

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**



C.P. No. (IB) 54/MB/C-III/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
Ramesh N Rughani

Having office at:
41, Juhu Vikrant, Gulmohar Cross Road No. 10,
Behind UTI Building, JVPD Scheme, Mumbai -
400049

...Financial Creditor/Petitioner

Versus

Libra Fabric Designs Private Limited

Having office at:
A-2/309/349, Shah & Nahar Estate, Dhanraj
Mill Compound, NM Joshi Marg, Lower Parel,
Mumbai-400013

...Corporate Debtor/Respondent

Order pronounced on: 01.10.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati (Technical)

Appearances:

For the Financial Creditor: Adv. Indrajeet Hingane

For the Corporate Debtor: Adv. Prakhar Tandon a/w Agam H Maloo

Per: Sh. Charanjeet Singh Gulati, Member (Technical)



1. This Petition has been filed by Mr. Ramesh N Rughani (**“Petitioner/ Financial Creditor”**) to initiate Corporate Insolvency Resolution Process (**“CIRP”**) against Libra Fabric Designs Private Limited (**“Respondent/Corporate Debtor”**) under **Section 7** of the Insolvency and Bankruptcy Code, 2016 (**“the Code”**) for the alleged default on part of the Corporate Debtor in repayment of debt of **Rs. 2,20,53,593/-** (including interest as on 10.12.2023) borrowed by the Corporate Debtor from Mr. Mehul Jayantilal Sedani (**Original lender**).

Brief Facts:

2. M/s. Libra Fabrics Designs Private Limited (Corporate Debtor) was granted financial assistance of Rs.1,58,26,045.56/- by Mr. Mehul Jayantilal Sedani (Original Lender). Owing to the poor financial condition and losses incurred by the Corporate Debtor in their business, the Corporate Debtor was not able to repay the loan to the original lender.
3. Thereafter, an assignment agreement dated 22.07.2019 was executed between the Original Lender, the Corporate Debtor and the Financial Creditor i.e. the Petitioner herein, whereby the debt given to the Corporate Debtor by the Original Lender was assigned to the Petitioner. Under the said assignment deed, it was agreed that the Corporate Debtor shall repay the loan amount of Rs.1,58,26,045.56 alongwith interest @12% per annum within 18 months from the date of the said deed.
4. However, the 18 months due as mentioned above ended in January 2021. The Corporate Debtor failed to make the payment however, by a letter dated 20.05.2021, the Corporate Debtor had promised to repay the sum alongwith interest within a period of 6 months i.e. in November 2021. However, no payment was received.
5. Consequently, the Petitioner sent a demand letter dated 03.04.2023 and demanded the aforesaid amount alongwith interest @18%. In response to the said letter, the Corporate Debtor issued another letter dated



18.04.2023, wherein it admitted the existence of debt and default, however, sought for further 3 months' time to repay the debt.

6. It is submitted by the Petitioner that despite repeated reminder and various failed promises, no payment has been received by the Financial Creditor from the Corporate Debtor till date. Since the Corporate Debtor has no source and cash flow to clear the aforementioned outstanding, the present petition is filed under the provisions of the Code for initiation of insolvency proceedings of the Corporate Debtor.

FINDINGS

7. Heard Ld. Counsel for the parties and perused the record.
8. From the record, it is ascertained that the original lender is Mr. Mehul Jayantilal Sedani who had extended financial assistance of Rs. 1,58,26,045.56/- to Corporate Debtor. It is averred that the original lender had disbursed the amount to Corporate Debtor in several tranches.
9. Admittedly, the Corporate Debtor failed to repay the loan due to its constrained financial condition. The Petitioner requested for assignment of this debt in its favour and accordingly, an Assignment Deed dated 22.07.2019 was executed between the Original Lender/Assignor, the Corporate Debtor/ Borrower and the Petitioner/ Assignee whereby the said debt of Rs. 1,58,26,045.56/- was assigned to the Petitioner.
10. The relevant clauses of the Assignment Deed are reproduced below:

