

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA  
(Special Bench)

CP (IB) No.2078/KB/2019

*Under section 7 of the Insolvency & Bankruptcy Code, 2016*

*In the matter of*

Trimurti Associates Private Limited  
[CIN: U19202WB1986PTC041494] ...

Financial Creditor

Versus

BKM Industries Private Limited  
[CIN: L27100WB2011PLC161235] ...

Corporate Debtor

**Order reserved on: 29.12.2020**

**Order pronounced on: 30.12.2020**

***Coram:***

Mr. Rajasekhar V.K. : Member (Judicial)

***Appearances (via videoconferencing):***

For the Financial Creditor : Ms Swati Dalmia, Advocate

For the Corporate Debtor : Ms Neha Somani, Authorised  
Representative

**ORDER**

*Per: Rajasekhar V.K., Member (Judicial)*

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Trimurti Associates Private Limited, a company within the meaning of section 2(20) of the Companies Act,

2013 and represented by its Director, Sanjay Bhuwalka, on the basis of a Board Resolution dated 22.11.2019 ("*the Financial Creditor*") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against BKM Industries Private Limited ("*the Corporate Debtor*").

2. The Corporate Debtor is a listed public company limited by shares and incorporated on 25.03.2011 under the Companies Act, 1956, with the Registrar of Companies, West Bengal, Kolkata. Its Corporate Identity Number (CIN) is L27100WB2011PLC161235. Its registered office is Bikaner Building (3rd Floor), 8/1, Lal Bazar Street, Kolkata 700001, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 03.12.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹5,00,00,000 (Rupees five crore only) as principal and ₹1,14,43,046 (Rupees one crore fourteen lakh forty-three thousand and forty-six only) as interest as on 09.10.2018, which is the date of default.
4. The case of the Financial Creditor is as follows: -
  - (a) The Corporate Debtor approached the Financial Creditor for some funds to meet its urgent working capital requirements, expansion of existing projects and undertaking of new projects. The Board Resolution dated 16.08.2017 passed by the Corporate Debtor has been placed at p.164 of the petition. The parties entered into a loan agreement dated 11.04.2018 which has been placed at pp.167-175 of the petition;

- (b) In terms of the said loan agreement, the Financial Creditor extended a loan of Rs.5,00,00,000/- (Rupees five crore only), repayable in ninety days from the date of disbursement. The disbursement took place on 12.04.2018 into the bank account of the Corporate Debtor, as per the bank statement placed at p.177 of the petition. At the expiry of ninety days, the Corporate Debtor addressed a letter dated 07.07.2018, requesting for extension of the period by another ninety days. The request letter is placed at p.180 of the petition. The extension was also granted by the Financial Creditor vide letter dated 08.07.2018, which has been placed at p.181 of the petition. The Corporate Debtor did not repay the amount even after the extended period;
- (c) The Financial Creditor demanded repayment of the loan *vide* letters dated 10.11.2018 (p.183 of the petition) and dated 09.11.2019 (p.184 of the petition). There was no reply to the same.
5. The underlying documents have been placed on record as **Exhibit 'A-7'** at pp.165-176. The rate of interest charged is 16% per annum. Bank statements are also attached as **Exhibit 'A-17'** at pages 177. The total debt due and payable to the Financial Creditor is ₹6,14,43,046 (Rupees six crore fourteen lakh forty-three thousand and forty-six only), as mentioned at page 191 of the Petition.
6. The Financial Creditor has served copies of the petition on the Corporate Debtor *vide* email dated 13.12.2019, which was received by the Corporate Debtor. Court Notices dated 04.12.2019 and 26.12.2019 were also issued, which has been served on the Corporate Debtor by email on 13.12.2019 and speed post on 14.12.2019. Affidavit of service dated 17.12.2019 has been placed on record in this regard.

7. The Corporate Debtor has not submitted any reply in the matter.
8. We have heard the arguments of both sides and perused the records.
9. The Corporate Debtor was given a chance to file reply to the petition vide orders dated 22.01.2020 and 03.03.2020. However, the Corporate Debtor chose not to file a reply.
10. At the hearings held on 07.12.2020 and 29.12.2020, Ms Neha Somani, learned authorised representative appearing for the Corporate Debtor, submitted that the debt is admitted and that there is no defence. She also submitted that the Corporate Debtor had initially thought that it would be possible to settle the debt in question, but it has been found to be increasingly impossible to do so. Therefore, she has instructions to admit inability to repay.
11. The Financial Creditor has proposed the name of Mr Kanchan Dutta, Registration No.IBBI/IPA-001/IP-P00202/2017-18/10391, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of his Certificate of Registration. Ms Swati Dalmia, learned counsel for the Financial Creditor, has confirmed that the proposed appointee has a valid Authorisation for Assignment (AFA) in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
12. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor

is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the petition. In view of this, this Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Debtor.

13. It is, accordingly, hereby ordered as follows: -

- (a) The petition bearing **CP (IB) No.2078/KB/2019** filed by **Trimurti Associates Private Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **BKM Industries Private Limited [CIN: L27100WB2011PLC161235]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC.
- (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (e) **Mr Kanchan Dutta** [Reg. No. IBBI/IPA-001/IP-P00202/2017-18/10391], having address at C/o KGRS & Company, Chartered Accountants, Chatterjee International Centre (17<sup>th</sup> Floor), Flat No.13-A, 33/A, JL Nehru Road, Kolkata, 700071 [email: kdutta.ip@gmail.com, Mobile: 9007064061], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP 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 IBC.
- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (h) The Financial Creditor shall deposit a sum of ₹1,00,000/- (Rupees one 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).

- (i) In terms of section 7(5)(a) of the IBC, the Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- (j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.



Rajasekhar V.K.  
Member (Judicial)

30.12.2020