

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II)

CP (IB) 274/CHD/PB/2022 & IA No. 52/2024

IN THE MATTER OF:

Mr. Yogesh Sharma
Son of Late Sh Kushal Kumar
Having Residence at Plot No. 120 WZ,
150 Pratap Nagar, Hari Nagar,
NEW Delhi- 110064

... Applicant/ Creditor

Versus

M/s Bhatia Hire Purchase Pvt Ltd.
35, New Lal Bagh Colony,
Patiala, Punjab-147001

...Respondent/ Corporate Debtor

And in the matter of IA No. 52/2024

Mr. Yogesh Sharma
Son of Late Sh Kushal Kumar
Having Residence at Plot No. 120 WZ,
150 Pratap Nagar, Hari Nagar,
NEW Delhi- 110064

Versus

M/s Bhatia Hire Purchase Pvt Ltd.
35, New Lal Bagh Colony,
Patiala, Punjab-147001

Order Delivered on: 23.04.2024

SECTION: **Section 7 of IBC 2016 and section 252(3) of the Companies Act, 2013 read with Rule 87A of NCLT (Amendment) Rules, 2017.**

CORAM:

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Rachit Mittal, Advocate
For the Respondent : Mr. Vishav Bharti Gupta
For the RoC : Mr Vineet Khatri, Company Prosecutor

JUDGEMENT

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

Mr. Yogesh Sharma (for brevity, the “**Applicant**”) has filed the present application 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 with a prayer to initiate the Corporate Insolvency process against M/s Bhatia Hire Purchase Pvt. Ltd. (for brevity, the “**Respondent**”).

2. The Respondent namely, M/s Bhatia Hire Purchase Pvt. Limited is a Company incorporated on 05.10.1987 under the provisions of the Companies Act, 1956 with CIN U65921PB1987PTC007706 having its registered office at 35, New Lal Bagh Colony, Patiala, Punjab-147001, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.1,50,00,000/-, and the Paid-up Share Capital is Rs. 1,50,00,000/-, as per the master data annexed with the application.

3. It is submitted by the Applicant that in year 2010, the Respondent approached the Applicant for seeking the financial assistance in the form of a loan for its working capital requirements for a long term of 96 (Ninety-Six) months and promised to repay the loan amount with agreed interest. Relying upon the representation and promises of the Respondent, the Applicant

agreed to provide the Respondent the said loan as per the terms mutually accepted by both the parties. Accordingly, on 10.03.2010, a Loan Agreement was signed between the Applicant and the Respondent/Corporate Debtor.

4. The detailed particulars of the unpaid Financial Debt claimed including the total amount of default and the date of default as mentioned by the applicant in Part IV of the application reads thus:

Part – IV

PARTICULARS OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Rs. 7,00,00,000 (Rupees Seven Crores Only Further, details given below.
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)	Rs.17,21,14,761.73 (Rupees Seventeen Crores Twenty-One Lakhs Fourteen Thousand Seven Hundred Sixty-One and Paise Seventy-Three only) Further, details given below.

5. Thus, as per Part IV of the application reproduced above, the Applicant has claimed an outstanding “financial debt” of Rs. 17,21,14,761.73. As submitted by the Ld. counsel for the Applicant and duly recorded in the order of this Tribunal dated 01.04.2024, that the date of default in this matter is 01.05.2019.

6. To buttress its plea, the Applicant has relied on the following documents:

- (i) Copy of the Master Data of the Corporate Debtor;
- (ii) Copy of the Loan Agreement dated 10.03.2010;
- (iii) Copy of Bank Account Statement of Financial Creditor;

- (iv) Copy of Addendum Loan Agreement dated 01.05.2018;
- (v) Record of Financial Information- Form C filed on NESL Portal dated 02.07.2022 by the Financial Creditor.

7. During the course of the hearing on 21.09.2023, from the Master Data of the Corporate Debtor filed by the Applicant, this Tribunal came to know that the Corporate Debtor company stood struck off. Accordingly, this Tribunal vide Order dated 21.09.2023 directed the Respondent Company to take steps for reviving of the company. Later, on 09.11.2023, it was observed that the Respondent Company did not take any steps for its revival. Hence, this Tribunal directed the Applicant/Financial Creditor to take steps for revival of the Respondent Company. Subsequently, Applicant/ Financial Creditor Mr Yogesh Sharma filed an IA No. 52 of 2024 under Section 252(3) of the Companies Act, 2013 for restoration of the name of the Respondent Company (M/s Bhatia Hire and Purchase Pvt Ltd) in the register maintained by the Registrar of Companies, NCT of Chandigarh (the 'RoC'). As per the information filed by the Applicant, the name of the Respondent Company was struck off by ROC vide notification dated 04.03.2022.

