

BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT 1

CP(IB) 13/7/NCLT/AHM/2020

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)  
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 01.03.2021

Name of the Company:

Indiabulls Consumer Finance Ltd

V/s

Kimaya Industries Pvt Ltd

Section:

7 of the Insolvency & Bankruptcy Code, 2016

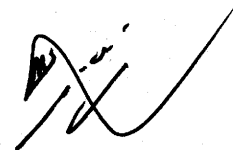
**ORDER**

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.



(VIRENDRA KUMAR GUPTA)  
MEMBER (TECHNICAL)



(MADAN B. GOSAVI)  
MEMBER (JUDICIAL)

Dated this the 1st day of March, 2021.

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
INDORE BENCH AT AHMEDABAD  
COURT 1**

**CP (IB) No.13/7/NCLT/AHM/2018**

An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016

**In the matter of :**

**M/s Indiabulls Consumer Finance Limited**

(formerly IVL Finance Limited)

Having Branch office at;  
202, 2<sup>nd</sup> Floor, Third Eye-2,  
Above Mc Donand Restaurant,  
Panchvati Cross Road, GC Road,  
Ahmedabad- 380009

**..Financial Creditor**

**Versus**

**M/s Kimaya Industries Private Limited**

CIN: U17120GJ2009PTC057158

Registered Office at;  
C-22, Road No. 15, Hojiwala,  
Industrial Estate Sachin, Palsana  
Road, Sachin Surat  
Gujarat- 363421

**..Corporate Debtor**

**Reserved on 09.02.2021.**

**Date of Pronouncement of Order on 01.03.2021**

**Coram: MADAN B. GOSAVI, MEMBER(J)  
VIRENDRA KUMAR GUPTA, MEMBER (T)**

**Appearance:**

Learned Counsel Lalit M. Patel appeared for Financial Creditor.  
Ld. Counsel of Mr. Biju Nair appeared for the Corporate Debtor.



ORDER

[Per Bench]

1. The instant application has been filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IB Code") by Financial Creditor M/s Indiabulls Consumer Finance Limited to initiate Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor M/s. Kimaya Industries Private Limited for a default amount of Rs. 45,64,151/- and interest thereon. The date of default has been stated as 05.08.2019.
2. The financial creditor is the NBFC, had financed a Term loan to the Corporate Debtor to the tune of Rs. 50,00,000/- vide loan agreement dated 06.12.2017. The loan was to be repaid into 36 installments by the corporate debtor. The corporate debtor paid a few installments out of 36 installments. The financial creditor reminded several time to the corporate Debtor for making the payment of the due installment, but, the corporate debtor never bother to pay the amounts of due installments. The financial creditor submitted that the first default was made by the corporate debtor on 05.08.2018 and the last date of default is 05.10.2019. After non-payment of installments even after sending the reminders, the financial creditor initiated the

arbitration proceedings against the corporate debtor. Due to non-appearance by the corporate debtor before the sole arbitrator, ex-parte award dated 05.04.2019 was passed in favor of the financial creditor by the sole arbitrator. Thereafter, the financial creditor filed the present application before this Authority to initiate the Corporate Insolvency Resolution Process against the corporate debtor on 06.12.2019.

3. The corporate debtor filed the reply to the present application and prayed for the dismissal of the present application. The corporate debtor submitted that the financial creditor has not been furnished a certificate issued by The Reserve Bank of India to show that the status of NBFC has been granted and authorized the financial creditor to grant finance to the general public.
4. The corporate debtor further submitted that the debt is not legally recoverable. There was no board resolution passed by the board of corporate debtor for authorizing the company to obtain a loan in question from the financial creditor.
5. The corporate debtor stated that part 3 of the application is not complete as the consent affidavit given by the Resolution

Professional in form-2 is not accompanied by a certificate issued by IBBI confirming the eligibility of the proposed IRP. It is also stated that the claim of default in part IV of the application is wrong. The Corporate Debtor further stated the account statement and the repayment schedule produced by the financial creditor reveals that the amount claimed as a debt of default is totally wrong.

