



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
[through Physical hearing/VC Mode (Hybrid)]

CP (IB) No.91/BB/2023
U/s. 7 of the IBC, 2016
R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

1)Shri Harish.B

S/o K.V Bata Rao
R/at No. 204, Sathvik Apartments,
34-35, Vittal Nagar, Uttarahalli,
Bijashipura, Near National Convent
Bangalore South, JP Nagar,
Bangalore- 560078

... Financial Creditor/Petitioner No. 1

2)Shri Chandragupta Elavarthy Naranraju

S/o Narayan Raju EV
R/at No. 5/A, Classic Orchards,
Behind Meenakshi Temple,
Bannerghatta Road,
Bangalore South, Bangalore – 5600076

...Financial Creditor/Petitioner No 2

3) Shri Nanda Kumar N

S/o N. Narasaraju
R/at No. 630, Sri Sai, 6th B Main
14th Cross, 3rd Phase, JP Nagar,
Bangalore 560078

...Financial Creditor/Petitioner No 3

4)Smt Madhuri R Shah

W/o Ramesh Shah
R/at 506, Opp to Telli Galli,
Akruti Nova Wing – A
NS Phadke Marg,
Andheri (East)
Mumbai, Maharashtra - 4600069

...Financial Creditor/Petitioner No 4



VERSUS

Hi-Tech AIPR POWER PVT LTD

Registered Office at No.6
Gandhi Bazar Main Road
Basavangudi, Bangalore - 560004

... Respondent/Corporate Debtor

Order delivered on: 12/01/2024

Coram: Hon'ble Mr. K Biswal, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri. Saji P John
For the Respondent : Shri Ojaswi

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed, under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the IB Code), r/w. Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules 2016, by 1)Harish.B, 2)Chandragupta Elavarthy Naranraju, 3)Nanda Kumar N, 4) Madhuri R Shah (hereinafter referred to as the 'Financial Creditors/Petitioners') *inter alia* seeking to initiate Corporate Insolvency Resolution Process in respect of Hi-Tech AIPR POWER Private Limited (hereinafter referred to as the 'Corporate Debtor/Respondent').
2. The Corporate Debtor, namely, Hi-Tech AIPR POWER Private Limited is a Company incorporated on 01/11/2000 with CIN: U29120KA2000PTC028063, having its registered office at No.6, Gandhi Bazar Main, Basavangudi, Bangalore Bangalore KA 560004 which falls within the territorial jurisdiction of this Adjudicating Authority. The Company is engaged in the business of manufacture of general purpose machinery and associated services therein. The Authorised Share Capital of

the Respondent/Corporate Debtor is Rs.15000000/- and the Paid-Up Share Capital is Rs. 86660600/-.

3. The facts of the case are discussed below:

The present application has been filed on 12/12/2022 by the above four Financial Creditors against the Corporate Debtor in respect of the default amount of Rs 1,15,95,600 (Rupees One Crore Fifteen Lakhs Ninety Five Thousand and Six hundred) as on 01/02/2022 as per part IV of Form No. 1.

4. The Corporate Debtor had availed of unsecured Loans, from Financial Nos Creditors 1 to 4, respectively, as follows:

	Amount in Rs	Date of Disbursement
Financial Creditor No: 1 (Shri Harish.B)	10,00,000/-	20/02/2018
Financial Creditor No: 2 (Shri Chandragupta Elavarthy Naranraju)	20,00,000/-	07/08/2019
Financial Creditor No: 3 (Shri Nanda Kumar N)	45,50,000/-	04/10/2017
Financial Creditor No: 4 (Smt Madhuri Shah)	40,45,606/-	28/05/2016
TOTAL:		1,15,95,600

5. It is submitted that the Corporate Debtor executed a Memorandum of Understanding on 01/02/2021, acknowledging the current outstanding loan amount owed to each Financial Creditor and agreeing to repay the outstanding unsecured loan amount on or before 01/02/2022. Demand Promissory Note was also executed in favour of each Financial Creditor along with the Memorandum of Understanding to secure the repayment of the outstanding unsecured loan.
6. It is submitted that the Corporate Debtor partially discharged a sum of Rs 4,50,000/- (Rupees Four Lakhs Fifty Thousand only) to the Financial Creditor No.3, (Shri Nanda Kumar N) on 19/01/2018, 15/02/2018, 05/07/2018 and 10/10/2018 respectively and thereafter no further

payments have been remitted by the Corporate Debtor to any of the Financial Creditors.

