



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,(Court-II)
KOLKATA**

C.P. (IB) No. 304/KB/2021

An application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

In the matter of:

Intec Capital Limited [CIN L74899DL1994PLC057410], having its registered office at 708, Manjusha Building, 57 Nehru Place, New Delhi, South Delhi – 110019.

....Operational Creditor

-Versus-

SAT India Limited [CIN U30007WB1994PLC066120] having its registered office at 33A J L Nehru Road, 12th Floor, No 13, Kolkata – 700071;

...Corporate Debtor

**Date of hearing: 03 July, 2023
Order Pronounced on: 05 January, 2024**

Coram:

Smt. Bidisha Banerjee, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical)

For the Operational Creditor	:	Mr. Ritoban Sarkar, Adv.
	:	Ms. Madhujā Barman, Adv.
	:	Mr. Abhas Singh, Adv.
For the Corporate Debtor	:	Mr. Rachit Lakhmani, Adv.
	:	Mr. Siddhanth Makkar, Adv.

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ORDER

Per: Balraj Joshi, Member (Technical)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Ms. Chandan, Manager, Intec Capital Limited (*'Financial Creditor'*) duly authorised *vide* Board Resolution dated 09 November, 2020¹ for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against SAT India Limited (*'Corporate Debtor'*).
3. The present Petition was filed on **10 September, 2021** before this Adjudicating Authority. The total amount claimed in default is Rs.2,90,60,274/- (Rupees Two Crore Ninety Lakh Sixty Thousand Two Hundred Seventy Four only) as on 30 April, 2021. The date of default is 31 December 2015.
4. The authorized share capital of the Corporate Debtor is Rs.2,00,00,000/- (Rupees Two Crore only) with subscribed share capital of Rs.1,41,27,030/- (Rupees One Crore Forty One Lakh Twenty Seven Thousand Thirty only).
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - 5.1 The Financial Creditor is a Non-Banking Financial Company duly registered with Reserve Bank of India, engaged inter-alia in the business of providing financial facility. The Corporate Debtor is in the business of manufacture, produce, assemble, repair, maintain, import, export and deal in all types of computers, software and hardware.
 - 5.2 The directors of the Corporate Debtor, Mr. Prashant Saraogi and Ms. Swati Saraogi approached the Financial Creditor for availing financial facility upto Rs.48,09,300/- (Rupees Forty-Eight Lakh Nine Thousand and Three Hundred Only), by making an application [*Annexure 3*].

¹Annexure – 14, Page 163-164 of the Petition.

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- 5.3 Based on the documents and information given to the Financial Creditor and the confidence shown to repay the loan amount, the Financial Creditor approved the loan application of Corporate Debtor and issued the Sanction Letter dated 26 September, 2013 [Annexure 5] for collective amount of Rs.48,09,300/-.
- 5.4 Subsequently a loan agreement dated 28 September, 2013 [Pages 60 -70 of the Petition] was executed between the Financial Creditor and Corporate Debtor.
- 5.5 As per the Loan Agreement, the loan was disbursed *vide* various instrument in different dates to vendors of machinery after deducting Collateral security and applicable charges as per letter dated 26 September, 2013.
- 5.6 As per the agreement, the Financial Creditor had financed loan bearing interest @12.63% p.a. on reducing basis to be repaid in 60 monthly instalments including one advance instalment paid on 28 September, 2013, equal monthly instalment was of Rs.1,07,408/- starting from 16 October, 2013 ending on 16 August, 2018.
- 5.7 The Corporate Debtor started making defaults in the repayment schedule in Loan account even after repeated request by the Financial Creditor the instalments were not paid. Thereafter, the Financial Creditor *vide* Loan recall cum Arbitration Notice dated 07 April, 2015 [at pages 125 to 129 of the Petition] in terms of Clause 15.1.1, 24.1 & 32 of Loan Agreement.
- 5.8 That, the Corporate Debtor even defaulted after receiving the loan recall cum arbitration notice. Thus, Arbitration proceedings were initiated which resulted in Arbitral Award dated 14 August, 2015 [at pages 131 to 149 of the Petition] in favour of Financial Creditor but the Corporate Debtor failed to comply and failed to make it default good.
- 5.9 As per the Loan Account No. LNNHP00113-140002796 the last transaction Amount of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand only) was received via RTGS, being transaction number- CBIN520190918100084 on 18 September, 2019 as recorded in Loan Transaction Details [at page 161 of the Petition]).

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- 5.10 The total outstanding financial debt after adjusting collateral security & amount paid, stands at Rs.2,90,60,274 / - (Rupees Two Crore NinetyLakh Sixty Thousand Two Hundred and Seventy Four Only) as on 30 April, 2021, calculated as per clause 19.3 of loan agreement & other mutually agreed terms.
- 5.11 The Corporate Debtor is also concealing the financial status by not filing its audited financial records with ROC since 31March, 2017 which makes it very evident that the Corporate Debtor has become financially insolvent and is unable to pay his debt. The applicant is not barred from filing the present application as provided under section 11 of the Code.

