

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 111/7JPR/2024

(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)

IN THE MATTER OF:

OM PRAKASH SOMANI & ORS.

...Financial Creditor/ Petitioners

Versus

VMN STONES PRIVATE LIMITED

...Corporate Debtor/ Respondent

MEMO OF PARTIES

1. Om Prakash Somani

R/o No. 16, 29th Main, BTM 2nd Stage,
Bangalore, Karnataka -560 068.

...Financial Creditor No. 1

2. Namita Somani

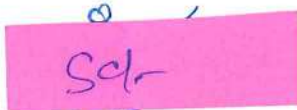
R/o No. 16, 29th Main, BTM 2nd Stage,
Bangalore, Karnataka -560 068.

...Financial Creditor No. 2

3. Manoj Somani

R/o No. 16, 29th Main, BTM 2nd Stage,
Bangalore, Karnataka -560 068.

...Financial Creditor No. 3





4. Manoj Somani HUF

R/o No. 16, 29th Main, BTM 2nd Stage,
Bangalore, Karnataka - 560 068.

...Financial Creditor No. 4

5. Om Prakash Somani HUF

R/o No. 16, 29th Main, BTM 2nd
Stage, Bangalore, Karnataka -560 068.

...Financial Creditor No. 5

6. Devki Devi Somani

R/o No. 16, 29th Main, BTM 2nd Stage,
Bangalore, Karnataka - 560 068.

...Financial Creditor No. 6

7. Naman Somani

R/o No. 16, 29th Main, BTM 2nd Stage,
Bangalore, Karnataka – 560 068.

...Financial Creditor No. 7

8. MN Precision Pvt. Limited

CIN No.: U29100KA2010PTC056179
R/o: No. 16, 29th Main, BTM 2nd
Stage, Bangalore, Karnataka – 560 068.

...Financial Creditor No. 8

VERSUS**VMN STONES PRIVATE LIMITED**

CIN No.: U14101RJ2019PTC066935
Through its Director, Having its
registered address at: No. 13, Shree
Apartments Sector 4, Vidhyadhar
Nagar, Jaipur, Rajasthan – 302 039.

...Corporate Debtor/ Respondent

For the Financial Creditors :

Prabhansh Sharma, Adv.
Nagendra Singh Adha, Adv.
Eshaan Sanghi, Adv.
Shrishti, Adv.
Rohini, Adv.
Ankit Juneja, Adv.

For the Corporate Debtor :

Order Pronounced On: 01.07.2026

ORDER

1. The instant Petition bearing *CP No. (IB)- 111/7/JPR/2024* has been filed by *Mr. Om Prakash Somani & Ors.* ('Financial Creditor'/ 'Petitioner') against the Corporate Debtor namely, *VMN Stones Private Limited.* ('Corporate Debtor'/ 'Respondent'), under section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of the Corporate Insolvency Resolution Process ('CIRP') of the Respondent on account of the alleged default in repayment of the outstanding loan amount.
2. The Respondent is a Private Limited Company incorporated on 08.11.2019 and duly registered with the Registrar of Companies, Jaipur, having Identification No. U14101RJ2019PTC066935. The registered office of the Respondent is situated at *flat No. 13 Shree Apartments Sector 4 Vidhyadhar Nagar, Jaipur, Jaipur, Rajasthan.* The authorized share capital of the Respondent is Rs. 60,00,000/- (Rupees Sixty Lacs Only) and the paid-up share capital is Rs. 51,99,480/- (Rupees Fifty-One Lacs Ninety-Nine Thousand Four Hundred and Eighty Only). The same has been verified from the online database maintained by the Ministry of Corporate Affairs.
3. The case of the Petitioner Financial Creditor is as follows:
 - 3.1. It is stated that the Corporate Debtor, i.e., *VMN Stones Pvt. Ltd.,* is a private limited company registered and incorporated under the

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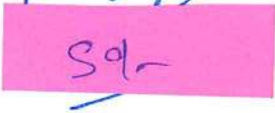
provisions of the Companies Act on 08.11.2019. The Financial Creditors held 60% of the paid-up share capital in the Corporate Debtor, whereas the remaining 40% share capital was held by the other directors/promoters, namely *Mr. Abhishek Periwal* and *Mr. Vijay Periwal*.

