

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

202. C.P. (IB)/570(MB)2024

IN THE MATTER OF

Kapishvar Silicates Pvt Ltd

... Petitioner

Vs

VXL Instruments Limited

... Respondent

U/s 7 of the Insolvency and Bankruptcy Code, 2016

Order Delivered on 26.11.2024

CORAM:

MS. REETA KOHLI,
MEMBER (J)

MS. MADHU SINHA,
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner: Adv. Kunal Kanungo (PH)

For the Respondent:

ORDER

This Company Petition is filed on 19/07/2024 by **Kapishvar Silicates Pvt. Ltd.** (hereinafter referred as “**the Petitioner/Financial Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **VXL Instruments Ltd.** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 7** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**the Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for committing default in payment of a Financial Debt of **Rs. 1,48,07,666/-** and the date on which the default occurred is **16.07.2024**.

Submissions by the Financial Creditor

1. The brief facts of the case are that the at the request of VXL Instruments Limited (Respondent / Corporate Debtor), Kapishvar Silicates Private Limited (Petitioner

/ Financial Creditor) had agreed to place an inter-corporate deposit for a sum up to Rs.1,50,00,000/- carrying interest 15% per annum compounded with monthly rest, payable at monthly interest starting from 30 April 2024. Accordingly, Inter-Corporate Deposit Agreement dated 03 April 2024 was executed between the Petitioner / Financial Creditor and Respondent / Corporate Debtor. In view of the above mentioned Inter-Corporate Deposit Agreement dated 03 April 2024, the Petitioner / Financial Creditor had disbursed amount of Rs.1,45,00,000/- to the Respondent / Corporate Debtor.

2. The Petitioner / Financial Creditor had sent a letter dated 28 May 2024 to the Corporate Debtor recalling the interest due on 05 May 2024 for the month of April 2024 amounting to Rs.1,72,131/-. Since as on 18 May 2024, the interest was not paid by the Respondent / Corporate Debtor and hence requested the Respondent / Corporate Debtor to pay the overdue interest amounting to Rs.1,72,131/- within 5 days from the receipt of the letter.
3. The Petitioner / Financial Creditor has received a reply dated 05 June 2024 from the Respondent / Corporate Debtor acknowledging the facts that an interest amounting to Rs.1,72,131/- for the month of April 2024 was due on 05 May 2024. The Respondent / Corporate Debtor has stated in the reply that they are trying to pay the said interest however due to certain financial crisis it seems difficult to pay within the time period mentioned in the letter sent by the Petitioner / Financial Creditor i.e. within 5 days from the receipt of letter and hence the Respondent / Corporate Debtor has requested for time till 15 June 2024 for paying the said interest amount. However, no payment has been received from the Respondent / Corporate Debtor as on the date of filing the present petition. The Corporate Debtor never disputed its liability in respect of the said Interest and hence as per the Clause 5(a) of Inter-Corporate Deposit Agreement dated 03 April 2024, the entire loan amount along with interest for the entire period shall immediately become due and payable.

Submissions by the Corporate Debtor

4. It is the case of the Corporate debtor that since it was experiencing financial difficulties therefore it approached the Financial Creditor and consequently a loan of Rs. 1.45 crores with interest @ 15% p.a. was granted to it by the Financial Creditor.
5. The Corporate Debtor clearly and expressly admitted that due to unavoidable circumstances, it was unable to repay the outstanding amount towards the loan however it had always been its intention to repay the loan. The Corporate Debtor resultantly sought more time from this Hon'ble Tribunal for repayment of the same.

FINDINGS

6. After having heard both the Counsels for the parties and having gone through the documents placed on record, we deem it appropriate to take note of order dated 14.10.2024 which is as follows: -

“The Counsel for the Corporate Debtor seeks time to place on record the list of the liabilities. The Respondent is stated to be a listed entity and the amount of default in the present case is only of Rs. 1.48 crores. Counsel for the Respondent has also submitted that they are attempting to resolve their dispute with the Financial Creditor. Let the needful be done before the next date. Adjourned 26.11.2024”

7. The default amount is stated to be Rs. 1.48 Cr. The date of default is 16.07.2024. The disbursement table has been annexed at page 13. The Inter-Corporate Deposit Agreement is stated to be dated 03.04.2024. The relevant clauses are being reproduced hereunder: -

1. **LOAN AMOUNT-**

“The Lender has agreed to advance an amount of upto Rs. 1,50,00,000 (Rupees One Crore Fifty Lakhs only) carrying

interest @ 15% per annum compounded with monthly rest, payable at monthly rest starting from 30th April 2024.”