6. *Per contra, submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor would be as under:*

- 6.1 That, the Corporate Debtor has not been functioning and carrying on any business since 2018. The Corporate Debtor was carrying on the business of manufacturing of flexible copper wire annealed bare core wire & annealed tinned copper wire.
- 6.2 Present application is barred by limitation as the same has not been filed by the Applicant within three years from the date of declaration of the loan account as Non-Performing Account (*'NPA'*). The Corporate Debtor is not a defaulter and the amount claimed as default is neither legally recoverable nor it is due and payable.
- 6.3 The Application has not been filed through proper Authorisation or Board Resolution. The Board of Directors of the Financial Creditor has not authorised and appointed Mr. Chandan to sign, file and institute the present insolvency proceedings.
- 6.4 The statements of dues filed by the Financial Creditor are illegal and baseless. The Financial Creditor has not filed any detailed statement of account reflecting the credits and outstanding.
- 6.5 The alleged Loan recall notice cum Arbitration notice dated 07 April, 2015 as filed by the Financial Creditor is defective. The alleged Arbitral Award

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dated 14 August, 2015 is also illegal and defective, no notice of such arbitration proceedings were ever received by the Corporate Debtor.

6.6 Further, the Arbitral Award dated 14 August, 2015 has been challenged by the Corporate Debtor before the District Court Saket, New Delhi, and the same is pending adjudication.

6.7 Only a sum of Rs.29,21,977/- was disbursed by the Financial Creditor and that has been paid back by the Corporate Debtor. The Financial Creditor is illegally charging interest on interest which is not permissible in law.

7. *Supplementary Affidavit filed by the Corporate Debtor.*

7.1 *Vide* order dated 26 October, 2022 this Adjudicating Authority had granted leave to the Corporate Debtor to file a Supplementary Affidavit for bringing on record certain documents, which are necessary for adjudication.

7.2 The Arbitration Award dated 14 August, 2015 was challenged and the execution proceedings in respect of the said award were stayed at the first instance. However, the Ld. Advocate representing the Corporate Debtor in the Arbitration petition could not attend court one day because of which the challenge Petition was dismissed for default *vide* order dated 26 August, 2022. The Corporate Debtor has taken steps for recalling the dismissal order.

7.3 The Financial Creditor has cheated the Corporate Debtor by only disbursing a sum of Rs.29,21,977/- (Rupees Twenty Nine Lakh Twenty One Thousand Nine Hundred Seventy Seven only) instead of the agreed loan amount of Rs.48,09,300/- (Rupees Forty Eight Lakh Nine Thousand Three Hundred only).

7.4 The Financial Creditor has also forged and tampered with the conditions of loan as stated in the purported loan agreement and documents annexed to the captioned petition, which are totally denied and disputed by the Corporate Debtor. In this regard, the Corporate Debtor has filed a police complaint against the Financial Creditor for cheating, forgery and other offences with Rajasthan Police Station, District Alwar, being FIR No. 0286

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of 2017 dated 02 November, 2017 under sections 420, 467, 468, 471, 34, 120-B of the Indian Penal Code, 1860

Analysis and Findings

8. We have heard the Learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the documents on record.
9. The first contention raised by the Corporate Debtor is that Ms. Chandan does not have the proper authorisation to file the instant petition on behalf of the Financial Creditor. However, the petitioner has filed a copy of the Board Resolution² dated 24 May 2019 whereby Mr. Sanjeev Goel, the Managing Director of the Petitioner company was authorised to delegate various powers to other persons including the power to sign of verify complaints, plaints, pleadings, applications and other documents and also to institute any civil or criminal proceedings against its debtors. Accordingly, Mr. Sanjeev Goel, has authorised Ms. Chandan vide the Letter Of Authorisation³ (LOA) dated 09 November 2020 to act as an authorised representative of the company and to represent on behalf of the company before this Adjudicating Authority of the Hon'ble National Company Law Appellate Tribunal (NCLAT), sign, file, verify application or other documents and do all other acts related thereto. Having gone through the same, we are satisfied that the authorisation in favour of Ms. Chandan is in order.
10. The next contention on behalf of Corporate Debtor is that the arbitration award dated 14 August 2015 passed in favour of the petitioner herein which formed the basis of the instant petition was challenged by the Corporate Debtor. In this regard, it is pertinent to note that the Hon'ble Supreme Court in *K. Kishan v. Vijay Nirman Company Private Limited*⁴ has held that the CIRP could not be initiated on basis of Arbitral Award, on the following grounds:

²Annexure 14 to the petition

³Annexure 14 to the petition

⁴(2018) 17 SCC 662

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- (a) When a counterclaim exceeding the claim awarded was rejected by the Arbitral Tribunal on merits, and such rejection is also a matter of challenge before the Courts; and
- (b) When a challenge had also been filed against the Arbitral Award.