- 3.2. It is submitted that the Financial Creditors had, from time to time, advanced substantial financial assistance by way of an unsecured loan to the Corporate Debtor. The Long-Term Borrowings of the Corporate Debtor for the Financial Year ending 2022-2023 stood at approximately Rs. 15,06,19,200/-, out of which the principal sum of Rs. 9,67,61,000/- was admittedly disbursed by the Financial Creditors. The said financial debt was fully utilized by the Corporate Debtor towards the setup and installation of its Marble/Granite processing plant, which subsequently commenced commercial production with effect from 20.10.2022.
- 3.3. Pursuant to detailed discussions and commercial negotiations between the parties, the Financial Creditors agreed to transfer their entire 60% shareholding in the Corporate Debtor to *VMN Export Pvt. Ltd.* Consequently, an Agreement dated 28.12.2023 was signed and executed by and between the Financial Creditors, the Corporate Debtor, as well as *Mr. Abhishek Periwal* and *Mr. Vijay Periwal* (“Settlement Agreement”). The said Settlement Agreement provided for the sale of

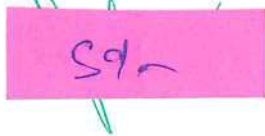
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the share capital and the complete settlement of the outstanding unsecured loan for a total consideration of Rs. 10,00,00,000/- (Rupees Ten Crores Only), excluding the bank liabilities to be receivable by the shareholders and the unsecured loan of the Financial Creditors.

- 3.4. It is further submitted that apart from the financial debt extended by the Financial Creditors herein, certain other entities, namely *Novel Apartment* and *Vikram Apartment*, had also advanced unsecured loans to the Corporate Debtor to the tune of Rs. 80,00,000/- (Rupees Eighty Lakhs Only). In terms of the reciprocal covenants and obligations executed under the Settlement Agreement, it was explicitly agreed between all the respective parties that the Financial Creditor was legally entitled to receive a final consolidated settlement payment of Rs. 10,92,38,920/- (Rupees Ten Crores Ninety-Two Lakhs Thirty-Eight Thousand Nine Hundred and Twenty Only).
- 3.5. The debt owed by the Corporate Debtor to the Financial Creditors was legally assigned/acknowledged *vide* the Agreement dated 28.12.2023, under which the Corporate Debtor admittedly fulfilled its repayment obligations through part-payments up until 30.03.2024. Contrary to the categorical undertakings and the payment schedule contained therein, the Corporate Debtor completely failed making any further payments after 30.03.2024.



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- 3.6. Following the persistent defaults, no further payments were received by the Financial Creditors. As on date, a substantial principal sum of Rs. 5,78,51,000/- (Rupees Five Crores Seventy-Eight Lakhs Fifty-One Thousand Only) towards the unsecured loans remains overdue, unpaid, and outstanding, which is to be serviced along with applicable contract interest from the date of default till the date of realization.
- 3.7. The continued non-payment of the outstanding financial debt compelled the Financial Creditors to issue a formal Legal Notice dated 04.07.2024 to the Corporate Debtor, calling upon them to clear the entire overdue loan amount immediately. In response to the said Legal Notice, the Corporate Debtor sent a Reply dated 24.07.2024 wherein they merely tried to dissolve their absolute liability towards the Financial Creditors by concocting a fallacious and fictitious story. The Corporate Debtor sought to raise fake accusations and unsubstantiated claims with the sole, *malafide* objective of evading the settlement of their lawful dues that are clearly owed to the Financial Creditors.
- 3.8. Aggrieved by the evasive stand, the Financial Creditors issued a comprehensive rejoinder dated 14.08.2024 to the Corporate Debtor, refuting the false narratives and reiterating the demand for immediate payment. Despite receipt of the same, no efforts were made by the Corporate Debtor to liquidate their outstanding financial liabilities.



