



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

COMPANY PETITION (I.B.) NO. 771 OF 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:

M/s IPK Exports Private Ltd

...Applicant/Financial Creditor

Versus

M/s HSB Home Solutions Ltd

...Respondent/ Corporate Debtor

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 08.07.2025

PRESENT:

For the Applicant : Mr. Akshay Joshi, Advocate

For the Respondent : Mr. Praveen Singh, Advocate



ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. The instant Company Application is filed by M/S. IPK Exports Private Limited (**‘Applicant/ Financial Creditor’**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**‘Code’**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating the Corporate Insolvency Resolution Process (**‘CIRP’**) against M/s. HSB Home Solutions Limited (**‘Respondent/Corporate Debtor’**) having CIN: U70109DL2006PLC155160 on the ground that the Corporate Debtor had committed a default in payment of Rs. 3,06,09,874/- (Rupees Three Crore Six Lakh Nine Thousand Eight Hundred and Seventy-Four Rupees only), wherein, the Principal Amount is 2,15,00,000/- (Indian Two Crore Fifteen Lacs only) and the interest Amount is Rs. 91,09,874/- (Indian Rupees Ninety-one lakhs nine thousand eight hundred and seventy-four only).
2. The Corporate Debtor i.e. M/s. HSB Home Solutions Limited having CIN: U70109DL2006PLC155160 incorporated on 02.11.2006 under the Companies Act 1956 having its registered office situated at : Plot No-B 289 B, First Floor Khasra No- 1041/1 Block-B Road No. 5 Vasant Kunj Enclave, South West Delhi, Delhi, India, 110070. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority



in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code

3. Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-

- a) The Applicant submitted that M/s. IPK Exports Private Limited hereinafter referred to as ("Financial Creditor/ Applicant") is a company incorporated under the provisions of the Companies Act, 1956 and deals in trading, buying, selling, dealing, importing, exporting. wholesaling, retailing and fabrication in textile garments, yam fabrics & other products.
- b) The Financial Creditor submitted that in the ordinary course of business, it had advanced a total sum of ₹2,18,38,611/- (Rupees Two Crore Eighteen Lakh Thirty-Eight Thousand Six Hundred Eleven Only) to the Corporate Debtor during the Financial Year 2011–2012 towards the supply of materials. The remittances made by the Financial Creditor were as follows: ₹81,76,349/- on 14.09.2011, ₹75,30,000/- on 24.03.2012, and ₹61,32,262/- on 14.08.2012. However, the Corporate Debtor failed to discharge its contractual obligation of supplying the said materials, despite repeated assurances and commitments of delivery. Consequently, upon failure of



the Corporate Debtor to supply the goods, the Financial Creditor demanded a refund of the advance amounts paid.

- c) The Applicant stated that despite repeated demands raised by the Financial Creditor through letters dated 01.04.2012, 10.08.2012, 10.06.2013, 25.11.2015, 12.11.2016, 25.08.2017, 12.01.2022, 02.02.2022, and 04.02.2022, the Corporate Debtor, while acknowledging its liability, sought further time for repayment in its responses dated 15.11.2012, 15.06.2013, 15.01.2016, 15.05.2017, 13.05.2019, 11.06.2021, 31.08.2021, and 17.01.2022. However, despite such acknowledgments and assurances, the Corporate Debtor failed to refund the outstanding amount and admitted to having utilized the advance received from the Financial Creditor.
- d) The Applicant stated that being unable to fulfil its repayment obligations or supply of material demanded by the Financial Creditor, the Financial Creditor and the Corporate Debtor mutually entered into a Loan Agreement dated 15.04.2022, whereby it was agreed that the total sum of ₹2,15,00,000/- (Rupees Two Crore Fifteen Lakh Only) shall be treated as a loan (hereinafter referred to as 'Loan' or 'Loan Amount') extended by the Financial Creditor to the Corporate Debtor, subject to the terms, conditions, and purposes set forth in the said Agreement. Under the Loan Agreement, the Corporate



Debtor undertook to repay the Loan Amount on or before 30.06.2022, along with interest at the rate of 24% per annum, to be calculated from the date of execution of the Agreement until the date of actual repayment.

- e) The Applicant submitted that despite being granted a final opportunity by the Financial Creditor through the execution of the Loan Agreement, the Corporate Debtor failed to honour its repayment obligations and continued to default on the outstanding dues. Consequently, the Financial Creditor issued a Notice of Default dated 15.07.2022, calling upon the Corporate Debtor to make immediate repayment of the outstanding loan amount. However, the Corporate Debtor failed to respond to the said notice. Thereafter, the Financial Creditor issued reminder notices dated 30.11.2022 and 07.08.2023, reiterating the demand for immediate repayment. In response, vide letter dated 15.08.2023, the Corporate Debtor acknowledged its financial distress and expressed its inability to repay the loan amount or supply the agreed materials, citing unavoidable circumstances and lack of financial viability.

4. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- a) The Corporate Debtor, in its reply, denied the various allegations made by the Financial Creditor and submitted



that the present application is misconceived and liable to be dismissed.

- b)** The Respondent submitted that the application is nothing but a bundle of lies which got filed by the financial creditor with ulterior motives and malafide intention by raising false, frivolous, bogus and baseless claim against corporate debtor.

