

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH-VI**

**IB-817/(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:**

**M/s MANGALJYOTI SYNDICATE PVT. LTD.**

Registered office at:

4<sup>th</sup> Floor,

7, Canning Street,

Kolkata, West Bengal- 700001

...Applicant/Financial Creditor

**Versus**

**M/s MAHAVIR RICHAB INVESTMENTS PVT. LTD.**

Registered office at:

Khasra No. 70/1/1 Floor Ground Landmark,

Near Hanuman Mandir,

Village Mangolpur, Kalan,

New Delhi- 110085

...Respondent/ Corporate Debtor

**Coram:**

**SH. P.S.N. PRASAD, Hon'ble Member (Judicial)**

**SH. RAHUL BHATNAGAR, Hon'ble Member (Technical)**





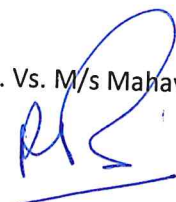
**Counsel for Applicant:** Mr. Ekansh Mishra, Advocate  
**Counsel for Respondent:** Mr. Amit Goel and Mr. Prabhat Kumar,  
Advocates-Goel & Associates, Corporate  
Lawyer & Consultants

**ORDER**

**Per P.S.N. PRASAD, MEMBER (JUDICIAL)**

**Date:16.03.2022**

1. This is an application filed by 'M/s MangaljyotiSyndicate Pvt. Ltd.', through its Authorized Person Mr. Om Prakash Binani, to initiate Corporate Insolvency Resolution Process ("CIRP") against 'M/s Mahavir RichabInvestments Pvt. Ltd.', under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Corporate Debtor ("CD"), in settling an amount of Rs.1,04,72,767/- (net of TDS) (Rupees One crore Four Lakhs Seventy Two Thousand Seven Hundred and Sixty Seven only) comprising of Rs. 1,00,00,000/- as the Principal Amount along with the Interest amounting to Rs. 4,72,767/- @ 12% per annum, payable monthly till 30.09.2021 and 18% per



annum thereafter, payable monthly until 30.11.2021, payable to the Financial Creditor ("FC"). The details of transactions leading to the filing of this application as averred by the FC are as follows:

- a. The FC submitted that the CD approached the FC in 2021 seeking a short-term loan and further agreed to pay the loan with an interest rate which will be mutually agreed between the FC and the CD.
- b. The FC further submitted that on 21.06.2021, Loan agreement was executed between the FC and the CD wherein, the CD requested the FC to grant a loan of Rs. 1,00,00,000/- repayable by or before 30.09.2021 with interest @12% per annum, payable monthly till 30.09.2021. Further any delay after 30.09.2021 in repayment of loan would attract an interest of 18% per annum. The FC has also annexed a copy of the Loan agreement dated 21.06.2021.
- c. It was submitted that the CD also executed a promissory note dated 21.06.2021 committing to repay the loan in accordance with the terms of the loan agreement dated



21.06.2021. The FC also annexed the copy of promissory note dated 21.06.2021.

- d. That the amount of Rs. 1,00,00,000/- (Rupees One Crore only) was transferred to the CD via RTGS on 23.06.2021. That a Copy of bank statement of the FC is also annexed with the application.
- e. The FC submitted that the CD made payment of Rs. 88,767 after TDS as per Income Tax Act, 1961 on 12.08.2021. Thereafter, the CD failed to discharge its obligation to pay the further monthly interest as per the terms of the loan agreement and subsequently also failed to repay the principal loan by or before 30.09.2021.
- f. The FC also submitted a copy of the record of the Financial default information with respect to the CD registered at Information Utility (National E-Governance Services Ltd.). That a Copy of said record is also annexed with the application by the FC.
- g. The FC submitted that the FC even reminded the CD of its failure to discharge its contractual obligations of the loan

agreement dated 21.06.2021 through email communications on 04.09.2021 and 26.10.2021.

- h. That the FC also issued a legal notice dated 24.11.2011 through email and post, calling upon the CD to repay the financial debt under the Loan agreement that comprises the unpaid principal and interest amount already became due. Though the post went undelivered, the email was delivered on the email address which is on record as per MCA data. Thereafter, neither any response was received from the CD, nor any payment was received till date. That a Copy of the legal notice of the FC is also annexed with the application.
- i. It was further submitted by the FC that the Default falls within the definition of default in terms of Section 3(12) of the IBC, 2016 and the claim of the FC is not hit by the Insolvency and Bankruptcy Code Amendment Ordinance, 2020 dated 05.06.2020 issued by the Government of India.



2. Consequent to the notice issued by this Tribunal, the CD filed its reply on 19.01.2022 in which the following contentions were made:

- i. The CD denied each and every averment made in the application of the FC, except where it was expressly admitted in its reply and the same be treated as having been denied in seriatim.
- ii. That the FC concealed material facts before this Tribunal. The CD requested the FC for grant of loan for a period of one year. However, the FC suggested that initially the Loan agreement can be executed for a period of three months which can thereafter be extended for three further terms of three months each after the expiry of initial three months period. However, after expiry of three months of the Loan agreement, the FC refused to extend the term of the Loan agreement and started demanding for the repayment.
- iii. That the CD is facing financial difficulties due to adverse business conditions but the CD is committed to pay off the amount due to the FC. As per the last

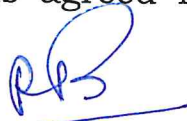


discussion held with the FC after receipt of legal notice dated 24.11.2021, the CD sought a time of six-nine months to make payment but no response was received from the FC. Meanwhile, the FC filed the present petition within a period of one month. The FC should have granted a time of six-ninemonths' to make payment as per the last discussion held with FC dated 24.11.2021.

