



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (SPECIAL), COURT NO. I  
KOLKATA**

**Company Petition (IB) No. 59/KB/2024**

***A Petition 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:**

**KANHAIYA POWER PRIVATE LIMITED**

**... Financial Creditor/ Petitioner.**

***Versus***

**TIRUPATHI PROPERTIES AND INVESTMENT PRIVATE LIMITED**

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

**Date of Pronouncement: August 13, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE HON'BLE MEMBER (JUDICIAL)**

**SHRI D. ARVIND HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Financial Creditor:**

**Ms. Manju Buteria, Adv.  
Ms. Tanvi Luhariwala, Adv.  
Anjali Tulsyan, Adv.**

**For the Corporate Debtor:**

**Pranit bag, Adv.  
Mr. Rahul Poddar, Adv.**

**ORDER**

**Per: D. Arvind, Member (Technical)**

1. The Court is congregated through hybrid mode.
2. Heard the Learned Counsels Ms. Manju Bhuteria along with Ms. Tanvi Luhariwala and Ms. Anjali Tulsyan, appearing on behalf of the Financial Creditor and the Learned Counsels Mr. Pranit bag along with Mr. Rahul Poddar appearing on behalf of the Corporate Debtor.



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3. This is a petition preferred by **Kanhaiya Power Private Limited**, hereinafter referred to as “Petitioner”/ “Financial Creditor” against **Tirupati Properties and Investment Private Limited**, hereinafter referred to as “Respondent”/ “Corporate Debtor” for initiating Corporate Insolvency Resolution Process (for brevity “CIRP”) under Section 7 of Insolvency and Bankruptcy Code, 2016, for brevity “I&B Code”.

4. The total amount claimed to be in default is Rs. 2,76,55,327.87 along with further interest at the rate of 9% per annum as agreed till actual realization of the said sum. The Date of Default is claims as on 13.01.2024.

**Factual Matrix:**

5. Upon request by the Corporate Debtor for a loan not exceeding Rs. 3 Crore, the Petitioner and the Respondent entered onto a loan agreement on 05.08.2023 and the Financial Creditor has disbursed a corporate loan of Rs. 2.67 crore with an interest rate of Rs. 10% per annum, and transferred the sum in various trenches from September 26, 2023, to October 13, 2023.

6. As per the loan agreement dated 05.08.2023, the loan amount is to be paid within 31<sup>st</sup> October 2023 with an interest rate of 9 % per annum. Since the Corporate Debtor failed to pay the loan amount, recall notice was issued on 15<sup>th</sup> January 2024 followed by another letters on February 06, 2024, and February 21, 2024. This application has been filed on 07<sup>th</sup> March 2024.

**Petitioner’s submissions:**

7. The Learned Counsel Ms. Manju Bhuteria appearing on behalf of the Petitioner brought to our notice in the Clauses (i), (ii), (iii) and (iv) of the agreement dated August 05, 2023, to contend that loan was given with an interest rate of 9% per annum, therefore, the same qualify as a financial debt in terms of the Section 5 (8) of I&B Code. The Financial Creditor issued demand notice on 15<sup>th</sup> January 2024, as no loan replacement was received



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from the Corporate Debtor. The Financial Creditor also issued reminder letters dated 6<sup>th</sup> February 2024, and 21<sup>st</sup> February 2024. The Corporate Debtor did not respond to such reminder notices as well.

**8.** It is submitted that at in no point of time the Financial Creditor extended the time limit, for repayment as otherwise the Financial Creditor would not have issued demand notice or several reminder notices, which are on record.

**9.** It is contended that this is a fit case for admission of the Corporate Debtor into CIRP under Section 7 of the I&B Code.

**Per Contra, submissions made by the Respondent:**

**10.** The Learned Counsel Mr. Pranit Bag appearing on behalf of the Corporate Debtor would submit that as per the agreement dated 05.08.2023, the last date for repayment by the borrower was 31<sup>st</sup> October 2023. Since the Corporate Debtor was unable to pay within 31<sup>st</sup> October 2023, the respondent requested the Financial Creditor to grant extension to the respondent to repay the loan considering the friendly relationship between the parties.

**11.** It is submitted that The Financial Creditor granted extension to the respondent to repay the loan amount, and thus, the debt is yet to become due and consequently the question of “default” does not arise in view of extension granted by the Financial Creditor and this petition deserves to be dismissed.

**Analysis and Findings:**

**12.** We find that no such extension letter purported to have been granted by the Financial Creditor to the Corporate Debtor has been placed on record by the Corporate Debtor. It was orally submitted by the Ld. Counsel for the



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Corporate Debtor in this regard. Whereas the Ld. Counsel for the Financial Creditor submits that this is frivolous excuse and defence. If the Financial Creditor has, indeed, granted extension, question of issuing recall notice and several reminders which have been placed on record, would not have arisen. Therefore, we find that in the absence of any extension letter placed on record by the Corporate Debtor we find force in the argument of the Ld. Counsel appearing for the Petitioner.

**13.** Further, we note that the NeSL report as per the information as on 26.02.2024, annexed at pages 36-37 to the petition, that the date of default is on 13.01.2024 and the default amount is reflected as of Rs. 2,76,55,327.87/-. Further, we note that the Petitioner has supplied the bank statement, annexed at pages 38-40 to the petition, to substantiate the disbursement of the debt to the Corporate Debtor.

**14.** We are supported by the views of Hon'ble Apex Court to define "Financial Debt" and to initiate Corporate Insolvency Resolution process as under:

***(a) Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416:***

*"any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and that the disbursal must be against consideration for time value of money."*

**(Emphasis added)**

***(b) Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401:***

*"the essential condition of financial debt is disbursement against the consideration for time value of money."*

**(Emphasis added)**



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(c) *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...'”

(Emphasis added)

(d) *Innoventive Industries Ltd. v. ICICI Bank* reported in (2018) 1 SCC 407: MANU/SC/1063/2017 has laid down that:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”

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“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)

15. Since the debt is an excess of threshold limit prescribed under I&B Code and default has been established clearly and the petition has been filed



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within the time limit prescribed, we find it appropriate to admit the Corporate Debtor into the CIRP.

**16.** In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 59/KB/2024** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **Kanhaiya Power Private Limited (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Tirupathi Properties and Investment 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 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*



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*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;]*

- 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 the 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 Petition has proposed the name of **“Mr. Vasudeo Agarwal”**, Address: 5, Fancy Lane, 3<sup>rd</sup> Floor, Room no. 9, Kolkata 700001, registration no. IBBI/IPA-001/IP-P00186/2017-18/10365, contact: 9830078378, email ID: [vdainfo@gamil.com](mailto:vdainfo@gamil.com), as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as Annexure D at pages 15-17 to the petition, 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



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proceedings pending against him with the Board or IIIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Vasudeo Agarwal”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Mr. Vasudeo Agarwal”** 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 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 the 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 CIR Process 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 I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession





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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.
- 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 CIR Process 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.



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- 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), to whom the company is registered with, 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 a 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 regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 17.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 18.** Post the Company Petition on **24/ 09/ 2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This Order is signed on the 13th Day of August 2024.**  
SSG\_Steno/ Bose, R. K. [LRA]