7. It is submitted that thus, the Financial Creditors have issued a Demand Notice dated 17/02/2022, for repayment of loan along with interest payable thereon at the rate of 18% per annum as agreed upon in the MOU dated 01/02/2021. That the financial break up after interest as demanded by the Financial Creditors is as follows:

	Principal Amount	+ 18% interest
Financial Creditor No. 1	10,00,000/-	Interest – 7,20,000/- Total – 17,20,000/-
Financial Creditor No. 2	20,00,000/-	Interest – 9,30,000/- Total – 29,30,000/-
Financial Creditor No. 3	45,50,000/-	Interest – 39,00,000/- Total – 84,50,000/-
Financial Creditor No. 4	40,45,606/-	Interest – 7,28,209/- Total – 47,73,815/0
	Total	1,15,95,600/-

8. It is submitted that the Corporate Debtor replied to the above mentioned Demand Notice on 29/03/2022, stating that the Corporate Debtor acknowledges the loan given by each Financial Creditor, while denying that an interest component of 18% per annum was agreed upon.
9. The Respondent- Corporate Debtor filed reply to the Petition vide Diary No.5354 dated 18/10/2023 in which it has expressly admitted to the loan advanced by the Financial Creditors, while only refuting the averment that the interest of 18% per annum was payable by the Corporate Debtor. Further, the Corporate Debtor has stated that there is insufficiency of cash flow to settle the Principal amount at the moment but is willing to accommodate the Principal amount without payment of any interest to the Financial Creditor.



10. On 03/10/2023, this Tribunal directed the Petitioner's Counsel to justify the basis on which the four individuals (Petitioners herein) can be collectively called as Financial Creditors; and explanation regarding the date of default mentioned as 01/02/2022, in the absence of, a record of default by NESL, or Certified Copies in Banker's Book as per Banker's Book Evidence Act. Therefore, Petitioners were asked to explain as to how such loan will qualify as financial credit for the purpose of IB Code ; and maintainability of the petition.
11. In the compliance of the Order dated 03/10/2023, the Ld Counsel for Petitioner filed memo dated 18/10/2023, and submitted that as per Section 7 of IB Code a *Financial Creditor either by itself or jointly may file an Application for initiating CIRP against the Corporate Debtor before the Adjudicating Authority*; further that as per Section 5(7) of IB Code a "Financial Creditor" means "*any person to whom a financial debt is owed and includes a person to whom such a debt has been legally assigned or transferred to.*" Hence a joint reading of Section 7 and Section 5(7), it is clear that any individual(s)/persons can be Financial Creditors and that they can individually or jointly initiate CIRP against the Corporate Debtor.
12. The Ld Counsel for the Petitioner submitted that, the Petitioners advanced an amount to the Corporate Debtors as unsecured Loan which was to be repaid after 3 years with 18% interest and has not been disputed by the Corporate Debtor. Apart from the above facts, the Loan given by the Financial Creditors is reflected in the Audited Financial Statements of the Corporate Debtor under Note 4 – Unsecured Loan from Others in Balance Sheet as at March 31, 2020. It was also submitted that the IB Code does not prescribe for an express condition that a Financial Debt has to be backed up by a Contract Agreement. The Petitioners relied on two judgments in support of their contention,
- 1) Agarwal Polysacks Limited v. K.K. Agro Foods and Storage Limited, 2023 SCC NCLAT 624:
- Wherein the Hon'ble Appellate Tribunal has held that "*When we look into the statutory scheme as reflected in the Application to Adjudicating*



Authority Rules, 2016 and CIRP Regulations, it is clear that financial debt can be proved from other relevant documents and it is not mandatory that written financial contract can be only basis for proving the financial debt. We, thus answer that it is not necessary that written financial contract be the only material to prove the financial debt.”

It is further observed that, “When we look into the above financial statement, it is clear that amount of Rs.79,70,250 is mentioned against the Corporate Debtor-K.K Agro Foods (P) Ltd. Under the heading “Advance Recoverable in Cash or in Kind.” Thus, the factum of amount of Rs.79,70,250 due on the Corporate Debtor is corroborated by Balance Sheet of Appellant also. The mere fact that it is under the heading Short Term Loans and Advances does not have any adverse consequence. We already noticed that term loan as reflected in the Balance Sheet of the Corporate Debtor is ‘on demand’. Thus the Balance sheet also corroborate the amount due on the Corporate Debtor”

- 2) *Satish Balan v. Neeta Navin Nagda & Anr, Company Appeal (AT) (Insolvency) No. 718/2023: “This Appellate Tribunal observes that the Code nowhere prescribes that there should be written agreement between the parties to prove the loan and its disbursement to be treated as Financial Debts. It is also observed that if there are acknowledgements by the ‘Corporate Debtor’ and where the statements of accounts of the ‘Corporate Debtor’ are in position to proof disbursement of loan and payment of interest, the absence of formal written agreement would not bar the ‘financial creditor’ (the Respondent No1 herein) from initiating the CIRP. We take note from the record made available that there have been clear acknowledgements which have been issued by the ‘Corporate Debtor’ for the money received from the Respondent No 1 which also mentioned the quantum of interest payment to be made by the ‘Corporate Debtor’ to the Respondent No.1.”*
13. Further, Ld. Counsel for Petitioner filed a memo vide Diary No.5789 dated 16/11/2023, enclosing the Memorandum of Understanding executed by the Financial Creditors and the Corporate Debtor, and also filed NESL Form C, vide Diary No 5995 dated 29/11/2023.



14. Heard Ld.Counsel for the Petitioner and, Ld.Counsel for the Respondent and perused the pleadings on record.

It is evident that the individual financial debts in default of the Corporate Debtor towards the Financial Creditor are less than the threshold limit of Rs. 1,00,00,000/- (minimum amount of default to initiate CIRP under I&B Code, 2016). Hence, the Financial Creditors have claimed the amount in a joint Petition to meet the threshold limit of Rs.1,00,00,000/-.

