



Sl. No. 1

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 01.07.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/22/7/AMR/2023		7 of IBC	Ashok Kumar Jain (HUF) & others Vs. VR Commodities Private Limited

ORDER

Present:

Mr. Avinash Amarnath and Mr. Naman Golechha, Ld. Counsels for the CD

Orders pronounced in CP(IB)/22/7/AMR/2023. CP is admitted, IRP appointed and recorded vide separate sheets.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**



IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

CP (IB) No.22/07/AMR/2023

In the matter of :

M/s VR COMMODITIES PRIVATE LIMITED

Between:

1. M/s. Ashok Kumar Jain HUF
Represented by its Kartha:
Mr. Ashok Kumar Jain,
No.30, Thirupalli Street, 1st Floor,
Chennai – 600 079.
2. Vikram Kumar Ambalalji,
No.30, Tirupalli Street, Sowcarpet,
Chennai – 600 079.
3. Mr. Kamlesh Kumar A Jain,
No.52, Perambur Barracks Road,
A-301, Sai Shresta Apartments,
Vepery,
Chennai -600007.
4. Ms. Sushma Devi,
9/13, Vinayaka Mudali Street,
Sowcarpet,
Chennai – 600079.
5. Ms. Smita Jain,
210/212, C.B.Road,
Oswal Garden Apartment,
Q Block, Flat No.304,
3rd Floor, Kurukpet,
Chennai – 600 021.
6. M/s. S.C.S. Holdings,
Rep by Proprietor
M/s. Shankarlal C Shah HUF,
Through its Kartha
Mr. Shankarlal C Shah,

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No. 10/3, Barnaby Road, Kilpauk,
Chennai – 600 010.

7. M/s. Sri Ambey Investment,
Rep. by its Proprietor
M/s. Narendra Kumar and Sons HUF
through its Karta Mr. Narendar Shah,
No.10/3, Barnaby Road, Kilpauk,
Chennai – 600 010.
8. Ms. Ashika Shah,
At No.10/3, Barnaby Road,
Kilpauk,
Chennai – 600 010.
9. M/s. Metro Dye Chem,
Represented by its Partner
168, Govindappa Naicken Street,
Chennai – 600 001.
10. Mr. S. Prakashchand,
156, Mint Street,
Chennai -600 079.

....Applicants/
Financial Creditors

And

M/s. VR Commodities Private Limited,
(CIN: U52100AP2019PTC113509)
Rep by its Directors/Authorised Signatory
9-30-4, Balaji Nagar, Siripuram,
Vishakhapatnam – 530 003.

Also at: H.No.9-25-16/1, Flat No.101,
MVV Wooden Village, VIP Road,
Visakhapatnam – 530 001.

Also at: D.No.31-32-90, 1st Floor,
Opp. APGVB Bank, Dabagardens,
Visakhapatnam – 530 020.

... Corporate Debtor

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Date of order : 01.07.2024

CORAM:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsels present:

For Financial Creditors : Mr. T. Sri Krishna Bhagavat, Advocate.

For Corporate Debtor : Mr. Chandiaok & Mahajan, Advocates

Per : Sanjay Puri, Member (Technical)

ORDER

1. This application has been filed under Section 7 of IBC¹ by 10 Applicants collectively as Financial Creditors (**FCs**) who had extended loans to M/s VR Commodities Private Limited, the Corporate Debtor (**CD**), seeking initiation of CIRP² against the CD on the grounds of default by the CD in repayment of the loan amount.
2. It is submitted that, together they had extended loan for a sum of Rs.3.35 Crores to the CD for a period of five months starting from 04.07.2022 at the monthly rate of interest ranging from 1.75% to 2.30%. These loans were made through the Promissory Notes, copies of which have been appended to the application. Part of these loans are also stated to have been repaid and the balance outstanding is Rs.2.89 Crores as per Table-1 on the next page.

