

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) No. 112/KB/2024

***An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with the Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.***

**IN THE MATTER OF:**

**Shradha Buildcon Pvt. Ltd & Anr.**

**... Financial Creditor/ Applicant.**

***Verses***

**Vinilok Solutions Private Ltd**

**... Corporate Debtor/ Respondent.**

**Date of Pronouncement: 13<sup>th</sup> September, 2024.**

**Coram:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**SHRI. D.ARVIND, MEMBER (TECHNICAL)**

**Appearance:**

**For the Financial Creditor:**

Mr. Patita Paban Bishwal, Adv.

Mr. Neeraj Kr Gupta. Adv.

Ms. Suranjana Chatterjee, Adv.

Ms. Sohini Dey, Adv.

**For Corporate Debtor:**

Mr. Kumar Deepraj. Adv.

**ORDER**

**PER Bidisha Banerjee, Member (Judicial):**

- 1.** This Court congregated through hybrid mode.
- 2.** Heard the Learned Counsels for both parties.

***Factual matrix:***

- 3.** This instant application is filed under Section 7 of the Insolvency and Bankruptcy Code, for brevity I&B Code, read with Rule 4 of the

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Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by **“Shradha Buildcon Pvt. Ltd & Anr.”**, hereinafter referred to as **“Financial Creditor” (“Applicant”/ “FC”)** against **“Vinilok Solutions Private Ltd”**, hereinafter referred to as **“Corporate Debtor” (“Respondent”/ “CD”)** seeking direction to initiate Corporate Insolvency Resolution Process (for brevity “CIRP”) in respect of the Corporate Debtor.

**4. Submissions of the Ld. Counsel for the Applicant:**

- 4.1** The Learned Counsel for the applicant submits that the Corporate Debtor is a private company engaged in the business of online sale of medicines and other medical/healthcare products.
- 4.2** It is contend that in March 2022 the Corporate debtor needed money for restructuring and expansion of its business and approached the applicant for extending of financial assistance to meet its business requirements.
- 4.3** It is claimed that after negotiations, the applicant company agreed to provide a loan of Rs. 10 Crore for 5 years, with disbursement over 2 years, contingent on meeting obligations and satisfactory progress in the expansion plan. The detailed terms are outlined in the loan agreement dated 27.04.2022, annexed as Annexure-P2.
- 4.4** It is further submitted that the loan was disbursed at an interest rate of 15% per annum, with a 12-month interest-free period starting from the first disbursement of Rs. 5 Crore on 05.07.2022. Interest began accruing from 05.07.2023.

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- 4.5** It is contended that interest payments were due monthly, within 7 days after the end of each calendar month. Therefore, the first payment was required by 07.08.2023.
- 4.6** It is further submitted that during the expansion plan, deviations from expected results were noted by the applicant company, which issued a letter on 25.05.2023 warning that failure to meet the business plan would lead to loan recall with interest. Despite the warning, the corporate debtor did not satisfactorily implement the business plan or pay the interest due on 07.08.2023.
- 4.7** It is contended that on 28.09.2023, the applicant issued another notice to the corporate debtor to rectify the default and implement the business plan as per the agreement. The debtor's financial situation did not improve, the interest default persisted, and the business plan failed.
- 4.8** It is claimed that due to delayed interest payments and no improvement in financial status, the applicant recalled the loan on 14.12.2023, demanding full repayment by 26.12.2023. Letters dated 25.05.2023, 28.09.2023, and 14.12.2023 are annexure as AnnexureP-3.
- 4.9** It is further submitted Applicant No. 2 lent Rs. 1 crore to the corporate debtor on June 12, 2020, repayable by May 24, 2022, or upon the end of COVID-19. Late payments incur 12% annual interest. The agreement, dated May 25, 2020, is annexed as Annexure P-4.
- 4.10** It is claimed that Applicant No. 2 issued a demand notice on December 5, 2023, but the corporate debtor did not repay the loan or interest. The demand letter is Annexure P-5.

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**4.11** It is further submitted that the corporate debtor did not pay the due interest or comply with recall and demand notices, resulting in a default amount of Rs. 8,87,45,751/-, exceeding the threshold under Section 4 of the Code. Default computation is annexed as Annexure P-6, and loan disbursement bank statements are Annexure P-7.

**5. *Per Contra the Corporate Debtor would allege as under:***

- 5.1** It is submitted that the corporate debtor borrowed Rs. 6.98 crore from Applicant No. 1 and Rs. 1 crore from Applicant No. 2, as supported by the agreements provided by the applicants.
- 5.2** It is contended that the Covid 19 threw entire corporate planning and business plans into disarray and the entire business became difficult to manage and the growth of company was not only stalled but reversed also.
- 5.3** It is claimed that after COVID-19, Applicant No. 1 agreed to lend Rs. 10 crore to support the corporate debtor's recovery. However, when the debtor's business plan faltered and additional funds were needed, Applicant No. 1 withdrew, citing deviations from the plan, and served a recall notice instead of accommodating the urgent need.
- 5.4** It is further submitted that the corporate debtor's business has underperformed but could recover with additional funding. The business, a new-age tech venture, requires high marketing and support expenses. The applicants failed to grasp that online medicine delivery demands sustained advertising for brand building, which creates intangible value rather than tangible assets.

