

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -I**

CP (IB) No. 348/MB/2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Credas Trusteeship Service Private Limited
[CIN: U74999MH2020PTC348484]

Having its registered office at
410, Bhaveshwar Arcade Annexe,
LBS Marg, Opp Shreyas Cinema,
Ghatkopar (West),
Mumbai, Maharashtra-400086

.....Applicant/Financial Creditor

Versus

Shree Nakoda Infrastructure Private Limited
[CIN: U70101MH2011PTC268459]

Flat No.302/C,
Floor-III, Platinum building
Juhu Lane, Andheri(W),
Mumbai, Maharashtra-400058
Order Delivered on : 19.12.2023

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht, (Retd.)
Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Financial Creditor: Ms. Mehali Mehta, Advocate

For the Corporate Debtor : Ms. Nandita Dethe, Advocate

ORDER

Per:

1. This Company Petition has been filed by Credas Trusteeship Service Private Limited (hereinafter referred to as "Financial Creditor") as a security trustee of M/s Kimuro Solutions (OPC) Private Limited, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Shree Nakoda Infrastructure Private Limited. (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for a default in repayment of outstanding debt of INR 5,00,00,000/- (Rupees Five Crore Only) as on **15th January 2022**, which is the first date of default and the last date of Default is **12th July 2022**.
2. The total amount claimed to be in default by the Financial Creditors is **5,43,32,089/- (Rupees Five Crore Forty-Three Lakh Thirty-Two Thousand and Eighty-Nine only)** with interest at the rate of **18% Per Annum and Default/Penal interest @2% per month, payable in 6 (six) months.**

3. The Corporate Debtor is a Company incorporated on 06.12.2012 at Flat No.302/C, Floor-III, Platinum Building Juhu Lane, Andheri(W)Mumbai, Maharashtra-400058 with the Registrar of Companies, Maharashtra, Mumbai, therefore the Bench has the Jurisdiction to deal with this Petition.

Submissions made by the Financial Creditor:

4. A tripartite Loan Agreement was entered between Jain Engineering hereinafter referred to as the “**Borrower**”, Kimuro Solution (OPC) Private Limited hereinafter referred to as the “**Lender**”, Credas Trusteeship Service Private Limited hereinafter referred to as the “**Security Trustee**”. **All the three** parties have entered into Security Trustee Agreement and was executed on 22nd Day of September 2021.
5. The Corporate Debtor herein, M/s Shree Nakoda Infrastructure Private Limited, signed a deed of Corporate Guarantee with the Financial Creditor herein and stood as a Corporate Guarantor to the Loan.
6. On 06.04.2022 on account of repeated default by the Principal Borrower, the Financial Creditor sent a notice to the Principal Borrower as well as to the Guarantor, the Corporate Debtor herein, calling upon them to repay the entire Financial debt (along with Interest) to the tune of Rs.5,06,90,411/-(Rupees Five Crore Six Lakh Ninety Thousand Four Hundred and Eleven Only).

7. When the notice was served upon the Corporate Debtor, they immediately replied to the Financial Creditor by email dated 06.04.2022 and admitted their debt forthwith and that the outstanding dues will be cleared in the very said month.
8. On 12.04.2022 the Financial Creditor sent an email in response to the aforesaid email dated 07.04.2022 sent by the Principal Borrower and acting in good faith upon the assurance of the Principal Borrower, sought a detailed repayment schedule proposed by the principal borrower on their letterhead, to seek a waiver of penalty from the lender.
9. On 06th May 2022, the Financial Creditor issued a Demand notice to the Corporate Debtor by demanding payment of an unpaid financial debt due from M/s Kimuro Solutions (OPC) Private Limited. In the said Demand Notice the Financial Creditor asked the Corporate Debtor to repay the entire loan along with the interest amounting to **Rs.5,13,70,208 (Rupees Five Crore Thirteen Lakhs Seventy Thousand Two Hundred and Eight Only)** but the Corporate Debtor Failed to comply with the **Demand notice** of Financial Creditor.

Findings:

10. Heard learned counsel and perused the record.

11. Corporate Debtor's right to file Reply was forfeited vide order dated 03.07.2023. The Ld. Counsel appearing for the Corporate Debtor Ms. Dhara Modi informed this Bench as noted in the daily order dated 14.09.2023 that, they are ready to repay the debt claimed in default in instalments and they are ready to undertake the payment thereof in accordance with thereof. This Tribunal directed the Corporate Debtor to propose the terms of payment.

