

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD**

**COURT - 2**

ITEM No.301

**CP(IB)/74(AHM)2023**

**Order under Section 7 IBC**

**IN THE MATTER OF:**

Imdadali M Momin

.....Applicant

Vs.

Pellucid Lifesciences Private Limited

.....Respondent

**Order delivered on: 25/04/2024**

**Coram:**

**Mrs. Chitra Hankare, Hon'ble Member(J)**

**Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)**

**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

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**DR. V. G. VENKATA CHALAPATHY  
MEMBER (TECHNICAL)**

-sd-

**CHITRA HANKARE  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD (COURT - II)**

**CP(IB) No. 74 of 2023**

(Filed under Section 7 of IBC, 2016 r.w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

**IN THE MATTER OF:**

**Imdadali M Momin & Ors.**

**... Financial Creditors**

**Vs.**

**Pellucid Lifesciences Pvt. Ltd.**

**... Corporate Debtor**

**Order pronounced on 25.04.2024**

**Coram:**

**MRS. CHITRA HANKARE  
HON'BLE MEMBER (JUDICIAL)**

**MR. VELAMUR G VENKATA CHALAPATHY  
HON'BLE MEMBER (TECHNICAL)**

**MEMO OF PARTIES**

1. Imdadali M Momin
2. Abasali Mohmmadau Momin
3. Abidali Mohmedali Momin
4. Mohsinali Mumtazali Momin
5. Mumtazali Jamalbhai Momin
6. Shabbirali Jamalbhai Momin Shelia

All of the above having address  
61, Jafari Tower,  
B/h. Tagor Hall, Kochrab Paldi,  
Ahmedabad-380006

**... Petitioners/Financial Creditors**

**Versus**

**Pellucid Lifesciences Private Ltd.**

Having registered office at Plot No.3538  
Phase 4, GIDC Industrial Estate, Chhatral  
Gandhinagar, Gujarat – 382729

**... Corporate Debtor**

**Present:**

For the Applicants : Mr. Arjun Sheth, Adv. A.w Ms. Rhea Sevak,  
Adv., Mr. Rajiv Chawla, Adv.  
For the Respondent : Mr. Ravi Pahwa, Adv. A.w Ms. Pragati  
Bansal, Adv.

### **JUDGEMENT**

1. The present application is jointly filed by the six Financial Creditors against the Corporate Debtor who is engaged in the business of manufacturing biotechnological products. According to the applicants, debt of Rs.1,25,44,997.25/- was granted @12% per annum. There are different date of disbursement which are mentioned in the demand notice. The whole amount is in default on 13.11.2022 being 15 days from the date of receipt of demand notice dated

12.11.2022. No record of default is filed with Information Utility. The Corporate Debtor borrowed funds in the form of loan for the business purpose from the applicants. While making repayment, TDS was also deducted by Corporate Debtor on interest. The Corporate Debtor instead of repaying the financial debt, prayed for admitting it into insolvency.

2. The Corporate Debtor contended that the application itself is not maintainable in pursuant to the violation of Regulation 20(1A) of IBBI (Information Utility) Regulations, 2017 by the petitioner. The default is not filed before Information Utility. It is further contended that the applicants have provided *suo-moto* unsecured loan in the capacity of promoters of the respondent to made with the requirements of the bank against the credit facility granted. Respondent never demanded any such loan from the applicants. Funds were infused by the promoters and not given with understanding of being repaid. No agreement, written or oral was entered into between the parties, therefore, no interest would be payable by the respondent. TDS deducted was done to made requirement of Income Tax

Act only. Unsecured loan was made in the year 2013 while respondent paid interest only for the year 2018-19. The applicants have not demanded any interest prior to that. Application is filed just to recover money and not within the purview of IBC, 2016. They have categorically replied to the demand notice. Only Civil Court has jurisdiction to try the present case for recovery of dues. Filing of the default before Information Utility after the application, will not comply the provisions of law, hence, prayed for rejection of application.

3. The applicant has filed rejoinder as well as written submissions. Heard Learned Counsels for both sides.
4. The respondent relied upon three citation which are as under:
  - i. Before the Hon'ble Supreme Court in Civil Appeal No.2231 of 2021 in the matter of Orator Marketing Pvt. Ltd. Vs. Samtex Desinz Pvt. Ltd. held that financial debt means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as financial debt. Moreover, definition of

financial debt in Section 5(8) does not expressly exclude an interest free loan and financial debt would have to be construed to include interest free loans advanced to finance the business operations of a Corporate Debtor.

- ii. Before the National Company Law Tribunal, Ahmedabad Court-II in CP(IB) 158 of 2020 with IA No.889 of 2022 in the matter of Premjayanti Enterprises Pvt. Ltd. Vs. Shivam Water Treaters Pvt. Ltd. held that in absence of a “Financial Contract” specifying what is the actual amount of disbursal, tenure of the debt, interest payable and date of repayment, the contentions of the Financial Creditor that it is an interest-bearing financial debt are not-tenable
- iii. Before the National Company Law Tribunal, Ahmedabad Court-I in CP(IB) 251 of 2019 with IA No.123 of 2023.

5. It is admitted fact that after filing of the application, Corporate Debtor repaid an amount of Rs.99 lakhs. According to the applicants as the amount was paid during

pendency of the application and entire amount is not paid so the petition survives. The date of default remains the same. He has also pointed out that part of interest is paid to some creditors. While, according to the respondent, initially principal amount and interest was paid and there is no further contract for payment of interest. Whenever they have paid interest, TDS was deducted. Thereafter interest was not paid to any creditor. They have also pointed out that there is no document to show disbursement of amount.

6. It is seen that six creditors have joined together to file this application. Debt of amount is paid by them but there is no agreement with any of the applicants with Corporate Debtor. According to them, loan is repayable in demand. In the absence of any agreement, it cannot be said that at what rate interest is payable and whether it is payable. According to the applicant, total amount of loan was Rs.1,55,44,997/- out of which Rs.99 lakhs is already paid and accepted by the applicant. This forum cannot be used for recovery of money. The Corporate Debtor has already raised dispute regarding demand of interest. The object of IBC, 2016 is to consolidate and amend the laws relating to reorganization

and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner of maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an insolvency and bankruptcy fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit markets and encourage entrepreneurship.

7. In view of the above, we pass the following order:

**ORDER**

CP(IB) 74 of 2023 is rejected.

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**DR. V. G. VENKATA CHALAPATHY**  
**MEMBER (TECHNICAL)**

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**