

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH**

**Company Petition (IB)No.25/ALD/2020**

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

**IN THE MATTER OF**

**M/S KALDONIA JUTE AND FIBRES PVT. LTD.**

*.....Applicant/Financial Creditor*

**VERSUS**

**M/S AXIS NIRMAN AND INDUSTRIES LIMITED**

*.....Respondent/Corporate Debtor*

**ORDER DELIVERED ON: 27.08.2021**

**CORAM:**

**Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial**

**For the Applicant/ Financial Creditor: Mr. Amit Khanna, Adv Alongwith \**  
**Mr. Somesh Khare Adv**

**For the Respondent/ Corporate Debtor: Mr. Anil Kumar, PCS**

**Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)**

**Order**

1. The present petition has been filed by the financial creditor (herein referred as "petitioner" i.e. "M/s Kaledonia Jute And Fibres Pvt. Ltd" under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate debtor i.e "M/s Axis Nirman and Industries Limited." on grounds of its inability to liquidate its financial debt.



2. As per averments made in the petition, the applicant has sold goods to the respondent but due to the financial loss in the business, the corporate debtor could not made payment of the amount of dues for the goods sold and further requested the applicant to convert the amount of the pending dues into loan



amount and also requested to fix equal monthly instalment for the same which the corporate debtor again failed to pay.

3. It was contended by counsel for applicant that the total amount of default outstanding and as claimed by the financial creditor is Rs.32,00,000/-along with interest @18% and to proof the existence of the debt the petitioner has attached the ledger as well as the balance confirmation as on 01.04.2018 with the present application.
4. The corporate Debtor has been duly served and the Learned PCS, Mr Anil Kumar appeared on behalf of the corporate debtor and it is the matter of record that vide order adted 04.12.2020, the PCS appearing for the corporate debtor has stated that the liability is admitted on behalf of the respondent. Thus arguments were heard and order was reserved.
5. Further it was brought to the notice that the Hon'ble Supreme Court in Civil Appeal No. 3735 of 2020, in the matter related to same parties has ordered that the proceedings for winding up pending before the company Court (Allahabad High Court) against the respondent to be transferred to NCLT, Allahabad and to be taken up alongwith the application under Sec 7 IBC.

The factual background of the winding up petition is that one M/s Girdhar Trading Company , filed a petition as Company Petition No. 24 of 2015 before the Hon'ble High Court of Allahabad u/s 433 of the companies Act, 1956 for the winding up of the Respondent company on the Ground that the company was unable to pay its debts in which the Court issued notice to the Respondent but the Respondent failed to appear before the company Court.

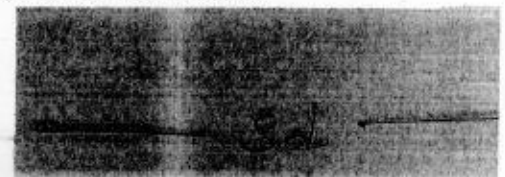


7. Thereafter, the Company Court passed an order dated 10.03.2016 directing the winding up of the 1<sup>st</sup> respondent Company on the ground that the Company has been unable to pay its debts and that it was just and equitable to wind up the respondent Company and appointed the official liquidator attached to the High Court of Allahabad as the Liquidator and directed him to take over the assets and books of accounts of the Company. Thereafter, the Respondent company "*herein referred to as corporate debtor*" filed an application for recalling the order of winding up dated 10.03.2016 and in order to prove their bonafides paid the entire amount due to the creditor along with costs. Therefore, the creditor had no objection to recall the order of winding up but the official liquidator opposed the application for recall on the ground that the respondent company owed money to various creditors to the tune of Rs. 27 Crores and that unless the said amount is paid, the order of winding up cannot be recalled. The Official Liquidator also submitted that he had already taken over charge of the assets of the Company.

8. Further, the Company Court has passed an order on 22.08.2016 keeping the winding up order dated 10.03.2016 in abeyance however, the company court directed the official liquidator to continue to be in the custody of the asset of the company. Meanwhile the creditor "*herein referred to as an applicant*"

filed a petition u/s 7 of IBC stating that the claim of the applicant was due and respondent i.e corporate debtor was liable to pay a sum of Rs. 32 lacs and despite repeated demand the Respondent failed to pay the said amount.

Thereafter, the applicant moved an application in Civil Miscellaneous Application No.23 of 2020 before the Company Court (high Court) seeking a transfer of the winding up petition to the NCLT, Allahabad which was rejected by the Company Court by a cryptic order dated 24.02.2020, on the sole ground that the requirement of Rule 24 had already been complied with and that a



winding up order had already been passed. Thus, the financial creditor moved to Hon'ble Apex Court against the order of refusal to transfer the winding up proceeding before the NCLT, Allahabad to which the Hon'ble Apex Court held that the proceedings for winding up pending before company Court (Allahabad High court) to be transferred to NCLT, Allahabad and to be taken up alongwith section 7 IBC Petition.

