

**NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH
GUWAHATI**

CP. (IB) No.2/GB/2022

Coram:

Hon'ble Shri Deep Chandra Joshi, Member (J) : Hearing through
Hon'ble Shri Prasanta Kumar Mohanty, Member (T) : Video Conferencing

In the matter of:

Dr. N. Sahewalla and Company Private Limited
(CIN: U85110AS1993PTC00387), having
Registered Office at Bordoloi Avenue,
Jalannagar, Dibrugarh- 786005
..... Petitioner / FC

Versus

Kuber Khanij Private Limited
[CIN:U14200ML2008PTC008341], having
Registered Office at Mrs. Slowlylian Mawroh, Near
Bausara Eye Clinic, Veronica Lane, Laitumkarh
Main Road, Shillong-793003
..... Respondent/Corporate Debtor

Order delivered on 09.09.2022

ORDER

[Per se: Shri Prasanta Kumar Mohanty, Member (T)]

1. The present Petition has been filed by the Petitioner/Financial Creditor, i.e. Mr. Dr. N. Sahewalla and Private Company Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016, read with Section 14 and 33 and other applicable provisions of the Insolvency and Bankruptcy (application to Adjudicating Authority Rules, 2016) seeking initiation of Corporate Insolvency Resolution Process ("CIRP") in respect of the Corporate Debtor (CD) namely, Kuber Khanij Pvt. Ltd., which has failed to pay the due and payable financial

debt of an amount of Rs. 4,43,29,509.00 (Rupees Four Crores Forty-Three Lakh Twenty-Nine Thousand Five Hundred Nine only) as on 01.12.2021.

2. The Corporate Debtor Kuber Khanij, a registered Private Limited Company, bearing CIN: U14200ML2008PTC008341, incorporated on 22.10.2008 is engaged in the mining and quarrying industry. As per the information available on the website of Ministry of Corporate Affairs, the authorized share capital of the Corporate Debtor is Rs. 25,00,000.00 (Rupees Twenty-Five lacs only) and paid-up capital Rs. 1,10,000.00 (Rupees One Lac Ten thousand only). A true copy of the Master Data of the Company as available on the Ministry of Corporate Affairs website has been annexed with the Petition. The address of the Registered Office of the Corporate Debtor is at Mrs. Slowlylian Mawroh, near Bausara Eye Clinic, Veronica Lane, Laitumkrah Main Road Shillong- 793003 and Sri Mukut Mithi S/o Late Kumso Mithi, R/o Near Mishmi hills Resort & Roing Zoo, Ezengo Village, P.O. Roing, district: Lower Dibang Valley, Arunachal Pradesh-792110 is one of the Directors of the Corporate Debtor.

3. The Applicant submits that:

3.1 The Corporate debtor in the year 2017 approached the financial creditor for obtaining an unsecured loan facility and after agreeing to the same, a loan agreement dated 03.10.2017 was executed between the parties and a loan amount of Rs. 2,75,00,000.00 (Rupees Two Crores Seventy-Five Lakhs only) was disbursed in favour of the corporate debtor. The Corporate debtor undertook to repay the principal amount within 3 years of the execution of the loan agreement and pay interest at 9 % compounded annually.

3.2 On 15.05.2018 a sum of Rs. 25,00,000.00 was further transferred to the corporate debtor.

3.3 The Corporate Debtor was supposed to pay the interest at the rate of Nine Percent (9.00%) per annum, compounded annually, and the interest was to be paid after deducting TDS on or before 10th day of April every year.

However, the corporate debtor never paid any amount towards the interest but for reasons best known for F.Y. 2017-18 had deposited a sum of Rs. 82,602/- towards TDS on the said interest.

3.4 The Corporate Debtor defaulted in repaying the loan amount disbursed in favour of the corporate debtor, the financial creditor vide a “Loan Recall Notice” dated 02.10.2021 called upon the corporate debtor to pay within 30 days, the loan amount along with the interest, further along with the expenses incurred which are due and payable. On the failure of the corporate debtor to clear its dues, the financial creditor through its Advocates issued a legal notice dated 12.11.2021 and called upon the corporate debtor to pay the outstanding loan amount along with the interest within 7 days from the receipt of the same notice failing which appropriate legal remedies would be initiated against the corporate debtor. However, the corporate debtor has failed to repay the amount due. Hence the present application is filed before this Hon’ble Tribunal.

4. The Applicant further states that the total amount disbursed to the CD is 3,00,00,000.00 (Rupees Three crores only) and the amount of interest on this amount at the rate of 9% per annum compounded annually till 01.12.2021 is Rs. 1,43,29,509.00 (Rupees One Core Forty-Three Lacs Twenty-Nine Thousand Five Hundred Nine only) and the total debt due and payable by the CD comes to Rs. 4,43,29,509.00 (Rupee Four Crores Forty-Three Lakhs Twenty-Nine Thousand Five Hundred Nine Only).

5. The total amount in default and due from the Corporate Debtor is Rs. 4,43,29,509.00 (Rupee Four Crores Forty-three Lakhs Twenty-Nine Thousand Five Hundred Nine Only) being the amount of Principle Amount paid by the Financial Creditor, along with loan amount and interest not paid by the corporate debtor. The default occurred on 10.04.2019 when the CD failed to deposit the interest amount payable for the Financial Year, 2018-19. The default further occurred on 10.04.2020 when the CD failed to deposit the interest

amount payable for the financial year 2019-20. The default occurred once again on 03.10.2020 when the CD failed to repay the loan amount along with the interest within 3 years from the date of execution of the loan agreement i.e. 03.10.2017. The default occurred further on 02.11.2021, when the CD failed to repay the debt within 30 days from the date of issuance of the loan recall notice and it finally occurred on 19.11.2021, when the CD failed to repay the debt within 7 days of the receiving the legal notice dated 12.11.2021.

