

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

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

**IN THE MATTER OF:**

**Aditya Birla Finance Limited**  
(CIN: U65990GJ1991PLC064603) ... Applicant/ Financial Creditor.

Verses

**RKDS Exports Private Limited**  
(CIN: U51909WB2007PTC120815) ... Respondent/ Corporate Debtor.

Date of Hearing: November 06, 2023.

Date of Pronouncement: November 10, 2023.

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**  
**SHRI ARVIND DEVANATHAN, MEMBER (TECHNICAL)**

**Appearance:**

**For Applicant: Mr. Rishav Banerjee, Adv., Ms. S. Mazumder, Adv. and Mr. S. Basak, Adv.**

**ORDER**

**PER Arvind Devanathan, Member (Technical):**

1. This Court is congregated through hybrid mode.
2. This instant application is filed under **Section 7 of the Insolvency and Bankruptcy Code, 2016**, for brevity “**I&B Code**” by **Aditya Birla Finance Limited**, hereinafter referred to as **Financial Creditor (Applicant)** against **RKDS Exports Private Limited** hereinafter referred to as **Corporate Debtor (Respondent)** seeking direction from this **Adjudicating Authority** to initiate **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor herein.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

3. Corporate Debtor is a private limited company, incorporated on 04/12/2007, having Nominal Share Capital of Rs. 50 Lakh and Paid-up Share Capital of Rs. 50 Lakh.
4. It is claimed that amount of default made by the Corporate Debtor is of Rs. 16,41,19,344.78/- and the Date of Default is claimed as August 09, 2022. It is further claimed that Rs. 17,08,41,279/- is total amount of debt granted to the Corporate Debtor and the debt was disbursed on October 04, 2017; June 22, 2020; June 30, 2020; July 27, 2020; September 05, 2020; September 30, 2020 and January 28, 2022.
5. **Brief Facts of the Case:**
  - 5.1. **Aditya Birla Finance Limited (Financial Creditor)** has made financial accommodation to **M/s. Maa Durga Hardware Stores (borrower)** and **RKDS Exports Pvt. Ltd. (co-borrower)**.
  - 5.2. Initially the Financial Creditor has sanctioned a loan of Rs. 3 Crore to the borrower and the credit facility was enhanced to Rs. 5 Crore. Thereafter, on an application made by the borrower, a Demand Loan Agreement dated 18/09/2017 for working capital amounting to Rs. 2 Crore was executed between the borrower and the Financial Creditor. Thereafter, *vide* another loan agreement dated 18/09/2017 the existing loan credit facilities was enhanced to Rs. 6 Crore. In addition to the this, a fresh term loan facility was also offered to the tune of Rs. 5 Crore.
  - 5.3. In the meantime, on a further request the Corporate Debtor herein joined the borrower as a co-borrower to avail loan facilities from the Financial Creditor and the same was sanctioned by way of sanction letter dated 04/02/2019. In furtherance to the said sanctioned loan an addendum loan agreement dated 21/02/2019 was also executed between the borrowers, i.e., the Corporate Debtor and Maa Durga Hardware Stores and the Financial Creditor for an amount of Rs. 2.46 Crore which was sanctioned and

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

disbursed under the Emergency Credit Line Guarantee Scheme. Further a loan agreement dated 27/01/2022 executed between the borrowers and the Financial Creditor was made for further Term Loan Facility of Rs. 1 Crore.

- 5.4.** Additionally pursuant to the request of the borrowers, Financial Creditor extended the benefit of moratorium period on account of COVID-19 pandemic with effect from 01/03/2020 to 31/08/2023. The said moratorium was extended to the borrowers under a separate Loan Account Number 80002897 for a sum of Rs. 12,41,279/-.
- 5.5.** As per the books of accounts maintained by the Financial Creditor, there was a total outstanding balance of Rs. 16,41,19,344/- apart from prepayment charges and TDS outstanding on all the loan accounts all put together stood at Rs. 17,08,41,279/-. The Applicant has supplied the calculation of loan amount at page 12 in the application as under:

<b>S. No.</b>	<b>Loan Account No.</b>	<b>Loan Amount (INR)</b>
1.	MINACCS0153601	6,00,00,000/-
2.	12006301365	50,00,000/-
3.	80000955	5,00,00,000/-
4.	80003412	2,46,00,000/-
5.	12006301357	2,00,00,000/-
6.	80002897	12,41,279/-
7.	HCFKO1TER00001001554	1,00,00,000/-
<b>Total</b>		<b>17,08,41,279/-</b>

