



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical/Video – Conferencing/Hybrid Mode)

C.P.(IB)No.164/BB/2022 &
I.A.Nos.242 & 243/2023
U/s. 7 of the IBC, 2016
R/w Rule 4 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

Rahul Narayana Reddy,
#238, 1st Floor 1st Cross 2nd Block,
3rd Phase Banashankari
3rd Stage

Bengaluru - 560085

- Petitioner/Applicant/Financial Creditor

VERSUS

M/s. Biomylyz Private Limited,
Building No. I, No. 21-D, 2nd Phase,
Peenya Industrial Area

Bangalore - 560058

- Respondent/Corporate Debtor

Order delivered on: 26/09/2024

Coram: Hon'ble Mr. K. Biswal, Member (Judicial)
Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri S. Vivekananda & Shri Vinay B. L.
For the Respondent : Shri Abhijith Atur & Ms. Athulya M. P.

O R D E R

Per: K.Biswal, Member(Judicial)

1. The instant Company Petition bearing **C.P.(IB)No.164/BB/2022** is filed on 29.08.2022 by Rahul Narayana Reddy, U/s.7 of IBC, 2016, R/w. Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by *inter alia* seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Biomylyz Private Limited (Respondent) for a total outstanding default amount of Rs.8,46,69,785/-, In Part IV of Form No.1 filed with application, the following information is given :



2.	Amount claimed to be in Default and the date on which the default occurred (Attach the workings for computation of Amount and ays of default in tabular form)	Amount claimed to be in Default: Rs.8,46,69,785/- (Eight Crore forty six lakh sixty nine thousand seven hundred and eighty five rupees only) Date on which default occurred: 05/05/2022 – the date on which demand notice was sent.
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Further, the NeSL Record of Default (RoD) in Form D has been filed vide Diary No.4239 dated 07.10.2022, in which also the date of default is mentioned as 05.05.2022.

2. The brief facts of the case, as averred in the Petition, are as follows:
- a) M/s. Biomylyz Private Limited, (hereinafter referred to as Respondent/ the Company/Corporate Debtor) is a Private Limited Company incorporated under the provisions of Companies Act, 2013 on 01.03.2017. Its registered office is situated at Building No.1, No.21-D, 2nd Phase, Peenya Industrial Area, Bangalore. It is engaged in Healthcare Industry.
 - b) The Financial Creditor was approached by Mr. Srinavasa Ragavendra, who is one of the Directors of the Corporate Debtor for funding of Corporate Debtor. Accordingly, the Petitioner over a period of time commencing from June 2017 started funding the Company for its business requirements. Over a period of time, the Petitioner has lent an amount of Rs.5,57,20,000/- . As on date, the Corporate Debtor is liable to pay the Financial Creditor, an amount of Rs.8,46,69,785/-. The last payment of Rs.6,00,000/- was made by the Financial Creditor to the Corporate Debtor on 17.11.2018.
 - c) After receipt of money, the Corporate Debtor neither bothered to repay the money, nor did it pay the interest on the loans availed from the Financial Creditor. On continuous insistence, the Corporate Debtor repaid an amount of Rs. 20,00,000/- on 17.06.2020, but it failed to pay anything thereafter, in spite of making several demands. The




amount was lent by the Petitioner in 2017-18 as an arrangement to the Corporate Debtor to overcome the difficulty in availing funds from the market then. However, even after more than four years, the Corporate Debtor was unable to repay/refund the amount of Rs.5,37,20,000/- to the Financial Creditor.

- d) Being left with no other alternatives, the Petitioner also sent a notice dated 5th May, 2022 calling upon the Corporate Debtor to repay the amount. However, the Corporate Debtor did not bother to even reply to the said notice. Left with no alternatives, the Petitioner has filed this Petition for the purpose of initiating the CIRP as against the Corporate Debtor.
 - e) A Demand Notice was served on 05.05.2022 on the Corporate Debtor and all the other Directors. The Applicant has not received any reply for the same till date and the financial debt remains unpaid. The amount due and payable to the Applicant qualifies as a financial debt as per the IBC, 2016 and that the Corporate Debtor has clearly defaulted in paying the same and it has become insolvent so to put it under CIRP.
 - f) Hence, the Petitioner urged this Authority to initiate CIRP against the Corporate Debtor by passing appropriate orders as per law.
3. The Respondent has opposed the Application by filing a statement of objections vide Diary No.655 dated 03.02.2023, by *inter alia*, contending as follows:
- 1) The amount in question is not a 'Financial Debt' and there is no 'Default' as defined under Section 5(8) of the Code and it was not issued against consideration for the time value of money and does not have commercial effect of borrowing. It is not even aware of the transfer of money by the Petitioner and there is no Board resolution authorising the funds transfer from the Petitioner. However, there were negotiations between the Board Members and the Petitioner as to whether to treat it a loan or capital and it is voluntary contribution made by **the Petitioner and his mother.**



