



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

RCP (IB) No. 10/MB-IV/2024

Connected to

CP (IB) No.521/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

ARHAM JEWELLERY.

through its proprietor

Mr. Vishal Ramesh Jain

[AEDPJ2552B]

...Financial Creditor

v/s.

GOLDEN WEALTH ADVISORY PRIVATE LIMITED.

[CIN: U74110MH2012PTC237832]

...Corporate Debtor

Order Delivered on: 29.08.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Mr. Yahya Batatawala, Ld. Counsel.

For the Corporate Debtor:

Mr. Tejas Nadhavi, Ld. Counsel.



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1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by *Arham Jewellery (“Financial Creditor”)* through its proprietor *Mr. Vishal Ramesh Jain*, seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of *Golden Wealth Advisory Private Limited.*, the Corporate Debtor.

1.1 The petition is filed on 18/06/2023 and the total outstanding amount of Rs. 39,73,79,600/- in default has been disbursed by the Financial Creditor to the Corporate Debtor towards short term unsecured loan. The date of default as Specified in Part IV of the petition is 06.12.2022.

Submissions of the Financial Creditor:

2. On 31.01.2013, Memorandum of Understanding was executed between the Financial Creditor and the Corporate Debtor. The Financial Creditor had disbursed Rs. 39,73,79,600/-(Rupees Thirty-Nine Crore Seventy-Three Lakhs Seventy-Nine Thousand Six Hundred only) to Corporate Debtor towards short term unsecured loan for a period of 12 months on the simple interest which can be extended at the will of both the parties and it was agreed between the parties that the amount of interest shall be recovered for the extended period along with the principal amount. The details of such disbursement are as under.

Date	Amount (Rs.)
29/01/2013	9,50,04,595
29/01/2013	9,50,05,375
29/01/2013	9,50,02,870
30/01/2013	9,50,01,970
30/01/2013	1,73,64,790
Total	39,73,79,600/-



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2.1. In view of the failure on part of Corporate Debtor to repay the loan despite letter dated 05.12.2022 sent by the Financial Creditor of the outstanding dues since January 2013, the Financial Creditor has filed the petition under section 7 of the IBC Code.

2.2. As directed by the erstwhile bench vide order dated 10.08.2023, an Additional Affidavit has been also filed by the Financial Creditor on 09.09.2023 to place on record Financial Statements of the Corporate Debtor which is duly acknowledged by the Corporate Debtor in the present case.

Submissions of the Corporate Debtor:

2.3. The Corporate Debtor is involved in the business of providing Corporate Advisory Services, Consultancy Services, Financial Advisory Services, Management and Facilitation Services, and in Investment Advisory Services.

2.4. The Corporate Debtor vide its Affidavit in reply dated 08.08.2023 states that, the Corporate Debtor has failed to make repayment of any amount of the Unsecured Borrowing availed from the Financial Creditor and an amount of Rs.39,73,79,600/- is still due and payable; the Financial Creditor on several occasions have communicated and recalled the outstanding amount. The Corporate Debtor sought time on several occasions to make the payment as the Corporate Debtor is facing Financial difficulties; the Corporate Debtor in the month of the November, 2022 had sought last opportunity to make payment and had agreed to provide with the chart of repayment schedule.



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Findings

3. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.
4. On 06.10.2023, the Adjudicating Authority by way of the Impugned Order, had rejected the Application primarily on the ground that MOU categorically stated that “ *The BENEFICIARY has approached the INVESTOR to INVEST a sum of Rupees (397379600.00) as an Unsecured Borrowing for a period of 12 months on simple interest which can be extended at the will of both parties.....* ”. The bench held that such investment made by the Financial Creditor does not fall within ambit of Financial Debt. The present applicant preferred a Company Appeal (AT) (Ins) No. 1514 of 2023 against the impugned order dated 06.10.2023 before National Company Law Appellate Tribunal Principal Bench, New Delhi. The same was allowed on 21.03.2024 and the impugned order was set aside. The relevant extract of the said order is reproduced below:

“...From the evidence which has been brought on record much less the balance sheets of the Corporate Debtor, already referred to hereinabove, and also admission of the Respondent in the reply filed to the application under section 7, there is no doubt that it was a loan and not investment on the part of the appellant, therefore, amount paid by the Appellant falls within the definition of debt and the application filed under section 7 is fully maintainable...”



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5. In view of the Order passed by the Hon'ble NCLAT holding that the petition under section 7 is maintainable. The Applicant filed a Restoration Application No.21/2024 on 18.04.2024. Thereafter, the tribunal was pleased to restore the Company Petition.
6. We take note of the affidavit filed by the Corporate Debtor dated 12.09.2023 clarifying the different names of the Corporate Debtor, stating that “**PURNIYA GOLD JEWELLERY PRIVATE LIMITED, NISIDDH VISION PRIVATE LIMITED AND GOLDEN WEALTH ADVISORY PRIVATE LIMITED** are one and the same entity”.
7. We note from the submissions of the Corporate Debtor, that the Corporate Debtor has acknowledged its liability in respect of dues payable to the Financial Creditor towards the outstanding amount.

“...The Corporate Debtor in the month of November, 2022 had sought last opportunity and had agreed to provide with the chart of repayment schedule. However, due to financial instability, the Corporate Debtor not submit any repayment schedule. The Corporate Debtor is unable to conduct its business effectively and hence the non-payment of the Financial debt is not intentional but are a result of unfortunate circumstances beyond the control of the Corporate Debtor which has resulted in financial crisis within the Corporate Debtor. The Corporate Debtor is not on position to make any payment to the Financial Creditor...”



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8. We take cognizance of the decision of the Hon'ble NCLAT holding that this case is fully maintainable u/s 7 of the IBC and the fact that Corporate Debtor has acknowledged its liability and the said petition is filed in time. It is a settled law that the pre-requisites for an application under Section 7 of the Code are the existence of 'debt' and a 'default'. The Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency Process be initiated in the matter of the Corporate Debtor. The petition is complete in all aspects. In the light of the above facts and circumstances, the existence of debt and default is reasonably established by the Applicant as a major constituent for admission of the Application under section 7 of the Code.
9. The Financial creditor has proposed the name of the Insolvency Resolution Professional {referred as "IRP"}. This bench hereby appoints **Mr. Keyur Jagdishbhai Shah**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-002/IP-N00244/2017-2018/10729** and email- **cs.keyurshah@gmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
10. It is ordered accordingly, the Petition bearing RCP (IB) No.10/MB-IV/2024 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC)) by Arham Jewellery ("Financial Creditor") through its proprietor Mr. Vishal Ramesh Jain, seeking initiation of Corporate Insolvency Resolution Process



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(CIRP) in the matter of Golden Wealth Advisory Private Limited., the Corporate Debtor is **Admitted.**

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (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 of 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 right 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;



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- (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).



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- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
29.08.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)