- iv. The Petition of the FC is therefore liable to be dismissed on the ground that the FC has concealed these material facts in its application to this Tribunal.

3. Consequent to the reply filed by the CD, the FC filed its rejoinder in which the following submissions were made:

- i. It was denied that the FC had concealed any material fact. FC denied that the CD approached the FC for the grant of loan for a period of one year. It was denied that there was any kind of understanding between the parties qua extension of period of repayment of loan except what was agreed in writing and mentioned in



duly executed loan agreement between the FC and the CD.

- ii. That the CD in its reply had admitted the execution of the Loan Agreement dated 21.06.2021 between the FC and the CD. That the amount is due from the CD to the FC under the aforesaid Loan Agreement. Further that the CD has failed to pay the financial debt already due despite being in receipt of legal notice dated 24.11.2021
  - iii. That CD in its reply in unequivocal terms admitted the debt towards the FC and stated that the CD is committed to pay off the amount due to the FC.
4. We have gone through the documents filed by both the parties and heard the arguments advanced by the counsels. The FC has claimed the default on part of the CD for the Loan amount of Rs1,04,72,767/- (net of TDS) (Rupees One crore Four Lakhs Seventy Two Thousand Seven Hundred and Sixty Seven only) comprising of Rs. 1,00,00,000/- as the Principal Amount along with the Interest amounting to Rs. 4,72,767/- @ 12% per annum, payable monthly till



30.09.2021 and @18% per annum thereafter, payable monthly until 30.11.2021.

5. In the light of the aforesaid facts, we find that the CD requested for grant of Loan and the Loan Agreement was duly executed between the parties on 21.06.2021 for an amount of Rs. 1,00,00,000/- repayable with 12% interest per annum payable monthly till 30.09.2021 and with 18% interest thereafter. The said grant of loan vide the Loan agreement dated 21.06.2021 and the non-payment of debt is not being disputed by the FC and/or the CD. The counsel of the CD has advanced the argument that the CD requested the FC for a grant a loan for a period of one year. However, the FC suggested that initially the Loan agreement can be executed for a period of three months which can thereafter be extended for three further terms of three months each after the expiry of initial three months period whereas, No documentary evidence has been produced by the CD to substantiate it and the same has also been denied by the FC in its rejoinder.



6. Further, in the hearing on 22.02.2022 the Learned Counsel for the Corporate Debtor has submitted that his client is not in a position to pay the debt and he has also expressed the inability to pay the debt.
7. The documents submitted and the submissions made by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has defaulted on repayment of loan amount.
8. It is pertinent to mention here that, the Code requires the Adjudicating Authority to only ascertain and record satisfaction in adjudication, as to the occurrence of default before admitting the application. The material placed on record clearly shows that CD had availed the credit facility and has committed default in repayment of the outstanding loan amount. The FC has also submitted a copy of the record of the Financial default information with respect to the CD



registered at Information Utility (National E-Governance Services Ltd.).

9. We are satisfied that the present application is complete in all respect and the FC is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.
10. It is thus seen that the requirement of sub-section 5 (a) of Section 7 of the code stands satisfied as default has occurred, the present application filed under Section 7 is complete. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
11. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution



Professional. In compliance thereof the FC has proposed the name of Mr. Atul Kumar Kansal, for appointment as Interim Resolution Professional having registration number IBBI / IPA-001 / IP-P00035/ 2016-17 / 10088, Address at: SC0-61, 3<sup>rd</sup> Floor, Above Kotak Mahindra Bank, Old Judicial Complex, Sector-15, Civil Lines, Gurugram- 122001, email - id [cakansal@yahoo.com](mailto:cakansal@yahoo.com). Mr. Atul Kumar Kansal has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Atul Kumar Kansal as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.



12. Mr. Atul Kumar Kansal, having registration number IBBI / IPA-001 / IP-P00035/ 2016-17 / 10088 with email – [idecankansal@yahoo.com](mailto:idecankansal@yahoo.com) is appointed as the Interim Resolution Professional.

13. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (three days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

14. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor*

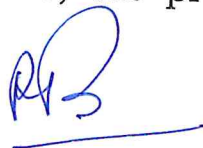
*including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.*

15. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium




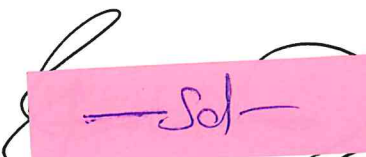
shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

16. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The

Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

17. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible, but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

  
**(SH. RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

  
**(SH.P.S.N. PRASAD)**  
**MEMBER (JUDICIAL)**