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3.9. Consequent to the continuous inaction and persistent defaults by the Corporate Debtor, the Financial Creditors served a formal Statutory Notice dated 13.09.2024 under Section 7(1) of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, in the prescribed form, demanding the immediate payment of the unpaid financial debt arising out of the advancement of the unsecured loans. However, it is submitted that the Corporate Debtor in its Reply dated 11.10.2024 denied the lawful claims of the Financial Creditors without any supporting evidence whatsoever.

3.10. The relevant details as reflected in Part IV of the Petition are as follows:

Part IV
PARTICULARS OF FINANCIAL DEBT

1.	<i>TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT</i>	<i>The total amount of Financial Debt of the Financial Creditors is to the tune of Rs. Rs. 5,78,51,040/- along with interest @24% per annum amounting to Rs. Rs. 6,43,48,832/-. Therefore, the total amount of default is Rs. 12,21,99,872</i>
2.	<i>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)</i>	<i>Date of Default: that there are various dates of default which can be found in Annexure A-2 (Colly).</i>

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4. The Respondent filed its Reply vide Dairy No. 567/2025 dated 25.03.2025 stating as follows: -

4.1. At the outset, the Respondent explicitly denies all the false, baseless, and vexatious allegations leveled in the Petition and specifically disputes the existence of any “financial debt” or “default” within the meaning of the Code.



4.2. It is stated that in the instant case dispute entirely emanates from a commercial Agreement dated 28.12.2023 executed between *VMN Stones Pvt. Ltd.* (Respondent Company) and *VMN Exports Pvt. Ltd.*, in relation to the acquisition and transfer of the ownership and majority shareholding of the Respondent Company for a total agreed sale consideration of Rs. 10,00,00,000/- (Rupees Ten Crores Only). The aforementioned Agreement was essentially a commercial exit arrangement between two distinct shareholder groups and not a financial borrowing.

4.3. The Respondent has asserted that the Applicants themselves were existing directors and majority shareholders of the Respondent Company holding approximately 60% equity shares and were fully aware of all financial affairs and transactions of the Company. It is contended that the Applicants voluntarily agreed to transfer their respective shareholdings pursuant to the Agreement and accepted payments in furtherance thereof.

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- 4.4. It is alleged that Applicants cannot be treated as “Financial Creditors” under Section 5(7) of the IBC since the Agreement dated 28.12.2023 was not executed by them in their personal capacities but between two private limited companies only. It is further contended that the Applicants lack locus standi to invoke Section 7 of the IBC as no financial facility or loan carrying time value of money was ever advanced by them pursuant to the aforesaid Agreement.
- 4.5. The Respondent has further contended that the alleged claim does not qualify as a “financial debt” under Section 5(8) of the IBC since the Agreement nowhere provides for payment of interest or any component representing “time value of money.” It is specifically submitted that the Applicants have falsely claimed interest @ 24% per annum despite there being no contractual stipulation regarding payment of interest at any stage of negotiations, execution or performance of the Agreement.
- 4.6. It is alleged that Applicants have raised an inflated and exaggerated claim of approximately Rs. 12.22 Crores, including alleged principal and interest, which is even higher than the total agreed consideration of Rs. 10 Crores for acquisition of 100% shareholding of the Respondent Company. According to the Respondent, the said claim is imaginary, whimsical and contrary to the commercial understanding between the parties.

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- 4.7. It is submitted that the Agreement contemplated not only transfer of equity shares but also adjustment, settlement and write-off of unsecured loans and liabilities associated with the Somani Group. The Respondent has placed reliance upon detailed calculations and tabulations showing payments already made towards equity share consideration, unsecured loans and other creditors on pro-rata basis. It is contended that substantial payments amounting to more than Rs. 4,19,10,000/- were already paid to the Applicants/Somani Group.
- 4.8. It is stated that several Applicants had themselves acknowledged receipt of amounts and accepted that no further claims remained outstanding against the Respondent Company. It is contended that despite such admissions, the Applicants were deliberately impleaded in the present Petition only to artificially inflate and strengthen the alleged claim.
- 4.9. The Respondent has also disputed the alleged date of default i.e., 31.03.2024. It is alleged that payments continued to be made even thereafter and bank statements evidencing transfers made in May 2024 of amount Rs. 20 Lakhs to Applicant Nos. 2 and 3 have been placed on record.
- 4.10. It is further submitted that the Applicants initiated multiple proceedings and exchanged various notices, rejoinders and legal communications prior to filing of the present Petition, including