3. REPAYMENT OF THE LOAN-

“The Borrower may repay all or any portion of the Loan Amount at any time or from time to time, provided that repayment of full Loan Amount along with the applicable interest shall be repaid by the Borrower on or before 15th July, 2024 (“Maturity Date”)”.

4. EVENT OF DEFAULT-

- a) Any non-compliance by the Borrower of the terms and conditions of this Agreement.*
- b) Any breach of this Agreement by the Borrower.*

5. CONSEQUENCES OF AN EVENT OF DEFAULT-

- a) The entire Loan amount along with interest for the entire period shall immediately become due and payable, and the Lender shall have the right to recall the entire Loan together with interest for the entire period. All costs incurred by the Lender to recall this loan shall be borne by the Borrower together with applicable taxes.*
- b) The Lender shall be entitled to take all or any action with or without intervention of the Courts or any third party to recover the monies due and payable by the Borrower under this Agreement.*

8. On 28.05.2024, the Financial Creditor issued notice for the payment of the due interest wherein it was stated as under: -

“Based on agreement dated 03.04.2024 entered between Kapishvar Silicates (p) Ltd. And VXL Instruments Ltd. Kapishvar Silicates (P) Ltd had given a loan of Rs. 1.45 Crores in various tranches with the last one on 16.04.2024

to VXL Instruments and agreed to charged interest at 15% per annum on the said loan.

Kindly note that in view of the above, interest for the month of April, 2024 amounting to Rs. 1,72,131/- was due on 5th May 2024. However, as on 18th May, 2024, the said interest is not yet received by Kapishvar Silicates (P) Ltd. And hence you are requested to pay the overdue interest amounting to Rs. 1,72,131/- within 5 days from the receipt of this letter”.

9. It is submitted that the Respondent has failed to discharge the liability and did not make any payment towards the due interest. On 05.06.2024, the Respondent responded as under: -

“This is with response to your letter dated 28/05/2024 with regards to interest for the month of April 2024 amounting to Rs. 1,72,131/- which was due on 05 May 2024, as per the ICD agreement dated 03/04/2024 entered between Kapishvar Silicates (P) Ltd. And VXL Instruments Limited.

We humbly submitted that we are trying our best to pay the said interest for the month of April 2024 amounting to Rs. 1,72,131/- which was due on 05 May 2024, however due to certain financial crisis it seems difficult to pay within the time period mentioned in your letter i.e. within 5 days from the receipt of you letter, and hence we request you kindly give us time till June 15th 2024 for paying the said interest amount”.

The only amount paid by the Respondent is stated to be Rs. 12,909/- on 25.04.2024.

10. Presently also in the reply filed before this Hon'ble Court, the Respondents have admitted their liability of payment and have only submitted that because of experiencing financial difficulties, they have not been able to make the due payment.
11. This Hon'ble Tribunal further relies on the judgement of *Innoventive Industries Limited v. ICICI Bank and Another and E.S. Krishnamurthy & Ors. vs. Bharath Hi-Tech Builders Pvt. Ltd. (2022) 3 SCC 161* in which the Hon'ble Supreme Court held that the moment the adjudicating authority is satisfied that there is a debt and a default has occurred, the Section 7 application must be admitted unless it is incomplete.
12. In view of the facts, submissions and *deliberations* of both the parties, we deem it appropriate to admit the CIRP against the Corporate Debtor.

ORDER

- a. In view of the aforesaid findings, the above Company Petition No. 570/IBC/MB/2024 is hereby **admitted** and thereby initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **VXL Instruments Limited**.
- 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 **Mr. Jayanti Lal Jain** having Registration No. **IBBI/IPA-001/IP-P-01792/2019-2020/12845** having Email Id jljain.ip@gmail.com is appointed as the Interim Resolution Professional.
- 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.
- 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. Registry to intimate the IRP about his appointment as IRP of the Corporate Debtor within 3 days.
- l. Accordingly, CP 570 of 2024 is **admitted**.

Sd/-
MADHU SINHA
Member(Technical)

Sd/-
REETA KOHLI
Member(Judicial)

/Ziyaul/