NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT-I
KOLKATA

CP(IB)No.133/KB/2023

Application under Rule 4 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016;

<u>In the matter of:</u>
M/s. Kodan Konnect Private Limited
...Applicant/Financial Creditor

Versus
M/s. Reachnet Cable Services Private Limited
...Res

<u>Coram:</u>
Bidisha Banerjee, Member (Judicial)
Balraj Joshi, Member (Technical)

<u>Appearances: (via video conferencing/physically)</u>
Ms. Nimisha Agarwal, Adv.] For the Financial Creditor

Mr. Prashant Kumar Singh, Adv.] For Corporate Debtor

Date of pronouncement: 13.12.2024.

<u>Per:Bidisha Banerjee, Member (Judicial)</u>

1. This Court convened through hybrid mode.
2. Ld. Counsel for the Financial Creditor present. Ld. Counsel for the Corporate Debtor present.
3. The Corporate Debtor had approached the Financial Creditor for availing credit facilities in the form of working capital loan.
4. It is submitted that both the parties agreed to enter into a loan agreement where the Financial Creditor had agreed to advance a loan of Rs.98,00,000 from August 2023 to November 2023 at the terms agreed between the parties.
5. The entire principal amount along with the interest was supposed to be paid back by the Corporate Debtor and for security purpose the

Corporate Debtor had mortgaged its immovable assets and had hypothecated its movable assets with the Financial Creditor.

6. It is mentioned that the said secured loan of Rs.98,00,000 was disbursed by the Financial Creditor in six tranches.
7. The Corporate Debtor had defaulted in re-payment of the said loan amount along with the interest due to delay in the project for which the loan was taken by the CD.
8. It is averred that after multiple request made by the Corporate Debtor, the Financial Creditor had not only agreed to extend the timelines of the re-payment of the existing loan but had also agreed to provide an additional loan of Rs.25,00,000.
9. On 27th December, 2023 and 29th December, 2023, a supplementary agreement to the main loan agreement was executed between the Financial Creditor and the Corporate Debtor where the said amount was disbursed in two tranches of Rs.15,00,000 and Rs.10,00,000 vide RTGS respectively.
10. It is further submitted that on 30th December, 2023 and 28th January, 2024, the Corporate Debtor had promised to make payment of the entire loan amount of Rs.1,23,00,000 along with the interest which was due and payable and assured that no further extension will be demanded.
11. On 22nd January, 2024, the Financial Creditor demanded repayment of the entire principal amount of Rs.1,23,00,000/- plus interest of Rs.6,73,027/- aggregating to Rs.1,29,73,027/- whose due date was 28th January, 2024.
12. Vide email dated 29th January, 2024 and 31st January, 2024 the Corporate Debtor even acknowledged its debt and has assured the Financial Creditor that it will repay the entire outstanding amount.
13. Again on 02nd February, 2024 the Corporate Debtor acknowledged its debt and assured the Financial Creditor that it will repay the entire outstanding amount and its addendum, supposed to be paid by the Corporate Debtor.

14. It is submitted that on 10th February, 2024 and 13th February, 2024 the Financial Creditor sent reminder emails to the Corporate Debtor demanding re-payment which was acknowledged by Corporate Debtor and it sought two weeks' time to pay the debt.
15. Finally, on 20th February, 2024 and 28th February, 2024 the Financial Creditor through its attorney issued a legal notice demanding the entire outstanding amount due and payable, within a period seven days to which the Corporate Debtor replied via email once again; acknowledged the Corporate Debtor had acknowledged the debt. Hence the debt and default is admitted.

<u>Submissions of the Corporate Debtor by way of reply-affidavit</u>

16. Per contra the Corporate Debtor would refute the allegations contained in Part I and the various sub-paragraphs and submit that the allegations made in this application are baseless.
17. It is alleged that Mr. Prithpal Singh, being the alleged authorised signatory of the Financial Creditor has not been properly authorized to submit the application on behalf of the Financial Creditor.
18. Further, with reference to allegations contained in Part II and Part III it is submitted the instant matter is not a fit case for initiation of the Corporation Insolvency Resolution Process of the corporate debtor as the corporate debtor is in a financial crisis and has assured and reassured to the financial creditor from time to time that it shall pay off the dues which were payable.
19. However, it is admitted with reference to allegations contained in paragraph 1(1) of Part IV of the application that the Corporate Debtor is in default of an amount of Rs.1,32,42,208/- including interest as on 28th January, 2024 as averred by the Financial Creditor as the Corporate Debtor had assured on 28th February 2024 that it will make the necessary payments to the Financial Creditor which were due and payable by them.
20. It is stated that the amount was disbursed by the Financial Creditor to the account of the Corporate Debtor between the period 28th August,

2023 to 2nd September 2023 there is no unequivocal terms, the Corporate Debtor has admitted disbursal of the amount by the Financial Creditor.

21. Although the Corporate Debtor with reference to Paragraph No. 2(4) of Part IV had denied that it failed or neglected to act in accordance with the terms or conditions of various agreements, but has admitted that it assured the Financial Creditor from time to time that it will make the repayment of the debt due and payable.

22. The Corporate Debtor has also admitted that the date of default in paying of the debt was 2nd February, 2024 as per various agreements and the communication with the Financial Creditor.

23. Further, it is stated with reference to part V, there are no documents to show that the Financial Creditor had disbursed the said amount to the Corporate Debtor.

Analysis and Findings

24. We have heard the Ld. Counsel appearing for the Financial Creditor and Ld. Counsel appearing for the Corporate Debtor, considered their rival contentions and perused records.

25. Admittedly and irrefutably the "debt" that is "due and payable" is evident.

26. The Corporate Debtor in no uncertain terms has accepted its liabilities. It has neither denied the debt nor the default. This petition is not barred by limitation and the threshold is duly met. Hence it is to be admitted.

27. Further, we are fortified in our views by the following decisions of the Hon'ble Apex Court which succinctly clarifies what a "Financial Debt" would be that would justify initiation of Corporate Insolvency Resolution process:

(a) In **Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416**, it was held that:

"any debt to be treated as financial debt, there must happen disbursal of money to the borrower for utilization by the borrower and

that the disbursal must be against consideration for time value of money."

(emphasis added)

1.1. In the present case, "disbursement" against "consideration for time value of money" is adequately found.

(b) In **Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401**, it was held that:

"the essential condition of financial debt is disbursement against the consideration for time value of money."

(emphasis added)

(c **) In Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14)** it was held that:

"14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor..."

(Emphasis added)

28. In the aforesaid backdrop, we admit this petition and order initiation of CIRP against the Corporate Debtor and we, therefore, pass the following orders:-

O R D E R S

i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor is hereby **admitted**.

ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

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 (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.

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

vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii) 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 the 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.

ix) **Ms. Bharati Manoj Daga, IRP,** having Registration No. **IBBI/IPA-001/IP-P-01963/2020-2021/13070** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

xi) The Financial Creditor/Applicant is directed to deposit **Rs.3,00,000/- (Rupees Three Lakhs Only**) with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

1. Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

2. List the matter on **15.01.2025** for filing of **Progress Report**.

3. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on 13.12.2024

BD