



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

**IA (IB) No.1090/KB/2023
and
CP (IB) No.52/KB/2022**

In the matter of:

Tatanagar Financial Services Limited [CIN U65999WB1999PLC090599]

...Operational Creditor

Versus

SIS Mohan Real Estate Private Limited [CIN U45201WB2005PTC103676]

... Corporate Debtor

IA (IB) No.1090/KB/2023

In the matter of

Tatanagar Financial Services Limited [CIN U65999WB1999PLC090599]

...Applicant

Date of hearing: 03 July, 2023

Order pronounced on: 31 August, 2023

Coram:

Smt. Bidisha Banerjee

: Member (Judicial)

Shri Balraj Joshi

: Member (Technical)

Appearances (via video conferencing/physical hearing):

For the Operational Creditor

: Mr. Ramesh Ch. Prusti, Adv.

: Ms. Alisha Kar, Adv.

: Ms. Mahuya Ghosh, Adv.

For the Corporate Debtor

: Ms. Tanvi Luhariwala, Adv.

: Mr. Simran More, Adv.



ORDER

Per Bidisha Banerjee, Member (Judicial)

1. This court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*‘the Code’*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Rajan Nagelia, Director, Tatanagar Financial Services Limited (*‘Operational Creditor’*) duly authorised *vide* Board Resolution dated 27 January, 2022¹ for initiation of Corporate Insolvency Resolution Process (*‘CIRP’*) against SIS Mohan Real Estate Private Limited (*‘Corporate Debtor’*).
3. The present Petition was filed on **01 February, 2022** before this Adjudicating Authority. The total amount of default is Rs.5,25,11,500/- (Rupees Five Crore Twenty Five Lakh Eleven Thousand Five Hundred only) inclusive of interest calculated @18% p.a. from the month of September, 2012 till February, 2020;
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs.10,00,000/- (Rupees Ten Lakh only) with subscribed share capital of Rs.5,00,000/- (Rupees Five Lakh only). Part – IV of the Petition deals with the particulars of the Operational Debt.
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - 5.1 The Operational Creditor is the Owner of the two JCB’s bearing no. WB22U5279 and WB22U5278.
 - 5.2 The Corporate Debtor being represented by Mr. Arjun Mondal Managing director of the Corporate Debtor approached the Operational Creditor in the year 2012 for hiring those two JCB’s. Subsequently, on 21 August, 2012, the Operational Creditor and the Corporate Debtor entered into a JCB Hire Contract (*‘Agreement’*).

¹Annexure – A, Page 50 of the Petition.



-
- 5.3 It is pertinent; to mention that since the beginning the Corporate Debtor was irregular in adhering to the terms and conditions in the Agreement which included payments of monthly rent in respect of those two JCB's.
- 5.4 The said issue was again and again brought to the knowledge of the Management of the Corporate Debtor by the Operational Creditor, but no effective steps were taken by the Corporate Debtor. Resultantly, the contract executed between the Operational Creditor and the Corporate Debtor came to an end. On the termination of the contract, the Corporate Debtor was supposed to return back those two JCB's to the Operational Creditor.
- 5.5 The Operational Creditor visited the office of the Corporate Debtor and requested the Corporate Debtor to return the two JCB, but the Corporate Debtor went on causing delay in the matter of returning those two JCB on different flimsy grounds.
- 5.6 On failure of the Corporate Debtor to return the JCB's to the Operational Creditor, the Operational Creditor has suffered huge loss in business which tantamount to more than Rs.1.08 Crore.
- 5.7 The Operational Creditor has already brought this fact to the knowledge of the Officer in Charge of the Tollygunge Police Station and a case has been registered on the basis of the said Complaint being FIR No. 26, of 2020 and the said two JCBs have been seized by the Police from the possession of the Corporate Debtor.
- 5.8 After the seizure of the JCBs by the Police authorities, the Corporate Debtor found no other alternative way of evading liabilities, so they issued three Cheques to the Operational Creditor
- 5.9 However, upon presentation of the aforesaid Cheques, all the Cheques were dishonored by the Bank on the dates of presentation. The Operational Creditor has also filed a Criminal Cases under section 138 of the N.I ACT, 1881 which is pending before the appropriate forums against the Corporate Debtor.



6. Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor.

