

S.No.8

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1  
VC AND PHYSICAL (HYBRID) MODE  
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
13-03-2024 AT 10:30 AM**

**CP(IB) No. 275/7/HDB/2023**  
u/s. 7 of IBC, 2016

**IN THE MATTER OF:**

Karne Ramesh Babu

**...Financial Creditor**

**VS**

Kalzen Contech Private Limited

**...Corporate Debtor**

**C O R A M:-**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Learned Counsel Mr Dishit Bhattacharjee, for Financial Creditor present through Video Conference.

Orders pronounced. In the result, **this Company Petition is rejected with Costs.**

**Sd/-**

**MEMBER (T)**

**Sd/-**

**MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
COURT-I, HYDERABAD BENCH**

**CP (IB) No.275/7/ HDB/2023**

UNDER SECTION 7 OF THE  
INSOLVENCY & BANKRUPTCY  
CODE, 2016 READ WITH RULE 4  
OF IBBI (AAA) RULES, 2016.

**In the matter between:**

**KARNE RAMESH BABU**  
S/o. KARNE RAJAMOULI, Age:56  
Occ: Business. R/o. 3-10-66,  
Gokhalenagar, Ramnathpur,  
Hyderabad- 500 013,Telangana

... **Petitioner**  
**Financial Creditor**

Versus

**KALZEN CONTECH PRIVATE LIMITED**  
#2-22-223/1/G1, Aruna Co-Op Society,  
Sai Krupa Residency, Jayanagar, KPHB  
Hyderabad – 500 072, Telangana

... **Respondent**  
**Corporate Debtor**

**Date of Order: 13<sup>th</sup> March 2024**

**Coram:**

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA  
HON'BLE MEMBER (JUDICIAL)**

**SHRI CHARAN SINGH  
HON'BLE MEMBER (TECHNICAL)**

**Parties/Counsels present:**

For Petitioner : Mr. Dishit Bhattacharjee, Advocate.

For Respondent : Called absent.

**PER BENCH**

**ORDER**

This is a Petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as IBC) by one Karne Ramesh Babu, claiming to be Financial Creditor against M/s Kalzen Contech Private Limited, purported to be Corporate Debtor for initiation of Corporate Insolvency Resolution Process (CIRP), alleging that the Corporate Debtor availed

certain credit facilities from the Financial Creditor stated to be **Rs.1,98,61,990/-**. The amount claimed to be outstanding towards such credit facilities as per Statement of Account dated 21.11.2023, is **Rs.2,98,79,184/-**. Date of default being **14.03.2023**.

2. The averments made in the Company Petition, in brief, are as under:

2.1 The Corporate Debtor is engaged in the business of providing construction activities to individuals, business houses, government bodies, non-governmental organizations and others by various modes.

2.2 The Managing Director of the Corporate Debtor approached the Financial Creditor for a business loan

for day-to-day functioning of the company and its operations. The Corporate Debtor offered equity as security to the Financial Creditor.

2.3 The Financial Creditor claimed to have transferred various amounts in form of loan to the Corporate Debtor through his account, through his firm's account and some amounts were also paid in cash. The summary of total amounts paid as loan by the Financial Creditor to the Corporate Debtor is as follows:-

<b>Sl. No</b>	<b>Nature of Disbursement</b>	<b>Amount Disbursed Rs.</b>
01.	From Personal Account of the Financial Creditor	81,30,000
02.	From his own Firm's Account	68,50,000
03.	Additional disbursed on demand	36,31,990
04.	Amounts Deposited in Cash	12,50,000
	<b>Total</b>	<b>1,98,61,990</b>

2.4 The Corporate Debtor has acknowledged the receipt of the above-stated amounts and also acknowledged the receipt of the above amount as loan through an e-mail dated 10.01.2023. Copy of such e-mail is at ANNEXURE-9 of the petition.