- 2) During discussions between the Corporate Debtor and the Petitioner, it was indicated that when an investor is ready to invest in the Corporate Debtor, the alleged loan shall be repaid to the Petitioner upon certain terms and conditions as put forth by the investor. However, this condition was not agreeable by the Petitioner. Therefore, the amount in question cannot be treated as a financial debt.
 - 3) It is alleged that the Petitioner and his mother were operating the Bank accounts and signing cheques on behalf of the Corporate Debtor until 2021. So, they have transferred an amount of Rs.20,00,000/- on 17.06.2020 to the Petitioner as interest and they have misappropriated the Company money as they like. The Present Petition is filed with sole intention of usurping the Company and its affairs. And the Corporate Debtor is solvent Company by earning profits every year. It has secured loans from several other financial institutions as such ICICI Bank, IDFC First Bank, Tata Capital, Capital Float etc., and it has not committed any default on these loans. And the mother of the Petitioner has also filed a Petition u/ss. 241-242 of the Companies Act, 2013 for the alleged acts of oppression and mismanagement. Therefore, they have urged the Authority to dismiss the Petition.
4. The Petitioner has filed brief Rejoinder vide Diary No 1105 dated 27/02/2023 and written submissions vide Diary No.4074 dated 11.07.2024, by *inter alia* contending as follows:
- i) The aspect to debt and default is clearly seen from the balance sheets and profit and Loss accounts of the Respondent company, the email correspondences between the Petitioner and the Respondent and its directors. Further, loan confirmation was given by the Respondent company and acknowledged by all the directors of the Respondent Company on the letter head of the company.
 - ii) It is submitted that the receipt of the amount of Rs 5,57,20,000/- cannot be denied by the Corporate Debtor and has not been denied. However, very conveniently, the Respondent has contended that there



is no loan agreement, lack of formal authorisation, no consideration for the time value of money, no established default, etc., The lending of money is not in dispute.

- iii) That a bare perusal of the balance sheet clearly shows the acknowledgement of liability to Rahul Narayan Reddy i.e the Petitioner to an extent of Rs. 5,57,20,000/- for the year 2019-20 and Rs. 5,37,20,000/- for the year 2020-21. The contentions of the Respondent that there is lack of formal authorisation, that there is no loan agreement and that there is no consideration for the time value of money are all dealt under the decisions of Hon'ble NCLAT in *Shailesh Sangani v. Joel Cardasa and another, 2019 SCC OnLine NCLAT*.
- iv) It is submitted that the Petitioner herein is a Financial Creditor and the loan given to the Respondent/Corporate Debtor is a financial debt under Section 5(8) of the Insolvency and Bankruptcy Code, 2016. All Directors have signed the Balance sheets, Profit and Loss, Cash Flow statement and Notes to accounts for the year 2018-2021, which clearly discloses the loan amount from the Petitioner.
- v) With regard to the allegation and contention that there is violation of Section 179 of the Companies Act, 2013 and that there is no Board Resolution passed or borrowing of funds from the Petitioner Director, it is submitted that the Respondent and other directors are in possession of the Board Minutes and as such the minutes have been manipulated. However, without conceding to the violation of section 179, it is submitted that even if there were to be violation under the Companies Act, the same would not hinder admission of the company into Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, as has been held in *Anurag Gupta Vs. BK Education Services Pvt Ltd (2020) 221 CC 394 NCLT, ND*.