6. The corporate debtor further stated that it is admitted fact that the financial creditor has initiated the arbitration proceedings against the corporate debtor for recovery of the amounts of due installments, the award has also been passed in favour of the financial creditor on 05.04.2019. Once the award has been passed in favour of the financial creditor the debt ceased to a contractual debt. Moreover, the said award does not give any repayment schedule which the corporate debtor has defaulted, thereby, the present application falls outside the Scope of Insolvency and Bankruptcy Code, 2016.
7. Heard, the counsel of financial creditor as well as corporate debtors, perused the record. It is noted that the Terms Loan was disbursed to the corporate debtor and the corporate debtor has paid the few loan installment out of 36 installments. The

contention raised by the Corporate debtor in regard, that the financial creditor has not annexed the certificate issued by the RBI to show the status of the financial creditor as an NBFC is not required, as there is no requirement for such certificate for filing the application under section 7 of IB Code. Neither, section 7 of IB Code nor section 5 (7) IB Code envisage that the financial creditor incorporated under the Companies Act, 2013/ 1956 is required to annex the certificate of NBFC for filing the application under section 7 of IB Code.

8. The contention of the Corporate Debtor that the debt is not legally recoverable that, there was no board resolution passed by the board of the corporate debtor to empower the company to obtain the loan from the financial creditor is baseless. As per the records, it is noted that the Corporate Debtor paid few installments without raising any objection (s) that the Corporate debtor was not authorized for raising the said loan from the financial creditor. Even authorize the debt of disbursement of loan to the corporate debtor and utilization of the same by the Corporate Debtor is not in dispute, hence, such pleading does not help the cause of the corporate debtor in any way. It is also not worth considering for the reason that at the time of receiving of loan no such aspect was considered, and only when times to

repayment comes, it is considered. One can't be allowed to approbate and reprobate at the same time.

9. The contention raised by the corporate debtor that consent affidavit of Resolution Profession is required which is on record. The registration number is also on record. Hence, no merit in this contention also.
  
10. The contention raised by the corporate debtor that after passing the order in arbitration proceeding in favour of financial creditor by the sole arbitrator, the nature of contractual debt has been changed to award, and, in the said award date of payment of award amount has not been stipulated, hence, liability to pay any amount does not exist. It is noted that the corporate debtor has defaulted. Arbitration proceedings were undertaken in terms of provisions of the governing agreement. In such proceedings, the corporate debtor did not appear. The Arbitrator passed an arbitration award in respect of debt which was obtained by the Corporate Debtor on interest from the financial creditor. The present petition has been filed on that basis. Default has also been made by the corporate debtor in honouring the terms of the award. Thus all the requirements of section 7 read with 5(8),

sections 5(7), 3 (11), and 3 (6) of IB Code are fulfilled. Accordingly, we reject this contention of the corporate debtor.

11. The present application is defect-free and complies with the requirements of section 7 of the IB code. The consent of the resolution professional has been obtained to act as IRP who is eligible to be appointed as an IRP as no disciplinary proceedings are pending against her. Hence, we appoint the proposed RP as an IRP.
12. In view of the above observations, the present application is admitted with the following directions:

**ORDER**

- I. Corporate Debtor M/s Kamaya Industries Private Limited is admitted in the Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
- II. We appoint **Ms. Anjali Nirav Choski**, registration no. **IBBI/IPA-001/IP-P00820/2017-2018/11382** under section 13 (1) (c) of the IB Code as IRP.
- III. That the Moratorium under Section 14 of the Code shall come to effect from the date of the order till the completion

of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub- Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

- IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any Court of law and further prohibits a Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing (of by the Corporate Debtor) any of Corporate Debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- V. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the

pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

- VI. That the supply of essential goods or services to Corporate Debtor, 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 assets and management of the Corporate Debtor.
- VII. The IRP so appointed shall make the Public announcement of the Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.
- VIII. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 &21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to

extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- 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 the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- X. We direct the Financial Creditor / Applicant to pay the IRP a sum of Rs. 50,000/- (Rs. Fifty thousand only. ) as fees & expenses till the COC decides about his fees/expenses.
- XI. The Registry is directed to communicate this order to the Petitioner-Financial Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned

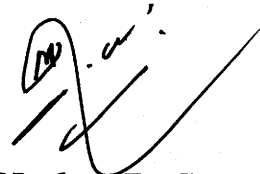
**CP (IB) No.13/7/NCLT/2020**

Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after pronouncement of the order.

- XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
- XIII. This CP(IB) 13 of 2020 stands allowed and disposed-off.
- XIV. The matter to be listed on 02.03.2021 for further consideration.



**(Virendra Kumar Gupta)**  
**Member (Technical)**



**(Madan B. Gosavi)**  
**Member (Judicial)**

RB