



**In the National Company Law Tribunal
Division Bench, (Court-I), Kolkata**

CP(IB) No. 49/KB/2024

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

In the Matter of:

M/s. Shri Balaji Holdfin Limited

....Applicant / Financial Creditor

Vs.

M/s. IKF Technologies Limited

.... Corporate Debtor / Respondent

Date of Pronouncement of order: 13.12.2024

Coram:

Smt. Bidisha Banerjee : Member (Judicial)

Shri Balraj Joshi : Member (Technical)

Counsel appeared physically / through video Conferencing

Mr. Naman Singhal, Adv.] For the Applicant

O R D E R

Per Bidisha Banerjee, Member (Judicial):

1. The Court convened through hybrid mode.
2. Ld. Sr. Counsel /Counsel for the parties were heard at length.
3. This Petition has been preferred by the Petitioner seeking initiation of Corporate Insolvency Resolution Process ("CIRP") in respect of the Respondent / IKF Technologies Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code") for a default in payment of sum of Rs. 4,94,60,000/- and interest of Rs. 14,79,735/- i.e. a total amount of debt of INR 5,29,94,769/-.



4. The default is claimed to have occurred on 31.10.2023.

5. The Submissions of the Applicant:

5.1. The Applicant is a company registered as NBFC with the Reserve Bank of India is the Financial Creditor. The present Petition has been filed by Sh. Suresh Singhal who is duly authorized by the Applicant Company by virtue of Board Resolution dated 29.01.2024 to file the application.

5.2. The Corporate Debtor approached the Applicant Company in the month of July with a request for a loan of Rs. 5 Crores for a period of 3 months.

5.3. The Applicant Company agreed to sanction a loan of Rs. 4, 94,60,000/- at an interest of Rs. 0.86% per month (10.50% p.a.). To that effect a loan agreement was entered into being signed by the representatives of both the parties as it appears from page Nos. 26 to 27 at annexure 'B' to the Petition.

5.4. The disbursement of the amount is substantiated by Annexure 'G' at page 35 of the Application. It is claimed that the entire amount of Rs. 4, 94,60,000/- of loan transferred to the Corporate Debtor by 22.07.2023. When no payments were made to the Financial Creditor even on 31.10.2023, Financial Creditor approached the Corporate Debtor and trying to resolve the matter amicably and by mutual settlement but all the efforts went in vain.

5.5. Since, finally, Corporate Debtor failed to repay the amount against the loan disbursed by the Financial Creditor. The Financial Creditor has come up with this application with a prayer to initiate the CIR Process against the Corporate Debtor.

6. Analysis and findings:

6.1. No reply affidavit has been filed by the Corporate Debtor either to deny or dispute the statements made in the Petition.

6.2. Repeated notices have been attempted to be served, but records suggest that notices have been served upon Corporate Debtor and

therefore, final opportunity was given on 26.08.2024 to appear failing which appropriate order would be passed.

6.3. Still the Corporate Debtor chose not to appear, therefore, on 30.09.2024, it was set *ex parte* with liberty to file written notes of arguments, which has not been filed till date.

6.4. Notices seems to have been served by way of email.

6.5. In absence of any denial or dispute on the part of the Corporate Debtor, whereas the debt and 'default' is established obvious from the records and the threshold limit is met, and petition being filed within the period of limitation, we deem it appropriate to admit the application.

7. Further, we are fortified in our views by the following decisions of the Hon'ble Apex Court which define "Financial Debt" and initiation of Corporate Insolvency Resolution process as under:

7.1. In **Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416**, it was held that:

"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)

7.2. In **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401**, it was held that:

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

(emphasis added)

7.3. In **Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14)** it was held 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)

7.4. In the present case, “disbursement” as loan which is essential against “consideration for time value of money” is adequately met. Thus “debt” that is due to “Financial Creditor” and “default” by the Corporate Debtor is satisfied.

8. In terms of the foregoing discussions, we **ALLOW** the application bearing **Company Petition (IB) No. 49/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 and pass the following Orders:

(a) This application being **C.P.(IB)/49(KB)2024** filed by **M/s. Shri Balaji Holdfin Limited**, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s. IKF Technologies Limited**, the Corporate Debtor, is **admitted**.

(b) There shall be a moratorium under Section 14 of the IBC.


(c) The moratorium shall have effect from the date of this Order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC.

(d) Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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- (e) **Mr. Ashwani Rastogi having** registration number **IBBI/IPA-001/IP-P-02137/2020-2021/13357** hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the 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 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 Code.
- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP 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. No separate notice for cooperation by the suspended management should be expected.
- (g) The IRP/RP shall submit to this Adjudicating Authority periodical report about the progress of the CIRP in respect of the Corporate Debtor.
- (h) The Financial Creditor shall deposit a sum of **Rs. 3,00,000/- (Rupees Two Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the

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Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, 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.

- 9. C.P.(IB)/49(KB)2024** to come up on **15.01.2025** for filing the progress report.
- 10.** The Registry is directed to send e-mail copies of the Order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 11.** Urgent 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.

Balraj Joshi
Member (Technical)

Bidisha Banerjee,
Member (Judicial)

Signed on this, the 13th day of December, 2024

M. Jana (P.S.)