



**IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT- V**

C.P. 322/IB/MB/2024

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Visagar Financial Services Limited

907/908, Dev Plaza, SV Road, Andheri
West, Mumbai- 400058, India

..... Financial Creditor/ Petitioner

Vs

**Dharmkalp Constructions And
Consultancy**

Private Ltd. Shop No. F-83,
First Floor, Prime Mall,
Beside Irla Church, Irla Road,
Vile Parle West, Mumbai 400056

..... Corporate Debtor

Order Dated: 26.09.2024

Coram:

Hon'ble Reeta Kohli, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: Vibhav Gadre (PH)

For the Respondent: Shachi Mittal



ORDER

Per: Hon'ble Member Madhu Sinha (Member Technical)

The above Company Petition is filed by **Visagar Financial Services Limited** hereinafter called as the (“**Financial Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **Dharmkalp Constructions and Consultancy** hereinafter referred to as the (“**Corporate Debtor**”) on **22.04.2024** by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called “**Code**”) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Financial Debt of **Rs. 1,04,10,511/-** (Rupees One Crore Four Lakhs Ten Thousand Five Hundred and Eleven Only). The Date of Default being **06.02.2024**.

Brief Facts of the Case and Submissions by the Financial Creditor

1. In and around September/October 2023, the Corporate Debtor was in need of funds and in view thereof and as per the terms agreed upon between the Financial Creditor and the Corporate Debtor, the Financial Creditor extended loan dated **16.10.2023** for a sum of Rs. 1,02,00,000/- (Rupees One Crore Two Lakhs Only) to the Corporate Debtor carrying an interest @ 9% per annum repayable within three months and a post dated cheque of principal plus interest amount was issued by the Corporate Debtor in favour of the Financial Creditor.
2. As per the terms of Loan Agreement, the debtor was required to execute Demand Promissory Note in favour of the creditor, which was duly done. As per the said Note the debt was payable in full on demand.
3. It was agreed to both the parties that in case of delay or default in the payment, whether of the principal, or of the interest, or any part thereof, the Creditor shall be entitled to recover and the Debtor shall be liable to pay a penal interest @ 3% per annum over and above the interest mentioned. Also, if the Debtor fails to make payment on or before the stipulated date, the Creditor shall give written notice to the Debtor calling upon them to make the payment within 7 days with the penal interest, failing which the Creditor shall be entitled to take appropriate legal action for repayment of the due amount.
4. Since this was a “Short Term” Loan for a period of 3 Months, whereby the last day for payment was 17.01.2024, therefore, a Cheque No. 643879 dated 17.01.2024 for an



amount of Rs. 1,04,10,511/- (Rupees One Crore Four Lakhs Ten Thousand Five Hundred Eleven Only) was drawn on the S.V. Road, Andheri Branch of Punjab National Bank, by the Debtor towards part discharge of their financial liabilities to the Creditor. The said cheque was given based on the fact that the interest would accrue every month, and that the parties would be in a position to settle the debts if required. The Financial creditor being an NBFC, even registered the default of the Corporate Debtor on the website of NeSL. Therefore, the debt and corresponding default is also substantiated by the NeSL Report dated 08.04.2024.

5. When pursued continuously, the Corporate Debtor, refused to pick up any calls and/or respond to the Financial Creditor, pursuant to which the said cheque was deposited. When the said cheque was presented for payment, the same was returned by Creditor's bank with the endorsement "**FUNDS INSUFFICIENT**". The bank has informed Creditor regarding the cheque return through their cheque return memo dated 06.02.2024 issued by HDFC Bank.
6. Adhering to the terms of Loan Agreement, the creditors through their Advocate, addressed a notice dated 23rd February 2024 under Sec. 138 of Negotiable Instruments Act, 1881 asking for the repayment of outstanding debt amount of Rs. 1,04,10,511/- (Rupees One Crore Four Lakhs Ten Thousand Five Hundred Eleven Only) on immediate basis.
7. The Corporate Debtor only issued a holding reply without making the entire payment vide its email dated 08.03.2024. Since there was no response, the Applicant through its Advocate addressed a demand letter through e-mail on 14.03.2024 addressed to the Corporate Debtor making a formal demand of the outstanding amount owed to the Financial Creditor by the Corporate Debtor. This was a final attempt to seek amicable settlement of the matter. However, there is no response to the same. Hence the Applicant is constrained to file the present Petition. Despite several reminders, the Corporate Debtor continued to default on its payment obligation.
8. When the said Petition was being heard for admission by this Hon'ble Tribunal, the Corporate Debtor entered their appearance through their Advocate and resisted the Petition submitting before this Hon'ble Tribunal that the Petition should not be admitted and seeking time for one-time settlement. However, the Financial Creditor did not receive any concrete terms for settlement, and all settlement talks have failed. Under



the above facts and circumstances, were there is clear, undisputed and unequivocal admission of Debt and Default by the Corporate Debtor in their reply, this is a good and clear case for exercise of powers u/s 7 of the Code and admit the Corporate Debtor into Insolvency.

