

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT-1**

ITEM NO. 301  
C.P.(IB) No. 153/(AHM)/2023

**Order under section 7 of IBC**

**IN THE MATTER OF :**

Vignaharta Corrugators Private Limited  
V/s.  
Cyber Infosystems and Technologies  
Private Limited

....Applicant/Financial Creditor

....Respondent/Corporate Debtor

Order delivered on: 13/10/2023

**Coram:**

Mr. Shammi Khan, Hon'ble Member (J)  
Mr. Sameer Kakar, Hon'ble Member (T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-Sd-  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT NO. I**

**C.P.(IB) NO. 153/AHM/2023**

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

**IN THE MATTER OF:**

**Vignaharta Corrugators Private Limited**

CIN: U74990MH2009PTC196826

Registered office at:

RM-81, Sudarshan Nagar, MIDC,

Phase-II, Dombivli (East), Mumbai-421201

**...Applicant / Financial Creditor**

**VERSUS**

**Cyber Infosystems and Technologies Private Limited**

CIN: U32201DN000PTC000148

Registered office at:

Gala No. 106, Everest Industrial Estate,

Near 66 KVA Power Substation, Amlī,

Silvassa, Dadar & Nagar Haveli-396230

**...Respondent/ Corporate Debtor**

**Order Pronounced on: 13.10.2023**

**CORAM: SHAMMI KHAN, HON'BLE MEMBER (J)**  
**SAMEER KAKAR, HON'BLE MEMBER (T)**

**APPEARANCE:**

For Applicant/FC: Mr. Saumitra Chaturwedi, Adv.

For Respondent/CD: Mr. Nilesh Udarnani, Adv.

**ORDER**

1. The Present Application is filed on 05.06.2023 by **Vignaharta Corrugators Pvt. Ltd.** through its director Mr. Ritesh Gujar, hereinafter referred to as **“the Applicant/Financial Creditor”**) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against **Cyber Infosystems and Technologies Private Limited-** (hereinafter referred to as **“the Respondent/Corporate Debtor”**) for having defaulted in payment of its outstanding dues of **Rs.11,99,79,693/-** (Rupees Eleven Crores Ninety Nine Lakhs Seventy Nine Thousand Six Hundred and Ninety Three only) including interest and overdue charge as on 28.04.2023. The date of default is stated to be 01.04.2021.
2. On perusal of Part-I of the Form-1 reveals that the Applicant/Financial Creditor is a company incorporated on 03.11.2009 under the provisions of Companies Act, 1956

having CIN No. U74990MH2009PTC196826 and registered office at RM-81, Sudarshan Nagar, MIDC, Phase-II, Dombivli (East)-421201. Mr. Ritesh Gujar, is the director of the Applicant/Financial Creditor who has been authorised to file this Application vide Board Resolution dated 24.06.2023.

3. On perusal of Part-II of the Form-1 reveals the Respondent/Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956 on 07.02.2000, having CIN: U32201DN2000PTC000148 and its registered office is located at Gala No. 106, Everest Industrial Estate, Near 66 KVA Power Substation, Amlhi, Silvassa Dadar & Nagar Haveli-396230.
4. Part-III of the Form-1 reveals that the Applicant/Financial Creditor has proposed the name of the Interim Resolution Professional (**'IRP'**) **Mr. Modilal Dhanraj Pamecha**, having registration No. IBBI/IPA-001/IP- PO 123 1 /20 18-19/ 12127, Address: C-802, Padmarag Co-Op. Hsg. Ltd., J.B. Nagar, Andheri (East), Mumbai-400059 Email: camodilalpamecha@gmail.com. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations.

5. Part-IV of the Form-1 reveals that total dues as claimed by the Applicant/Financial Creditor is Rs.11,99,79,693/- (consisting of Rs.3,00,00,000/- being principle and amount of Rs.8,63,32,496/- as interest and amount of Rs.36,47,196/- as overdue charge up-to 28.04.2023).
6. The Financial Creditor has relied on the below-listed documents to prove their case:-

9.	<b>Annexure E:</b> Copies of Bank Statement evidencing disbursement of loan amount.	16- 16/B
10.	<b>Annexure F:</b> Copy of working computation of the total outstanding amount as on 28.04.2023.	17-18
11.	<b>Annexure G:</b> Copy of Letter dated 14.03.2016 addressed by Cyber Infosystems And Technologies Private Limited to Vignaharta Corrugators Private Limited	19