2.5 The Corporate Debtor has defaulted in repayment of the loan amounts and interest payments. The Corporate Debtor defaulted in payments since 14.03.2023 and defaulted for payment of the entire loan on 14.03.2023. Accordingly, the Financial Creditor issued several reminders for the default that occurred on 14.03.2023 and for the repayment; finally as a part payment, the Corporate Debtor made a payment of Rs 19,00,000 and further issued a cheque for Rs 30,00,000/- drawn on Indus Land Bank Ltd. in favour

of the Financial creditor. However, the cheque got dishonoured. Copy of cheque No.023677 dated 31.12.2022 drawn on Indus Ind Bank and Pay-in-slip dated 12.03.2022 of SBI are at Page 75 (Anneuxre-10) of the Copy of Return Memo Report dated 14.03.2023 issued by SBI, Prashant Nagar, Uppal is at Page 76 (Annexure-10) of the Company Petition. Summary of facilities provided by the petitioner to the respondent, the amount received and the amount due is at page 49 (Annexure-4) of the Company Petition. Relevant Bank Statements are at Annexures 5, 6, 7 and 8 of the Company Petition.

2.6 The applicant submitted that repeated reminders made by the petitioner did not elicit any response from the respondent/ Corporate Debtor.

3. The averments as made in the Company Petition by the petitioner remained unrebutted as the respondent has not filed any counter.

4. In this backdrop, the above Company Petition was taken up for hearing on the point:

**POINT:**

- Whether there exists a financial debt exceeding Rupees one crore due and payable by the respondent? If so, whether the respondent has defaulted in repayment of the same?

5. We have heard Mr. Dishit Bhattacharjee, learned advocate for the petitioner/ financial creditor.

6. At the outset, we wish to state that merely because the respondent remained ex parte, it cannot be assumed that the case of the petitioner has been proved.

7. Before we proceed further, with our discussion on the Point, it is pertinent to state that on 01.02.2024 when the matter stood posted for filing proof of service of notice on the respondent, learned counsel for the Financial Creditor, Mr. Dishit Bhattacharjee appeared through videoconference and submitted that the proof of service of notice on the respondent has been filed and the respondent has been served. An advocate, by name, Mr. Prashant had appeared through videoconference and submitted that he has been instructed by the Corporate Debtor to appear on its behalf. We, therefore,

directed him to file Vakalatnama within three days for the Corporate Debtor and further stated that in default it will be deemed that the Corporate Debtor remained ex parte. We also directed the Corporate Debtor to file counter, if any, while directing the petitioner to serve copy of the petition on the respondent within three days and posted the matter to 21.02.2024.

8. On 21.02.2024, the learned counsel for the petitioner Mr.Dishit Bhattacharjee was present in person. However, the learned counsel, Mr.Prashant, who appeared through videoconference on 01.02.2024 and offered to file Vakalatnama did not choose to file Vakalatnama for the respondent Corporate Debtor. The Corporate Debtor was also “called absent”. We

adjourned the matter to 12.03.2024. Thereafter also neither any Vakalatnama on behalf of the respondent has been filed nor the respondent appeared through its any of the other authorised agent.

9. Here it is pertinent to note that on perusal of the Company Petition the registered address of the respondent is mentioned as below:

**Registered Office:**

**KALZEN CONTECH PRIVATE LIMITED**

#2-22-223/1/G1, Aruna Co-Op Society,

Sai Krupa Residency, Jayanagar, KPHB

Hyderabad – 500 072, Telangana.

10. The said address of the Registered Office of the respondent, is also found in the website of the Ministry of Corporate Affairs.

