IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-II

CP (IB) No. 421/MB/2024

[Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

DB VIEW INFRACON PRIVATE LIMITED

[CIN No. U45202MH2009PTC194183]

Registered Office: '7th Floor, Resham Bhavan,

Veer Nariman Road, Churchgate, Mumbai 400020

…Financial Creditor

V/s

DYNAMIX SECURITIES AND HOLDINGS PRIVATE LIMITED

[CIN: U65990MH1994PTC080250]

Registered Office: DB House, Gen. A.K. Vaidya Marg,

Goregaon (East), Mumbai - 400063

…Corporate Debtor

Pronounced: 30.10.2026

CORAM:

HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL)

HON'BLE SHRI BANWARI LAL MEENA, MEMBER (TECHNICAL)

Hearing:Hybrid

Appearances:

Financial Creditor: Adv. Yash Momaya a/w. Adv. Munaf Virjee & Adv. Mithali Shetty i/b. AMR Law

Corporate Debtor: None (*ex-parte*).

ORDER

[PER: CORAM]

1. BACKGROUND

1.1 This Company Petition No. **C.P. (IB) 421/MB/2024** (hereinafter referred to as "Company Petition") was filed on **09.04.2024** under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code' or 'IBC') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as 'the AAA Rules') by DB View Infracon Private Limited, (hereinafter referred to as 'the Financial Creditor' or 'FC'), through Mr. Tariq Abdullah Suleman, General Manager of the FC for initiating Corporate Insolvency Resolution Process (hereinafter referred to as 'the CIRP') in respect of **Dynamix Securities And Holdings Debtor Private Limited** (hereinafter referred to as **'**the Corporate Debtor' or 'CD')**.**

1.2 The total amount of default alleged is Rs. Rs. 518,89,00,000/- (Rupees Five Hundred Eighteen Crores and Eighty-Nine Lakh) as on 31.03.2024 including further interest. The Corporate Debtor had availed of Term Loan from Yes Bank Limited (hereinafter referred to as 'Yes Bank') on 20.03.2014 for a sum of Rs. 154,00,00,000/- (Rupees One Hundred and Fifty-Four Crore) under a Term Loan Facility (hereinafter referred to as "Term Loan"). Yes Bank *vide* a facility letter sanctioned the Term Loan to the Corporate Debtor by a Deed of Assignment dated 31.03.2016, Yes Bank assigned and transferred to the Financial Creditor the entire debt of the Corporate Debtor under the Term Loan, then standing at an amount of Rs. 163,49,01,393 (Rupees One Sixty-

Three Crore Forty-Nine Lakh One Thousand Three Hundred and Ninety-Three) on the terms and conditions and for the consideration set out therein.

1.3 The date of default as mentioned in Part IV of the Company Petition is 19.06.2018. Since the CD defaulted in payment of its outstanding dues, the Financial Creditor prays that CIRP may be initiated in respect of the CD under Section 7 of the IBC.

2. CONTENTIONS OF FC

2.1 It is submitted that the Corporate Debtor had availed of a Term Loan from Yes Bank for a sum of Rs. 154,00,00,000/- (Rupees One Hundred and Fifty-Four Crore) under a Term Loan Facility. In view thereof, Yes Bank *vide* a facility letter dated 20.03.2014 sanctioned the Term Loan to the Corporate Debtor. The Financial Creditor craves leave to refer to rely upon the Facility Letter as and when required be produced.

2.2 It is further submitted that the by a Deed of Assignment dated 31.03.2016 ("Deed of Assignment"), Yes Bank assigned and transferred to the Financial Creditor the entire debt of the Corporate Debtor under the Term Loan, then standing at an amount of Rs. 1,63,49,01,393 (Rupees One Sixty-Three Crore Forty-Nine Lakh One Thousand Three Hundred and Ninety-Three) on conditions and the terms and for the consideration set out therein. The sum of Rs. 163,49,01,393/ -, being the consideration due to Yes Bank under the Deed of Assignment, was duly paid by the Financial Creditor on 31.03.2016. Accordingly, from 31.03.2016, the debt in respect of the Term Loan was assigned to the Financial Creditor, and the Financial Creditor became a

"financial creditor" of the Corporate Debtor under the Code. Thereafter, because payment of the debt in respect of the Term Loan was not made by the Corporate Debtor, the Financial Creditor filed a Petition under Section 7 of the Code before this Hon'ble Tribunal, being Company Petition No. 1221 of 2017 (hereinafter referred to as "Earlier Petition").

