

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

**C.P. (IB) 89/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*

**Dowell Crushing and Industries Pvt. Ltd.**

Having its address at E-303, Maheshwari Nagar Bldg. D & E CHS Ltd, Maheshwari Nagar, MIDC, Andheri (East)

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

**Versus**

**Buoyant Financial Advisor Pvt. Ltd.**

Having its address at 405, Dalamal House, J. Bajaj Road, Nariman Point,  
Mumbai- 400021

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

**Order Delivered on :- 12/01/2024**

*Coram:*

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

*Appearances:*

For the Financial Creditor : Adv. Darpan Bhatia a/w Krushika Udeshi

**ORDER**

*Per: -Mr. Kuldip Kumar Kareer, Member (Judicial)*

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Dowell Crushing and Industries Pvt. Ltd.** (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Buoyant Financial Advisor Pvt. Ltd.** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Financial Debt of Rs. 1,18,04,774/- (Rupees one crore eighteen lakhs four thousand seven hundred and seventy four only) comprising of Rs. 1,03,85,432/- (Rupees one crore three lakhs eighty-five thousand four hundred and thirty two only) towards the principal amount and outstanding interest dues amounting to Rs. 14,19,342/- (Rupees fourteen lakh nineteen thousand three hundred and forty two only).

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

2. The Financial Creditor and the Corporate Debtor are companies incorporated under the provisions of the Companies Act, 1956. In or around 2015, the Corporate Debtor approached the Financial Creditor seeking financial assistance for setting up an Integrated Textile Park. Financial Creditor agreed to lend monies to the Corporate Debtor for the purposes as he was given assurance of hefty returns. Between the time periods of 2015 to 2017, or around February 2017, the Corporate Debtor informed the Financial Creditor that the business project had failed.
3. On 1<sup>st</sup> April, 2018, the representatives of the Corporate Debtor and the financial Creditor held a joint meeting regarding repayment of sum that was due and payable to the Financial Creditor. At such time, the Corporate Debtor requested the Financial Creditor to grant some time to the Corporate Debtor. The Corporate Debtor further requested the Financial Creditor to grant additional funds to the Corporate Debtor to revive its business which was accepted by the Financial Creditor.
4. The Corporate Debtor further assured the Financial Creditor that it would repay the Financial Creditor the principal amount by or before March 31,2022 along with interest. Upon further request made by the Corporate Debtor, the Financial Creditor further disbursed more amounts of finance to the Corporate Debtor between May 2018 and October 2018.
5. The Financial Creditor disbursed monies for the business purposes of the Corporate Debtor and the Corporate Debtor agreed to return the same to the Financial Creditor, However, in between October 2018 and March 2021, the

Corporate Debtor made various payments to the Financial Creditor against the interest amount payable against the said principal outstanding loan.

6. The Financial Creditor states that as per the minutes of the meeting held on 1<sup>st</sup> April 2018, the Corporate Debtor was obligated to repay the entire outstanding principal along with the interest amount, which it was not paying.
7. Therefore, the Financial Creditor issued a letter to the Corporate Debtor intimating the principal amount and interest amount to be payable by the Corporate Debtor. However, the Corporate Debtor failed to respond to the same.
8. Being constrained by the failure of the Corporate Debtor to repay the aforesaid dues by or before March 31, 2022, the Financial Creditor through their advocate issued a demand notice dated August 17, 2022 calling upon the Corporate Debtor to repay the dues to the Financial Creditor.
9. The Financial Creditor has filed the present Petition to initiate Corporate Insolvency Resolution Process against the Corporate Debtor for recovery of its outstanding dues.

**Analysis and Findings:**

10. Notice of the Petition was given to the Corporate Debtor, but none has appeared on its behalf to contest the proceedings. In the circumstances, the Corporate Debtor was proceeded against ex-parte vide order dated 12.07.2023.

