



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No. 860/MB-IV/2021**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Radhika Chatterjee & Ors**

...Financial Creditors/Applicants

V/s

**Infinia Solutions & Services Private  
Limited**

[CIN: U72900MH2013PTC250305]

...Corporate Debtor/Respondent

**Order Dated: 28.04.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Arman Kacheria , Advocate.

For the Respondent(s) : None.

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is an application bearing C.P. (IB) No. 860/MB/C-IV/2021 filed by Radhika Chatterjee & Ors., the Financial Creditors/Applicants, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP)

against Infinia Solutions & Services Private Limited, Corporate Debtor.

2. The Application is filed by the Ms. Radhika Chatterjee, an authorised representative of the Financial Creditors duly authorised vide its Power of Attorney dated 08.06.2021, claiming total default of Rs.2,08,48,591/- (Rupees two crore eight lakh forty-eight thousand five hundred ninety-one only) as on 30.06.2021 which includes:

2.1. Principal amount of Rs.1,74,48,591/-; and

2.2. Interest amount of Rs.33,84,188/-.

3. The Date of Default is stated to be 01.04.2021 in the Part-IV of the Petition. The Petition is filed on 25.08.2021.

4. The case of the Financial Creditor is that:

4.1. As Agreement was entered by the Financial Creditors and the Corporate Debtor on 28.04.2016 and was made applicable from 29.04.2016. In view of the same, the Financial Creditors had disbursed an amount of Rs.74,48,988/- @ 6% interest per annum to the Corporate Debtor which was to be repaid on or before 31.03.2021. The Corporate Debtor repaid an amount of Rs.15,00,000/- against the amount disbursed by the Financial Creditors in terms of Agreement dated 28.04.2016.

4.2. The Corporate Debtor was under huge debts from different financial institution and in view of the same another Agreement was executed between Corporate Debtor and Financial Creditor on 28.06.2018 vide which the Financial Creditors disbursed a total

amount Rs.1,14,99,603/- to various financial institutions such as Clix Capital, Tata Capital Financial Services, HDFC Bank, Kotak Mahindra Bank, Revira Investros Private Limited and Vidhya Vinod Prakash on account of Corporate Debtor. In return the Corporate Debtor being the borrower under the aforesaid Agreement dated 28.06.2018 promised to repay the disbursed amount of Rs.1,14,99,603/- along with interest @ 6% per annum calculated from the date of the Agreement dated 28.06.2018.

5. The Financial Creditors has issued a Demand Notice dated 23.07.2021 upon the Corporate Debtor for claiming total outstanding amount of Rs.2,08,32,779/- payable within 10 days from the date of this Demand Notice. The Financial Creditors has filed the Bank Statements. The Financial Creditors has also filed the Ledger Accounts for period of 01.04.2016 to 30.09.2018. The Financial Creditors has filed the Board Resolution dated 26.06.2018 of the Corporate Debtor wherein the Board of Directors has accorded for repayment of the loan taken from the financial institutions and promised to repay the total payment done by the directors at the interest rate of 6% p.a.
6. The Corporate Debtor did not appear in the matter. Vide order dated 28.09.2021, the Court Notice was ordered against the Corporate Debtor to appear and file its reply in the matter. The matter was listed on 15.11.2021, 12.01.2022, 07.03.2022, 04.05.2022, 26.07.2022, 24.11.2022, 25.01.2023, 09.03.2023 and on 27.03.2023 the Corporate Debtor failed to appear in the matter, hence, vide order dated 12.01.2022 the Corporate Debtor was set ex-parte and on 27.03.2023 the matter was reserved for orders.

*Findings/Observations:*

7. We have heard the arguments of the Learned Counsel for Financial Creditor.
  - 7.1. It is observed from the material on records that the Financial Creditors had disbursed an amount of Rs.74,48,988/- @ 6% interest per annum to the Corporate Debtor which was to be repaid on or before 31.03.2021 and as per the submissions of the Financial Creditor, the Corporate Debtor repaid an amount of Rs.15,00,000/- against the amount disbursed by the Financial Creditors in terms of Agreement dated 28.04.2016.
  - 7.2. This Bench noticed that this loan was payable on or before 31.03.2020 in accordance with Clause 2 of Declaration cum Arrangement executed between the Financial Creditor and the Corporate Debtor, accordingly, this Bench sought clarification from the Learned Counsel for the Financial Creditor, how this present Application is not hit by Section 10A of the Code. Learned Counsel for the Financial Creditor clarified that the obligation to pay in Clause 2 allows the Corporate Debtor to pay the principal without interest, alternatively the Corporate Debtor is under obligation principal along with interest at the rate of 6% in case the Corporate Debtor chooses to pay after 31.03.2020. The Learned Counsel for the Financial Creditor emphasised that Clause 2 and Clause 3 are in nature of option available to the Corporate Debtor and in case the Corporate Debtor does not pay in terms of Clause 2, the loan amount was repayable on or before 31.03.2021 in terms Clause 6 of

the Agreement. Accordingly, the present Application is not barred by Section 10A of the Code.


- 7.3. Learned Counsel also drawn our attention to para 14 of the Hon'ble NCLAT order in case of *Suzlon Synthetics Ltd. V. Stressed Asset Stabilization Fund, Company Appeal (AT) (Insolvency) No. 662-663 of 2022*, to emphasis that as long as amount of debt in default exceeds the threshold limit prescribed in section 4 of the Code, there is no need to calculate and fix the exact amount of debt in default.
- 7.4. After perusal of the material on record, this Bench is of considered view that the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is complete and filed in the proper form. The Corporate Debtor has failed to appear in the matter after being afforded several opportunities in the matter.
- 7.5. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. This Bench does not find any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor deserve to be admitted u/s 7 of the Code.
8. The Applicant has proposed the name of Mr. Anil Tayal, a registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code.

**ORDER**

9. This Application being C.P. (IB) No. 860/MB-IV/2021 filed by Radhika Chatterjee & Ors., the Financial Creditors/Applicants, under section 7 of Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against Infinia Solutions & Services Private Limited, Corporate Debtor is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 possession of the corporate debtor.

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- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
  - III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
    - a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
    - b. a surety in a contract of guarantee to a Corporate Debtor.
  - IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
  - V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
  - VI. That this Bench appoints Mr. Anil Tayal, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01118/2018-2019/11818], as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar  
Member (Technical)  
28.04.2023

Sd/-

Kishore Vemulapalli  
Member (Judicial)