Submissions by the Corporate Debtor

9. It is the case of the Corporate Debtor that the present petition is false, frivolous and a mere attempt to claim amount which is not due.
10. The Operational Creditor has failed to show that the above stated due was a short term loan facility. Further, it is submitted by the Corporate Debtor that the loan in question is a usury loan which takes a long time to service and is meant to be utilised as a working capital assistance given the fact that the Corporate Debtor is in the business of a construction company.
11. The Corporate Debtor also submitted that default in repayment of Principal Amount does not entitle the Petitioner to file the present petition as this Hon'ble Tribunal is not a debt recovery forum.
12. Additionally, the cheque given to the Petitioner was merely for security purpose and was not meant to be deposited. The Petitioner did not even intimate the Corporate Debtor before depositing the cheque. Thus, these actions of the Corporate Debtor show his *malafide* intentions.
13. The Corporate Debtor is a going concern and admitting this present petition will go against the spirit of the Code. The Corporate Debtor further prayed for time from this Hon'ble Tribunal to settle the dues for which the petitioner has already been approached.

Findings

14. At the outset we deem it apt to reproduce the contention of the Corporate Debtor in his written submissions, ad verbatim, wherein he accepts the fact that the loan in question is a short term loan and also that it was due and payable. The relevant paras are reproduced here in under:-

“2. That the Financial Creditor is a NBFC which is in the business of granting loans/ financial assistance and



accordingly the Corporate Debtor approached the Financial Creditor for short term financial assistance for its business purpose as per the term and conditions recorded in the Loan Agreement dated 16.10.2023. 3.

3. That the Respondent herein is a contracting Company and was in need of money for its business purpose for a short span of 3 months. However, since the nature of its business being uncertain, it was unable to repay the said borrowed money in time and required further time from the Financial Creditor.”

15. The Corporate Debtor further contended that the Cheque No. 643879 dated 17.01.2024 for an amount of Rs. 1,04,10,511/- (Rupees One Crore Four Lakhs Ten Thousand Five Hundred Eleven Only) drawn on the S.V. Road, Andheri Branch of Punjab National Bank, by the Debtor towards part discharge of their financial liabilities to the Creditor, was given merely as a security and that mala fide intention of petitioner is reflected in depositing the same without prior intimation. The corporate debtor however fails to place on record any substantiating evidence for proving the fact that the above stated cheque was given merely for security purpose or that the petitioner was required to intimate the corporate debtor before depositing the same.

16. Furthermore, the fact that the Corporate Debtor had approached the petitioner for settlement along with the documents placed on record of this Tribunal, namely, the Loan Agreement dated 16.10.2023, Cheque No. 643879, cheque return memo dated 06.02.2024 issued by HDFC Bank as well as the fact that the Corporate Debtor gave no response to the Demand Notice dated 14.03.2024, all establish the existence of debt and corresponding default as per requirements of Section 7 of the Code. The present petition also satisfies the pecuniary, territorial and subject matter jurisdiction of this Hon'ble Tribunal and hence we deem it apt to **admit** the present petition CP 322/MB/2024.

ORDER

- a) The above Company Petition No. (IB) 322/IB/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Dharmkalp Constructions and Consultancy.



- b) The Financial Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition. This Bench hereby appoints **Vikas Gopichand Khiyani**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P-02738/2022-2023/14194, having Email id cavikas.khiyani@gmail.com as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c) The Financial Creditor shall deposit an amount of **Rs. 2 Lakhs** towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- d) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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; 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) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



- g) That the order of moratorium shall have effect from the date of pronouncement of this order till the 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 corporate debtor under section 33, as the case may be.
- h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k) Accordingly, the **C.P. 322/IB/MB/2024** is **admitted**.
- l) The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

MADHU SINHA
MEMBER (TECHNICAL)

//VLM//

SD/-

REETA KOHLI
MEMBER (JUDICIAL)