*"B. **WHEREAS** in order to protect the balance sheets of both the Assignor and Borrower, the total amount of **Rs. 1,58,26,045.56/- (Rupees One Crore Fifty-Eight Lakh Twenty-Six Thousand and Forty five and Fifty six paise only)** is assigned to the Assignee along with all the rights to recover the receivable.*

*C. **WHEREAS** therefore, after discussion and deliberation between the Assignor/ Lender and the Assignee, the Assignee herein has requested the Lender herein to grant to the Assignee herein*



assignment of Debt for the said Loan/Debt and give the right to receive the payment as against the said Loan amount from the Borrower

*D. **WHEREAS** the Borrower is made aware of the Assignment arrangement between the parties and has agreed to terms of the present Assignment agreement in lieu of consideration i.e. 25% of the said Loan amount.*

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*F. **WHEREAS** assignee has agreed to grant the Borrower 18 months from the date of the present Agreement to repay the said Loan and the Borrower in turn has agreed to repay the said Loan to the Assignee along with interest @12% per annum calculated from the date of the present Agreement.”*

11. As can be seen from the above, under clause F of the Assignment Deed, the Corporate Debtor was required to repay the loan within 18 months from the date of the Assignment Agreement. Admittedly, the Corporate Debtor failed to make the payment. However, the Corporate Debtor sent a letter dated 20.05.2021 requesting for further time extension till November 2021 for repayment of loan.
12. It is submitted by the Petitioner that there were repeated reminders and requests sent by the Petitioner to which the Corporate Debtor gave repeated assurances, however, despite the same, no payment was made. Consequently, the Petitioner had sent a notice dated 03.04.2023 demanding the payment of the outstanding due and also stated that proceedings under law shall be the consequence of non-payment by the Corporate Debtor. However, the Corporate Debtor, in its reply dated 18.04.2023 to the notice, requested for further extension of 3 month to pay the said amount.
13. Consequently, the Petitioner filed the present petition under section 7 of the I&B Code, 2016. This Tribunal vide order dated 06.02.2024 directed the Corporate Debtor to file its reply, however, it was submitted that the Corporate Debtor had sent settlement proposal to the Petitioner and therefore, no reply was filed. In view of the fact that no reply was filed by



the Corporate Debtor within the given time period, the Corporate Debtor's right to file reply was forfeited on 11.03.2024. However, Ld. Counsel for the Corporate Debtor was present during the hearing of the matter.

14. During the course of hearing, this Bench noted that Form D issued by the National E-governance Service Limited (NeSL) showing record of default was not annexed to the Petition and the Petitioner undertook to place them on record. Accordingly, an additional affidavit dated 09.07.2024 was filed by the Petitioner wherein the Record of Default issued by NeSL is annexed which is taken on record.
15. A perusal of the letters dated 20.05.2021 and 18.04.2023 sent by the Corporate Debtor clearly reveals that the Corporate Debtor had acknowledged the debt of Rs. 1,58,26,045.56/- due and payable and the repeated defaults in repaying the loan amount is also clearly established.
16. We note that as per the assignment deed, the default occurred in 22.01.2021 i.e. after the completion of 18 months from the date of the Assignment Agreement i.e. 22.07.2019. Though the default under the Assignment Agreement has taken place during the period covered under section 10A of the I&B Code, however, we also observe that this was not the first default on part of the Corporate Debtor. The Assignment Agreement itself expressly states that the Corporate Debtor had already defaulted in repaying the loan due to strained financial condition. The relevant clause of the Assignment Agreement is reproduced below:

*"A. **WHEREAS** the Lender has advanced a loan of Rs.1,58,26,045.56/- (Rupees Rupees One Crore Fifty Eight Lakh Twenty Six Thousand and Forty Five only) ("the said loan") to the borrower in several tranches in the past. The borrower company is not in a position to repay the said loan to the Lender. The Lender had to originally to recover a sum of Rs.1,58,26,045.56/- (Rupees Rupees One Crore Fifty Eight Lakh Twenty Six Thousand and Forty Five and Fifty Six Paise only) from the Borrower. Due to the Borrower's poor financial condition and losses incurred by them in*



their business, Borrower is not in a position to repay the loan to the Lender.”