8. Based on the facts described above and the documents, the Applicant has prayed for the initiation of CIRP against the Respondent.

9. On issuance of the notice, the Respondent filed its reply dated 29.05.2023 stating mainly the following:

9.1 The present Application seeking initiation of Corporate Insolvency Resolution Process against the Respondent Company is not maintainable under Section 7 of the Code, as the Respondent company has sought some

more time for the repayment of loan amount though there is an admitted default on part of the Respondent Company in terms of Section 3(12) of the Code, 2016. Further, there is debt which was disbursed by the Financial Creditor, but the Respondent company is undergoing deep financial crunch due to the outrage of Covid Pandemic and is not able to revive back on its feet's since then. The Financial Creditor has failed to appreciate the ongoing financial crunch of the Respondent/ CD.

9.2 In view of the financial condition of the Respondent Company the Financial Creditor and the Respondent Company had entered into an oral agreement and have inter-alia modified the terms of the loan. As per the oral agreement executed between the parties, the terms of the agreement had been revised and the Financial Creditor had categorically agreed not to initiate any proceedings for repayment of any amount due. However, the terms of the said oral agreement could not be reduced in writing due to the ongoing COVID-19 pandemic and restrictions imposed by the Central and State Government.

10. We have heard the submissions of both parties and perused the pleadings on record, including the Written Submissions filed by the Applicant on DMS. The first question which arises before this Bench whether the present proceedings under Section 7 are maintainable against a CD company whose name stand struck off in the Register of ROC. During arguments, Ld. counsel for the Applicant in this regard relied upon para 21 and 23 of the judgment dated 05.09.2019 passed by the Hon'ble NCLAT in ***Company Appeal (AT) (Insolvency) No. 765 of 2019*** titled as '***Mr. Hemang Phophalia Vs. The Greater Bombay Co-operative Bank Limited and Anr'***'. Hence, we consider

it appropriate to refer to the para 21 and 23 of the judgement of the Hon'ble NCLAT (ibid), which are reproduced as under:

"21. The name of the Company having been struck-off, the Corporate Person cannot file an application under Section 59 for Voluntary Liquidation. In such a case and in view of the provisions of Section 250 (3) read with Section 248 (7) and (8), we hold that the application under Sections 7 and 9 will be maintainable against the 'Corporate Debtor', even if the name of a 'Corporate Debtor' has been struck-off."

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"23. In view of the aforesaid provision, we hold that the Adjudicating Authority who is also the Tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of 'Corporate Insolvency Resolution Process' under Sections 7 and 9 of the I&B Code based on the application, if filed by the 'Creditor' ('Financial Creditor' or 'Operational Creditor') or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of Section 248. In the present case, application under Section 7 having admitted, the 'Corporate Debtor' and its Directors, Officers, etc. deemed to have been restored in terms of Section 252(3) of the Companies Act."

(Emphasis Supplied)

11. In this context, we also refer to Section 250 of Companies Act 2013, which reads thus :

*“250. Effect of company notified as dissolved.— Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date **except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.**”*

(Emphasis supplied)

12. Thus, as per Section 250 (Supra), the company which is struck off has been given an exception by the Legislature to not to be treated as dissolved in two circumstances i.e., (a) for the purpose of realising the amount due to the company and; (b) for the payment or discharge of the liabilities or obligations of the company.

13. Thus, in the light of provisions under Section 250 of Companies Act 2013 and the Judgement of Hon’ble NCLAT passed in the matter of Mr. **Hemang Phophalia Vs. The Greater Bombay Co-Operative Bank Limited & Ors.** - Company Appeal (AT) (Insolvency) No. 765 of 2019, we are of the considered opinion that the present Application filed against the Struck off Company is maintainable.

