



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH**  
**(Exercising powers of Adjudicating Authority under**  
**the Insolvency and Bankruptcy Code, 2016)**  
**[through Physical hearing/VC Mode (Hybrid)]**

**CP (IB) No.92/BB/2023**  
U/s. 7 of the IBC, 2016  
R/w Rule 4 of the IBC (AAA) Rules, 2016

**IN THE MATTER OF:**

**National Skill Development Corporation**

Having its registered office at:  
301, 3<sup>rd</sup> Floor West Wing Worldmark 1,  
Asset 11, Aerocity  
New Delhi 110037

...Financial Creditor/Petitioner

**VERSUS**

**Ants Consulting & Services Private Limited**

Ants Skill Varsity, No.37/1, Yashas Complex, 1 Floor,  
Singasandra, Begur Hobli, Hosur Main Road,  
Bangalore – 560068,  
Karnataka

... Respondent/Corporate Debtor

**Order delivered on: 10/01/2024**

**Coram:** Hon'ble Mr. K Biswal, Member (Judicial)

Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri. Samkeerth Vittal with Ms Nandhini S

For the Respondent : Shri Anupam Agrwal

**ORDER****Per: Manoj Kumar Dubey, Member (Technical)**

1. The present petition is filed, under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 4 of the I&B (Application to Adjudicating Authority) Rules 2016, by National Skill Development Corporation (for brevity 'Financial Creditors/Petitioners') *inter alia* seeking to initiate Corporate Insolvency Resolution Process in respect of Ants Consulting & Services Private Limited (hereinafter referred as 'Corporate Debtor/Respondent').
2. The Corporate Debtor, namely, Ants Consulting & Services Private Limited is a Company incorporated on 11/06/2010 with CIN: U74140KA2919PTC054030, having its registered office at Ants Skill Varsity, No.37/1, Yashas Complex, 1Floor, Sringasandra, Begur Hobli, Hosur Main, Road Bangalore 560068 which falls within the territorial jurisdiction of this Adjudicating Authority.. The Authorised Share Capital of the Respondent/Corporate Debtor is Rs.15000000/- and the Paid-Up Share Capital is Rs. 13018000/-.
3. The facts of the case are discussed below:
  - i. The present Petition is filed by the Financial Creditor vide CP (IB ) No. 92/BB/2023, dated 04/07/2022 against the Corporate Debtor in respect of the default amount of Rs 2,21,30,589 (Rs Two Crore Twenty One Lakh Thirty Thousand Five Hundred Eighty Nine Only ) as on 12/11/2021 as per part IV of Form No. 1.
  - ii. It is submitted that the Corporate Debtor and the Financial Creditor entered into a Loan agreement as on 17/10/2011. That in pursuance to the said Loan Agreement, the Financial Creditor has agreed to provide financial assistance to the Corporate Debtor to be utilised for implementation of the Project and sanction loan for an amount of Rs 3,00,00,000/- ( Rupees Three Crore Only) with loan tenure of ten years.
  - iii. That in pursuance of the Loan Agreement, the following documents were executed by the Financial Creditor and the Corporate Debtor.
    - a. Irrevocable Power of Attorney Dated 17/10/2011
    - b. Deed of Hypothecation dated 17/10/2011




- c. Non-disposal Undertaking dated 17/10/2011 in respect of 51% shareholding of the Corporate Debtor issued by Mr Rajesh Rathod and Ms Runi Sikdar
  - d. Personal Guarantee dated 17/10/2011 issued by Mr Rajesh Rathod in favour of Financial Creditor.
  - e. Personal Guarantee dated 17/10/2011 issued by Ms Rumi Sikdar in favour of Financial Creditor.
  - f. Share Pledge Agreement dated 06/01/2012 executed by Mrs. Rumi Sikdar in favour of Financial Creditor in respect of her shareholding in the Corporate Debtor.
  - g. Share Pledge Agreement dated 26/03/2015 executed Mr Rajesh Rathod in favour of Financial Creditor in respect of her shareholding in the Corporate Debtor.
- iv. It is submitted that the Financial Creditor has disbursed the following sums to the Corporate Debtor as per the terms of the Loan Agreement:

Sl No	Date	Amount (In INR)
1.	17/02/2012	73,05,000/-
2.	14/09/2012	63,24,000/-
3.	07/04/2015	13,71,000/-
4.	05/12/2016	1,50,00,000/-
	TOTAL	3,00,00,000/-

- v. It is further submitted that the last set of payments were received on 28/02/2020 being an amount of Rs 1,01,936/- (Rupees One Lakh One Thousand Nine Hundred and Thirty Six Only) and Rs 98,064/- (Rupees Ninety Eight Thousand and Sixty Four Only). That outstanding debt owed to the Financial Creditor has been acknowledged by the Corporate Debtor in its Financial Statements for Financial year 2014-15, 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 of Corporate Debtor is annexed for perusal.




- vi. That as on 31/03/2022, the Corporate Debtor owes the following amount to the Financial Creditor as per the Loan Agreement:
- Cumulative principal Amount of Rs 1,87,50,594/- (Rupees One Crore Eighty Seven Lakh Fifty Thousand Five Hundred Four Only)
  - Interest of Rs 27,14,552/- (Rupees Twenty Seven Lakhs Fourteen Thousand Five Hundred Fifty Two Only)
  - Default interest of Rs 6,65,564/- (Rupees Six Lakh Sixty Five Thousand Five Hundred Sixty Four Only) (at the contractually agreed rate of 2% per annum)
- vii. That as per the said Loan Agreement and arrangement between the parties after the expiration of moratorium period of 3 years for the principal amount only, the Corporate Debtor had to repay the Loan in quarterly principal and interest instalments. The Corporate Debtor was liable to pay quarterly principal instalment of Rs 10,71,428.57 (Rupees Ten Lakhs Seventy One Thousand Four Hundred Twenty Eight and Paise Fifty Seven Only) along with interest instalment.
- viii. The Corporate Debtor defaulted in making the repayment of the dues under the Loan Agreement. Hence, The Financial Creditor issued a loan recall notice dated 21/09/2021 whereby it called upon the Corporate Debtor to repay within a period of 45 days the entire due for a sum of Rs 2,09,95,406/- as on 30/06/2021 along with further interest and default interest as on the date. The said notice was delivered on 28/09/2021 and hence the stipulated period of 45 days expired on 12/11/2021. However, no payment was received by the Financial Creditor from the Corporate Debtor and hence, default has occurred.
4. The respondent through the statement of objections, filed on 15/09/2023 vide Diary No. 4819 has inter alia contended as under:
- That as per the General Terms of Assistance as specified in Schedule II of the Loan Agreement dated 17/10/2011, which has been attached by the Petitioner as Annexure A-4 at Page No.69 of the Petition, it was agreed that the Petitioner would extend the mentioned sum of Rs 3,00,000,000/- (Rupees Three Crores Only) in two distinct disbursements. However, the Petitioner has not adhered to the pre-



agreed terms of the disbursements. Instead of following the stipulated two disbursements structure, the Petitioner has chosen to release only partial amount in favour of the Respondent. That by unilaterally deciding to release only a partial amount of the loan and not adhering to the agreed disbursement structure, the Petitioner has materially violated the terms of the Loan Agreement which has in turn caused huge losses to the Respondent, resulting in the Respondents defaulting in its payment schedules.