5. The Respondent by repeating various averments made in their objections, has filed written submission vide Diary No.4350 dated 24.07.2024, by *inter alia* contending as follows:



- a) There is a complete absence of formal authorization for the alleged loan provided by the Petitioner, which is a mandatory requirement under Section 179(3)(d) of the Companies Act, 2013. Since the Petitioner and his mother are holding 40% of the equity share capital in the Corporate Debtor and they were in control of the management of the Corporate Debtor until 2021 and therefore, the burden of proof is on the Petitioner to show that proper board resolution as required under Section 179 of the Companies Act, 2013 was obtained prior to the alleged infusion of funds as loan. Secondly, the Company Secretary's report dated 27.05.2024, which was commissioned to review the company's records, unequivocally states: "No minutes of Board meetings authorizing the loans or monies advanced by the directors were provided." This independent professional assessment further corroborates the Corporate Debtor's assertion that the alleged loan was never formally approved or authorized by the company through its proper governance channels. The absence of such crucial documentation casts serious doubt on the very existence and validity of the purported financial debt claimed by the Petitioner.
- b) The lack of a formal agreement precludes the alleged transaction from meeting the definition of a "financial debt" under Section 5(8) of the IBC. As such, the petition must be dismissed outright for failing to establish the existence of a financial debt as required under the IBC. It is settled law that all types of money transactions cannot be held as "Financial Debt" as defined under Section 5(8) of IBC. Reliance is placed on the decision of the Hon'ble NCLAT in **Shailesh Savla v. Good Value Financial Services Private Limited** reported in 2019 SCC OnLine NCLT 27271 (Para 9 & 10). Further, the Hon'ble NCLAT in **Sanjay Kewalramani vs. Sunil Parmanand Kewalramani & Ors.** reported in 2018 SCC Online NCLAT 310 (Para 6 to 9 & 12), it was held that in order to qualify a transaction as a financial debt within the meaning of Section 5(8) of the IBC, the said transaction should be against consideration for time value of money. And this judgment was followed by the Hon'ble NCLT, Ahmedabad Bench in

Nilu R Ahuja v. Ethan Textile India Pvt. Ltd. reported in 2020 SCC OnLine NCLT 17943.

- c) The crucial element is that there is no clarity as to whether the Petitioner brought in the amounts as investment, capital or loan. The ledger statement (Annexure A1d @ Pg.38 onwards, to the Petition) produced by the Petitioner himself contradicts the amounts that were invested by him over a period of time. Further, the Balance Sheet produced by the Petitioner (Annexure A1f @ page 101) mentions about the loans that are repayable on demand as NIL. Since there is no repayment date or that the alleged loan is also not repayable on demand, it can safely be stated that there is no consideration for time value of money.
- d) The absence of an agreed-upon repayment schedule precludes the possibility of a default. For a default to occur, there must be a failure to meet a defined payment obligation. The email communications dated 03.02.2022 and 15.02.2022 unequivocally demonstrate ongoing discussions between the Parties regarding the treatment of the alleged loan. The fact that the Parties were still deliberating on how to characterize and manage the transaction years after the alleged disbursement fundamentally negates any claim of an existing default. Reliance is placed on the judgement of *Innoventive Industries Ltd. v. ICICI Bank (2017) 1 SCC 407*.
- e) On 17.06.2020, the Petitioner unilaterally transferred a sum of Rs.20,00,000 to himself from the Corporate Debtor's accounts without any board approval or resolution, in clear contravention of Section 179 of the Companies Act, 2013, which mandates Board approval for such transactions. This unauthorized transfer constitutes a clear case of misappropriation of Company funds. The actions of the Petitioner potentially amount to embezzlement. Furthermore, this conduct represents an egregious breach of fiduciary duty as outlined in Section 166 of the Companies Act, 2013.