14. Now, we would like to examine the case on merits. The Respondent in its defence contended that it has sought some more time for the repayment of loan amount though there is an admitted default on part of the Respondent Company in terms of Section 3(12) of the Code, 2016. Furthermore, contended

that the Applicant/FC and the Respondent Company had entered into an oral agreement and have inter-alia modified the terms of the loan, the terms of the agreement got revised and the Financial Creditor had categorically agreed not to initiate any proceedings for repayment of any amount due. However, he has failed to place any document in support of this contention. Clearly, the respondent has admitted the debt and default.

15. Moreover, the Applicant/FC has also placed on record the Form C (Record of Financial Information) filed on NeSL Portal dated 02.07.2022 to substantiate its claim regarding the Debt and Default.

NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED
India's First Information Utility राष्ट्रीय ई-गवर्नेंस सर्विसेज लिमिटेड

Record of Financial Information - Form C

Unique Debt Identifier: AREPS4096H_Z369826
 Submission ID: 1
 Submitted by Yogesh Sharma
 Information as on 02/07/2022

Submitter Information			
Name	Yogesh Sharma	UIN (PAN)	AREPS4096H
Relationship	creditor	Comm. Address PIN	110064
DOI / DOB	09/09/1975	Mobile No.	9xxxxxxx5
Billing / Comm. Address	Plot No. 120 WZ, 150 Pratap Nagar, Hari Nagar, New Delhi	Email ID	*****@gmail.com
Email ID - Dispute Alert	*****@gmail.com	Email ID - Default Alert	*****@gmail.com

Other Party Details			
Debtor			
Name	Bhatia Hire Purchase Private Limited	Relationship	debtor
Regd. / Permanent Address	35, New Lal Bagh Colony, Patiala, Punjab	Regd. Address PIN	147001
Billing / Comm. Address	35, New Lal Bagh Colony, Patiala, Punjab	Comm. Address PIN	147001
Legal Constitution	PVTL	DOI / DOB	05/10/1987
CIN/LLPIN	U65921PB1987PTC007706	PAN	AACCB2236Q
MSME Flag	N	Email ID	hirepurchasebhatia@gmail.com
Party Sanctioned Currency	INR	Party Sanctioned Limit	35000000

Debt Information			
Type of debt	financial	Debt Reference No.	Z369826
Creditor Location	Delhi	Debt Contract Date	01/05/2018
Debt Start Date	01/05/2018	Debt Currency	INR
Sanction Currency	INR	Sub Type - Debt	TLOAN
Funded Type	Funded	Security Flag	unsecured
Sanctioned Amount	70000000	Drawing Power	70000000
Facility Name	Term Loan	Repayment Frequency	bullet
Rate of Interest	24.00	Lending Arrangement	others
Total Outstanding Amount	133463680	Amount Overdue	133463680
Principal Outstanding	70000000	Interest Outstanding	102114761.73
Days Overdue	395	Account Closed Flag	no
Old Debt Reference No.	L893068	Tenure	36.00


True Copy

Expiry Date	01/05/2021	Installment Amount	165494963.20
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Default Details			
Date Of Default	02/05/2021	Days Past Due	395
Default Amount	133463680	Total Outstanding Amount	133463680
Amount of Last Repayment	0.00		

From the Form C (Record of Financial Information) of NeSL (*ibid*), it is evident that the Corporate Debtor Company is in default to the Applicant for a debt of more than Rs. 01 crore.

16. In the sequel to the above and the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Petition is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.”

17. As proposed by the Applicant, this Bench appoints Mr. Anuj Maheshwari as IRP having Registration IBBI/IPA-001/IP- P00577/2017-2018/11018 Email ID: anuj@vksa.in subject to the condition that no disciplinary proceedings is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

Mr. Anuj Maheshwari, as an IRP having Registration No. IBBI/IPA-001/IP- P00577/2017-2018/11018, Email ID: anuj@vksa is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

18. The Applicant is directed to deposit Rs. 5,00,000/- (Five Lakhs) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

19. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, the IRP named above, and the Information Utility/NeSL by the Court Officer/Registry of this Tribunal.

20. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to IBBI for their records.

21. The need to go into merits of the **IA No. 52/2024** filed by the Applicant is obviated in view of the admission of main petition No. 274/2022 and is accordingly **dismissed** as being infructuous.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(HARNAM SINGH THAKUR)
MEMBER (J)