17. The Hon'ble NCLAT in **Vishal Agarwal vs. ICICI Prudential Real Estate AIR-I & Anr. [Company Appeal (AT) (Ins) No. 1016 of 2022]** has held that the benefit under section 10A of the I&B Code cannot be extended to cases where there is clear admission of default which was prior to 25.03.2020. In the present case, it is discernible from the Assignment Agreement that the debt given to the Corporate Debtor was assigned by the Original Lender to the Petitioner for the very reason that the Corporate Debtor was unable to repay the loan amount. Evidently, the Corporate Debtor has signed the said Assignment Agreement and is a confirming party to the same. Thus, it is clear that default in respect of the said debt of Rs. 1,58,26,045.56/- has occurred much prior to the 10A period. The mere assignment of the loan by the Original Lender to the Petitioner will not affect the date of default. Moreover, the NeSL has 'Authenticated' the default in its Record of Default issued on 05.12.2023 wherein date of default is mentioned as 27.06.2023.
18. In view of the discussions made above, we are satisfied that debt and default has been established in the present case. As regards the limitation aspect, we note that the Corporate Debtor has been repeatedly acknowledging the debt of Rs. 1,58,26,045.56/- towards the Petitioner. It is a settled law that acknowledgement of debt by the Corporate Debtor extends the period of limitation. The latest acknowledgement of debt was made by the Corporate Debtor vide letter dated 18.04.2023 and the present Petition was filed in January 2024. Thus, the Petition is within limitation.
19. It is a well-settled position that the Adjudicating Authority has to determine whether there is debt and default and if it is satisfied that a default has occurred, then the application under section 7 of the Code must be admitted unless it lacks other necessities as mandated



thereunder. We are supported by the decision of Hon'ble Supreme Court in **Innoventive Industries Limited vs. ICICI Bank and Anr** [(2018) 1 SCC 407] wherein it was held as follows:

“28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days receipt of a notice from the adjudicating authority.

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 Provided)

20. Upon perusal, this Tribunal is of considered opinion that the application made by the Financial Creditor is complete in all respects as mandated under the Code and the default amount is also in excess of the minimum amount stipulated in section 4(1) of the Code. The Petition is filed within the limitation period, and therefore we are satisfied that the present petition is maintainable.
21. In view of the facts and circumstances of the case and discussions hereinabove, the Company Petition bearing no. 54 of 2024 is **admitted** and ordered as follows:



ORDER

- i) The above Company Petition No. (IB) 54 (MB)/2024 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Libra Fabric Designs Private Limited**.
- ii) The Petitioner has proposed **Truvisory Insolvency Professionals Private Limited**, having Registration No. IBBI/IPE-0103/IPA-2/2022-2023/50020, to be appointed as an Interim Resolution Professional (IRP) of the Corporate Debtor. The proposed IRP has filed his Written Communication dated 06.01.2024 in Form 2 as required under Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Written Communication is accompanied by AFA dated 28.12.2023. Accordingly, **we appoint Truvisory Insolvency Professionals Private Limited** (*contactanshulgupta@gmail.com*) as the **Interim Resolution Professional (IRP)** to carry out the functions as per the Insolvency & Bankruptcy Code, 2016.
- iii) The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional (IRP) appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by the Committee of Creditors.
- iv) There shall be a moratorium under section 14 of the Code prohibiting the following:
 - 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 assets 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- v) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- vi) 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.
- vii) 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.
- viii) The public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- ix) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of section 17 of the Code. 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.



x) The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

xi) The Registry is further directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP immediately.

xii) The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.

xiii) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

22. The Company Petition No. 54 of 2024 is accordingly **allowed**.

Sd/-

Charanjeet Singh Gulati
Member (Technical)

Uma, LRA

Sd/-

Lakshmi Gurung
Member (Judicial)