

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB) 344/MB/2023**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 4 of  
the Insolvency and Bankruptcy

(Application to Adjudicating Authority)  
Rules, 2016

*In the matter of*

**Bank of India**

Having registered office at :- Star House, C-  
54, G Block, Bandra Kurla Complex,  
Bandra (East), Mumbai – 400051.

**..... Applicant/ Financial Creditor**

**Versus**

**Kesma Impex Private Limited**

Having address at :- E-9, MR Housing  
Society, Opp Raheja College, Relief Road,  
Santacruz West, Mumbai - 400054.

**..... Corporate Debtor**

**Order Delivered on :- 12.09.2023**

***Coram:***

**Mr. Anil Raj Chellan**

**Member (Technical)**

**Mr. Kuldip Kumar Kareer**

**Member (Judicial)**

***Appearances:***

For the Financial Creditor:- Adv. Geeta Toraskar

For the Corporate Debtor:- Adv. Sejal Tambe

**ORDER**

*Per:- Kuldip Kumar Kareer, Member Judicial*

1. This Company petition is filed by Bank of India (hereinafter called as "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Kesma Impex Pvt. Ltd. (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of **Principal outstanding of Rs. 2,49,95,885.45/-** (Rupees Two Crores Forty-Nine Lakhs Ninety-Five Thousand Eight Hundred and Eight Five and Forty-Five Paise only), **interest of Rs. 39,98,974/-** (Rupees Thirty-Nine Lakhs Ninety-Eight Thousand Nine Hundred and Seventy-Four only) **aggregating to Rs. 2,89,94,859.45/-** (Rupees Two Crores Eighty-Nine Lakhs Ninety-Four Thousand Eight Hundred Fifty- Nine and Forty-Five Paise only) as on 02.02.2023.

**The submissions of the Financial Creditor are as follows:**

2. The Corporate Debtor was availing credit facilities from the Financial Creditor since 1999 and the same were revised from time to time. Further, the Corporate Debtor approached the Financial Creditor for review of the existing credit facilities. The said request was considered by the Financial Creditor and the existing credit facilities of Rs.

4,50,00,000/- was issued and revised vide Sanction Letter dated 31.03.2018 and 24.09.2020.

3. Further, a Deed of Guarantee was executed between the Directors (Guarantors) of the Corporate Debtor and the Financial Creditor on 11.08.2017 and 10.05.2018.
4. Further, the Corporate Debtor executed Hypothecation cum Loan Agreement in favour of the Financial Creditor. The Corporate Debtor also signed and executed Letter of Acknowledgement of Debts and Securities and thereby acknowledged the debt amount.
5. The Corporate Debtor failed and neglected to make the repayment of the loan amount within the stipulated period and hence, the loan account of the Corporate Debtor was classified as NPA on 26.10.2021.
6. The Financial Creditor sent a loan payment recall notice dated 28.10.2021 for claiming the outstanding dues of the Corporate Debtor. The Financial Creditor also sent Legal Notice dated 12.12.2022 through its Advocate thereby demanding the unpaid financial debt owed by the Corporate Debtor.
7. The Corporate Debtor replied to the said notice vide letter dated 06.01.2023 wherein the Corporate Debtor has not denied its liability to pay but has raised an objection only on the amount claimed by the Financial Creditor.

8. Hence, the Financial Creditor submits that the petition is complete in all respects and the default has been corroborated by substantial evidences, therefore, the petition ought to be admitted and the Corporate Insolvency Resolution Process to be initiated against the Corporate Debtor.
9. The Corporate Debtor was granted with two weeks' time to file its reply, however the Corporate Debtor failed to file its reply and hence the right to file reply was forfeited vide Order dated 25.07.2023.

### **FINDINGS**

10. We have heard the counsel for the parties and gone through the records.
11. During the course of arguments, the counsel for the applicant has argued that in this case the factum of financial debt and the default committed by the Corporate Debtor stands proved on record. According to the counsel for the applicant the credit facilities were granted to the Corporate Debtor in 1999 and thereafter the same was revised from time to time. In this regard the counsel for the applicant has referred to revised sanction letters dated 31.03.2018 and 24.09.2020 whereby different credit facilities were granted to the Corporate Debtor. The counsel for the applicant further referred to the hypothecation cum loan agreement dated 10.05.2018 which was executed by the Corporate Debtor in favour of the applicant bank. In addition to this, multipurpose agreement demand promissory note were also executed by the Corporate Debtor. As the Corporate Debtor failed to make the repayments in time and committed default, the account of the

Corporate Debtor was declared NPA, as is evident from the NPA certificate dated 21.12.2022. The counsel for the applicant bank further submitted that it is a fit case to be admitted under Section 7 of the Code.

12. On the other hand, the counsel for the Corporate Debtor has argued that no case for admission of the application under Section 7 of the Code was made out and the application deserves to be dismissed.

13. Having considered the contentions raised by the counsel for the parties, we are of the considered view that the applicant in this case has been able to establish the existence of a financial debt and default committed by the Corporate Debtor. It is evident from the sanction letter dated 31.03.2018 and 24.09.2020 that different loan facilities were granted to the Corporate Debtor against execution of documents such as hypothecation cum loan agreement dated 10.05.2018, demand promissory note etc. It is further in evidence that the Corporate Debtor committed default in payments and its account was declared NPA on 26.10.2021 as is evident from NPA certificate dated 21.12.2022. Thereafter, a recall notice dated 28.10.2021 was also issued to the Corporate Debtor. Subsequent to that another legal notice dated 12.12.2022 was also issued to the Corporate Debtor but despite that it has failed to pay the outstanding dues.

14. It is further evident from the NeSL records that the Corporate Debtor committed default as on 28.09.2021 being the date of default. Therefore, the present application, which was filed in May 2023, is well within the limitation.

15. No substantial defence has been raised on behalf of the Corporate Debtor. No reply has been filed despite the fact that sufficient opportunities were given to the Corporate Debtor. Eventually, vide order dated 23.06.2023 the right to file reply of the Corporate Debtor was forfeited. Since, no reply has been filed, the averments made in the application under section 7 of the Code has not been controverted at all and are deemed to have been admitted as correct by the Corporate Debtor. Therefore, we find the instant case to be a fit one to be admitted under section 7 of the Code. It is ordered accordingly in the following terms:

**ORDER**

a. **The above Company Petition No. (IB) 344(MB)/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Kesma Impex Private Limited.**

b. This Bench hereby appoints **Renascence Insolvency Resolution Professionals Private Limited, Registration No: IBBI/IPE-0093/IPA-1/2022-23/50034** as the Interim Resolution Professional having address at **101, Kanakia Atrium - 2, behind Courtyard Marriott, Andheri East, Mumbai - 400093** email :- [rj@rirp.co.in](mailto:rj@rirp.co.in), to carry out the functions

as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

**Accordingly, this Petition is admitted.**

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**ANIL RAJ CHELLAN  
(MEMBER TECHNICAL)**

**Sd/-**

**KULDIP KUMAR KAREER  
(MEMBER JUDICIAL)**