

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH-I  
KOLKATA**

**CP (IB) No. 389/KB/2020**

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

**Majestic Commercial Private Limited**  
[CIN:U51109WB2005PTC104314]

*...Financial Creditor*

*Versus*

**Akin (India) Private Limited**  
[CIN: U24299WB1982PTC035520]

*...Corporate Debtor*

Order reserved on: 13 June 2022

Order pronounced on: 29 June 2022

**Coram:**

**Shri Rajasekhar V.K.** : **Member (Judicial)**

**Shri Balraj Joshi** : **Member (Technical)**

**Appearances (through hybrid mode):**

For the Financial Creditor : Mr. Sankarsan Sarkar, Advocate  
Mr. N. Gurumurthy, FCA

For the Corporate Debtor : No representation

**ORDER**

**Rajasekhar V.K., Member (Judicial)**

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the insolvency and Bankruptcy Code, 2016 by Majestic Commercial Private Limited, represented by Mr. Gopal Goenka, authorized by a Board Resolution dated 06 January 2020, seeking to initiate Corporate Insolvency

Resolution Process (“CIRP”) against Akin (India) Private Limited (“Corporate Debtor”).

3. The Corporate Debtor was incorporated on 06 December 1982, having CIN: U24299Wb1982PTC035520, under the Companies Act, 1956. It’s registered office is 128/1/, Hazra Road, Kolkata- 700026. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 21 January 2020 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.61,02,130/- (Rupees Sixty One Lakh Two Thousand One Hundred and Thirty only) along with interest at 9% p.a.

***Submission of learned Counsel appearing for the Financial Creditor***

5. The Financial Creditor, *inter alia*, provides financial accommodation to various interested parties and investment in real estate etc., the Corporate Debtor, *inter alia*, carries on business of trading in Umbrella and other goods.
6. Since the Corporate Debtor was in financial stringency, a short-term loan of Rs.50,00,000/- (Rupees Fifty Lakh only) was given to the Corporate Debtor on 10 August 2016 at an interest rate of 9% p.a. on an oral agreement for a period of 120 days from the date of disbursement.
7. The Corporate Debtor gave a written confirmation along with postdated cheques. The Corporate Debtor made a payment of Rs.4,23,8633/- (Rupees Four Lakh Twenty-Three Thousand Eight Hundred and Sixty-Three only) till 31 July 2017.
8. Thereafter, despite several reminders, the Corporate Debtor failed to repay the short-term loan. The Corporate Debtor defaulted in payment on 09 December 2016.

9. The Financial Creditor issued a demand notice on 07 January 2019, but the Corporate Debtor failed to repay the loan amount.
10. The Financial Creditor filed the Board Resolution dated 16 July 2016 wherein the Board was authorized to grant loans or give guarantee or provide security in respect of loan.
11. The learned Counsel for the Financial Creditor submitted that Inter Corporate Deposit is a Financial Debt and once a default takes place, and debt becomes due and payable, it is considered as default under section 3(12) of the Code. He placed reliance on Narendra Kumar Agarwal and Anr. v. Monotrone Leasing Private Limited and Anr.<sup>1</sup>
12. Corporate Debtor filed its reply on 13 September 2021, wherein it submitted that:
  - a. The present Company Petition has been filed only to extort money from the Corporate Debtor. The Corporate Debtor was a profit making concern as on 31 March 2016 and hence there is no question of the Corporate Debtor facing financial crisis.
  - b. Further, the Financial Creditor had approached the Corporate Debtor in April 2016, with the intent to infuse funds in the business of the Corporate Debtor and after several discussions, the Financial Creditor invested Rs.50,00,000/- (Rupees Fifty Lakh only) as Inter Corporate Deposit for a period of 120 days with the Corporate Debtor. The said deposit was to be invested in the business of the Corporate Debtor and in return the Corporate Debtor was to pay interest at 9% p.a. till the time Rs.50,00,000/- was rolled in the business of the Corporate Debtor.

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<sup>1</sup> Company Appeal (AT) (Ins.) No. 549 of 2020, decided on 19 January 2021

- c.* The Corporate Debtor paid the interest @ 9% p.a. and also filed TDS till the time the interest was paid to the Financial Creditor i.e. July 2017. The Financial Creditor demanded more interest and hence, disputes arose between the Financial Creditor and the Corporate Debtor and the Corporate Debtor stopped paying the interest.
- d.* The Financial Creditor demanded the repayment of the Inter Corporate Deposit which was invested for a period of 120 days and it is submitted that after the expiry of 120 days, the Financial Creditor had agreed to deposit the sum for a period of ten years from the date of expiry of 120 days.
- e.* The Corporate Debtor had issued a cheque of Rs.50,00,000/- (Rupees Fifty Lakh only) as a security deposit with the limited purpose in the event the Corporate Debtor failed to invest the said sum in its business. But the cheque was deposited by the Financial Creditor which was dishonoured for manipulation of date by the Financial Creditor. The dispute is under adjudication in the Court of the Metropolitan Magistrate at Kolkata.

### ***Analysis and Findings***

- 13. Heard the learned Counsel appearing for the Financial Creditor and perused the record.
- 14. Before going into the merits of the case, the document annexed to the Petition which is considered as acknowledgement of the short term loan given by the Financial Creditor reflects that the “inter-corporate deposit” was given for 120 days from 10 August 2016. Now, if we calculate the period of 120 days from 10 August 2016, it ends on 08 December 2016, which means that the loan was to be returned by 08 December 2016. The Financial Creditor has itself stated that the date of default is 09 December 2016.

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15. Further, there is no document that has been relied on to extend the period of loan or other terms and conditions. The Financial Creditor did not demand the inter-corporate deposit after the expiry of 120 days but kept silent as long as Corporate Debtor paid the interest i.e. till July 2017 and it is only after July 2017, that the Financial Creditor started taking steps to recover the inter-corporate deposit.
16. The question whether an Inter Corporate Deposit is a Financial Debt or not is a well settled question but then documents to show that there has been an Inter Corporate Deposit, the terms and conditions of the such Inter Corporate Deposit should also be filed to substantiate such claim.
17. It is a well settled principle that this Code is not a Code for recovery of dues but for revival of the Corporate Debtor. The conduct of the Financial Creditor is clear that the Financial Creditor wants to recover its loan and is using the Insolvency and Bankruptcy Code, 2016 to do so.
18. In view of the above circumstances, **CP (IB) No. 389/KB/2020** is dismissed.
19. However, the dismissal of the present petition shall not stand in the way of the petitioner pursuing its remedies under any other law.
20. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ  
JOSHI**

**Balraj Joshi**

**Member (Technical)**

This order is pronounced on 29<sup>th</sup> day of June 2022.

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**Rajasekhar V K**

**Rajasekhar V.K.**

**Member (Judicial)**

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