	requesting for financial assistance.	
12.	<b>Annexure H:</b> Copy of Board Resolution dated 18.03.2016 passed by Vignaharta Corrugators Private Limited in its Board Meeting held and convened on 18.03.2016 approving the granting of financial assistance to Cyber Infosystems And Technologies Private Limited.	20
13.	<b>Annexure I:</b> Copy of Letter dated 18.03.2016 addressed by Vignaharta Corrugators Private Limited to Cyber Infosystems And Technologies Private Limited approving a sanction of loan of Rs 3 Crores.	21
14.	<b>Annexure J:</b> Copy of Board Resolution dated 24.03.2016 passed by the Board of Directors of Cyber Infosystems and Technologies Private Limited.	22
15.	<b>Annexure K:</b> Copy of Demand Promissory Note dated 01.04.2016 executed by Cyber Infosystems And Technologies Private Limited in favour of Vignaharta Corrugators Private Limited	23
16.	<b>Annexure L:</b> Copy of Letter dated 16.01.2019 addressed by Cyber Infosystems And Technologies Private Limited to Vignaharta Corrugators Private Limited confirming the outstanding balance due and payable.	24
17.	<b>Annexure M:</b> Copy of the Entries maintained in the Books of the Applicant for the Financial Years 2015-16, 2019-20, 2020-21 and 2021-22.	25- 28
18.	<b>Annexure N:</b> Copy of letter dated 28.03.2021 addressed by Vignaharta Corrugators Private Limited to Cyber Infosystems And Technologies Private Limited requesting for repayment of the Loan Amount alongwith interest at contracted rate by the due date i.e 01.04.2021.	29
19.	<b>Annexure O:</b>	



	Copy of letter dated 02.04.2021 addressed by Cyber Infosystems And Technologies Private Limited to Vignaharta Corrugators Private Limited stating that the outstanding amount will be paid latest by 22.11.2021.	30
20.	<b>Annexure P:</b> Copy of letter dated 23.11.2021 addressed by Vignaharta Corrugators Private Limited to Cyber Infosystems And Technologies Private Limited demanding repayment of the Loan Amount alongwith interest at contracted rate and overdue charges/ interest latest within 30 days failing which Vignaharta Corrugators Private Limited will be constrained to initiate legal proceedings.	31-32
21.	<b>Annexure Q Colly:</b> Copies each of Demand Notices dated 23.05.2022 and 03.04.2023 respectively addressed by Vignaharta Corrugators Private Limited to Cyber Infosystems And Technologies Private Limited.	33-34

7. The submissions of the learned counsel for the financial creditor are summarized hereunder:-

a) The Corporate Debtor vide letter dated 14.03.2016 requested Financial Creditor to grant loan of Rs.5.00 Crore for the purpose of expansion of business. The Financial Creditor considered the said request and passed board resolution dated 18.03.2016 approving the granting of financial assistance amounting to Rs.3.00 Crore to the Corporate Debtor.

b) The Financial Creditor informed the Corporate Debtor about providing financial assistance vide letter dated 18.03.2016 thereafter, the Corporate Debtor vide board resolution dated 24.03.2016 accorded its approval for

availing loan of Rs.3.00 Crore from the Financial Creditor.

- c) The Financial Creditor disbursed the loan amount of Rs.3.00 Crore on 30.03.2016. The proof of disbursement is annexed to the application as Annexure-E (Pg.no. 16-16B). Subsequently, a demand promissory note dated 01.04.2016 was issued by Corporate Debtor wherein the Corporate Debtor has acknowledged the receipt of Rs.3,00,00,000/- (Rs. Three Crore only) and specified the terms and conditions of payment. A copy of demand promissory note is annexed to the application as Annexure-K (Pg. No. 23).
- d) The Corporate Debtor addressed a letter dated 16.01.2019 to the Financial Creditor confirming outstanding balance of Rs.3,00,00,000/- (Rs. Three Crore only) the said letter is annexed to the application as Annexure-L (Pg.no. 24).
- e) The Financial Creditor sent a letter dated 28.03.2021 to the Corporate Debtor as a reminder for making repayment on the due date i.e. on 01.04.2021. However, the Corporate Debtor did not make repayment on due date and requested the Financial

Creditor to defer the repayment till 22.11.2021. The said request was accepted by Financial Creditor however, the Corporate Debtor again failed to make repayment on 22.11.2021.

- f) As the Corporate Debtor failed to make payment even on 22.11.2021, the Financial Creditor vide letter dated 23.11.2021 asked the Corporate Debtor to make payment within a period of 30 days failing which all legal measures will be adopted for recovery.
  - g) Despite of repeated requests no payments was made therefore, recall notice dated 23.05.2022 and final demand/recall notice dated 03.04.2023 was sent to Corporate Debtor, still no payment was received.
  - h) Several requests for repayment of loan amount have been made by Financial Creditor to the Corporate Debtor however, the same still remains unpaid. Therefore, the present application is preferred by Financial Creditor for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
8. The notice was issued to the Respondent/Corporate Debtor for appearance as well as for filing reply. After due service the Respondent/Corporate Debtor appeared through its counsel and filed Reply on 31.08.2023. The Corporate