¹ Insolvency & Bankruptcy Code 2016

² Corporate Insolvency Resolution Process

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Table-1

S.No.	Name of the Financial Creditor	Loan Amount Rs	Balance principal outstanding Rs	Rate of interest per month	Interest amount till date on balance amount Rs	Total outstanding amount as on 27.12.2022 Rs
1	Ashok Kumar Jain HUF	30,00,000	24,00,000	1.75%	32,200	24,32,200
2	Vikram Kumar Ambalalji	30,00,000	24,00,000	1.75%	32,200	24,32,200
3	Kamlesh Kumar A Jain	25,00,000	25,00,000	1.75%	33,542	25,33,542
4	Sushma Devi	20,00,000	20,00,000	1.75%	26,833	20,26,833
5	Smita Jain	15,00,000	15,00,000	1.75%	20,125	15,20,125
6	S.C.S. Holdings	70,00,000	60,00,000	2.21%	1,01,660	61,01,660
7	Sri Ambey Investment	50,00,000	40,00,000	2.30%	68,387	40,68,387
8	Ashika Shah	50,00,000	40,00,000	1.75%	53,667	40,53,667
9	Metro Dye Chem	20,00,000	16,00,000	1.75%	21,467	16,21,467
10	S Prakashchand	25,00,000	25,00,000	1.75%	33,542	25,33,542
		3,35,00,000	2,89,00,000		4,23,622	2,93,23,622

3. Significantly, the amount mentioned on the Promissory Notes represented the amount actually disbursed to the CD plus interest for the period of loan, e.g. the loan Rs.30 lakhs extended by M/s Ashok Kumar Jain HUF comprised of Rs.27,37,500 disbursed from his Bank Account by RTGS to the CD on 04.07.2022 and the interest of Rs.2,62,500 for the period of the loan till 05.12.2022.
4. The Applicants have claimed interest amounting to Rs.4,23,622 for the period after 05.12.2022 which along with the principal amount makes the claim of total outstanding amount as Rs.2,93,23,622.

Counter reply

5. In its counter, the CD has claimed that the Applicants were its customers who had made certain advance payments towards supply of coal by the CD. These advances amounted to Rs.3,01,31,250, out of which a sum of Rs.46 lakhs were returned

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to the Applicants and coal worth Rs.1,61,90,991 was supplied by the CD to the Applicants. It is therefore, claimed that after accounting for the amount of advance of Rs.46 lakhs and supply of coal worth of Rs.1,61,90,991, the surplus left with the CD was less than Rs.1.0 Crore i.e. Rs.93,40,259 which is below the threshold limit for initiating CIRP under Section 7 of IBC.

6. The CD had also questioned the Promissory Notes submitted by the Applicants along with the application to state that these were not rightfully executed on behalf of the CD. Citing from the Articles of Association of the CD, it is claimed that the said Promissory Notes were not valid, as these were signed by only one Director as against the requirement of at least two Directors who could have been signed on any instrument, to which seal of the Company could be affixed.
7. It is argued that the CD is a solvent company with good financial standing and assets and is being used as a recovery measure rather than the resolution of insolvency of the CD. For the reasons above, it is asserted by the CD that the application is not maintainable.

Rejoinder

8. The Applicants have filed a rejoinder where they have denied claims of the CD about any arrangement of supply of coal to them by the CD. It is pointed that the Invoices presented by the CD along with its counter to substantiate the supply of coal, are all in the name of M/s S.C. Shah Enterprises and none of the Applicants are party to such transactions.
9. It is also alleged that the CD is cunningly trying to confuse this Authority by clubbing the unrelated transactions with their

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different concerns and has nothing to do with the case on hand and the financial debt. It is stated that the CD apart from having availed loans from the Applicants also had business transactions with a sister concern M/s. S.C. Shah Enterprises which had nothing to do with the loan transactions under consideration.

10. On the issue of the Promissory Notes being signed by only one Director of the CD, it is argued that the Clauses of the Articles of Association (**AoA**) of the CD's Company are their internal matter and indoor management of the Company and cannot effect a bonafide third party transaction with the said Company. Moreover, it is highlighted that the loans were availed by the CD and if the Promissory Notes were not properly executed and the CD ought to have immediately retransferred the entire amount without utilizing the same. The averments made by the CD in their counter are termed by the Applicants as mischievous and narrated in a concealed manner with twisted facts to confuse this Tribunal. Hence, this application.