- 6.1 The alleged claim of the Operational Creditor is arising out of a JCB Hire Contract dated 21 August, 2012 and out of alleged invoices all dated from September 2012 till February, 2020.
- 6.2 The Application has been filed only around 31 January, 2022, after a period of 10 years. It is thus evident that the alleged claim of the Operational Creditor is hopelessly barred by limitation. In any event, it is pertinent to mention that no invoices were ever raised and the invoices annexed to the petition at pgs. 140-228 are all fabricated and the signature affixed on the said invoices is all forged.
- 6.3 The alleged claim of the Operational Creditor arises out of a JCB Hire Contract dated 21 August, 2012, which was in reality never given effect to or was never acted upon.
- 6.4 Article 2 of the said Agreement [at pg. 137 of the petition] provides for ‘Term of Contract’ wherein it has been mentioned that the JCB shall be rented commencing on 01 September, 2012 and expiring on 31 August, 2015. Therefore, the Agreement expired on 31 August, 2015, however, no steps was taken by the petitioner till 2019.
- 6.5 In the rejoinder, the Operational Creditor has annexed the invoices and delivery challan of the 2 JCBs (at pgs. 33 to 41). From the said invoices and delivery challan, it is evident that the JCBs were delivered to the Operational Creditor only on 14 September, 2012.
- 6.6 In fact, what is more shocking is that the Operational Creditor has also annexed an invoice for the entire month of September, 2012. This itself shows that the invoices are forged and fabricated and the agreement was never given effect to
- 6.7 Article 3 of the Agreement provides for ‘JCB Rental’, [at pg 137 of the petition] wherein it has been mentioned that rental includes fuel/petrol, driver's salary and JCB maintenance. However, no fuel or driver or maintenance was ever provided by the Operational Creditor.



-
- 6.8 Article 4 of the Agreement provides for ‘Payment’, wherein it has been mentioned that a security deposit of Rs. 4,00,000/- would be paid for each JCB right after signing of the Agreement. However, no amount was ever paid by the Corporate Debtor to the Operational Creditor towards any security deposit and the Operational Creditor has also never raised any objection with respect to the same.
- 6.9 Article 6 of the said Agreement provides for ‘Rights and Responsibilities of Party B’, wherein it has been provided that if the payment is delayed over 10 days, then the Operational Creditor has the right to terminate the contract and take the JCB back without compensation by sending a one day prior written notice to the Corporate Debtor. It is alleged that the no payment has been made by the Corporate Debtor since the inception, i.e. September, 2012, however, the Operational Creditor has not issued a single notice to terminate the Agreement.
- 6.10 It was only in 2019 that for the first time, that the Operational Creditor had taken steps. It is stated that disputes had arisen between the parties, reason whereof, in order to harass the Corporate Debtor and as an afterthought, steps were taken by the Operational Creditor only in 2019 with ulterior motive and mala fide intention.
- 6.11 The transaction that had actually taken place is very different from what has been demonstrated by the Operational Creditor. The Operational Creditor, being in the business of finance, managed to obtain loan in its name for purchase of JCBs and then allowed the Corporate Debtor to use such JCBs. It was mutually agreed between the parties that the loan amount which was obtained by the Operational Creditor for the Corporate Debtor, would be gradually paid back by the Corporate Debtor to the Operational Creditor.
- 6.12 As such, in good faith and trust, the Corporate Debtor entered into a contract namely JCB Hire Contract dated 21st August, 2012 with the Operational Creditor. The loan amount was also gradually paid off.



- 6.13 Therefore, no invoices were ever raised by the Operational Creditor on the Corporate Debtor and the invoices annexed to the petition at pgs. 140-228 are all fabricated and the signature affixed on the said invoices is all forged.
- 6.14 Furthermore, the alleged letter dated 03 February, 2020 annexed as Letter ‘H’ to the petition, was never issued by the Corporate Debtor and is a forged document.
- 6.15 The Operational Creditor has not mentioned the date of default in the petition. Further, The Operational Creditor had initially asked the Corporate Debtor to issue three cheques of Rs.50,00,000/- each, with the date portion as blank, as a security for the initial loan and had assured that the same would never be deposited without the consent of the Corporate Debtor.
- 6.16 Considering the relationship between the parties and the desperate times, the Corporate Debtor agreed to issue the same. After payment of the entire loan amount, the Corporate Debtor on several occasions asked the Operational Creditor to return the same. However, the Operational Creditor always gave some or the other excuse and never returned the said cheques. The Operational Creditor then illegally and fraudulently, despite payment of the entire amount and without the consent of the Corporate Debtor, put dates on the cheques which were earlier given as security and deposited the same with the bank.