2.3 Meanwhile, the Corporate Debtor and certain related parties filed a Suit before the Hon'ble Bombay High Court being Commercial Suit No. 187 of 2017 ("High Court Suit") in respect of inter alia the Term Loan, debt, and Deed of Assignment. The parties to the High Court Suit, including the Corporate Debtor (as Plaintiff No. 1 therein) and the Financial Creditor (as Defendant No. 2 therein), entered into Consent Terms dated 19.09.2017 ("Consent Decree") in terms of which the Corporate Debtor inter alia submitted to a decree in favour of the Financial Creditor for the repayment of the debt in respect of the Term Loan. The Ld. Counsel for the Financial Creditor has placed the copy of the Consent Decree dated 19.09.2017 as well as Order of the Hon'ble Bombay High Court dated 19.09.2017 on record.

2.4 It is submitted that the Consent Decree provided that it would not be executed for a period of 9 months, and the Earlier Petition would also be adjourned for a period of 9 months so as to enable inter alia the Corporate Debtor to sell assets to pay its debts, the Earlier Petition came to be disposed of *vide* Order dated 05.10.2017 in view of the amicable settlement arrived at between the parties with liberty to the Financial Creditor to either revive the said Company Petition or to file a fresh Company Petition against the Corporate Debtor.

2.5 In order to recover its dues under the Consent Decree, the Financial Creditor

has filed Commercial Execution Application No. 1693 of 2018 (hereinafter referred as ‘Execution Application’) before the Hon'ble Bombay High Court. In the Execution Application, the Financial Creditor has taken out several Interim Applications seeking transfer and sale of various properties and assets of the Judgment Debtors, in which (i) the Judgment Debtors (including the Corporate Debtor) have consistently failed to appear; and (ii) orders allowing the said Interim Applications have been passed (hereinafter referred to as "Orders in Execution").

2.6 Pursuant to the Orders of Execution, several properties and assets of the Judgment Debtors (but not of the Corporate Debtor) under the Consent Decree have been sold, and monies realized in part satisfaction of the Consent Decree. The Term Loan is therefore outstanding, and in default. Accordingly, as on 31.03.2014, the total debt due from the Corporate Debtor to the Financial Creditor is Rs. 518,89,00,000/- (Rupees Five Hundred Eighteen Crores and Eighty-Nine Lakh) as aforesaid, the entire amount of which is in default. However, as affirmed by the Corporate Debtor itself (including by way of the Consent Decree), and by the Hon'ble Bombay High Court in the Execution Application by way of the Orders in Execution, the debt in respect of inter alia the Term Loan is valid, subsisting, and binding, and is due and payable, and is in default.

2.7 Further, it appears that the Financial Creditor is the only creditor/substantial creditor of the Corporate Debtor. It also appears that the Corporate Debtor is defunct in that despite service, it does not appear in the Execution Application despite repeated service of notice, as recorded m the Orders in Execution.

3. CONTENTIONS OF CD

3.1 This Tribunal *vide* order dated 21.06.2024 issued notice to the Corporate Debtor with directions to the Applicant to collect the notice from the registry serve the notice along with copy of the Application and file affidavit of service. Registry is delivered the court notice to the CD on 19.07.2024. In compliance of the said order, the Applicant has filed Affidavit of Service, which shows that the notice was delivered to the Corporate Debtor on 07.03.2024. It was observed that the Corporate Debtor has not appeared on these occasions nor filed Vakalatnama or Reply on DMS or in physical form. Therefore, the Corporate Debtor was set ***ex-parte*** by this Tribunal on 25.07.2024. The said order is reproduced below:

> *"A perusal of the records reveals that court notice to the Respondent in the main Company Petition as well as in the present Application i.e. 3491 of 2024 has been received back duly served as can be manifested from the track consignment report, however, despite service of court notice none has come present on behalf of the Respondent/CD, therefore, Respondent/CD is set ex-parte in the present Application as well as the Present Petition CP (IB) No. 421/MB/2024."*

3.2 No application was filed by the Corporate Debtor for recall of the said order.

3.3 We also observe that since the CD remained unrepresented in spite of the above, it was set ***ex-parte*** on 25.07.2024. Hence, we proceed to deal with the matter based on the material available on record.

4. ANALYSIS AND FINDINGS

4.1 We have perused all the documents and pleadings and heard the Ld. Counsel for the Financial Creditor.

4.2 There has been no representation from the CD's side on any occasion. It is seen that the Applicant has been claiming a total amount of Rs.518,89,00,000/- The date of default is mentioned as 19.06.2018 based upon the notice invoking the guarantee.

4.3 The only issue to be determined in this matter is whether the present Company Petition is barred by limitation or not.

4.4 On perusal of the record reveals that the underlying claims culminated in a Consent Decree dated 19.09.2017 passed by the Hon'ble Bombay High Court, wherein the Corporate Debtor was granted a grace period of nine months to satisfy the decretal sum. The Corporate Debtor failed to honor the terms of the Consent Decree, and upon expiry of the stipulated nine-month period i.e. on 19.06.2018, the default crystallized. Furthermore, the Consent Decree constitutes an unequivocal acknowledgment of debt and liability in writing. It is a well-settled principle of law, as reaffirmed by the Hon'ble Supreme Court in *Dena Bank (now Bank of Baroda) v. C. Shivakumar Reddy & Anr.*, [(2021) 10 SCC 330], that a decree or recovery certificate establishes a fresh and distinct cause of action for initiating proceedings under Section 7 of the Code. Therefore, the statutory three-year period of limitation under Article 137 of the Schedule to the Limitation Act, 1963 commenced on 19.06.2018.

4.5 We have already determined the date of default in the instant matter as 19.06.2018, which was the first date after expiry of the stipulated time period of nine months from the aforesaid Consent Decree dated 19.09.2017. In M.A.

No. 21 of 2022 in MA No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020, "*In Re: Cognizance for Extension of Limitation*" the Hon'ble Supreme Court held that limitation for all types of proceedings stands excluded from 15.03.2020 to 28.02.2022, for all cases irrespective of the type of case. This view was recently applied by the Hon'ble Delhi High Court in *Captain Sudhanshu Bharadwaj Vs. Air India Limited.,* [OMP(T) COMM. 31/2023] and also the Principal Bench of the Hon'ble NCLAT, New Delhi in *Indospirit Distribution Limited Vs. Kristal Spirits India Pvt. Ltd.,* [Company Appeal (AT) (Ins.) No. 503 of 2024]. By applying the above, in the present matter, the aforesaid Company Petition ought to be to have been filed within a period of three years (1095 days) beginning from the date of default i.e., 19.06.2018; out of which a total number of 634 days had expired from 19.06.2018 till 14.03.2020. After the excluded period from 15.03.2020 to 28.02.2022, the balance period of limitation would run from 01.03.2022. In that case, the Financial Creditor would get remaining balance of 461 days, and the new date of expiration of the limitation would be 05.06.2023. Meanwhile, the company Petition was filed on 09.04.2024 and the intervening period between the new date of expiry of the limitation and the filing date of the Company Petition is 308 days, which is calculated as below:

Particulars	**Dates**
Date of Default	19.06.2018
Extent of limitation expired till 14.03.2020	634 days
Exclusion period	15.03.2020 to 28.02.2022
Balance limitation as available on 01.03.2022	461 days

461 days w.e.f. 01.03.2022	05.06.2023
New Date of expiration of the limitation (A)	05.06.2023
Filing Date of the Company Petition (B)	09.04.2024
Intervening period between the date (A) and the date (B)	308 days

However, upon perusal of available documents, it was found that the financial creditor had filled an interlocutory application, bearing IA No. 3491/2024 for seeking condonation of delay in filing the present company petition which has been filed on 09.04.2024. The applicant in that application had however in its prayer had sought condonation of delay of 9 months and 29 days i.e. 303 days and the same was allowed *vide* order dated 06.02.2026.