Decision

11. Before we delve into the merits of the present application, it is essential to understand the money transactions between the Applicants and the CD. The CD has not denied receiving funds from the Applicants but accepts only Rs 3,01,31,250, as against Rs 3,35,00,000 the Applicants assert was extended as a loan to the CD.
12. At first glance the money received by the CD does appear to be at variance with the amounts claimed as extended by the Applicants. However, despite the differing figures, it is noted that both parties are referring to the same monetary transactions. The

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reconciliation between the respective claims of the Applicants and the CD can be understood from the following example.

13. One of the loans in question, is of Rs 30,00,000, extended by M/s Ashok Kumar Jain HUF, as evidenced by a Promissory Note³. This loan was structured into two parts: simple interest of Rs 2,62,500, calculated at 1.75% per month for five months on the principal amount (of Rs 30,00,000) was computed and collected upfront, and the remaining amount of ₹27,37,500 was actually disbursed. Therefore, when the full promised amount of ₹30,00,000 is repaid, it will solely constitute the principal, as the interest portion has already been collected at the outset. After accounting for a repayment of ₹6,00,000 by the CD, claim of an outstanding debt of ₹24,00,000 remains for the Applicant, M/s Ashok Kumar Jain HUF.
14. The CD characterizes the same financial transaction as an advance received, acknowledging only the net disbursed amount of ₹27,37,500. Thereafter, deducting the ₹6,00,000 that has been returned, the CD computes a remaining payable amount of ₹21,37,500 to the Applicant, M/s Ashok Kumar Jain HUF. (There is further reduction claimed by the CD which is discussed in the later paras).
15. Following table captures the respective positions of all the Applicants and the CD in respect of the Loan/Advance transaction between them.

³ Page 18 of the Application

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Table - 2

Applicant	Loan amount claimed by Applicant	Money transferred to the bank account of CD	Rate of Interest	Interest on the loan	Amount returned by the CD	Balance as per Applicants	Balance as per the CD
No.1	30,00,000	27,37,500	1.75%	2,62,500	6,00,000	24,00,000	21,37,500
No.2	30,00,000	27,37,500	1.75%	2,62,500	6,00,000	24,00,000	21,37,500
No.3	25,00,000	22,81,250	1.75%	2,18,750	-	25,00,000	22,81,250
No.4	2,00,000	18,25,000	1.75%	1,75,000	-	20,00,000	18,25,000
No.5	15,00,000	13,68,750	1.75%	1,31,250	-	15,00,000	13,68,750
No.6	70,00,000	62,25,000	2.21%	7,75,000	10,00,000	60,00,000	52,25,000
No.7	50,00,000	44,25,000	2.30%	5,75,000	10,00,000	40,00,000	34,25,000
No.8	50,00,000	44,25,000	1.75%	5,75,000	10,00,000	40,00,000	34,25,000
No.9	20,00,000	18,25,000	1.75%	1,75,000	4,00,000	16,00,000	14,25,000
No.10	25,00,000	22,81,250	1.75%	2,18,750	-	25,00,000	22,81,250
	3,35,00,000	3,01,31,250*		33,68,750	46,00,000*	2,89,00,000	2,55,31,250

*Undisputed amounts

16. Both the Applicants and the CD agree having respectively disbursed and received the sums amounting to Rs 3,01,31,250. Both also agree on the returned amount of Rs 46,00,000. The Applicants however have accounted for the amounts mentioned on the promissory Notes as loans to the CD. The CD on the other hand, accounted for the sums actually received in its bank account and termed these as 'advances' received against supplies to be made.
17. The Applicants have added further interest of Rs 4,23,622 to the balance of Rs 2,89,00,000 claimed by them to take the amount in default⁴ to be **Rs 2,93,23,622**. The CD on the other hand has reduced a further sum of Rs 161,90,991 on account of supplies

⁴ Page 11 of the Application

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made to M/s S.C. Shah Enterprises from the remaining amount of Rs 2,55,31,250 to arrive at the figure⁵ of **Rs 93,40,259**, which it claims as the only sum payable to the Applicants.