11. However, a perusal of the Memo of Proof of Service dated 24.01.2024 filed by the petitioner shows that, the notice to the respondent was sent to the above Registered Office address of the corporate debtor, besides to two more addresses, which are neither mentioned in the Company Petition nor found in any official records. The same is illustrated as under:

<b>Sl. No.</b>	<b>Address as printed on Postal Dispatch Slip</b>	<b>Document</b>	<b>Enclosed to Memo dt. 24.01.2024 at page no.</b>	<b>Remarks</b>
1	Kalzen Contec. E 701 Trendest. PIN 500032	Postal Dispatch Slip dated 23.12.2023 of RL Nehrunagar S.O. 500026	2	Such address not found in any official record.
2.	Kalzen Contec., Villa No.1. PIN 500032.	Postal Dispatch Slip.	2	- do -
3	Kalen Contec 2-22-223/ 1/ G1 PIN 500072.	Postal Dispatch Slip.	2	Address as mentioned in the CP and records.

12. Strangely, the Postal Acknowledgment enclosed at page 3 of Memo dated 24.01.2024 relied on by the petitioner to establish service of notice on the respondent, does not relate to registered address of the office of the respondent, which is mentioned in the Company Petition. Interestingly, the address, where the notice was served as per the acknowledgement did not find place anywhere in the Company Petition or Registrar of Companies web portal.

13. Thus, it is as clear as crystal that the Corporate Debtor was not served of the notice of the Company Petition at its registered office, which is the only address that the petitioner mentioned in the Company Petition. Admittedly the counsel Mr. Prashant, who

claimed that he has been instructed to appear also did not file Vakalat for the respondent.

14. Therefore, no reliance can be placed on the Postal Acknowledgement which relates to an address which is not mentioned in the Company Petition.

15. Nextly, before numbering the Company Petition, the Registry has raised the following objections and the petitioner has filed Compliance Memo dated 15.12.2023 reporting compliance as below:

<b>Objections raised by the Registry</b>	<b>Compliance reported by the petitioner vide Memo dated 15.12.2023.</b>
1. As per the NCLT Order dated 03.04.2023 and as per the Regulation 20(1A) of IBBI (Information Utilities) Regulations, 2017 Record of Default (FORM-D) with Information Utility (NeSL certificate) may be enclosed.	The petitioner has produced record of default in form-D is produced.

<p>2. Any Agreement/Document between Financial Creditor &amp; Corporate debtor regarding the DEBT Please Submit/Clarify.</p>	<p>It is pertinent to note that a formal contract or agreement is not essential to claim a financial debt through an application under Section 7 of IBC. The Hon'ble NCLAT in Agarwal Polysacks Limited vs. K.K. Agro Foods and Storage Ltd, and this Hon'ble Tribunal in Smt. Pushpa Soni vs. Jairam Foundry Ltd. have categorically held the same. The copies of the judgments are enclosed herewith.</p>
<p>3. Document relied upon for determining the calculating Rate of Interest Please Clarify.</p>	<p>The interest has been admitted by the Corporate Debtor as per market rates in email dt. 10.01.2023 which annexed with the main application (Page 72). Hence the Applicant calculated the interest at the rate of 24% p.a.</p>
<p>4. Document relied upon for determining the calculating Rate of Interest Please Clarify.</p>	<p>The interest has been admitted by the Corporate Debtor as per market rates in email dt. 10.01.2023 which annexed with the main application (Page 72). Hence the Applicant calculated the interest at the rate of 24% p.a.</p>
<p>5. Proof of service to IBBI may be submitted in Form 1A (IAAA).</p>	<p>Form 1A (IAAA) dated 23.11.2023 is filed at page 5 of Memo dated 15.12.2023.</p>
<p>6. How the Debt Forms Financial Debt as Per the Section 5(8) please clarify.</p>	<p>The claim in the present application is a financial debt under Section 5(8)(a) of the IBC as money has been loaned by the Applicant to the Corporate Debtor against payment of interest. The same can be seen by the acknowledgement by the Corporate Debtor of the loan and the interest payment thereon in email dt. 10.01.2023 which annexed with the main application (Page 72). The total claim of the Applicant includes principal and</p>

	interest and hence it is a financial debt under Section 5(8)(a) of the IBC.
7. AFA validity expired.	New AFA to be submitted.
8. Vakalatnama without “Telangana Advocates’ welfare Fund Stamp”.	Affixed with original application.
9. Any Recall notice issued to Corporate Debtor regarding the Payment of DEBT, Please clarify.	it is established proposition of law that a demand/recall notice is not essential for an application under Section 7 of IBC. The judgment in Mr. Kolla Koteswara Rao vs. Dr. S.K. Srihari Raju and another, categorically holds the same. The copy of the judgment is enclosed herewith.