11. We have heard the Counsel for the Petitioner and have also gone through the record.
12. It has been argued by the Counsel for the Petitioner that the Corporate Debtor availed a financial debt of Rs. 1,03,85,432/- from the Petitioner and committed a default in its repayment. Counsel for the Petitioner has referred to the minutes of the meeting dated 01.04.2018 held between the Petitioner and the Corporate Debtor whereby the latter acknowledge its liability to repay a sum of Rs. 1,11,73,256/- and further promised to repay the entire outstanding amount by 31.03.2022 along with interest @ 10% per annum.
13. According to the Counsel for the Petitioner, since the Corporate Debtor has failed to repay the outstanding financial debt despite notices dated 21.02.2022 and 17.08.2022, this constitutes default on the part of the Corporate Debtor. The Counsel for the Petitioner has further contended that the Petition is well within the period of limitation and, therefore, the same be admitted and CIRP be initiated against the Corporate Debtor.
14. We have considered the aforesaid contentions raised by the Counsel for the Petitioner and have also gone through the record.
15. In the minutes of meeting held on 01.04.2018 between the Petitioner and the Corporate Debtor, it stands recorded that between 2015 and 2017, the Petitioner disbursed loans to the Corporate Debtor on its request and a sum of Rs. 1,11,73,256/- was outstanding. It is further mentioned in the minutes dated 01.04.2018 that the Corporate Debtor had requested the Petitioner to disburse another sum of Rs. 40,00,000/- for business purposes. In para no. 8 of the minutes, it stands further recorded that the outstanding amount of Rs.

1,11,73,256/- will be repaid by 31.03.2022 along with interest @ 10% per annum and the default rate of interest would be 2%. In the additional affidavit dated 20.11.2023, the Petitioner has annexed Annexure (d) which depicts the dates in chronological order on which the different amounts were disbursed to the Corporate Debtor during the period from 30.09.2014 till 24.10.2018.

16. Counsel for the Petitioner has further relied upon Annexure (b) which is the statement of account from 01.04.2014 to 06.01.2022 which shows that right from 30.09.2014, when the amount of Rs. 38,00,000/- was disbursed to the Corporate Debtor, the latter has been making certain repayments on account of either principal or interest. Eventually, on 01.04.2018 when a meeting was held between the parties, the Corporate Debtor acknowledged its liability to pay Rs. 1,11,73,256/- to the Corporate Debtor along with interest @ 18% .
17. Though there is no loan agreement available on record but from whatever has been mentioned in the minutes dated 01.04.2018, it is evident that the Financial Creditor has been lending money to the Corporate Debtor in consideration of payment of interest. Therefore, it is evident that the nature of the transaction is financial debt. Since the Corporate Debtor has failed to make the payment as promised in the meeting held on 01.04.2018 and has further failed to repay the outstanding amount despite having been served notices dated 21.02.2022 and 17.08.2022 which are exhibit (g) and (h) respectively, the Corporate Debtor is said to have committed a default.
18. Now, the question arises whether the Petition is within period of limitation or not. As per the minutes dated 01.04.2018, the Corporate Debtor acknowledged its liability to repay an amount of Rs. 1,11,73,256/- latest by 31.03.2022 along with 10% interest per annum. Therefore, the date of default has to be treated as 31.03.2022. Since the payment was not made by the due

date, the default took place on 31.03.2022 and the present Petition was filed on 10.11.2022, the Petition must be held to have been filed within the period of limitation.

19. As a result of above discussion, we hold that the petitioner has been able to establish the existence of financial debt and its default having been committed by the Corporate Debtor and further that the Petition is filed within the period of limitation. Therefore, the Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 deserved to be admitted and it is ordered accordingly in following terms:-

**ORDER**

- a. **The above Company Petition No. (IB) 89/(MB)/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Buoyant Financial Advisor Pvt. Ltd.**
- b. This Bench hereby **appoints Ms. Preeti Vimal Agarwal , Registration No: IBBI/IPA-001/IP-P00655/2017-2018/11144 as the Interim Resolution Professional having his address at No-511, 5<sup>th</sup> Floor, Corporate Avenue Sonawala Road, Goregaon (East) Mumbai ; Email:- [capreeti2003@gmail.com](mailto:capreeti2003@gmail.com) to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.**

- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) 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, Mumbai for updating the Master Data of the Corporate Debtor.

20. **Accordingly, this Petition is admitted.**
21. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**  
*Sushil*

**Sd/-**  
**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**