court in **M/s Orator marketing pvt ltd v. M/s Samtex Desinz Pvt Ltd 2021 SCC Online SC 513** opined that the financial debt accrued by way of a loan from a person to a corporate body to finance the business of the operations of the corporate body constitutes valid financial debt under section 5(8) of the IBC. The legal notices dated

05.03.2020 and 07.03.2020 were sent for dishonour of cheque no. 572444 and 572445. It is submitted that clause (2) of section 73 of the companies act, 2013 places the burden on the corporate debtor to pass a board resolution to that effect. Furthermore the corporate debtor in its reply has categorically stated that an extraordinary general meeting was held for the appointment of the financial creditor Mr. Harsh Khanna as the director which was thereafter approved. Thus, the financial creditor was appointed as the director. The loan accepted by the company from a director does not amount to be a deposit in terms of Section 73 of Companies act read with relevant rules. It is submitted that the corporate debtor in its reply dated 19.03.2020 to the legal notice has evidently acknowledged and admitted to the entirety of the unpaid financial debt.

Analysis and findings

7. We have heard the arguments advanced by the learned counsels and have also perused the case records carefully.
8. The first issue for consideration is whether the present application is filed within limitation. The date of default is stated to be 06.12.2017. It can be seen from the records that the present petition is filed vide diary number 01019 dated 26.08.2020. Hence, the present petition is well within the period of limitation of three years.
9. In order to initiate CIRP under section 7 the applicant is required to establish that there is existence of financial debt and its default by the corporate debtor.
10. The audited balance sheet of the corporate debtor as on 31.03.2017 shows the unpaid financial debt due and payable to the petitioner as stated on

page number 56 of the main petition. The issuance of a post-dated cheque also supports the contention. In the reply dated 19.03.2020 to the legal notices sent by the petitioner, the corporate debtor has admitted to the same financial debt. The existence of debt is also reflected in the report of NeSL, the information utility, dated 24.08.2020, wherein the existence of the debt has been recorded. In this regard, NeSL issued various communications to the corporate debtor to verify the debt, which has been received and acknowledged by the guarantor and director, Mr. Vijay Rajan (Annexure 5 of the main petition).

11. As regards the issue of passing of resolution required as per section 73 of Companies Act, it is the matter of indoor management of the company and does not negate the debt owed. In the light of the aforesaid facts, we find that the documents submitted by the financial creditor and the NeSL records of default, clearly establish that the corporate debtor has defaulted on repayment of loan amount. The requirement of Section 7(5)(a) stands satisfied as 'default' is established.
12. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, the adjudicating authority admits the petition and initiates CIRP on the corporate debtor with immediate effect.
13. In Part-III of Form No. 1, Mr. Rajeev Sharma, Interim Resolution Professional (IRP), has been proposed by the petitioner. The form-2 dated 17.12.2020, along with certification of registration issued by the Insolvency and Bankruptcy Board of India, is submitted with the main petition.

However, while examining the records, it was noticed that the Authorisation for Assignment was not found on record. Thereafter, the Petitioner has proposed the name of Mr. Umesh Gupta as the Interim Resolution Professional. The Petitioner vide Affidavit having diary no. 01019/7 dated 29.12.2023 filed the Registration certificate of the Proposed IRP (Annexure A-1) and copy of Expression of Interest and Authorisation for Assignment of the proposed IRP(Annexure A-2).

14. The IRP's written consent shows that there is no disciplinary proceeding pending against the proposed Resolution Professional. In view of the above, we appoint Mr. Umesh Gupta, Registration No. IBBI/IPA-001/IP-P-00848/2017-2018/11431, Email: umesh@vamindia.in, Mobile No. 9910024854, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Umesh Gupta shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the

Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern

and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than 8 financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

- vii.) In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.
- viii.) The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest.
- ix.) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench

for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- x.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.
- xi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

xii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

15. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or

suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

- f) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

16. We direct the Financial Creditor to deposit a sum of ₹4,00,000/- (Rupees Four Lakhs Only) with the Interim Resolution Professional to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

17. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

18. The petition is admitted accordingly.

Sd/-

(Umesh Kumar Shukla)
Member (Technical)

June 28, 2024
Reet

Sd/-

(Dr. PSN Prasad)
Member (Judicial)