- ii. Furthermore, in accordance with the Loan Disbursement Schedule outlined in Schedule II of the aforementioned Loan Agreement annexed as Annexure A-4 at Page No.70 of the Petition, a well-defined timeline for disbursement was agreed upon by the Parties. It was explicitly agreed that the Petitioner would initiate the first disbursement within the timeframe of October-December in FY 2011-12, and subsequently, the second disbursement would be effectuated within corresponding timeframe of October- December 2012-13. However, the Petitioner did not fulfil their obligation to release the stipulated sum of Rs 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) on the initially agreed-upon date. In a departure from the agreed timeline, the aforementioned amount was disbursed in a fragmented manner on multiple occasions following the lapse of the stipulated timeframe.
- iii. It was further submitted that, as per the Repayment Schedule, it is clearly mentioned that there shall be moratorium of 3 years on the repayment of the Principal amount starting from the date of first disbursement and the date of disbursement shall be the date on which the cheque of the first disbursement shall commence three years after the complete deposit of the first tranche, totalling 1,50,00,000 (Rupees One Crore Fifty Lakhs only). However, the Petitioner deviated from this plan by initiating principal repayment three years after the initial payment of Rs.73,05,000(Rupees Seventy Three Lakhs Five Thousand Only) on 17/02/2012, rather than adhering to the agreed upon dated of 07.04.2015 when full transaction of Rs, 1,50,00,000 was disbursed. This premature adjustment to the principal repayment schedule,



advancing it to 2015 instead of intended 2018, significantly disrupted the Respondents entire business timeline.

- iv. The Respondent herein further contented that that Due to COVID 19 outbreak, the business of the Respondent took a big setback and the Respondent was not able to repay the balance amount on time and requested for rescheduling of the payments dates.
5. That Pursuant to the order dated 17/10/2023, the Petitioner has filed rejoinder vide diary No.5376 dated 19/10/2023 and the contention of the Petitioner is as under:
- i. The entire Loan Amount of R 3,00,00,000 was promptly disbursed by the Financial Creditor and has produced certificate from the State bank of India certifying that an amount of Rs 3,00,00,000 has been disbursed to the Corporate Debtor herein, which is further reflected in their on Balance confirmation dated 20/06/2021 addressed to the Corporate Debtor.
  - ii. The pre-requisite of the Loan disbursement was to fulfil the conditions set out under Schedule I of the Loan Agreement i.e “Submission of Form 2 to the ROC for capital infusion certificate” which was delayed by the corporate debtor and hence as and when the Corporate debtor met the pre disbursement conditions, the loan were disbursed.
  - iii. The Respondent has not adhered to the pre-disbursement condition in a time bound manner and has complied with the conditions of promoter contribution in a belated and phased manner. The Petitioner has disbursed the amount as and when the Respondent has met with the pre-disbursement conditions.
  - iv. The Corporate Debtor’s objections that the three year moratorium starts from 17/04/2015 is completely untenable, in as much the agreement clearly stated that moratorium shall start from the date of 17/02/2012, which is the date of first disbursement.
  - v. It is submitted that, the Respondent has made part payments of Rs 25,00,000/- between July 2022 and September 2022 and Rs 5,00,000/- in June 2023. It is submitted that the said part payments does not satisfy the total outstanding as on the date of filing of the

petition. As such, the Respondent continue to be in default of payments due to the petitioner.

vi. The Petitioner further contends that even owing to the COVID 19 outbreak, the Financial Creditor herein gave ample time to the Corporate Debtor to make further payments and satisfy the dues. However, the Respondent failed to do so. Accordingly the Petitioner was left with no option but to issue a loan recall notice dated 21/09/2021.

6. Heard Counsel for the Petitioner and, learned Counsel for the Respondent and perused the pleadings on record.
7. It is seen as per the Article V, clause 5.1 of the Loan Agreement (i) that *“if the borrower fails to pay any monies payable as per schedule II”* AND (ii) *“If the Borrower fails, defaults, omits or neglects to observe or perform or commits or allows to be committed a breach of any of the terms, conditions, provisions or stipulations of this Agreement”* .