6. We have pursued the records available and also heard Learned Counsels, based on which we observe the following:



- a. By perusing various documents like Bank Statements, Balance sheet etc, it is clear that between the year 2017 and 2018, the Petitioner has advanced money on various occasions to the Corporate Debtor, total amounting to Rs 5,57,20,000/- (Five Crore Fifty Seven Lakhs, Twenty Thousand). In respect of the determination if the said amount is a 'financial Debt' or 'investment,' it is the contention of the Respondent that the said amount cannot be treated as Loan since there is no consideration for the time value of money. In this regard reliance is placed on the judgment of Hon'ble NCLAT **Shailesh Sangani Vs. Joel Cardoso, (2019) ibclaw.in 283 NCLAT**, vide order dated 30/01/2019, wherein it was held that:

“6. A plain look at the definition of 'financial debt' brings it to fore that the debt alongwith interest, if any, should have been disbursed against the consideration for the time value of money. Use of expression 'if any' as suffix to 'interest' leaves no room for doubt that the component of interest is not a sine qua non for bringing the debt within the fold of 'financial debt'. The amount disbursed as debt against the consideration for time value of money may or may not be interest bearing. What is material is that the disbursement of debt should be against consideration for the time value of money. Clauses (a) to (i) of Section 5(8) embody the nature of transactions which are included in the definition of 'financial debt'. It includes money borrowed against the payment of interest. Clause (f) of Section 5(8) specifically deals with amount raised under any other transaction having the commercial effect of a borrowing which also includes a forward sale or purchase agreement. It is manifestly clear that money advanced by a Promoter, Director or a Shareholder of the Corporate Debtor as a stakeholder to improve financial health of the Company and boost its economic prospects, would have the commercial effect of borrowing on the part of Corporate Debtor notwithstanding the fact that no provision is made for interest thereon. Due to fluctuations in market and the risks to which it is exposed, a Company may at times feel the heat of resource crunch and the stakeholders like Promoter, Director or a Shareholder may, in order to protect their legitimate interests be called upon to respond to



*the crisis and in order to save the company they may infuse funds without claiming interest. In such situation such funds may be treated as long term borrowings. **Once it is so, it cannot be said that the debt has not been disbursed against the consideration for the time value of the money. The interests of such stakeholders cannot be said to be in conflict with the interests of the Company.** Enhancement of assets, increase in production and the growth in profits, share value or equity enures to the benefit of such stakeholders and that is the time value of the money constituting the consideration for disbursement of such amount raised as debt with obligation on the part of Company to discharge the same. Viewed thus, it can be said without any amount of contradiction that in such cases the amount taken by the Company is in the nature of a 'financial debt'.*"

[Emphasis Supplied]

In the present case also, on perusal of the Balance Sheet for the F.Y 2021-22 and 2022-23, it is clear that the said money was treated as 'Loan' as per the books of the Corporate Debtor. Moreover, it is observed that during the course of communications between the Petitioner and Respondent, that the Respondent has duly acknowledged the existence of loan on various occasions. Further, in one of the emails dated 08/04/2022 the conversation flows as follows:

[From Corporate Debtor to the Petitioner, Dated: 8 April 2022 at 11:06 PM]

*We are in receipt of your email dated 6th April 2022 and noted the contents. As you are aware about the fund flow in the company, **with this current situation it is unviable for the company to repay your loan unless there is a fresh infusion of funds into the company.** Looking at Lender's urgency for the loan repayment the three Directors (Ragavendra, Srisailan and Vasanth) initiated to scout for investors to achieve this with great responsibility. **There has been no delay or casual approach towards the loan repayment by the company.***

.....



We wish to reiterate once again that the Company has not, cannot and will not commit any timelines of loan repayment given the current fund flow situation. Your response will decide the status of loan repayment which can be discussed in the board.”

Hence, it is clear that from the inception the Corporate Debtor was aware that the amount was given by the Petitioner may it be in an informal set-up was a “loan” and not an investment. The contention of the Respondent regarding it being unaware whether the amount was brought in as loan or investment is liable to be rejected. We are of the view that the money advanced was a loan and a debt as per Section 4(11) and Section 5(8) of the Code.

- b. In so far as the matter regarding “default” in cases under Section 7 of the IBC is concerned, the Hon’ble Supreme Court in the case of ***Innoventive Industries Ltd. vs. ICICI Bank and Ors. reported in (2018) 1 SCC 407*** has held as under:

*“ 27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt **becomes due and is not paid**, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.*

.....