10. Before proceeding with the applications, I would like to refer to the judgment of Hon'ble Supreme Court "*A. Navinchandra Steels Private Limited v. SREI Equipment Finance Limited & Ors.* 2021 SCC Online SC 149" in which it was observed that :

16. ....it is important to restate a few fundamentals. Given the object of the IBC as delineated in paras 25 to 28 of *Swiss Ribbons (P) Ltd. v. Union of India* [*Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17] [*Swiss Ribbons*"], it is clear that the IBC is a special statute dealing with revival of companies that are in the red, winding up only being resorted to in case all attempts of revival fail. Vis-à-vis the Companies Act, which is a general statute dealing with companies, including companies that are in the red, the IBC is not only a special statute which must prevail in the event of conflict, but has a non obstante clause contained in Section 238, which makes it even clearer that in case of conflict, the provisions of the IBC will prevail.



A conspectus of the aforesaid authorities would show that a petition either under Section 7 or Section 9 IBC is an independent proceeding which is unaffected by winding-up proceedings that may be filed qua the same company. Given the object sought to be achieved by the IBC, it is clear that only where a company in winding up is near corporate death that no transfer of the winding-up proceeding would then take place to NCLT to be tried as a proceeding under the IBC. Short of an irresistible conclusion that corporate death is inevitable, every effort should be made to resuscitate the corporate debtor in the larger public interest, which includes not only the workmen of the corporate debtor, but also its creditors and the goods it produces in the

*larger interest of the economy of the country. It is, thus, not possible to accede to the argument on behalf of the appellant that given Section 446 of the Companies Act, 1956/Section 279 of the Companies Act, 2013, once a winding-up petition is admitted, the winding-up petition should trump any subsequent attempt at revival of the company through a Section 7 or Section 9 petition filed under the IBC.*

*What is clear by this Section is that a compromise or arrangement can also be entered into in an IBC proceeding if liquidation is ordered. However, what is of importance is that under the Companies Act, it is only winding up that can be ordered, whereas under the IBC, the primary emphasis is on revival of the corporate debtor through infusion of a new management.*

11. Referring to the above, this Adjudicating Authority is of the view that Sec 7 IBC is an independent proceedings and it will be in the interest of justice that petition under Sec 7 IBC to be decided as there can be chances for revival of the company and further insolvency proceedings have an overriding effect over winding up proceedings under Companies Act, thus the petition under Sec 7 IBC is accordingly dealt with.

12. Thus the mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

i.) Whether there is duly established financial debt.

ii.) Whether there is default in payment by the corporate debtor.

iii.) Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.



13. Referring to the decision of Hon'ble Supreme court in Innoventive Industries Ltd. v. ICICI Bank, (2017)205 Comp Cas 57(SC) it was held that

*“..... The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.....”*

14. Based on the submissions made by the Applicant and the documents produced and placed on record before this Adjudicating Authority, the Bench is of the opinion that there is a 'default' on the part of the Corporate Debtor by not fulfilling the debt owed to the Financial creditor, the application filed on behalf of financial creditor/Applicant under Section 7 of IBC is found complete. The present petition being filed on 18.12.2019 found well within limitation as the copy of statement of account is of 01.04.2018 reflects the amount credited to the corporate debtor.

15. Therefore, in light of the aforesaid provisions, this Adjudicating Authority is of the considered view that the total amount claimed in default is of Rs. 32,00,000/- which is more than Rs One Lakh to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor. The increase in threshold limit to initiate CIRP from Rs. 1 lakh to 1 Crore vide notification of the MCA dated March 24, 2020 does not in any way apply to the present matter as the application was pending adjudication much before the notification came into force.

16. Considering the facts and circumstances of the case, this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:



(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

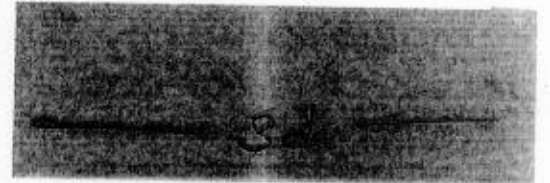
(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(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 (54 of 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.



Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.]



2) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]*

*(3) The provisions of sub-section (1) shall not apply to —*

*(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*

*(b) a surety in a contract of guarantee to a corporate debtor.*

*(4) The order of moratorium shall have effect from the date of such order*

*and till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*





17. The Financial Creditor has proposed the name of *Mr. Suresh Chandra Pattanayak*, Registration Number *IBBI/IPA-002/IP-N00759/2018-19/12384* for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

18. The registry is directed to communicate this order to Financial Creditor, as well as to Corporate Debtor and to IRP.

19. Urgent Photostat certified copies of this order, if applied for, be supplied to Parties upon compliance of requisite formalities.



DO. List on 01.10.2021 for the filing of the progress report.



**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**FREE OF COST**

**Date: 27.08.2021**

Swati Gupta  
(LRA)

Compared by Me  
Mahesh Sahai  
27/8/2021

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

*P. P. PANDEY*  
P. P. PANDEY  
ASSISTANT REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD-U.P.