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notices alleging oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013. According to the Respondent, the existence of such disputes clearly demonstrate that the present proceedings are rooted in *inter se* shareholder and commercial disputes rather than any undisputed financial default.

4.11. The Respondent has alleged that the Applicants have acted in *mala fide* manner after securing release of certain collateral properties mortgaged with Bank of Baroda in relation to the Respondent Company's loan facilities. It is contended that immediately thereafter the Applicants started demanding additional amounts and initiated coercive proceedings with an intent to extort more money from the remaining shareholders and management.

4.12. It is further alleged that the Applicants tampered with and improvised the Agreement dated 28.12.2023 by introducing additional signatures and altered documentation while filing the Petition before this Tribunal.

Analysis & Findings

5. We have heard the Counsels and have perused the material available on record. The basic facts are that: -

5.1. The substantial amount was advanced by the Applicants to the Corporate Debtor;

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- 5.2. The Agreement dated 28.12.2023 was executed by the Applicant and the Corporate Debtor;
- 5.3. Part payments were admittedly made thereafter and
- 5.4. Liabilities were reflected in the books of accounts.
6. The main controversy is regarding the legal characterisation of the transaction after execution of the Agreement dated 28.12.2023. The Corporate Debtor has attempted to characterise the transaction as a composite shareholder-exit arrangement in which the earlier unsecured loans allegedly stood extinguished / subsumed into a settlement mechanism.
7. However, upon perusal of the material on record, this Adjudicating Authority is unable to accept the contention that the earlier debt obligations altogether lost their independent character. The Agreement dated 28/12/2023 is not drafted like a pure share purchase agreement. The Agreement repeatedly identifies: -
- a) Unsecured loans,
 - b) Share capital,
 - c) Total liabilities, and
 - d) Continuing outstanding entries.
8. Clause 7 of the agreement expressly quantifies unsecured loans at Rs. 10.47 crores.
- Clause 9 of the agreement separately computes unsecured loans and share capital.
- Clause 10 of the agreement records a continuing outstanding balance.

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If the intention was complete extinction of all loan liabilities and substitution by a single share purchase consideration, one would normally expect language such as full and final settlement, novation, discharge, waiver, extinguishment, or equivalent language.

9. The Agreement appears to continue recognising loan liabilities throughout, hence it cannot be said that the debt completely vanished. Clause 7 of the Agreement expressly acknowledges lender-wise break-up the outstanding loan amount of Rs. 9.67 crore + 80 lakhs= Rs. 10,47,00,000/-. The Financial Creditor has pleaded that the Corporate Debtor has made part payment totalling Rs. 3.89 crore till 30.03.2024.
10. The Agreement consciously preserves the distinction between the shareholding component and the unsecured loan component instead of treating them as one indivisible amount. Annexure-2 of the petition gives the schedule of payments made under the Agreement dated 28.12.2023, separately maintaining heads-unsecured loan payments and share payments. The allocation of each tranche between these two heads demonstrates that the parties themselves continued to recognise the unsecured loan component as an independent payable liability while implementing the Agreement and after giving credit to the payments received, it specifically records the balance amount due towards unsecured loan as Rs. 5,78,51,000/-. This figure corresponds with the principal amount claimed in Part IV of Section 7 petition. Therefore, the petition is not founded merely on unpaid share

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purchase consideration. The Petitioner's own working read with the agreement is showing that a substantial unsecured loan component remain unpaid. Had the unsecured loans stood completely satisfied or merged into the share purchase consideration upon execution of the Agreement, there would ordinarily have been no occasion for the parties to maintain separate accounting heads and separate appropriation of every instalment towards unsecured loans and share consideration.