6. In support of the financial debt, the FC has enclosed the following documents: -

- i. A copy of the loan agreement dated 03.10.2017.
- ii. A true copy of Master Date of the CD as per the records of MCA website.
- iii. True copies of the Bank Statement of the FC showing disbursement of loan amount
- iv. True copies of the account ledgers as maintained by the FC.
- v. True copy of proof of payments made by the CD towards TDS.
- vi. True copy of loan recall notice dated 02.10.2021.
- vii. True copy of legal notice dated 12.11.2021.
- viii. True copies of Balance Sheets

7. The Petitioner/FC has also filed IA (IBC) No. 53 of 2022 on 21.07.2022 under Rule 11 of the NCLT Rules, 2016 bringing the following additional documents in support of its application:

Sr.No.	Annexure No.	Details
1	Annexure -I	A certified true copy of the Board Resolution dated 12.09.2017 for granting loan to the corporate debtor.
2	Annexure-II	True copy of statutory audit report of the financial creditor for assessment year 2019-20.
3	Annexure-III	True copy of the statutory audit report of the financial creditor for assessment year 2020-21.
4	Annexure-IV	True copy of the statutory audit report of the financial creditor for assessment year 2021-22.

5	Annexure-V	True copy of service of order dated 17.06.2022 along with the email read receipt.
6.	Annexure-VI	True copy of the specific board resolution for filing the petition before the Hon'ble Tribunal.
7	-	Proof of service.

8. Since from the beginning, the Respondent/CD was not appearing before this Bench, during the hearing, this Bench vide its Order dated 12.05.2022, had permitted the Petitioner / FC as prayed for for serving notice through Newspaper *one in* The Times of India, published from Guwahati and another local newspaper i.e. Shillong Times, published from Shillong.

9. In compliance of the aforesaid order, the Petitioner / FC had published the notice in the said two Daily Newspapers. Copies of the publications have also been filed before this Bench by way of an affidavit by the Petitioner / FC dated 07.06.2022.

10. Even, after publication of the notice in the News Papers, no one appeared on behalf of the Respondent /CD on any date of hearing. The Respondent was given sufficient opportunities to appear and present its case, the matter was taken up on 04.03.2022, 31.03.2022, 06.05.2022, 10.06.2022, 17.06.2022, 28.07.2022 and 05.08.2022, but the Respondent Company did not appear. One letter has been enclosed by the Financial Creditor which was sent by the Dr. Ashish Malakar, Director, Kuber Khanij Pvt. Ltd and received by the FC on 21.05.2022, it has been mentioned in the letter that:

“..As understood you have filed an application in NCLT. As you are also ware, the business could no.. up due to Covid-19 restrictions. your kind cooperation is highly appreciated...”

11. The petitioner/FC has succeeded in proving that it has meted out all the requirements under Section 7 of the Code. Since the CD remained absent, the matter was heard ex-parte and the order was reserved on 05.08.2022.

12. The Petitioner/FC has proposed the name of insolvency resolution professional, Mr. Mukesh Gupta, F-1, Milap Nagar, Uttam Nagar, New Delhi, having IP Registration No.IBBI/IPA-001/IP – P01494/2018-2019/12254 to be appointed as Interim Resolution Professional for initiating insolvency resolution process .Form 2 has been filed by the proposed IRP.

13. Considering the materials made available by the Financial Creditor/Petitioner, arguments of learned counsel of the Petitioner and the facts mentioned hereinabove, this Adjudicating Authority is satisfied that,

- a) The Corporate Debtor availed the unsecured loan facilities from the Financial Creditor.
- b) Existence of debt is above Rupees One Crore.
- c) Debt is due and defaulted.
- d) Default occurred on 10.04.2019
- e) Petition has been filed within the limitation period, as the default date is 10/04/2019 and onwards when the petition under Section 7 of the IBC has been filed on 21.01.2022
- f) Copy of the Application filed before this Bench has been sent to the Corporate Debtor and the application filed by the Petitioner under Section 7 of the IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

14. Accordingly, the petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of Kuber Khanij Private Ltd. The date of admission of this petition is 09.09.2022.

15. Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016 is hereby declared. The moratorium is declared for the

purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

- i. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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 (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.
- ii. 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.
- iii. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- iv. The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under

sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- v. Necessary public announcement as per Section 15 of the IBC, 2016 may be made.

16. This Adjudicating Authority hereby appoints, as proposed, **Mr. Mukesh Gupta, F-1, Milap Nagar, Uttam Nagar, New Delhi, having IP Registration No.IBBI/IPA-001/IP – P01494/2018-2019/12254** as an Interim Resolution Professional. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions under Section 13 and 14 and other relevant provisions of the Insolvency and Bankruptcy Code. The IRP is to file Assignment Declaration Form with the Registry within 3 days from the date of this Order.

17. The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016 and perform the duties as specified under Section 17, 18, 20 and 21 of IB Code. The IRP shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honest and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the Corporate Debtor. In case there is any violation, the IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under duty to protect and

preserve the value of the property of the Corporate Debtor as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

18. The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall complete the CIRP in time.

19. Registry is hereby directed under Section 7(7) (a) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail immediately.

20. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

21. Hence, CP (IB) 2 of 2022 is hereby admitted with the above directions.

Sd/-

**(PRASANTA KUMAR MOHANTY)
MEMBER (T) &
ADJUDICATING AUTHORITY**

Sd/-

**(DEEP CHANDRA JOSHI)
MEMBER (J) &
ADJUDICATING AUTHORITY**