11. Upon perusal of the records however, it is seen that while the Arbitration Award dated 14 August, 2015 was challenged and the execution proceedings in respect of the said award were stayed at the first instance, the said Arbitration Petition was dismissed for defaults *vide* order dated 26 August, 2022. As such, the facts of this instant case do not fulfil the aforesaid two conditions laid down by the Hon'ble Supreme Court in **K. Kishan (Supra)**. As such the said contention of the Corporate Debtor is without basis and untenable.

12. The Corporate Debtor has also contended that while the sanctioned loan amount was Rs. 48,09,300/-, the entire amount was never disbursed. However, the payment instruction for disbursal of the loan agreement⁵ attached to the petition reveals the true breakdown of the sanctioned amount of Rs. 48,09,300/-, which accounts for various deductions to the tune of Rs. 18,87,276/- along with the payment to two (2) parties of the remainder amount of Rs. 29,22,024/-. Further, the fact that Corporate Debtor kept depositing the monthly instalment of Rs. 1,07,408/- from 2013 till 2018 and never objected to the same, thus indicating that the Corporate Debtor was aware of the aforesaid breakdown of the sanctioned amount. As such, the said contention is not maintainable.

13. It is to be noted that the Financial Creditor has placed on record the Loan transaction details⁶ of the Corporate Debtor's loan account showing the transactions carried out by the Corporate Debtor towards the repayment of the debt due to the Financial Creditor. The same has not been denied the Corporate Debtor in its submissions, and hence the same has been considered and accepted to be correct.

⁵Annexure 6, page no. 76

⁶Annexure 12, page 150-161 of the petition

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- 14.** It is also pertinent to mention that the Petitioner has not pinpointed the exact date of default in the Form 1 of the petition and have only mentioned that the debt became due on various occasions starting from 16 October 2013 and ending on 16 August 2018. However, from the perusal of records, it is clear that the debt is very much crystallised. Not only an arbitration award been passed in this regard, the NeSL (National E-Governance Service Limited) report attached to the petition also shows the debt and default information of the loan account of the Corporate Debtor maintained with the Petitioner company. The NeSL report⁷ mentions the date of default to be 31 December 2015. Further, as per the NeSL Report, the last payment of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand only) was made on 18 September, 2019 by the Corporate Debtor, and the total default amount is of Rs.3,08,22,714/- (Rupees Three Crore Eight Lakh Twenty Two Thousand Seven Hundred Fourteen only).
- 15.** The Financial Creditor has relied on the existing *financial contract/agreement* between the parties, which includes the agreed rate of interest and the amount of interest being received by the Financial Creditor from the Corporate Debtor. It is clear that the transaction held between the parties squarely falls under the definition of financial transaction and that the Corporate Debtor has defaulted in the payment of its debt due to the Financial Creditor.
- 16.** Lastly, the Corporate Debtor has also argued that the instant petition is barred by limitation. The date of default mentioned in the petition is 31.12.2015 and the instant petition was filed on 10.09.2021. Prima facie, it appears that the petition is barred by limitation. However, the Corporate Debtor has acknowledged the debt on several occasions by depositing cheques⁸ for payment of the monthly instalments. Such cheques were presented in 2013, 2014, 2015, 2016, 2017, 2018 and 2019. Such transactions carried out by the Corporate Debtor would amount to

⁷Page 178 of the Petition

⁸Annexure 12, page 150- 161 of the petition

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acknowledgment of debt under section 18 of the Limitation Act, 1963 and payment thereof under section 19 of the said Act. As an effect of such transactions, the limitation period will begin afresh from the date of each such transaction. Since the last transaction was carried out by the Corporate Debtor on 18.09.2019, a fresh limitation period will ensue from such date and the same will come to an end on 18.09.2022. As such, the instant petition filed on 10.09.2021 is well within limitation.

17. In view of the above facts and circumstances, we are satisfied that the present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.

18. Accordingly, it is, hereby ordered as follows:-

- (a) The application bearing CP (IB) No. 304/KB/2021 filed by Intec Capital 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 SAT India 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, as the case may be.
- (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.
- (e) ***Mr. Anurag Nirbhaya***, registration ***number IBBI/IPA-001/IP-P00870/2017-2018/11468***, email: ***anurag@canirbhaya.com***, is hereby

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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, 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 Code.

- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 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 with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (h) The Financial Creditor shall deposit a sum of **Rs.4,00,000/- (Rupees Four Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting & processing 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 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

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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.

- 19. CP (IB) No. 304/KB/2021** to come up on **09.02.2024** for filing the periodical report
- 20.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The order is pronounced on the 5th day of January, 2024

S.A/SM [LRA]