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- 5.5** It is further submitted that if the corporate debtor enters CIRP, traditional financiers may be reluctant to invest in revitalizing the business, which currently needs both funding and brand development.
- 5.6** It is submitted that if the petition is admitted, the resolution applicants may take over the business idea, which was developed by the promoters, despite knowing that such ventures typically don't generate profit in the early years and need ongoing support.
- 5.7** It is contended that the corporate debtor's inability to pay the applicants is a temporary issue; the business could recover with a consistent source of funding for the next 3-5 years.
- 5.8** It is further submitted that the corporate debtor's failure to pay dues is due to its new tech venture experiencing heavy initial losses, which have eroded its net worth. However, the business could recover with a steady source of financing.

**6. *Analysis and finding***

- 6.1** We have heard the submissions made by both parties and perused the documents on record.
- 6.2** We find that there is no dispute about the default made by the Corporate Debtor and the default amount is in excess of the threshold limit.
- 6.3** It is evident that the Applicant No. 2 issued a demand notice on 05.12.2023 demanding Rs. 1 crore with interest to which the CD has failed to comply.

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**6.4** It is clear that the CD has not complied with recall and demand notices for default of an amount of Rs. 8,87,45,751/- and as such no objections have been raised with regard to the said defaulted amount by the Corporate Debtor.

**6.5** It is an admitted fact that the disbursal of loan given by Petitioners was admitted by Corporate Debtor in para 5 @pg 4 of its reply. Loan agreements with both petitioners were also admitted in same paragraph.

**6.6** Further it is evident that in para 7 of the Reply CD has pleaded as-  
*“However, since the business plan of the Corporate Debtor did not go as per plan and at the critical juncture when further fund was required,.....”*  
This pleading proves that the things were not going as per plan represented to the Petitioner No. 1. Therefore, it is a veiled admission of breach of representation by CD.

**6.7** Under para 13 of the agreement with Petitioner no. 1 (@pg 31 of the petition), the Petitioner no. 1 has right to terminate the agreement upon noticing 10% or more deviation from projections, a letter to that effect was sent by Petitioner no. 1 to CD on 25.05.2023 . This communication was responded by CD vide letter dt. 02.06.2023 and **deviation beyond 10% was admitted positively by CD. Under para 13(b) of agreement the Petitioner accrued the right to terminate agreement at that very juncture.**

**7.** At this juncture we would like to refer to the decision of the **Hon’ble Supreme Court in the matter of Innoventive Industries Ltd. vs. ICICI Bank & Anr** (2018) 1 SCC 407, **held as follows :-**

*“29. the scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a*

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*default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, **the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.***

**(Emphasis Added)**

- 8.** More recently, Hon’ble Supreme Court have reiterated in **Suresh Kumar Reddy v. Canara Bank & Ors.** [Civil Appeal No. 7121 of 2022] as under:-

*“13. Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view*

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*taken in the cases of Innoventive Industries and E.S. Krishnamurthy.  
The view taken in the case of Innoventive Industries still holds good.”*

**(Emphasis Added)**

9. Thus, it is clear that when a default takes place i.e., the debt becomes due and if it is not paid, the Insolvency Resolution Process shall begin against the corporate debtor even if the debt is disputed by the Corporate Debtor, unless it is interdicted by some law. In the instant case, we are of the opinion the debt has become due and payable on the basis of recall notice dated 05.12.2023 by applicant no.2 which has not been challenged by the Corporate Debtor. Once, the validity of the recall notice remains unchallenged by the Corporate Debtor in a court of law, it cannot argue that the said notice is invalid. Therefore, on the basis of discussion in the aforesaid paragraphs, we are satisfied that the present application is complete in all respects.
10. In terms of the foregoing discussions, the application bearing **Company Petition (IB) No. 112/KB/2024**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 7 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:
- i. The Application filed by the **Shradha Buildcon Private limited & Anr. (Financial Creditor)**, under **Section 7** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Vinilok Solutions Private Limited (Corporate Debtor)**.
  - ii. As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under



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the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

**iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- a) 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;*
- b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset or any legal right or beneficial interest therein;*
- c) 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);*
- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

*[Explanation.--For the purposes of this sub-section, it is hereby clarified that 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, concession, clearances or a similar grant or right during the moratorium period;]*

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- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v.** 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.
- vi.** The Applicant has proposed the name of **“Ms. Chaya Gupta”**, **[Registration no.: IBBI/IPA-002/N-00984/2020-2021/13133, Email ID: guptachayacs@gmail.com]**, as the “IRP”. We have perused that there is a written communication, annexed as **Pg. 15A-15C** , to this Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with ICAI Institute of Insolvency Professionals. In addition, further necessary disclosures have been made by **“Ms. Chaya Gupta”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code. Hence, we appoint **“Ms. Chaya Gupta”** as the **Interim Resolution Professional (IRP)** of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the

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Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.

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- x.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means 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.
- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with

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regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.

**xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

**11.** This order is issued under Section 7 of I&B Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.

**12.** A certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

**13.** Post the matter on **08.11.2024** for filing the Periodical Progress Report by the IRP/RP.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This Order is signed on 13<sup>th</sup> Day of September 2024.**

Tiwari, V. (LRA)/Oindrila, K. (LRA)