In this regard, referring to the Order dated 12/07/2023, by the NCLT Division Bench, Kolkata in the matter of *Hi-Tech Designs Pvt Ltd v. S.K Finserve Pvt Ltd and Anr*, CP (IB)/278(KB)2022, it is seen that in the judgement laid down in the case of *Vishnu Oil Mill Private Litd v. Union of India*, reported in MANU/RH/1250/2022: 2022(4)RLW3184(Raj.), it is held that: “11. Having considered the entirety of the facts and circumstances as available on record and after appreciating the arguments advanced at bar, we are of the firm view that the statute i.e., Section 7 of the IBC as amended vide Gazette Notification dated 05/06/2020, admits no other interpretation except that a group of financial creditors can converge and join hands to touch the financial limit of Rs.1crore stipulated under Section 7 so as to initiate a CIRP under the IBC.” Thus the joint petition of the four different persons coming together to reach the threshold of Rs.1Crore can be considered.

15. Further, having considered the above mentioned order of Hon'ble NCLAT dated 11/09/2023; *Agarwal Polysacks Limited v. K.K. Agro Foods and Storage Limited*, 2023 SCC NCLAT 624 and in *Satish Balan v Neeta Navin Nagda & Anr, Company (AT) (Insolvency) No.718/2023 Order Dated 04/07/2023*, the amounts owed to the the Financial Creditor by the Corporate Debtor, which is reflected in the Balance Sheets of the Corporate Debtor under the note 4 – “UNSECURED LOAN FORM OTHERS” is a “financial debt” as defined under the code, even when there is no express written agreement for the Loan.

16. Moreover, in the objections filed by the Respondents vide Diary No.5354 dated 18.10.2023, it has admitted the above mentioned loans taken from four different individuals, and only disputed the liability for interest. However, it is noticed that the total outstanding amount in respect of the Principal itself exceeds the threshold requirements of Rs.1 Crore. This was also confirmed



during the hearing held on 01.12.2023. The Petitioners have filed a memo vide Diary No.5789 on 16.11.2023 submitting the copies of four 'Memorandum of Understanding' along with 'On Demand Promissory Notes' dated 01.02.2021, executed with the four individuals(financial creditors).In accordance with the same, the due date for payment of the outstanding amount was stated to be 01/02/2022. The same was duly taken on record vide Order dated 01/12/2023. These Memorandums of Understanding specifically mentions the particular amount against the each individual and stipulated that the amount claimed to be in default was repayable on or before 01.02.2022 and the Creditor was at liberty to take appropriate legal action if not paid by 01.02.2022. In Form-1 this date was mentioned as Date of Default and the Petition has been filed on 12.12.2022.

17. Coming to the four loans taken from the four individuals, it is noticed that for Sl.Nos.1 & 2, the Memorandum of Understanding and Promissory Note dated 01.02.2021 is within the outer limit of three years from the date of disbursement. However, for the Financial Creditors No.3 & 4 the dates of disbursement were on 04/10/2017 and 28/05/2016 respectively. The Petitioner have filed a Memo on 18/10/2023 with which the Balance Sheet of the Corporate Debtor as on 31.03.2020 along with corresponding figures on 31.03.2019 is also filed. This clearly reflects that the impugned amount against Financial Creditors No.3 & 4 were duly shown by the Corporate Debtor under the heading 'Unsecured Loan from Others' as on 31.03.2020 as well as on 31.03.2019. Therefore, in accordance with this discussion it is held that the limitation issue is duly taken care of.
18. In view of the above discussion, the present petition being complete and having established the default in payment of the financial debt, and for the amount being above Rs.1,00,00,000/-, the petition is liable to be admitted in terms of Section 4 of the IB Code 2016. Accordingly, under Section 7 of IB Code, the instant Company Petition bearing CP (IB) No. 91/BB/2023 is admitted and moratorium is declared in terms of Section 14 of the IB Code. As a necessary consequences of the moratorium in terms of Section 14 of the IB Code, the following prohibitions are imposed, which must be followed by all and sundry:



- (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
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (d) 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;
- (e) the recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) it is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- (g) the provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- (h) the order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

19. In Part-III of Form No.1, Shri Nagaraj Emmadi bearing Registration No. IBBI/IPA-001/IP-P02187/2020-21/13409 has been proposed as Interim Resolution Professional (IRP). Form No.2 Written Communication by the IRP has been filed along with the C.P are found at Page Nos.15 of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Shri Nagaraj Emmadi and there is nothing adverse against him. In view of the above, we appoint M Shri Nagaraj Emmadi bearing Registration No. IBBI/IPA-001/IP-P02187/2020-21/13409, having registered address at 10, Diya Elite, Flat No. 301, Pattanagere, Rajarajeshwari Nagar, Bengaluru, Karnataka-560098 email- nagarajaca2005@gmail.com, Phone Number



9740058384 as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

20. The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval of the Committee of Creditors.
21. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
22. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(K. BISWAL)
MEMBER (JUDICIAL)