11. The contention regarding no time value of money also does not hold, as the loans were advanced earlier and those loans were acknowledged in the Agreement and the Agreement merely restructured repayment.
12. The Corporate Debtor has also relied upon the existence of proceedings under Sections 241-242 of the Companies Act, 2013 to contend that the matter is essentially a shareholder dispute. While the record does indicate disputes between the shareholder groups, the existence of such disputes by itself does not negate the existence of a financial debt if the requirements of Section 5(8) and Section 7 are otherwise satisfied.
13. The Financial Creditor has relied upon the various judgments are as under:

LICHFL Trustee Company Pvt. Ltd. Vs. M/s JBM Homes Pvt. Ltd.

IBA/812/2020 of Hon'ble NCLT Chennai Bench: -

"22. Thus, it is seen from the above definition that any amount raised pursuant to the debentures would partake the character of a 'financial debt'. Just because the Financial Creditor is also equity shareholder in respect of the Corporate Debtor would not debar the Financial Creditor from initiating the Corporate

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Insolvency Resolution Process against the Corporate Debtor. In this context, it significant to refer to the decision of the Hon'ble NCLAT in the matter of India Power Corporation Limited Vs. Meenakshi Energy Limited and Others in Company Appeal (AT) (Ins.) No. 1220 of 2020 has held that even though a financial creditor became a shareholder of the Corporate Debtor, the same will not bar the financial creditor cum shareholder to file an application to initiate CIRP against the corporate debtor so long as a financial debt is owed”.

Dipak Bhadra Vs. RCBS Realty Pvt. Ltd. CP (IB) No. 1062/KB/2019 of

Hon'ble NCLT Kolkata Bench: -

“7...We are further of the view that the status of the Financial Creditor Shareholder / Director of the Company is also not a disqualification of file application under Section 7 of IBC, 2016...”.

Mrs. Anita Kumaran & Anr. Vs. M/s KGS Developers Limited in CP (IB)

No. 678/7/CB/2018 of Hon'ble NCLT Chennai Bench: -

“8...The loan taken by the principal borrower/Corporate Debtor carries the element of time value of money and payment thereto by the Financial Creditors is also against the time value of money of the loan taken by the principal borrower i.e. Corporate Debtor. The interpretation that has been placed by the Learned Counsel for the Corporate Debtor is that the money that has been paid by the Applicants/Financial Creditors is not having an element of time value of money is not convincing and the same stands rejected....”.

14. Similarly, the Corporate Debtor has relied upon the judgment of Hon'ble NCLAT in **“Shailesh Sangani v/s Joel Cardoso” Company Appeal (AT)**

(Ins.) No. 616 of 2018: -

“6. A plain look at the definition of 'financial debt' brings it to fore that the debt along with interest, if any, should have been

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disbursed against the consideration for the time value of money. Use of expression 'if any' as suffix to 'interest' leaves no room for doubt that the component of interest is not a sine qua non for bringing the debt within the fold of 'financial debt'. The amount disbursed as debt against the consideration for time value of money may or may not be interest bearing. What is material is that the disbursement of debt should be against consideration for the time value of money. Clauses (a) to (i) of Section 5(8) embody the nature of transactions which are included in the definition of 'financial debt'. It includes money borrowed against the payment of interest. Clause (f) of Section 5(8) specifically deals with amount raised under any other transaction having the commercial effect of a borrowing which also includes a forward sale or purchase agreement. It is manifestly clear that money advanced by a Promoter, Director or a Shareholder of the Corporate Debtor as a stakeholder to improve financial health of the Company and boost its economic prospects, would have the commercial effect of borrowing on the part of Corporate Debtor notwithstanding the fact that no provision is made for interest thereon. Due to fluctuations in market and the risks to which it is exposed, a Company may at times feel the heat of resource crunch and the stakeholders like Promoter, Director or a Shareholder may, in order to protect their legitimate interests be called upon to respond to the crisis and in order to save the company they may infuse funds without claiming interest. In such situation such funds may be treated as long term borrowings. Once it is so, it cannot be said that the debt has not been disbursed against the consideration for the time value of the money. The interests of such stakeholders cannot be said to be in conflict with the interests of the Company. Enhancement of assets, increase in production and the growth in profits, share value or equity enures to the benefit of such stakeholders and that is the time value of the money constituting the consideration for disbursement of such amount raised as debt with obligation on the part of Company to discharge the same. Viewed thus, it can be said without any amount of contradiction that in such cases the amount taken by the Company is in the nature of a 'financial debt'."