18. So far as the contention of the CD about the aforesaid sums received as 'advances' is concerned, we are unable to accept the same. In support of the claim made in the counter reply, the CD has not provided any explicit or implied agreement with the Applicants for the payment of 'advances' against potential supplies. The claim of supplies being made against such 'advances' is also unsubstantiated. The invoices purportedly evidencing the supplies are issued in the name of M/s S.C. Shah Enterprises, which is not among the applicants here.
19. The CD's other argument - that the Promissory Notes signed by one of its directors, who was allegedly not authorized per its AoA - is also untenable. The CD itself acknowledges receiving the sum of Rs 3,01,31,250, which is corroborated by the bank statements provided by the Applicants. Regardless of whether or not the AoA permitted only one director to sign on behalf of the CD, it is an uncontested fact that the CD received and utilized Rs 3,01,31,250 from the Applicants, returning only Rs 46,00,000. Thus, even as per the CD, an outstanding amount of ₹2,55,31,250 remains, the claim of supplies made to S.C. Shah Enterprises, notwithstanding, as that entity is not a party in dispute here.
20. Moreover, copy of a letter⁶ dated 04.07.2022 from the CD has been filed by Applicants. In this letter, the CD confirmed having received financial assistance from several persons, including the

⁵ Page 10 of the Counter

⁶ Page 87 of the Application

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Applicants in this petition, by stating that

“We wholeheartedly thank you for timely financial assistance and hereby acknowledge the receipt of Loan of Rs.6,40,00,000 disbursed by you and your syndicate members in the following manner and assure to repay the same along with the agreed interest in five equated monthly instalments to the respective parties.”

The amount of Rs 6,40,00,000 mentioned in this letter included the loan amounts extended by the Applicants to the CD. This also shows the CD to have accepted financial assistance in the form of loans from the Applicants and promissory notes were provided in lieu thereof.

21. Despite the CD's attempts to disown the Promissory Notes signed by one of its directors, we are inclined to accept the Applicants' claim that the actual sum owed to them by the CD is Rs 2,89,00,000, which is the original amount of Rs 3,35,00,000 minus the Rs 46,00,000 that has been returned. Additionally, with the interest of Rs 4,23,622 accrued post the repayment date of 04.12.2022, the total sum in default amounts to Rs 2,93,23,622.
22. The CD has claimed to be a solvent entity with strong financial standing and substantial assets, arguing that the provisions of the Insolvency and Bankruptcy Code (IBC) should not be invoked for debt recovery. However, we are unable to accept this assertion, as the CD has not provided any evidence to substantiate its financial health or its capacity to settle its debts.
23. The facts of the case clearly indicate that the CD had taken loans from the Applicant Financial Creditors, with the commitment to repay the same with interest, as is evidenced from the promissory

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notes. Despite the promise to repay, the CD has failed to settle the full amount, resulting in a default on the unpaid sum of Rs 2,89,00,000, along with the accrued interest. Under the circumstances, we have no hesitation to admit the CD into CIRP, and we order as follows:

ORDER

- a) The Application is admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in IBC, reckoning from the date on which this order is passed.
- b) **Mr. YANNAMSETTI MURALIKRISHNA⁷, is appointed as Interim Resolution Professional (IRP).** He is directed to file Authorization for Assignment within three days from the date of this order.
- c) The IRP is directed to take charge of the management of the Corporate Debtor, immediately. He is also directed to cause public announcement as prescribed under Section 15 of the IBC, within three days from the date of receipt of this order, and call for submissions of claim in the manner as prescribed.
- d) **The Applicant FCs to pay a sum of Rs.2.0 lakhs** towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later by the Committee of creditors (CoC).
- e) Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered

⁷ AFA Registration No. IBBI/IPA-001/IP-P-02526/2021-2022/13884, validity of AFA : upto 15.11.2024, Address : 17-28-15 ,ESI Hospital Road, Sriramnagar, East Godavari, Andhra Pradesh - 533105, Email : yannamsetti@gmail.com

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that all of the following are prohibited:

- i. 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 or law, tribunal arbitration panel or other authority;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;
- iii. 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 Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

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- f) The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.
- g) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of IBC. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of IBC.
- h) The Corporate Applicant as well as the Registry is directed to send the copy of this Order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of IBC.
- i) The Registry is directed to communicate this Order to the Corporate Applicant.

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- j) The Registry shall also communicate this Order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.

Accordingly, this application is allowed and stands disposed of.

(SANJAY PURI)
MEMBER (TECHNICAL)

(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)

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