



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

Company Petition (IB) No. 61/KB/2021

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:

NRS STEEL TRADERS LLP

... Financial Creditor/ Petitioner.

Versus

CAMPUS IMPEX 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. Rashmi Singhee, Adv.

Ms. Sanjana Shaw, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

- 1.** The Court congregated through a hybrid mode.
- 2.** Heard the learned Counsel Ms. Rashmi Singhee along with Ms. Sanjana Shaw appearing on behalf of the Petitioner.
- 3.** This is an application preferred by **NRS Steel Traders LLP**, hereinafter referred to as **"Petitioner"/ "Financial Creditor"** against **Campus Impex Private Limited**, hereinafter referred to as **"Respondent"/ "Corporate Debtor"** under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" seeking initiation of Corporate Insolvency Resolution Process (for brevity CIRP) in respect of the corporate debtor.



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4. The total amount claimed to be in default is Rs. 1,17,00,000/- inclusive of 12% interest rate per annum. The Date of Default is claimed as on 30.09.2019.

Facts in a nutshell:

5. The Petitioner herein is a vendor to the Corporate Debtor supplying TMT Bar and made advance payment for the same from time to time. The Petitioner paid an advance of Rs. 1,00,00,000/- on various dates from July 2018 to September 2018 to the Corporate Debtor against the purchase orders for the supplying of TMT Bar to the tune of Rs. 2,59,60,000/-.

6. Failing to supply such materials by the Respondent, the Petitioner demanded of the advance payment paid to the Corporate Debtor. The Corporate Debtor requested to convert the same into a loan and accordingly both the parties entered into an agreement on 01.06.2019 and converted the said advance amount of Rs. One Crore as financial loan.

7. The Corporate Debtor has failed to pay the converted Loan in terms of the agreement dated 01.06.2019 and hence, the Petitioner has preferred this petition for initiation of CIRP in respect of the Corporate Debtor, under Section 7 of the I&B Code.

Petitioner's Submissions:

8. The Learned Counsel Ms. Rashmi Singhee appearing on behalf of the Petitioner brought to our notice an agreement dated 1st June 2019, executed between the parties herein. The said agreement in terms of Clause F, the advance of Rs. One Crore, given to the Corporate Debtor for supply of TMT bar, has been converted into Loan repayable by way of four instalments with a simple interest at the rate of 12% per annum.



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9. The Learned Counsel would submit that from June 2019 to November 2020, various reminders were issued by the Financial Creditor to the Corporate Debtor for the payment of the instalments due as per the agreement dated 01.06.2019, which has been duly acknowledged by the Corporate Debtor. However, no efforts have been made by the Corporate Debtor to repay the dues.

10. We find that despite notice of service by the Registry of this Adjudicating Authority, the Respondent has neither filed reply nor appeared on a single occasion. It would be evident from the daily orders that several opportunities were given to both the parties to appear but on every occasion only Financial Creditor has appeared through its authorised representative/ counsel, and, the Corporate Debtor has not appeared on any occasion. Thus, we find no alternative but to set the Corporate Debtor *ex-parte* and decide the matter based on the records available with us and the submissions made by the Learned Counsel appearing on behalf of the Financial Creditor.

Analysis and Findings:

11. We find that from Clause F of the agreement dated 01.06.2019, it was agreed by the parties that the Corporate Debtor would make payment of the amount claimed by the Financial Creditor as loan, upon the execution of the agreement, by way of four equal monthly instalments of Rs. 25 Lakh with simple interest at the rate of 12% per annum due on loan to be paid every month within 30th day of month starting from 30th June 2019. The instalment shall start in the month of June 2019 and end in September 2019. It is further agreed upon that all dues along with the interest shall be cleared within September 2019. The said agreement dated 01.06.2019 is annexed at pages 38-48 an Annexure “F” to the Petition.



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12. Further, we find that the petitioner has supplied the bank statement annexed at pages 21-23 to the petition, to substantiate the amount outstanding towards the advance payment made with the corporate debtor.

13. 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)

(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



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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, ...”

XXX XXX XXX XXX

“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)

14. We find that this debt qualifies for Financial Debt as per the definition enshrined under Section 5(8) of the I&B Code. The amount claimed to be in default along with interest agreed upon between the parties is in excess of the threshold limit described under Section 4 of the I&B Code. The date of default in terms of the said agreement dated 01.06.2019, arose on 30th September 2019. This petition has been filed on 20.02.2021. Therefore, the petition has been filed within time period and complies all the parameters for admission under I&B Code.

15. In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 61/KB/2021** 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**:



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- i.** The Application filed by **NRS Steel Traders LLP (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Campus Impex 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 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



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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 Applicant has proposed the name of **“Mr. Surendra Kumar Agarwal”**, Registration no. IBBI/IPA-001/IP-P00825/2017-18/11401, Email ID: surendrac@gmail.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 “H” at pages 53-56 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 proceedings pending against him with the Board or IIIP of ICAI. In addition, further necessary disclosures have been made by **“Mr. Surendra Kumar 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. Surendra Kumar 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



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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 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



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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.
- 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.



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- 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.
- 16.** 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.
- 17.** 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.

BD/ Bose, R. K. [LRA]