



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

Company Petition (IB) No. 271/KB/2024

An Application 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:
Horizon Commtrade Limited

... Financial Creditor/ Petitioner.

Versus

Jasmine Commodities Private Limited

... Corporate Debtor/ Respondent.

Date of Pronouncement: 08 April 2025.

Coram:
SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

Appearance:
For the Financial Creditor: Mr. Mukesh Singh Bhaduria, PCMA
For Corporate Debtor: Mr. Neeraj Kant Singh, Adv.

ORDER

PER Bidisha Banerjee, Member (Judicial):

1. This Court congregated through hybrid mode.
2. Heard the Learned Counsels for both parties.

3. *Factual matrix:*

This instant application is filed under Section 7 of the Insolvency and Bankruptcy Code, for brevity I&B Code, read with Rule 4 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, by "**Horizon Commtrade Limited**", hereinafter referred to as "**Financial**

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Creditor (“**Applicant**”/ “**FC**”) against “**Jasmine Commodities Private Limited**”, hereinafter referred to as “**Corporate Debtor**” (“**Respondent**”/ “**CD**”) seeking direction to initiate Corporate Insolvency Resolution Process (for brevity “CIRP”) in respect of the Corporate Debtor.

4. Submissions of the Ld. Counsel for the Applicant:

4.1 The Learned Counsel for the Applicant would submit that applicant financial creditor has provided loan to the corporate debtor in terms of the intercompany loan agreement 10.09.2019 and accordingly the loan documents were executed.

4.2 It is claimed that the Financial Creditor made payments to the borrower as per the requirement raised by the borrower in terms of the loan agreement. The payments were disbursed to the borrower as follows:

S. No	Date of Payment	Amount (In Rs.)
1.	16.09.2019	50,00,000
2.	19.09.2019	30,00,000
3.	19.09.2029	28,00,000
4.	24.09.2019	50,00,000
5.	27.09.2019	48,00,000
6.	11.10.2019	50,00,000
7.	15.10.2019	50,00,000

4.3 It is further submitted that the corporate debtor defaulted on the repayment of amounts listed in serial nos. 1 to 7 of the table. As per the agreement, the loan was to be repaid after 55 months from 10.09.2019, with the principal and interest due within seven days of the tenure's completion, i.e., by 17.04.2024.

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4.4 It is contended that on April 20, 2024, due to a default under the loan agreement, the financial creditor issued a loan recall notice to the corporate debtor. However, no payment was received from the corporate debtor.

5. Per Contra the Corporate Debtor would allege as under:

5.1 It is submitted that the Financial Creditor has portrayed a distorted and incorrect picture of the facts of the present case with a view to mislead this Adjudicating Authority and gain undue advantage. The Financial Creditor has not complied with the provisions of IBC in filing the present application.

5.2 It is further submitted the corporate debtor is experiencing financial difficulties due to various factors but remains optimistic about generating profits and securing sufficient funds to repay its debt to the financial creditor. The company has a reasonable chance of recovery and fulfilling its obligations.

5.3 Reliance has been placed on the judgement of the Hon'ble Supreme Court passed in **M/s. S.S Engineers v. Hindustan Petroleum** to contend that this Adjudicating Authority is not a substitute for a recovery forum/trial court.

5.4 It is claimed that no cause of action has ever arisen in favour of the petitioner and against the respondent and therefore the petition is liable to be dismissed in absence of any valid or legal cause of action.

5.5 It is submitted that the deponent, a director of the respondent company, is authorized by a board resolution to represent the company and is well-versed in the case facts, making them competent to submit this affidavit. A copy of the board resolution is annexed as Annexure-1.

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6. In counter, the Financial Creditor would submit:

6.1 That the respondent has failed to cite any legal provisions, including those under the Insolvency & Bankruptcy Code, 2016, to support their claim.

6.2 Their reply itself acknowledges the default, making their contentions untenable.

6.3 Thus, the application under Section 7 of the IBC is justified.

7. We have heard the Learned Counsels for parties and perused records and noted the rival contentions.

8. Analysis and findings

8.1. It is evident that there is notice dated 20.04.2024 at page 34-37 of the petition detailing the loan amount, the term interest, and additional charges, in case of any default on part of the corporate debtor.

8.2. It is clear from the inter-company loan agreement (Page 45 of the petition) that the borrower was required to repay the advance after a tenure of 55 months from the agreement date (10.09.2019) and to settle the principal along with interest within seven days of the tenure's completion, i.e., by 17.04.2024.

8.3. We further find that the Financial Creditor has supplied a copy of the bank statement showing the transaction between the parties including the disbursement of the loan to the Corporate Debtor, annexed at pages 38-40 to the petition.

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8.4. The Corporate debtor has not denied its failure to repay the debt. Hence “default” is admitted.

8.5. We find no support to the argument made by Ld. Counsel for the Corporate Debtor that the Financial Creditor has given extension for repayment of loan.

8.6. Once the “debt’ and “default” is admitted or established the petition must be admitted.

8.7. We are supported by the views of Hon’ble Apex Court to define “Financial Debt” and to initiate Corporate Insolvency Resolution process as under:

(a) Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416:

“any debt to be treated as financial debt, there must happen disbursement of money to the borrower for utilization by the borrower and that the disbursement must be against consideration for time value of money.”

(Emphasis added)

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

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

(Emphasis added)

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

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creditor' and (iv) such default which has occurred should be by a 'corporate debtor...'

(Emphasis added)

(d) *Innoventive Industries Ltd. v. ICICI Bank* reported in (2018) 1 SCC 407: MANU/SC/1063/2017 has laid down that:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ..."

"28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ..."

XXX XXX XXX XXX

"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

(Emphasis added)

8.8. Further, the date of default is 20.04.2024 whereas this application has been filed on 15.07.2024 which is well within the period of limitation, and therefore, we admit the Corporate Debtor into CIRP.

9. In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 271/KB/2024** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency**

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Resolution Process (CIR Process) in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **Horizon Commtrade Limited (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Jasmine Commodities 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

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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 the moratorium period.
- 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 **“Ms. Hemi Gupta”**, Address: P-178 CIT Scheme VI M, Phoolbagan, 3rd Floor, Kolkata, West Bengal, 700054, Registration no. IBBI/IPA-002/IP-N-00147/2017-2018/10383, Email id hemigupta@rediffmail.com , Contact: 9359911588, as the “IRP”. We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as letter D at pages 36-38 to the petition, as per the requirement of Rule 9(l) 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 IIP of ICAI. In addition, further necessary disclosures have been made by **“Ms. Hemi Gupta”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Ms. Hemi Gupta”** as the **Interim Resolution Professional** (IRP) of the

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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 announcement referred to in Clause (b) of subsection (1) of Section 15 of the 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 CIR Process 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 I&B Code. 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.

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- 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 CIR Process 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 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), to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance

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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 a 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 CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

10. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

11. Post the Company Petition on **16/05/2025** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

Cmde Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

The Order signed on this, the 8th day of April 2025.

V. Tiwari (LRA)