

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-II**

CP (IB) 1390/MB/C-II/2019

Under section 7 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

**Riddhim Textiles Through its
Proprietor Leena J Salot**

...Financial Creditor

(Petitioner/Applicant)

Versus

Kavya Buildcon Private Limited

[CIN: U45200MH2004PTC145368]

...Corporate Debtor

(Respondent)

Order Delivered on 29.01.2020

Coram:

Hon'ble Member (Technical) : Mr. Chandra Bhan Singh

Hon'ble Member (Judicial) : Smt. Suchitra Kanuparthi

Appearances:

For the Financial Creditor : Ms Aneesa Cheema, Advocate

For the Corporate Debtor : Mr Tanveer Khan i/b K K
Associate

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by Riddhim Textiles through its

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proprietor Leena J Salot ("the Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Kavya Buildcon Private Limited ("the Corporate Debtor"). The Financial Creditor has furnished information in Form 1 under Rule 4 of the Insolvency and Bankruptcy Code 2016, in the Application to Adjudicating Authority Rules 2016, in the capacity of Financial Creditor on 26.03.2019.

2. In the requisite Form, Under the Head Particulars of Financial Debt the sum of Rs.25,00,000/- (Rupees twenty-five lakh only) was advanced as principal on 12.05.2014 along with Rate of interest @ 15% as in the requisite Form. The total amount of default thus calculated is stated to be Rs.39,26,798/- as on 18.01.2019.
3. The Corporate Debtor is a Private company limited by shares and incorporated on 29.03.2004 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U45200MH2004PTC145368. Its registered office is at 2nd floor, 99 C, Kavya Aura, Sitaram Ghadigaonkar Marg, Tulsiwadi, Tardeo Mumbai, Mumbai - 400034. Therefore, this Bench has jurisdiction to deal with this petition.
4. **Submission made by the Financial Creditor: -**

4.1 The Financial Creditor had on 12.05.2014 advanced the Loan of Rs.25,00,000/- to the Corporate Debtor. Therefore, on the

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date of default i.e. on 18.01.2019 the total amount in default was Rs.39,26,798/- including rate of interest @15% per annum.

4.2 The Financial Creditor submits that the Corporate debtor accepted Loan. The Loan was subject to the terms and conditions mutually and orally agreed upon between parties with interest @ 15% as per terms agreed between parties. Pursuant to that Oral Agreement the Corporate Debtor paid interest on a quarterly basis at the agreed rate of interest, the details in respect of which are set forth below:

Sr. No.	Date	Interest Amount
1.	August 2014	Rs.51,042.00
2.	December 2014	Rs.93,750.00
3.	February 2015	Rs. 93,750.00
4.	July 2015	Rs. 93,750.00
Total		Rs.3,32,292.00

The Corporate Debtor deducted TDS on interest paid, TDS Certificate for Financial Year 2014-2015 is attached to the

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petition. The statements of accounts issued by Kotak Mahindra bank reflects amount received on above mentioned dates from the Corporate Debtor

4.3 The Financial Creditor has also in its Petition enclosed a copy of the Recall Notices to the Respondent dated 23.01.2019 for making payment of the outstanding dues. Copy of the service of these notices has been attached to the Petition.

4.4 The Financial Creditor in furtherance of his case has enclosed copies of statements of account confirmed by the Corporate Debtor for the year ending on 31.03.2015 to 31.03.2018 which clearly testifies to the existence of “Debt” on the part of the Corporate Debtor.

4.5 The Financial creditor also enclosed a copy of the bank statement and Bank Certificate which shows that the amount has been given to the Corporate Debtor.

5. Submission by the Respondent/Corporate Debtor: -

5.1 The Corporate Debtor has challenged the maintainability of this petition on various grounds. The foremost contention of the Corporate Debtor is present application is hit by the law of Limitation applicable to the proceedings filed under the provisions of Insolvency and Bankruptcy Code, 2016, and the Applicant itself in the Application has admitted that the date of default of the alleged loan is 01.09.2015. Further the

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Corporate Debtor submits by virtue provision of Section 137 of the Limitation Act, 1963, the petition is barred by limitation.

Findings: -

6. Ongoing through the submissions made by the Learned counsels of both the sides and on perusal of documents placed on record, it is necessary to deal with all the important contentions. The Corporate Debtor's foremost contention, is that present application is hit by the law of Limitation applicable to the proceedings filed under the provisions of Insolvency and Bankruptcy Code, 2016. However, from the balance confirmations issued by the Corporate Debtor to the Financial Creditor for the years 2015 to 2018 clearly brings out existence of Debt and therefore the Corporate Debtor cannot take a stand that the Application is hit by law of Limitation.
7. An unsecured loan to the tune of Rs.25,00,000/- was advanced on 12.05.2014 by the applicant even though not documented. An agreement was subject to the terms and conditions orally agreed upon between parties. According to those terms and conditions the interest rate was 15% and repayment of interest was made till the default of payment on 01.09.2015. TDS Certificates have also been placed on record to show that the amount which is paid after deduction of TDS.
8. The dispute raised by the Corporate Debtor with respect to the debt amount is also not maintainable because the amount claimed

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is corroborated by the Statement of Accounts of the Financial Creditor. Otherwise also, after the judgement of the Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018] upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

9. Ongoing through the facts and submissions of the petitioner and upon considering the same, the Financial Creditor has established beyond doubt that the money was duly received by the Corporate Debtor and that there has been default in payment of the Debt by the Corporate Debtor.
10. The Financial Creditor has proposed the name of **Mr Nandkishor Vishnupant Deshpande**, Registration No. IBBI/IPA-001/IP-P01399/2018-2019/12181, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration.
11. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under

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section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

12. The petition bearing **CP (IB) 1390/MB/C-II/2019** filed by **Riddhim Textiles Through its Proprietor Leena J Salot**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Kavya Buildcon Private Limited [CIN: U45200MH2004PTC145368]**, the Corporate Debtor, is **admitted**.
13. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its

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property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

14. Notwithstanding the above, during the period of moratorium: -

- i. 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;
- ii. That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

15. 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, as the case may be.

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

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17. **Mr Nandkishor Vishnupant Deshpande**, Registration No. IBBI/IPA-001/IP-P01399/2018-2019/12181, having address at E-19, Fountain Telecom, Building 1, Mahatma Gandhi Road, Mumbai - 400001, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/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 IBC.
18. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
19. The Financial Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one 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).
20. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed

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Post and email immediately, and in any case, not later than two days from the date of this Order.

21. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, 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.
22. Ordered accordingly.

Sd/-

CHANDRA BHAN SINGH
Member (Technical)

27.01.2020
SAM

Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)