Further as per clause 5.3 of the Loan Agreement *“on the happening of any Events of Default, The Lender shall give a written notice to Borrower to rectify the default within a period of 45 days. In case the default is not rectified within a period of 45 days then the Lender shall have the right, by a notice in writing to the borrower, without prejudice to the rights and claims under this Agreement to terminate this Agreement and/or declare the principal of and all interest forthwith and/or the security created in terms of this Agreement and/or the other Facility Agreements to become enforceable...”*

Moreover, it is observed that the Balance Confirmation as on dated 30/06/2021 by the Corporate Debtor to the financial creditor is a clear acknowledgement of the existing loan and default of payment by the Corporate Debtor. Since the Corporate Debtor defaulted in payments of its dues, the Financial Creditor issued Loan Recall Notices on 21/09/2021 and called upon the Corporate Debtor to repay the entire outstanding dues under the Loan Agreement(s). It is appropriate to refer to Section 5(8) of the Code which defines a ‘financial debt’ as a debt along with interest which is disbursed (i) against the consideration for the time value of money, and (ii) includes money borrowed against the payment of interest... etc. In view of the foregoing discussion, the ingredient of ‘debt’ has been satisfied as required under the Code.



8. The argument of the Respondent that there was irregular disbursement pattern and not adhering to the Loan Agreement, is not tenable in view of the explanation given by the Petitioner regarding the condition of infusion of funds not been fulfilled by the Corporate Debtor..
9. Further with regard to the contention of the Respondent that Repayment of the principal amount should be computed on 07/04/2015 rather on 07/02/2012, it is pertinent to refer Clause 3 of Schedule II of the Loan Agreement(s) which provides for Repayment/Payment, and the relevant portion of which is reproduced as under: *“The total amount of financial assistance will be repayable over a period of 10 years including the moratorium of 3 years on the principal amount, starting from the date of first disbursement. There shall be no moratorium on the interest payable. The date of disbursement shall be the date on which the cheque of the first disbursement is handed over to the borrower.”* Therefore, the date of disbursement calculated shall be such date on which the first cheque i.e. on 17/02/2012, was issued by the Financial Creditor and not the date on which the full transaction of Rs 1,50,00,000/- was completed.
10. As per the Loan Agreement dated 17/10/2011, loan amount claimed to be in default was repayable over a period of 10 years. Accordingly, a loan recall notice was raised on 21/09/2021 to the Corporate Debtor to repay the Loan amount due along with further interest within a period of 45 days. The stipulated time period of 45 days expired on 12/11/2021 and thus, the Company Petition filed on 12/12/2022, is well within limitation. Thus there is a debt exceeding Rs 1,00,00,000/- and there is a default with regard to the same.
11. Accordingly, this Adjudicating Authority is of the considered opinion that there is no reason to deny the Petition filed under section 7 by the Financial Creditor to initiate CIRP against the Corporate Debtor. Therefore, the instant Company Petition bearing CP (IB) No. 92/BB/2023 is admitted under Section 7 of IBC and moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14 of the Code, the following prohibitions are imposed, which must be followed by all and sundry:



- (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
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (d) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (e) the recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) it is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
- (g) the provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- (h) the order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 of the Code as the case may be;

12. In Part-III of Form No.1, Shri Prashant Jain bearing Registration No. IBBI/IPA-001/IP-P01368/2018-19/12131 has been proposed as Interim Resolution Professional (IRP). Form No.2 Written Communication by the IRP has been filed along with the C.P are found at Page Nos.45 of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Shri Prashant Jain and there is nothing adverse against him. In view of the above, we appoint Shri Prashant Jain bearing Registration No. IBBI/IPA-001/IP-P01368/2018-19/12131, having registered address at Aa501, Shanti Heights, Plot No. 2,3,9B/10, Sector 11, Koparkharine Thane, Navi Mumabi, Maharashtra 400709 as the Interim Resolution Professional. The IRP is



directed to take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

13. The Financial Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
14. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.
15. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd-

**(MANOJ KUMAR DUBEY)**  
**MEMBER (TECHNICAL)**

-Sd-

**(K. BISWAL)**  
**MEMBER (JUDICIAL)**