



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-VI**

**IB-763/(ND)/2022**

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**M/s. Banyan Tree Natural Products Private Limited**

**At:** Plot No.174, Phase-I, Udyog Vihar, Gurgaon,  
Haryana - 122016

...Applicant/Financial Creditor

**Versus**

**M/s. Kixx Media Private Limited**

**At:** Plot No. 41A, 3<sup>rd</sup> Floor, Kh. No. 159,  
Village Rajpur Khurd Extn, Delhi -110017

...Respondent/ Corporate Debtor

**Coram:**

**Shri. Bachu Venkat Balaram Das, Member (Judicial)**

**Shri. Rahul Bhatnagar, Member (Technical)**

**Counsel for Petitioner:** Adv. Pooja Singh

**Counsel for Respondent:** Adv. Kumar Prashant



## ORDER

**PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)**

**Date: 09.11.2023**

1. This is an application filed by M/s. Banyan Tree Natural Products Pvt. Ltd. to initiate corporate insolvency resolution process (“CIRP”) against M/s. Kixx Media Private Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for the alleged default on the part of the Respondent in settling an amount of Rs. 1,18,66,905 /- (Rupees One Crore Eighteen Lakhs Sixty-Six Thousand Nine Hundred and Five) including interest. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That Loan Agreement dated 10.07.2019, was executed between M/s. Banyan Tree Natural Products Private Limited and M/ s. Kixx Media Private Limited, and a Loan facility amounting to Rs. 1,10,000,00 was provided to M/s. Kixx Media Private Limited.
- ii. That the Applicant, in terms of the Loan Agreement dated 10.07.2019 made payments to the tune of Rs.



1,03,19,048 (Rupees One Crore Three Lakhs Nineteen Thousand Forty-Eight) to various third parties from time to time on behalf of Corporate Debtor.

iii. That the Applicant through various emails dated 23.08.2021, 25.08.2021 and 30.08.2021 sent reminders for repayment of the loan amount but the Corporate Debtor refused to make payment.

iv. That legal notice dated 06.10.2021 was served to the Respondent by the Applicant for repayment of the total loan amount including interest due thereupon, for an amount of Rs. 1,18,66,905/- (Rupees One Crore Eighteen Lakhs Sixty-Six Thousand Nine Hundred and Five), however the Corporate Debtor failed to make the repayment of the said loan amount.

**2.** Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions were made:

i. That the Corporate Debtor has immense reputation in the digital marketing space with over 12 coaching centers in India and more than 20,000 students enrolled in the



various courses offered by it. The Corporate Debtor provides a wide array of imparting its services through Corporate Training at offices, Campus Learning and in-class training.

- ii. That the Corporate Debtor had suffered losses in FY 2020-21 and FY 2021-22 owing to loss of footfall at its coaching centers during the nationwide COVID-19 pandemic in 2020 and 2021.
- iii. That the Corporate Debtor approached the Financial Creditor for an inter-corporate loan of Rs. 1,10,00,000/- (Rupees One Crore and Ten Lakhs) and entered into a Loan Agreement dated 10.07.2019 (hereinafter "Loan Agreement") with the Financial Creditor wherein it was mutually agreed between the parties that the Financial Creditor would provide working capital to the Corporate Debtor by clearing the outstanding debts of the creditors/vendors due and payable originally by the Corporate Debtor.
- iv. That the Financial Creditor in accordance with the Loan Agreement had paid off the invoices issued to the Corporate



Debtor to the tune of Rs. 1,03,19,048/- (Rupees One Crore Three Lakhs Nineteen Thousand and Forty-Eight) during the subsistence of the Loan Agreement and the same was to be repaid by the Corporate Debtor along with an interest rate of 15% per annum.

v. That the Loan Agreement was executed in July 2019 and the nationwide COVID-19 pandemic struck India in 2020 as a result of which the entire footfall of students at the training centers of the Corporate Debtor came to a halt and the Corporate Debtor was constricted in a position where it could not generate any revenue and sustain its working capital.

**3.** We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application and reply filed on behalf of the parties. The Applicant has claimed that there is a default on part of the Respondent for an amount of Rs. 1,18,66,905 /- (Rupees One Crore Eighteen Lakhs Sixty-Six Thousand Nine Hundred and Five) including interest at the rate of 15% per annum.



4. The Corporate Debtor has acknowledged the debt in its reply to the present Section 7 Application and submitted that due to nationwide COVID-19 pandemic in 2020, the entire footfall of students at the training centers of the Corporate Debtor came to a halt and the Corporate Debtor was constricted in a position where it could not generate any revenue and sustain its working capital.
5. Mere reading of the provision under section 7 of IBC shows that in order to initiate CIRP under Section 7 the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the Adjudicating Authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. What constitutes a 'default' must be determined under the provisions of the Code. Section 3(12) of the Code defines default as:

“default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;



6. The documents submitted by the Financial Creditor substantiate the Financial Creditor's claim that the Corporate Debtor was in debt and defaulted the repayment of debt. Further, the Corporate Debtor has nowhere denied the existence of debt.
7. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.
8. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
9. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Mr. Sunil Kumar for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00628/2018-19/11884. Section 16(1) and Section 16 (2) of the Code mandate that the Resolution Professional proposed by the



Financial Creditor shall be appointed as the Interim Resolution Professional (IRP) by the Adjudicating Authority (Tribunal) if no disciplinary proceedings are pending against him. Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, require the proposed Interim Resolution Professional to make a declaration in Form 2 confirming his eligibility to be appointed as a Resolution Professional as well as a declaration confirming that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board or elsewhere. The proposed Interim Resolution Professional Mr. Sunil Kumar has submitted the declaration in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 17.11.2019. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

**10.** Mr. Sunil Kumar having registration number IBBI/IPA-002/IP-N00628/2018-19/11884 is appointed as an Interim Resolution Professional.

**11.** In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution



Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

**12.** We also declare moratorium in terms of Section 14 of the Code.

The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code.

Thus, the following prohibitions are imposed:

“(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.”

**13.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

**14.** The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made



clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- 15.** The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi &



Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

**SD/-**

**(RAHUL BHATNAGAR)  
MEMBER (TECHNICAL)**

**SD/-**

**(BACHU VENKAT BALARAM DAS)  
MEMBER (JUDICIAL)**