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support the proposition that absence of a conventional interest clause by itself is not conclusive and the commercial effect and surrounding circumstances of the transactions have to be examined.

15. Whereas the Corporate Debtor has also relied upon the Hon'ble NCLAT *in* "Imdadali M. Momin & Ors. v/s Pellucid Lifesciences Pvt. Ltd."

(Company Appeal (AT) (Ins.) No. 1145 of 2024:-

"15. In this regard we also have a look at the objects of IBC 2016 "The objective of the Insolvency and Bankruptcy Code, 2015 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 for 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. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development."

16. It is clear from the aforesaid objectives of the IBC that it's a forum for resolution of insolvency and not for recovery of debt. It has been laid down by the Hon'ble Supreme Court in "Swiss Ribbon Pvt. Ltd. Vs. Union of India" ((2019) 4 SCC 17), that IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of interest. The Corporate Debtor has already paid the amount of principal and interest for the amount for which TDS was paid. The aforesaid application for initiation of CIRP process against CD was not filed for resolution of insolvency of the Corporate Debtor.

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17. In his legal submission the appellant had cited cases involving existence of debt and default thereafter and submitted that the AA has no discretion but to order CIRP if debt and default is proven. In this regard, they have cited relevant Judgments: *Innoventive Industries Ltd. v. ICICI Bank Ltd.* (supra), *M. Suresh Kumar Reddy V. Canara Bank & Ors.*

18. We are of the view that the present case is not covered by aforesaid judgments of Hon'ble Supreme Court as the debt here cannot be classified as financial debt and therefore the AA is well within its powers not to allow CIRP under Section 7 of the Code against CD.

19. The present case is covered by the decisions of the coordinate Benches of this Tribunal in *VRG Healthcare P. Ltd. Vs. VRG Infrastructure P. Ltd.* (supra), *Rohit Motwat vs. Madhu Sharma [CA (AT)(Ins.) No. 1152/22 decided on 03.02.23]* which lay down the criteria for classifying a particular debt as a financial debt and also clearly state that proceedings under IBC are for corporate insolvency resolution and not for recovery of debt.

20. After considering the arguments and reviewing the pleadings presented by both parties, we concur with the AA findings. The appellant has not submitted any agreement showing that the respondent, or corporate debtor, was obligated to pay interest on the alleged loan. Additionally, the AA correctly determined that, for a debt to qualify as a "financial debt," the amount advanced to the corporate debtor must be in consideration of the time value of money, which is clearly absent in this case. It was also rightly concluded that the appellant does not qualify as a financial creditor, since, no money was disbursed with consideration for time value. Further, the CD's claim to have paid the entire amount of principal and interest for which TDS has been deducted, has not been disputed by the appellant. Now the dispute is only about recovery of balance amount of claimed interest. As already held this Appellate Tribunal is not a debt recovery forum. The appellant is free to raise such dispute before appropriate forum for recovery of balance claim, if any."