Analysis and Findings

- 5.** We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the Application, Reply filed by the Corporate Debtor.
- 6.** The matter was taken up on 21.11.2024 before this Adjudicating Authority and accordingly, Ld. Counsel for the Respondent, Mr. Praveen Singh who was present through VC and accepted notice on behalf of the Respondent and further confirmed that Respondent have received a copy of the application. This Adjudicating Authority accordingly granted a weeks time to file a reply.
- 7.** On 19.02.2025 this Adjudicating Authority recorded that
- “.....Proxy Counsel for Respondent submitted that arguing Counsel is not available today and further submitted that the reply filed on behalf of Respondent is already on board which was filed on 05.01.2025. This Tribunal vide order dated 29.01.2025 had recorded that since no reply has been filed



chance to file reply on behalf of Respondent is closed. However, from the record, it seems that reply has been filed on 05.01.2025. Hence order dated 06.01.2025 and 29.01.2025 with regard to closing of chance of reply is recalled.”

8. The admitted case of the applicant is that the applicant had, in the course of business paid an advance amount of Rs.2,18,38,611/- (Rupees Two Crore Eighteen Lakh Thirty-Eight Thousand and Six Hundred Eleven Only) against the Supply of Materials to the Corporate Debtor in the year 2011-2012. The Financial Creditor made the following remittances to the Corporate Debtor towards the supply of materials: ₹81,76,349/- on 14.09.2011, ₹75,30,000/- on 24.03.2012, and ₹61,32,262/- on 14.08.2012. However, the Corporate Debtor failed to supply the agreed materials as per the contractual understanding. In response to repeated demands, the Corporate Debtor, through various correspondences, acknowledged its liability to either supply the materials or, in the alternative, refund the advance amount. Such acknowledgments were made vide letters dated 15.11.2012, 15.06.2013, 15.01.2016, 15.05.2017, 13.05.2019, 11.06.2021, 31.08.2021, and 17.01.2022.

9. That upon realizing that the Corporate Debtor had failed to supply the materials despite repeated assurances, the parties mutually agreed to treat the advance amount as a loan.

Accordingly, the Financial Creditor and the Corporate Debtor

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entered into a Loan Agreement dated 15.04.2022, wherein the Corporate Debtor acknowledged the liability and agreed to repay the loan amount on or before 30.06.2022, along with interest at the rate of 24% per annum, calculated from the date of the Loan Agreement until the date of actual repayment.

10. Therefore, the point of contention that arises for determination is the nature of the debt at the time of its initial disbursement. Upon perusal of the record, it is observed that the Applicant had disbursed a sum of ₹2,18,38,611/- (Rupees Two Crore Eighteen Lakh Thirty-Eight Thousand Six Hundred Eleven Only) to the Corporate Debtor during the Financial Year 2011–2012 by way of advance towards the supply of materials.

11. We are inclined to refer to the definition of operational debt, Financial debt and Financial Creditor as provided in the Code which are as follows

(7)“Financial Creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

(8)“Financial Debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

- (a) Money borrowed against the payment of interest;***
- (b) Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;***
- (c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;***
- (d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or***



- capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) Receivables sold or discounted other than any receivable sold on non-recourse basis;*
 - (f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing.*
 - (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
 - (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
 - (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;*

(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

12. As per the averments made by the Applicant and upon examination of the material on record, it is evident that the initial disbursement was made towards the supply of goods. This clearly indicates that the original transaction was in the nature of an advance payment made for procurement of goods or services, thereby classifying the initial liability as an “Operational Debt” within the meaning of Section 5(21) of the Insolvency and Bankruptcy Code, 2016. Consequently, any subsequent attempt to reclassify such debt as a *Financial Debt* must be scrutinized in light of the original nature and purpose of the transaction.



13. Therefore, it is evident from the foregoing definitions and the material on record that the claim made by the Applicant does not fall within the ambit of a “Financial Debt” as defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016. Consequently, the Applicant cannot be regarded as a “Financial Creditor” within the meaning of Section 5(7) of the Code.

14. We are inclined to refer to the **Hon'ble Supreme Court in Swiss ribbons (P) Ltd v Union of India, (Writ Petition (Civil) No. 99 of 2018)** had observed as under:

"A conjoint reading of all these Rules makes it clear that at the stage of the adjudicating authority's satisfaction under Section 7(5) of the Code, the corporate debtor is served with a copy of the Application filed with the adjudicating authority and has the opportunity to file a reply before the said authority and be heard by the said authority before an order is made admitting the said Application. What is also of relevance is that in order to protect the corporate debtor from being dragged into the corporate insolvency resolution process malafide, the Code prescribes penalties."

15. This Adjudicating Authority is unable to accept the contention that an Operational Debt can be converted into a Financial Debt by way of a subsequent agreement between the parties. Permitting such a transformation would be contrary to the express intent and scheme of the Insolvency and Bankruptcy



Code, 2016, Recognising such arrangements as valid would open the floodgates for misuse and would undermine the fundamental distinction drawn by the Code between Operational Creditors and Financial Creditors, thereby defeating its very object and purpose.

16. Furthermore, the conduct of the parties, the manner in which the purported debt conversion was executed, and the specific terms and conditions of the alleged loan agreement collectively raise serious doubts about its genuineness. In the facts and circumstances of the present case, the possibility of collusion between the parties cannot be ruled out.

17. Thus, in view of the law laid down in the case of Minions Ventures Pvt. Ltd. (Supra) and facts in the present case, this Adjudicating Authority is of the considered opinion that the present Company Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, is not maintainable and is accordingly liable to be dismissed.

Sd/-
ATUL CHATURVEDI
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)