

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT No. IV)**

COMPANY APPLICATION No. IB-1122/ND/2020

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

In the Matter of:

**Mr. Mohan Lal Jain, liquidator of
Kaliber Associates Private Limited.**

**Applicant/
Financial Creditor**

Versus

J.R. Modi Associates Ltd.

**Respondent/
Corporate Debtor**

Order Pronounced on: 31/03/2022

Coram:

**Dr. Deepti Mukesh, Hon'ble Member (Judicial)
Ms. Sumita Purkayastha, Hon'ble Member (Technical)**

MEMO OF PARTIES**Kaliber Associates Private Limited.**

Through its liquidator Mr. Mohan Lal Jain

B-1/12, 2nd Floor

Safdarjung Enclave

New Delhi 110 029

... **Applicant/Financial Creditor****Versus****J.R. Modi Associates Ltd.**

Having its registered office at

26, Ground Floor, Siri Fort Road

New Delhi 110 049

... **Respondent/Corporate Debtor****Appearance:**

For the Applicant Mr. Anirban Bhattacharya, Mr. Dhruv Sachdeva, Adocates

For the Respondent :

ORDER**Per: Dr. Deepti Mukesh, Member (Judicial)**

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by the liquidator of **Kaliber Associates Pvt. Ltd.**, with a prayer to initiate the Corporate Insolvency process against **J.R. Modi Associates Ltd.** (for brevity 'Corporate Debtor').

2. M/s. Kaliber Associates Private Limited is a Company, incorporated under the provisions of the Companies Act, 1956 on 13.02.2003, duly registered with the Registrar of Companies, New Delhi bearing CIN: U74140DL2003PTC118931 and having registered office at Lajpatnagar, New Delhi (for brevity "Kaliber").
3. It is submitted by the applicant that the "Kaliber" is presently undergoing liquidation process vide order dated 02.01.2020. That on 12.10.2020 an application being IA No. 4559/2020 in CP (IB) No. 228/2018 under Section 35 (1) (k) of IBC was filed by the Liquidator seeking approval for initiating suit or other legal proceedings including filing of application under Section 7 of IBC against various borrowers of "Kaliber" including the corporate debtor herein. Vide order dated 01.12.2020, the applicant was allowed to institute any legal proceedings against the defaulting borrowers. That the Liquidator has filed the present application under Section 7 of the Code for initiating the CIRP against the corporate debtor for default in repayment of financial debt of Rs. 9,05,00,000/- (Rupees nine crores and five lacs only). As per the bank statements of the "Kaliber", various loans and advances were disbursed by "Kaliber" to the corporate debtor of total sum of Rs. 29,05,00,000/- on different dates starting from

13.10.2011 to 28.03.2015. That the audited financial statements as on 31.03.2018 and the provisional financial statements as on 18.01.2019 (CIRP commencement date) of the "Kaliber" reflect that a total amount of Rs. 9,05,00,000/- remains unpaid to "Kaliber" by the corporate debtor. The audited financial statements of the corporate debtor as on 31.03.2018 also reflect that the corporate debtor is indebted to "Kaliber" for an amount of 9,05,00,000/-.

4. The corporate debtor is a Limited Company, incorporated under the provisions of companies Act, 1956 on 06.03.1997, duly registered with Registrar of Companies, New Delhi with CIN: U45209DL1997PLC85650 and having registered office at SIRI Fort Road, New Delhi 110 049. The Authorized share capital of the Respondent is Rs. 1,00,00,000/- and paid up share capital of the company is Rs. 60,00,000/-.
5. It is further submitted by the applicant that it was a short term loan given by "Kaliber" to the corporate debtor which was repayable on demand. First demand notice was issued by the IRP of "kaliber" vide letter dated 31.01.2019 intimating the Directors of the corporate debtor that as per the audited financial statements of "Kaliber" as on 31.03.2017 a sum of Rs. 8,50,00,000/- was due and payable by the corporate debtor and

called upon the corporate debtor to confirm the balance payable together with interest and demanded payment of the outstanding balance. Subsequently, IRP of the "Kaliber" vide letter dated 10.05.2019 called upon Directors of the corporate debtor to clear the outstanding of Rs. 9,05,00,000/- due and payable along with the interest. No response by corporate debtor, hence this Section 7 application is filed and service is done on the corporate debtor. Service affidavit showing that service was complete as per maser data address of corporate debtor. As proof of service track consignment report is filed showing that the item is delivered at the registered office of the corporate debtor.

6. The corporate debtor has not filed any reply nor appeared. Hence, the corporate debtor was proceeded ex parte vide order dated 23.09.2021.
7. Heard the submissions and perused the documents on record. It is brought on record that the default has occurred with respect to the payment of financial debt due to "Kaliber". Disbursement of the loan is nowhere denied and the same is received by the corporate debtor as per bank statements of "Kaliber" as annexed with the application by the liquidator. The applicant has placed on record copies of three bank statements of various periods upto 01.06.2019 which clearly reflects that the corporate debtor

has availed disbursement of loan from time to time from "Kaliber". The applicant has also brought on record a copy of the audited financial statements of the corporate debtor as on 31.03.2018 along with provisional financial statement as on 18.01.2019 (CIRP commencement date). All the above documents clearly reflect that the corporate debtor had availed disbursement of loan and has failed to repay the same. Moreover, there is no response to the demand notice as well as to this application by the Corporate Debtor rebutting the contentions raised by the applicant, raising presumption of the admission of the debt by the corporate debtor.

8. As per part IV of form 1 the date of default is 18.01.2019 and the application is filed on 18.12.2020, which is well within the period of limitation and not barred by law.
9. The registered office of the corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
10. The present application is complete in terms of Section 9 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt, which remains uncontroverted by the corporate debtor. In light of the

above facts and records the present application is admitted and CIRP is ordered to be initiated against corporate debtor.

11. The applicant has proposed the name of Mr. Rajiv Bajaj as Insolvency Resolution Professional, who is be and hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-002/IP-N00276/2017-18/10834 (email - rbajajip@gmail.com) subject to the condition that no disciplinary proceedings are pending against him. Specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which is on record.
12. We direct the applicant to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Rajiv Bajaj within a week to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the applicant.

13. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
14. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



Ms. Sumita Purkayastha
Member (Technical)



Dr. Deepti Mukesh
Member (Judicial)

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