...30. On the other hand, as we have seen, in the case of a corporate debtor **who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred.** It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

[Emphasis supplied]

It is to be pointed out that the Respondent has nowhere denied the existence of “Default”. Even otherwise there are emails & message placed on record that show that the Petitioner has time and again demanded his money from the Corporate Debtor, which is record enough to show that the debt claimed is “due and payable.” If the loan advanced has not been paid then default has occurred. Further, the Hon’ble Apex Court in the above mentioned judgment has also pointed out to the records of the information utility reflecting the existence of a debt and a default to be a determining factor. In this case also the information utility has furnished a Record of Default in Form-D which was authenticated on 04.10.2022 and filed before this Adjudicating Authority vide diary no.4536 dated 20/10/2022. This Record of Default in Form-D issued by NeSL clearly shows the default amount as Rs.8,46,69,785, and the date of default as 05/05/2022, *albeit* with a remark “disputed” against the authentication. However, existence of a dispute is not relevant for the purposes of Section 7 of the IBC. Hence, the default as marked under provisioned under Section 3(12) – ‘default’ is satisfied.

- c. With regard to the contention of Corporate Debtor that it is solvent Company and it has not committed any default to its various financial Creditors are concerned, it is to be mentioned here that the Corporate Debtor has committed default for the money transferred to the Company by the Petitioner. And whether the Company has any other claims from any other



Financial Creditors/Operational Creditors, is not relevant for deciding the issue here.

- d. So far as the contentions raised by Corporate Debtor with regard to alleged violations of provisions of Companies Act, 2013 and filing of case of acts of oppression and mismanagement by the mother of the Petitioner are concerned, it is to be observed here that the instant Petition has been filed under the provisions of Code before this Authority seeking to take cognizance of the case under its provisions. IBC, 2016 is an independent and comprehensive Act, and the Adjudicating Authority is competent to take cognizance of a case filed under the provisions of Code, which has exclusive jurisdiction to deal with the cases filed under it. Reliance is placed on the judgement of *Anurag Gupta v. M/s B.K Educational Services Pvt Ltd. (2019) ibclaw.in 353 NCLT, vide Order dated 10/10/2019*, wherein it was held that, *“The issue before this Tribunal is whether the Petitioner has advanced to the respondent company (in his capacity as a creditor) which has remained unpaid. If the loan advanced has not been paid then default has occurred. Therefore any violation of the provisions of the Companies Act, 1956/2013 would not make any difference and in his capacity as a Director the consequences of various violations would be faced by the Petitioner. **The admission of the present petition is not to prejudice those proceedings and the same shall remain intact.**”*
- e. We have carefully perused various judgements cited and relied upon by the Respondent and the facts and circumstances are of those cases are different with reference to the present case. Hence, we have relied upon relevant provisions of Code and the settled position of law on the issue to decide the issue.
- f. In view of above facts and circumstances of the case, we are satisfied that the instant Petition meets all parameters required to be fulfilled under various extant provisions of the Code the Petition is filed within the limitation period. The threshold requirement is also fulfilled and thus it is a fit case to initiate CIRP against the Corporate Debtor.



7. Hence, by exercising powers conferred on this Adjudicating Authority, U/s 7(5) (a) and following other extant provisions of the IBC, 2016 and the rules made thereunder and taking into consideration of settled position of law on the issue, the following orders are passed:

- a) **C.P.(IB)No.164/BB/2022** filed by Rahul Narayana Reddy **is hereby admitted** by initiating CIRP against M/s. Biomylyz Private Limited (Corporate Debtor);
- b) Shri Pawan Garg, with Regn. Number No.: IBBI/IPA-002/IP-N01011/2020-21/13267, address: #14054, ATS One Hamlet, Sector-104, Noida-201304, email:cspawan.garg@gmail.com, contact number: 9811363220 hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor to carry the functions as mentioned under the IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Section 15,17,18,19,20,21 of the IBC.
- c) The following moratorium is declared prohibiting all of the following, namely:
 - 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
 - d) *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) *The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;*



- f) 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 as also not applicable to surety*
- g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;*
- d) The IRP is hereby directed to file his report in the Tribunal from time to time and to strictly adhere time schedule as mentioned under the Code and to file progress reports from time to time.
- e) The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- f) Post the case for report of the IRP after four weeks of the date of this order.
8. **I.A.Nos.242 & 243 of 2023** are also stand disposed of, accordingly, in terms of the order in **CP(IB) 164/BB/2022**.

Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

Sd/-

**K. BISWAL
MEMBER (JUDICIAL)**