7. **IA (IB) No.1090/KB/2023**

7.1 This is an application filed by the Operational Creditor under section 60(5) of the Code, *inter alia*, praying for the following reliefs:

- i) *Allow the instant application made by Your Petitioner.*
- ii) *Pass an order for appointment of Ld. Receiver.*
- iii) *Pass an order of Injunction Restraining the Corporate Debtor, its Directors, Officers, Servants and agents from, in any manner, whatsoever, disposing off, transferring, encumbering, alienating or parting with the possession of any of the Immovable assets of the Corporate Debtor.*
- iv) *Pass an order thereby restraining the Corporate debtor to transfer and/or to dispose of their above mentioned properties to any third party or*

creating a third party interest in any manner pertaining to the Immovable assets of the Corporate Debtor.

- v) *Pass such further and/or other order and/or orders and/or direction or directions as to this Learned Tribunal may deem fit and proper for the end of justice.*

Analysis and Findings

8. We have heard the Ld. Counsel appearing on behalf of the Operational Creditor and the Ld. Counsel appearing on behalf of the Corporate Debtor and perused the record.
9. ***Is the Application within limitation?*** - From the records at page 140 to 228 of the Application it is evident that several invoices were issued by the Operational Creditor from 05 October, 2012 till 04 February, 2020 to the Corporate Debtor. Moreover, such invoices were duly received and stamped by the Corporate Debtor, which means the limitation period kept on extending from time to time.
10. Further, there are no documents brought on record by the Corporate Debtor which would evidence the existence of pre-existing dispute under section 9 of the Code.
11. The Corporate Debtor had also issue three cheques of Rs.50,00,000/- being i) Cheque No. 955569 dated 26 October, 2021, ii) Cheque No.955570 dated 29 October, 2021 and iii) Cheque No.938972 dated 06 February, 2020 drawn in favour of the Operational Creditor. But upon deposit of the cheques by the the Operational Creditor, the cheques were dishonored with the remarks ‘Insufficient Fund’.
12. Further, the Hon’ble NCLAT in Rajendra kumar Kudanmal Jain, In re, Company Appeal (AT) (Insolvency) No. 366 of 2020 has held as follows;
“On perusal of the records, it was held, that the issuance of cheque indicates acknowledgement of the debt although the cheque dishonored for the reason “payment stopped by drawer”. It was also noted that “the respondent made

Tatanagar Financial Services Limited v. SIS Mohan Real Estate Private Limited

IA (IB) No.1090/KB/2023 and

CP (IB) No.52/KB/2022

part payment on 16-02-2016, after which no payment was made and cheque issue on 12-01-2016 was returned dishonoured". Also, the cheque was well within the period of limitation, therefore period of limitation and fresh limitation is out of bound, as contended by the Appellants. Hence, on finding no infirmity with the impugned order, the appeal was dismissed."

(emphasis supplied)

- 13.** In view of the above facts and circumstances, we are satisfied that the present petition made by the Operational 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. Further, no disputes were ever raised by the Corporate Debtor.
- 14.** It is, accordingly, hereby ordered as follows:-
- a. The application bearing **CP (IB) No. 52KB/2022** filed by Tatanagar Financial Services Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against SIS Mohan Real Estate Private Limited , 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. Abhisekh Khemka**, registration number **IBBI/IPA-001/IP-P-02038/2020-2021/13151** email: **khemka.abhisekh@gmail.com**, is 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, 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 Code. 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.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Operational 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 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 Operational 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 Operational 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

Tatanagar Financial Services Limited v. SIS Mohan Real Estate Private Limited

IA (IB) No.1090/KB/2023 and

CP (IB) No.52/KB/2022

regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

15. **CP (IB) No. 52/KB/2022** to come up on **20 October, 2023** for filing the periodical report. Resultantly, **IA (IB) No.1090/KB/2023** stands **dismissed** as infructuous.
16. 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 31st day of August, 2023

SA (LRA)