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16. In these matters, the Hon'ble NCLAT was dealing with a factual matrix where the basic material necessary to establish financial debt which itself was absent and the transaction lacked the essential attributes of borrowing, whereas in the present case, the facts are: -

1. There is admitted disbursement;
2. There exists a written Agreement dated 28.12.2023;
3. Liabilities are expressly acknowledged therein;
4. Part payments were admittedly made; and
5. The liabilities stood reflected in books of accounts.
6. Therefore, the ratio of *Imdadli M. Mohin & Ors. Vs. Pellucid Lifesciences Pvt. Ltd. (Company Appeal (AT)(Ins.) NO. 1145/2024)* does not assist the Corporate Debtor in the particular facts of the present case.
7. Likewise, the judgment of *Shailesh Sangani Vs. Joel Cardoso & Priority Marketing Pvt. Ltd.*, also does not support the case of the Corporate Debtor because the judgment itself recognizes that the commercial substance and effect of the transaction have to be seen, and in the present case there is acknowledgment of liabilities and structured repayment obligations.

17. This contention regarding absence of crystallized date of default also cannot defeat the petition, since the materials on record clearly establish continuing default after admitted part payments. Annexure-2 of the petition also shows that after 31.03.2024, no payment towards unsecured loans has been made.

18. This Adjudicating Authority is therefore satisfied that: -

1. Financial debt exists within the meaning of Section 5(8) of the IBC;

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2. Default has occurred and the requirements of Section 7 stand satisfied.

Conclusion

19. In view of the above facts, the **CP (IB) No. 111/7/JPR/2024** is admitted and consequently Corporate Insolvency Resolution Process (CIRP) is initiated against the Corporate Debtor i.e., VMN Stones Private Limited.
20. Under sub-section (4) of Section 7 of the Code, the Financial Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP'). Under Section 16(3)(b) the RP as proposed shall be appointed as IRP if no disciplinary proceedings are pending against him. In the instant case, the Financial Creditor has proposed the name of Mr. Vikas Rajvanshi, bearing Registration No. IBBI/IPA-001/IP-P01886-C01/2016-2017/10032 with the address *H-15, Chitranjan Marg, C-Scheme, Jaipur, Rajasthan ,302001* as the IRP in the present matter. The said IRP has filed his written consent to act as an interim resolution professional in Form-2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.
21. Therefore, we hereby appoint Mr. Vikas Rajvanshi having registration No. IBBI/IPA-001/IP-P01886-C01/2016-2017/10032 with the address *H-15, Chitranjan Marg, C-Scheme, Jaipur, Rajasthan ,302001*, email:- *vikasrajvanshi.jaipur@gmail.com*, as Interim Resolution Professional (IRP)

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Sd/-

of the Corporate Debtor to carry out the functions as per the Code, subject to there being no disciplinary proceedings pending against him and subject to all compliances under the IBC and IBBI regulations.

22. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder. The Interim Resolution Professional will also check the genuineness of the claim while admitting the financial dues of the Applicant.
23. Consequences of initiation of CIRP shall be inter-alia as follows: -

23.1 The IRP appointed by the Adjudicating Authority is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same.

23.2 Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in operation during the CIRP of the Corporate to Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.

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23.3 The said IRP shall act strictly in accordance with the provisions of the Code. This Bench also directs for an advance payment of Rs. 1,00,000/- (Rupees One Lakh only) to be paid by the Petitioner to the Interim Resolution Professional immediately to initiate the process which shall be adjusted towards the expenses payable to the Resolution Professional. In terms of Section 17 and 19 of the Code all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

23.4 Further, in term of Regulation 4(3) of the IBBI (Resolution Process For Corporate Persons), 2016 the creditors shall provide information in respect of assets and liabilities of the Corporate Debtor to the IRP and it is incumbent upon the IRP also to approach the Creditors to seek such information.

23.5 The Interim Resolution Professional (IRP) is also directed to inform and forward a copy of this Order to all the statutory authorities such as Enforcement Directorate, Employees Provident Fund Organization (EPFO), Income tax department and concerned Electricity department about the initiation of CIRP against the Corporate Debtor within a period of three days.

Sd/-

Sd/-

23.6 In terms of Section 7 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, the Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

24. Accordingly, *CP No. (IB)-111/7/JPR/2024 is admitted*. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the parties along with the IRP appointed herein.


REETA KOHLI
JUDICIAL MEMBER


KAVITA BHATNAGAR
TECHNICAL MEMBER