Debtor in Para 4 of its reply has admitted that the financial assistance of Rs.3 Crores was granted by the Financial Creditor to the Corporate Debtor and that the Corporate Debtor had executed a Demand Promissory Note dated 01.04.2016 in favour of the Financial Creditor. Further, in Para 6 of the reply inability of Corporate Debtor towards making payment can be seen, relevant portion of Para 6 of the reply is reproduced below:

*“However, the Corporate Debtor requires at least a period of 1 year to make the payments, towards the said amounts due and payable to the Financial Creditor. At the cost of repetition, it is reiterated that the Corporate Debtor is facing a temporary financial crunch which has resulted into this current situation and has added financial stress upon the Corporate Debtor and has disrupted the operations of the Corporate Debtor.”*

9. We have heard the learned counsel for both the parties and perused the relevant documents available on record. It is noted that, the Financial Creditor had granted loan amounting to Rs.3,00,00,000/- to the Corporate Debtor. The Corporate Debtor failed to make repayment on due date thereafter, the Financial Creditor made several requests to the Corporate Debtor for repayment of outstanding amount however, the same remains unpaid till date.

10. The default amount stated in Part-IV of the application is Rs.11,99,79,693/- which is above threshold limit. The Corporate Debtor failed to make payment on due date i.e. 01.04.2021 therefore, the date of default is considered to be 01.04.2021 and the application is filed on 05.06.2023 hence; the said application is filed well within the prescribed limitation period. Further, the date of default does not fall within the ambit of Section 10A of IBC, 2016 therefore; the Corporate Debtor cannot seek shelter under Section 10A. The Corporate Debtor has admitted its liability in the reply and the NeSL have authenticated the Financial Debt owed by Corporate Debtor to the Financial Creditor. The certificate issued by NeSL under Form-D is reproduced below:

39

**NeSL** NATIONAL E-GOVERNANCE SERVICES LIMITED  
India's First Information Utility

**FORM D**  
**RECORD OF DEFAULT (RoD)**

*(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)*

This Record of Default is issued to the Financial Creditor M/s VIGNAHARTA CORRUGATORS PRIVATE LIMITED in respect of the default of debt as per details given below-

(a) Name of the Submitter: M/s VIGNAHARTA CORRUGATORS PRIVATE LIMITED  
 (b) Schedule-2 Bank (Y/N): N  
 (c) Name of Corporate Debtor: M/s CYBER INFOSYSTEMS AND TECHNOLOGIES PRIVATE LIMITED  
 (d) Unique Debt Identifier Number: AADCV4075E\_NO 510101005441209  
 (e) Registered Address: RM-81, SUDARSHAN NAGAR, MIDC, PHASE-II, DOMBIVLI (EAST) DOMBIVLI MH 421201 IN  
 (f) Total Outstanding Amount: 119979693.00  
 (g) Default Amount: 119979693.00  
 (h) Date of Default: 01-04-2021  
 (i) Status of Authentication of Default: AUTHENTICATED

Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated/Disputed/Deemed to be authenticated)	Authentication completed on
(3)	23-05-2023 21:30:22	*AUTHENTICATED Colour Code :GREEN	25-05-2023 20:12:27

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

11. The present application is complete in terms of Section 7 (5) of the Code. The Applicant/Financial Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt which is admitted by the Corporate Debtor. The outstanding financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.
12. Further, the Hon'ble Supreme Court in the case of Innoventive Industries Limited v. ICICI Bank Limited, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which

requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

13. In view of the facts as stated supra and also in view of the ‘financial debt’ which is proved by the Financial Creditor and the ‘default’ being committed on the part of the

Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

14. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Corporate Debtor **Cyber Infosystems and Technologies Pvt. Ltd.** is admitted in Corporate Insolvency Resolution Process (**CIRP**) under section 7 of the IBC, 2016.
- (ii) The moratorium under section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the IBC, 2016.
  - 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 Securitisation 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.*
  - e. *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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022;*
- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.

- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.
- (v) As proposed by the Financial Creditor, we appoint **Mr. Modilal Dhanraj Pamecha** having Registration No. IBBI/IPA-001/IP-P01231/2018-19/12127, having address at Address: C-802, Padmarag Co-Op. Hsg. Ltd., J.B. Nagar, Andheri (East), Mumbai-400059 (e-mail: camodilalpamecha@gmail.com) under section 13(1)(c) of the Code to act as Interim Resolution Professional (IRP). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.

- (vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order
- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.

- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the financial creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the financial creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed of the initiation of CIRP against the Corporate Debtor timely.

(xiv) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

15. Accordingly, this petition **CP (IB) No. 153 of 2023** is allowed and stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd-  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

Arati-LRA