

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH- III**

IB-761/ND/2021

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

IN THE MATTER OF

OM Telecom Logistics Private Limited

Having Registered Address:

130, Transport Centre, Ring Road,
Punjabi Bagh, New Delhi-110035

...Financial Creditor/Applicant

Versus

M/s MKY Constructions Private Limited

(Formerly known as Action Bridgegap Constructions Private Limited)

Registered Address:

GN-12, 2nd Floor, Shivaji Enclave,
NEW DELHI – 110027

...Corporate Debtor/Respondent

Coram:

Shri Bachu Venkat Balaram Das
Hon'ble Member (Judicial)

Shri Narender Kumar Bhola
Hon'ble Member (Technical)

Delivered on: 13.05.2022

Appearances:

Financial Creditor : Adv. Arun Aggarwal

Corporate Debtor :

ORDER

Per: Bachu Venkat Balaram Das, Member (Technical)

1. This is an application filed by the Financial Creditors namely, M/s Om Telecom Logistics Pvt. Ltd. against the corporate debtor namely, M/s MKY Constructions Pvt. Ltd. under section 7 of the IBC, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor
2. The transaction leading to filing of application under consideration is as follows:
 - a. It is the case of the Financial Creditor that in the month of September/October 2015, Corporate Debtor Company namely M/s MKY CONSTRUCTIONS PRIVATE LIMITED (Formerly known as Action Bridgegap Constructions Private Limited) approached through its Managing

Director/ representative to the Financial Creditor and requested to provide them a loan against the security of the assets of the company for the business purposes and personal guarantee of directors. The Corporate Debtor borrowed a corporate loan from the financial Creditor for the business purposes and a loan agreement dated 01.10.2015 was executed between Action Bridgegap Constructions Private Limited (Corporate Debtor was previously known as at the relevant time) and the Financial Creditor.

- b. It is submitted that on 01.10.2015, the Corporate Debtor had given a request letter with reference to their meeting at the office Financial for inter Corporate loan for Rs. 1,00,00,000/-. As per the terms of the loan agreement, the financial creditor provided a business loan a sum of Rs. 1,00,00,000/- (Rupees One Crore Only) to the Corporate Debtor for 3 months which carried an interest @ 15% per annum as per the terms & conditions mentioned in loan agreement. It is stated that in order to secure the repayment of the loan amount with interest,

the Corporate Debtor put their assets as security along with personal guarantees of the directors.

- c. It is further submitted that the resolution passed in the meeting of the board of directors on 01.10.2015 at the registered office of the Corporate Debtor and it was resolved that the Corporate Debtor authorised Mr. Tarun Aggarwal, Managing Director of the company do avail financial assistance facilities and borrow by way of Inter Corporate Deposit to the extent of Rs. 1,00,00,000/- for a period of 3 months from the Financial Creditor. It is stated that the Financial creditor has transferred the loan amounting to Rs. 1,00,00,000/- in the account of the Corporate Debtor vide RTGS no. BRN-RTGS-UTIBHI5274055220-ACTIONBRIDGEGA- dated 01.10.2015 through Axis Bank, Punjabi Bagh as per the loan agreement dated 01.10.2015.
- d. It is averred that the said loan agreement was extended from time to time vide various request letters dated 24.12.2015, 23.03.2016 and 20.09.2016 of the Corporate Debtor for extension of Inter Corporate Loan for Rs. 1,00,00,000/- for further period (s) up to 25.03.2016,

25.09.2016 and 25.06.2017 respectively on terms and condition as agreed. It is stated that the Corporate Debtor paid the agreed interest amount of Rs. 3,75,000/- on quarterly basis to the Financial Creditor. The Corporate Debtor has paid interest amount Rs. 37,50,000/- in total for the period 01.10.2015 to 31.03.2018 to the Financial Creditor. It is further stated that after 31.03.2018, the Corporate Debtor stopped paying interest amount to the Financial Creditor citing various reasons, thereafter, at the instance of the Corporate Debtor, the time period of the repayment of the loan amount was extended several times.

- e. It is further averred that corporate debtor gave the cheque bearing no. "001269" to financial creditor amounting to Rs. 1,00,00,000/- in order to realize the outstanding amount towards the corporate debtor. However, on presenting the cheque, bank returned the cheque with endorsement "Funds Insufficient". It is stated that the financial creditor took legal action under Negotiable instruments Act and also sent demand notice dated 01.10.2021 for demanding outstanding demand of



Rs. 1,52,50,000/- (Principal Amount-Rs.1,00,00,000/- and interest @ 15%-Rs.52,50,000). Hence, the present petition.

3. The Corporate Debtor has been provided with several opportunities for filing the vakalatnama and reply, however, there is no reply filed, therefore, the Corporate Debtor is set ex-parte vide order dated 27.04.2022, the relevant extract of the order is as follows:

“Counsel for the Financial Creditor is present. No one is present on behalf of the Corporate Debtor. The Counsel has taken us through the petition which seeks the initiation of the insolvency process against the Corporate Debtor under Section 7 of IBC, 2016. The Counsel has taken us through the proof of service of present petition upon the Corporate Debtor.

The present petition has been duly served on the Corporate Debtor through e-Mail as well as Courier and the delivery report given indicates that the present petition has been successfully delivered to the Corporate Debtor on 13.12.2021. E-mail has also been sent on

11.12.2021 and the same is stated to be not bounced back till date.

In view of above, the service of the present petition on the Corporate Debtor is held sufficient for all future proceedings. Accordingly, the CD is set Ex-Parte in the matter.”

4. During the final arguments, the Counsel on behalf of the Financial Creditor submitted that the financial creditor has provided the corporate loan and same is evident from the documents annexed with the petition and the Corporate Debtor has failed to pay the said loan within stipulated period extended from time to time, hence, the present case is fit for admission.
5. This Adjudicating Authority has perused the petition and oral submission advanced by the counsel on behalf of Financial Creditor. The evidence placed by the financial creditor is sufficient to ascertain the existence of a default on the part of the Corporate Debtor as the Corporate Debtor has failed to honour the terms of the agreement, further, the Cheque provided by the corporate debtor towards principal amount also bounced. The Financial Creditor has fulfilled



all the requirements of law. Accordingly, this Adjudicating Authority is inclined to **admit** this application and initiate the process of CIRP of the Corporate Debtor. The financial Creditor has also proposed the name of the Resolution Professional for appointment of IRP.

6. Mr. Reetesh Kumar Agarwal having Regn. No.- IBBI/IPA-001/IP-P00878/2017-18/11475 (Email ID - carkagarwal@gmail.com) is hereby appointed as IRP as has been proposed by the Financial Creditor. There is no disciplinary proceeding pending against the IRP as evident from the Form-2 dated 04.12.2021. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.
7. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

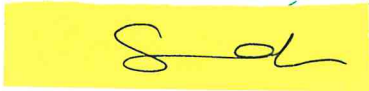
- a. The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor's 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.
8. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1)

of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

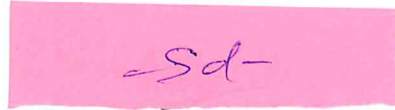
9. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.
10. The financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this order as per the provisions of IBC, 2016.
11. The financial Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect.
12. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.



13. The order is pronounced by this Adjudicating Authority
through Virtual Hearing



(BACHU VENKAT BALARAM DAS) (NARENDER KUMAR BHOLA)
MEMBER (JUDICIAL)



MEMBER (TECHNICAL)