At this juncture it is however seen that the actual delay in filing the present Company petition is of 10 months and 4 days (308 days) i.e. from 05.06.2023 till 09.04.2024. It is seen from record that the Financial Creditor in its delay condonation application had miscalculated the period of delay and had sought condonation of 303 days instead of actual delay period of 308 days and this Adjudicating Authority had, accordingly, passed order based on the prayer made in the application. Hence as on date, there is a difference of 5 days between the actual period of delay and the delay that had been condoned by this Adjudicating Authority *vide* its order dated 06.02.2026. Being conscious of such discrepancy which is merely a calculation error on part of the applicant in its delay condonation application this adjudicating authority does not have any reason to believe that had the applicant sought

condonation of delay of 308 days in its delay condonation application, then the application would have met a different fate. Accordingly, in exercise of inherent power prescribed under Rule 11 of NCLT rules, keeping in view of the fact that the difference is only of 5 (Five) days and in the interest of justice this Adjudicating Authority is inclined to condone the delay of 5 (five) days that has been inadvertently missed out by the applicant, owing to a computation error, while seeking delay condonation in IA No. 3491 of 2024.

4.6 The Financial Creditor preferred an interlocutory application, being I.A. No. 3491 of 2024, seeking condonation of the delay in presenting the Company Petition. This Tribunal, upon being satisfied with the sufficient cause demonstrated on record, has already condoned the delay *vide* separate order dated **06.02.2026 passed in I.A. No. 3491 of 2024.**

4.7 We find that despite several opportunities granted by this Adjudicating Authority to the CD to be represented; file its reply; and present its case on merits, it chose not to avail itself of the opportunities. As a result, the CD was set *ex-parte vide* our order dated 25.07.2024.

4.8 The Financial Creditor has placed on record the relevant loan sanction documents, deed of guarantee, the Consent Decree dated 19.09.2017, and the default notice dated 19.06.2018. The debt of ₹518,89,00,000/- and default thereof stand unequivocally established, well above the statutory threshold prescribed under Section 4 of the Code.

4.9 From the above, it is clear that financial debt amounting to more than One Crore Rupees is due and payable by the Corporate Debtor to the Financial Creditor herein and the Corporate Debtor has defaulted in payment of debt within the definition of Section 5(8) of the Code. Considering the facts and

law as discussed above, this Bench is of the view that in such circumstances, it is imperative that CIRP is only to be initiated in respect of the Corporate Debtor. Therefore, we are of the considered view that this Company Petition is complete and satisfies all the necessary requirements for admission under Section 7 of the Code.

ORDER

This Company Petition bearing **C.P. (IB) No. 421/MB/2024** under Section 7 of the IBC, filed by **DB View Infracon Private Limited**, the Financial Creditor, for initiating CIRP in respect of **Dynamix Securities and Holding Private Limited**, the CD is **admitted.**

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

a) institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.

II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the CD under Section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mr. S. Gopalakrishnan,** a registered Insolvency Professional having **Registration Number- IBBI/IPA-002/IP-N00151/2017-18/10398** and **e-mail-gopi63.ip@gmail.com**, having valid Authorisation for Assignment up to **31.12.2026** as the Interim Resolution Professional (hereinafter referred to as "IRP") to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under

Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.

VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the Financial Creditor to deposit a sum of Rs. 3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the Financial Creditor on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the CD.

IX. Registry is directed to immediately communicate this Order to the Financial Creditor, the CD and the IRP by way of e-mail and WhatsApp.

X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.

Sd/-
BANWARI LAL MEENA
MEMBER (TECHNICAL)

Sd/-
ASHISH KALIA
MEMBER (JUDICIAL)

//Supriya/LRA-Tanmay Jain//