12. Learned Counsel for the Corporate Debtor requested for some time to place on record proposal for remitting the debt claimed to be default in four instalments stating that the copy of same has already been shared with the Financial Creditor. However, the Financial Creditor submits that the same has been rejected and they seek a better offer. Learned Counsel for the Corporate Debtor was then directed to place on record the offer before this Bench by way of an additional affidavit, however, no additional affidavit was filed by the Corporate Debtor on next date of hearing i.e. 09.11.2023. Accordingly, both the sides were heard and the matter was reserved for orders.

13. It is clear from the record that the amount was disbursed to the Corporate Debtor by the Applicant, the copy of the Bank statement of the financial creditor where the disputed principal amount is disbursed by the Applicant on **23.09.2021** is on record. Learned Counsel for Petitioner through his arguments articulated the existence of debt and default which

are corroborated by the records annexed to the petition. In view of this, this Adjudicating Authority **Admits** this petition and orders initiation of CIRP against the Corporate Debtor. The Financial Creditor had disbursed the sanctioned loan amounts of Rupees Five Crores as under:

<u>Date of Disbursement</u>	<u>Amount of Disbursement</u>
23.09.2021	50,00,000
23.09.2021	50,00,000
23.09.2021	50,00,000
23.09.2021	50,00,000
23.09.2021	50,00,000
23.09.2021	50,00,000
23.09.2021	50,00,000
23.09.2021	50,00,000
23.09.2021	50,00,000
23.09.2021	50,00,000
23.09.2021	50,00,000
TOTAL	5,00,00,000/-

14. We find that the corporate debtor defaulted on several terms as stipulated in the Loan Agreement and also failed to repay the outstanding due amount and the Applicant issued a Demand Letter dated 06.05.2022 on account of the occurrence of an event of default under the Loan Agreement and recalled the entire loan amount being an aggregate sum of INR 5,06,90,411/- (Rupees Five Crore Six Lakh Ninety Thousand Four Hundred and Eleven Only) outstanding as on 6th April 2022, together with additional/ further interest, legal

charges, cost incurred thereafter till the date of repayment of the entire liability within 1 (One) days from the date of the said notice. Through this notice, the deed of personal guarantee was also invoked.

15. The said Petition is within the scope of Limitation. The First date of default is 15.01.2022 and the Petition was instituted before this Tribunal on 30.01.2023. 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 more than of the minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and 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.

16. The Financial Creditor has proposed the name of **Mr. Deepak Maheshwari having registration no. IBBI/IPA-002/IP-N00531/2017-2018/11594.** as the Interim Resolution Professional to take charge of the Respondent company assets, affairs, and books of account and to conduct the affairs of the Respondent Company's / Corporate Debtor's as per the provisions of the Insolvency & Bankruptcy Code, 2016 of the Corporate Debtor. The written communication in Form 2 is filed as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

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

- a. The Petition bearing **CP (IB) 348/MB/2023** filed by, **Credas Trusteeship Service Private Limited(U74999MH2020PTC348484)**, the Financial Creditor, under section 7 of the IBC read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against, **Shree Nakoda Infrastructure Private Limited** [CIN: **U70101MH2011PTC268459**] the Corporate Debtor, is admitted.
- b. There shall be a moratorium under section 14 of the IBC, regarding the following:
- (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

c. Notwithstanding the above, during the period of moratorium:

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- a. 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;
- b. The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- 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 IB Code.
- 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.

18. Mr. Deepak Maheshwari having registration no. IBBI/IPA-002/IP-N00531/2017-2018/11594. Unit 443, Fourth Floor, Tower-A2, Spaze I Tech Park, Sohna road, Gurgaon, Haryana -122001 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. He shall be paid a consolidated remuneration of Rs.1,50,000 /- (Rupees One Lakh Fifty Thousand only) for the period from the commencement of CIRP till the Constitution of CoC as fee, in addition to the expenses incurred in relation to CIRP process. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/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.

e. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or 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.

f. The Financial Creditor shall deposit a sum of Rs.3,00,000 /-(Rupees Three Lakhs 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).

- g. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- h. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

SH. PRABHAT KUMAR
Member (Technical)

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)