- 5.6.** Both the borrowers started defaulting their equated monthly instalments and consequently committed breach of the terms of the loan agreements. As the installment of interest and principal of the said loan accounts remained over due over a period of more than 90 days, the said account was declared as **Non-Performing Assets (NPA)** on **04/07/2022**.
- 5.7.** By means of notice dated 30/08/2022 under Section 13(2) of the SARFAESI Act, 2002, the Financial Creditor called upon the borrowers to repay the said sum of Rs.16,41,19,344/-. The above-mentioned amount in default had become due on 04/07/2022, the date of declaration of “NPA”.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

Since the borrowers failed to make any payment, this application has been preferred by the Financial Creditor under section 7 of the IBC for initiating **CIRP** of the Corporate Debtor.

**6. Submissions made by the Ld. Counsel, Shri Rishav Banerjee, Adv. for the Applicant:**

- 6.1.** Ld. Counsel for the applicant took us through various loan agreements made between the borrowers and the Financial Creditor. Ld. Counsel has placed reliance on copies of such entries in a Banker's Book in accordance with Bankers Book of Evidence Act, 1891 to show the loan/credit facility extended along with disbursement dates, which are placed at **pages 418 to 455 of the application (Annexure 'D')**. He also took us through copy of the notice issued under **section 13(2) of the SARFAESI Act** dated 30/08/2022. He submits that notice has been issued and properly served on the Corporate Debtor and proof of such service is annexed as **Annexure 'H'** to the application.
- 6.2.** In view of the above, the Ld. Counsel submits that the petition filed under **Section 7** of the IBC may be admitted and Corporate Insolvency Resolution Process be initiated against the Corporate Debtor.
- 6.3.** Ld. Counsel for the Applicant proposed the name of **Shri Jitendra Lohia, Registration no. IBBI/IPA-001/IP-P00170/2017-2018/10339, Address: 2/7 Sarat Bose Road, 2nd Floor, Vasundhara Building, Near Hindustan Club, Kolkata, West Bengal – 700020, Email ID: [jitulohia@knjainco.com](mailto:jitulohia@knjainco.com)** for the appointment of **Interim Resolution professional**, hereinafter referred to as **"IRP"**.

**7. Analysis and Findings:**

- 7.1.** It is evident from the daily proceedings that none appears for the Corporate Debtor despite service of several notices including paper publications made

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

on 17/09/2023. Therefore, when the matter came up on 19/09/2023, order was passed to set the Corporate Debtor *ex parte*, if the Corporate Debtor does not appear in the matter posted on 06/11/2023. At this juncture, it would be appropriate to go through Rule 110 of the NCLT Rules, 2016, which are reproduced in verbatim as below: -

***“110. Where the respondent, despite effective service of summons or notice on him does not appear before the date fixed for hearing, the Tribunal may proceed to hear the appeal or application or petition ex-parte and pass final order on merits:’***

***“Provided that it is open to the Tribunal to seek the assistance of any counsel as it deems fit in case the matter involves intricate and substantial questions of law having wide ramifications.”***

**7.2.** When the matter came up for hearing on 06/11/2023, none appears for the Corporate Debtor. Therefore, the matter is decided *ex parte* based on the documents produced in the application, affidavit of the financial creditor, apart from oral arguments made. From the records attached to the application, we find that the Corporate Debtor advanced by the Financial Creditor various facilities as detailed in the facts of the case amounting to Rs.16,41,019,344/- and the computation of the default amount is in **Annexure ‘D’** to the application, which is in pages 418 to 455 of the application.

**7.3.** It is also evident that the statement of account has been supplied by the Applicant to show the loan/credit facility extended along with disbursement dates, which are annexed at **pages 418 to 455 to the application (Annexure ‘D’)**. It is also a settled position of law that to establish a **“financial debt”**, the statement of the disbursement of money is essential. In this context, we would refer Section 5(8) of the I&B Code, reproduced verbatim as:

***(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes***

**xxx**

**xxx**

**xxx**

**xxx**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

- 7.4. We are supported by the judgment of the Hon'ble Apex Court in the case of *Anuj Jain v. Axis Bank Limited* reported in (2020) 8 SCC 401: MANU/SC/0228/2020 that:

**“The essentials for financial debt and financial creditor”**

**“43. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become 'financial debt' for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursement against the consideration for time value of money. .... In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of 'disbursement' against 'the consideration for the time value of money' could be forsaken in the manner that any transaction could stand alone to become a financial debt. ...”**

**(Emphasis Added)**

- 7.5. Further, we would rely upon the decision passed by this Tribunal in the matter of *Kesoram Industries Ltd. v. Pratim Bayal, RP of Birla Tyres Ltd.* [I.A. (I.B.C) No. 957/KB/2023 In CP (IB) No. 250/KB/2021] reported in (2023) ibclaw.in 734 NCLT that:

**“6.8. Thus, from the statutory provisions and decisions supra, it is clear that to bring any existence of debt within the ambit of the definition of “Financial Debt”, disbursement of money is sine qua non ...”**

**(Emphasis Added)**

- 7.6. We have perused the Sanction Letters and Loan Agreements executed by the Financial Creditor and the borrower/co-borrower, in this case is Corporate Debtor. It is evident that an Addendum to the loan agreement dated 21/02/2019 was made between the Borrower and Financial Creditor, annexed at Pages 279-280. By virtue of that, the Corporate Debtor (Co-Borrower) has joined the Borrower as Co-Borrower to the loan borrowed by the Borrower in terms of the Agreement.
- 7.7. We have also seen documents relating to declaration of the said loan account as “NPA”. Application has been filed by the duly Authorised

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

Person of the Financial Creditor as could be seen from the copy of the Board Resolution which is in page 456 of the application. Ld. Counsel submits that an amount of Rs.16,41,019.344/- has been defaulted for non-payment by the Corporate Debtor which is far in excess of threshold limit, the condition relating to threshold limit prescribed under IBC has been met. The “NPA” date is 04/07/2022 as could be seen from the record filed along with the application and thus the application has been filed within the time limit prescribed. We are supported by the judgment passed by the Hon’ble Apex Court in *Laxmi Pat Surana vs. Union Bank of India* reported in (2021) 8 SCC 481: MANU/SC/0221/2021, at Para 37; that:

*“37. Ordinarily, upon declaration of the loan account/debt as NPA that date can be reckoned as the date of default to enable the financial creditor to initiate action Under Section 7 of the Code.”*

**(Emphasis Added)**

- 7.8.** Hence, we are of the view that the default has been established clearly by the records placed in the application and the submissions made by the Ld. Counsel for the Financial Creditor supporting his claims.
- 7.9.** We find that the application is complete in all respects. Thus, all the ingredients required for admitting a section 7 petition under the IBC are there in this case and consequently, this application is allowed and the Corporate Debtor is put under Corporate Insolvency Resolution Process.
- 8.** In the light of the facts stated in the application bearing **C.P. (IB) No. 42/KB/2023**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 7 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:
- i.** The Application filed by the **Aditya Birla Finance Limited (Financial Creditor)**, under **Section 7** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

**Process** in respect of **RKDS Exports Private Limited (Corporate Debtor)**.

- ii.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
  - 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 any of its asset 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 Securitization 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 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 license, permit, registration, quota, concession, clearances 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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*
- iv.** 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.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

- v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Applicant has proposed the name of **Shri Jitendra Lohia**, **Registration no. IBBI/IPA-001/IP-P00170/2017-2018/10339**, **Address: 2/7 Sarat Bose Road, 2nd Floor, Vasundhara Building, Near Hindustan Club, Kolkata, West Bengal – 700020**, **Email ID: [jitulohia@knjainco.com](mailto:jitulohia@knjainco.com)**, as the “IRP”. We have perused that there is a written communication, annexed as **Annexure “I”** at **Page 461-465**, to this Application as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in the ICAI (Institute of Chartered Accountants of India). In addition, further necessary disclosures have been made by **Shri Jitendra Lohia** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code. Hence, we appoint **Shri Jitendra Lohia** as the **Interim Resolution Professional (IRP)** of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.
- vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- viii. During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix. The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi. The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii. In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) 42/KB/2023

the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
  - xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
  - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
  - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 9.** Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.
- 10.** Post the matter on 22/12/2023 for filing the Periodical Progress Report by the IRP/RP.

**Arvind Devanathan**  
Member (Technical)

**Bidisha Banerjee**  
Member (Technical)

**This Order is signed on 10th Day of November, 2023.**

hb.  
Bose, R. K. [LRA]