16. It is pertinent to note here that the objections no.3, 4, 5, 6 and 9, in this case, being in respect of the “very maintainability” of the Company Petition, the Registry is duty bound to place the said compliances before the Bench for appropriate orders.

17. That apart, in terms of Regulation 20 (1A) of Insolvency and Bankruptcy Board of India

(Information Utilities) Regulations, 2017, it is mandatory for the petitioner to enclose Record of Default in Form-D. In compliance of that objection, the petitioner instead of filing Form-D, has filed Form-C, which the Registry even failed to notice, before registering the Company Petition.

18. Be that as it may, even assuming for a moment that there is proper compliance as regards objections no.3, 4, 5, 6, 7 and 9, indisputably, necessary pleading in respect of the said compliance is required to be made by way of an amendment to the Company Petition, lest the same cannot be looked into.

19. In this regard, reliance can be placed on Surendra Trading Company vs. Juggilal Kamlapat Jute Mills

Company Limited and Ors. ((2017) 16 SCC 143), it was held:

*“26. .. if the objections are not removed within seven days, the applicant while refilling the application after removing the objections, should file an application in writing showing sufficient case as to why the applicant could not remove the objections within seven days. Only if the adjudicating authority is satisfied that sufficient cause is shown in not removing the defects would it entertain the application, otherwise it will have right to dismiss the application”.*

In Dena Bank vs. C. Shivakumar Reddy and Anr. (Civil Appeal No. 1650 of 2020), it was held:

*“the Adjudicating Authority calls upon the Applicant to cure some defects, such defects have to be rectified within 7 days, and thereafter “the Adjudicating Authority may accept the cured application”.*

In the above ruling it was further held that,

*“such averments were duly incorporated by way of amendment, and the Adjudicating Authority rightly looked into the amended pleadings”.*

20. In this case the petitioner has simply filed Memo dated 24.01.2024, signed by the Counsel, without seeking any leave to amend the pleadings.

21. Therefore, in absence of any amendment to pleadings, even if it is construed that the objections are cured, yet this Company Petition is liable to be rejected.

22. Hon'ble Supreme Court in Rajmas Foundation & others Vs. Union of India & others, Civil Appeal No.6662 of 2004, has held that:

*"The principle that a person who does not come to the Court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under [Articles 32, 226 and 136](#) of the Constitution but also to the cases instituted in others courts and judicial forums. .. .."*

23. Insofar as the case on hand is concerned, for the reasons aforementioned, we are satisfied that the petitioner has not approached the Tribunal with clean hands. Hence this is a fit case for not only rejection of the Company Petition, but also for imposing costs.

24. Hence, we hereby reject the Company Petition as not maintainable for not 'serving' notice on the respondent, besides for want of proper amendment in the Company Petition. We make it clear that we are not entering into any finding on the merits of the other contentions. We also direct that the petitioner shall pay cost of Rs.10,00,000/- (Rupees ten lacs only) to the Hon'ble Prime Minister's Relief Fund, within 10 (ten) days from the date of receipt of this order and file

compliance on or before 1<sup>st</sup> April 2024. We, therefore, reject this petition with costs.

25. In the result, Company Petition (IB) No.275/7/HDB/2023 is rejected with costs.

SD/-

**CHARAN SINGH**  
**MEMBER (TECHNICAL)**

SD/-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA**  
**MEMBER (JUDICIAL)**

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