

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 35/7/JPR/2021

(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:

KEDIA FINANCIAL SERVICES PRIVATE LIMITED

CIN: U65100DL1994PTC063169

2044/6, Chuna Mandi,
Paharganj, New Delhi- 110055

...Financial Creditor

VERSUS

AIREN METALS PRIVATE LIMITED

CIN: U27201RJ1995PTC011117

G-750, Road No. 9F/2 V.K.I.,
Jaipur, Rajasthan-302013

...Corporate Debtor

For Petitioner (s) : Shivangshu Naval, Adv.
Akanksha Noval, Adv.
Aanchal Choudhary, Adv.

For Respondent (s) : Amol Vyas, Adv.
Saumil Sharma, Adv.

ORDER PRONOUNCED ON: 28.04.2022

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ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by the Kedia Financial Services Private Limited, a Non-Banking Finance Company ('Applicant' / 'Financial Creditor'), through the director and authorized signatory, Mrs. Santosh Kedia, who is duly authorized to sign this application *vide* Board Resolution dated 07.07.2021 at Annexure – 2 of the Application, claiming to be a Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor.
2. Airen Metals Private Limited ('Corporate Debtor' / 'Non-Applicant') is a private limited company incorporated on 23.11.1995 under the provisions of the Companies Act, 1956 and is a manufacturer of range of Copper products, namely Contact Wire, Paper Insulated Copper Conductor, Copper Tubes, Copper Rods, etc. The registered office of the Corporate Debtor is in Jaipur and hence falls under the jurisdiction of this Adjudicating Authority.
3. The Corporate Debtor approached Financial Creditor in the year 2012 for availing loan to meet the requirement of incremental Working Capital

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Margin for expansion of its project at RIICO Industrial Area, Reengus, Sikar, Rajasthan. The Corporate Debtor requested the Financial Creditor for a loan of Rs. 3,25,00,000/- (Rs. Three Crore Twenty-Five Lakh Only), which was disbursed by Financial Creditor *vide* sanction letter no. KFSPL/AMPL/01.04.2013 dated 01.04.2013 ('Initial Sanction Letter') repayable on 31.03.2021.

4. As per the Initial Sanction Letter, it was agreed between the Corporate Debtor and Financial Creditor the interest payable would be 8% per annum for the first financial year of the initial loan agreement and the rate of interest for further remaining years would be mutually decided in the first quarter of the relevant year. Copy of the Initial Sanction Letter is annexed as Annexure – 4 (Colly).
5. The Financial Creditor upon the request of Corporate Debtor disbursed an additional loan of Rs. 67,00,000/- (Sixty-Seven Lakh Only) *vide* sanction letter no. KFSPL/AMPL/01.12.2016 on 27.12.2016 ('Revised Sanction Letter'), therefore, the amount of Rs. 3,92,00,000/- was repayable by 31.03.2021. Further, the interest was payable at 8% p.a. at the end of financial year for the first year on revised loan amount, with similar Terms & Conditions as of Initial Sanction Letter for the remaining subsequent years. Copy of the Revised Sanction Letter is annexed as Annexure – 5 (Colly).

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6. The rates of interest which was decided mutually between parties and the date of communication as annexed at Annexure – 6 is tabulated below:

Financial Year	Date of Communication	Rate of Interest (in % p.a.)	Principal Amount
2014-15	23.04.2014	9	3,25,00,000
2015-16	30.04.2015	8	3,25,00,000
2016-17	03.05.2016	8	3,25,00,000
2017-18	25.04.2017	7	3,92,00,000
2018-19	01.05.2018	7	3,92,00,000
2019-20	08.05.2019	6	3,92,00,000
2020-21	29.04.2020	6	3,92,00,000

7. The Corporate Debtor paid the interest on the loan amount till the financial year 2018-19 leaving the interest outstanding for the years 2019-20 and 2020-21. The total amount of outstanding interest till 31.03.2021 is Rs. 44,68,800/- (Rupees Forty-Four Lakh Sixty-Eight Thousand Eight Hundred Only).
8. It has been submitted by the Applicant that Corporate Debtor has paid interest to the Financial Creditor for the financial years 2013-14 to 2018-19, as the TDS was deducted by the Corporate Debtor on the interest amount paid by it, the copies of Annual Tax Statement under Income Tax Act, 1961 the said period is annexed at Annexure – 7 (Colly).

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9. The Corporate Debtor's failure to maintain financial discipline, i.e., failing to repay the entire loan amount by 31.03.2021 clearly substantiated by bank statements and ledger account of the Corporate Debtor *vide* Annexure – 8 & 9 respectively. It was provided in the Sanction Letter that in the event of default, the full re-payment of the Financial Assistance shall be required to be made immediately if the borrower fails to pay Interest on the Unsecured Loan amount for a consecutive period of two Financial Years. The Financial Creditor issued Loan Recall Notices to Corporate Debtor on 15.04.2021 and 22.06.2021, the same is annexed as Annexure – 10. The total outstanding amount of the aforesaid financial debt along with interest, as enumerated under Part IV is as follows:

Part IV

PARTICULARS OF FINANCIAL DEBT

1.	Total amount of debt granted	<u>Amount of Debt Granted:</u> Total Principal Amount: Rs. 3,92,00,000/-																						
	Date(s) of Disbursement	<table border="1"> <thead> <tr> <th>S. No.</th> <th>Amount</th> <th>Date</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Rs.1,00,00,000</td> <td>11.04.2013.</td> </tr> <tr> <td>2.</td> <td>Rs.1,00,00,000</td> <td>17.04.2013</td> </tr> <tr> <td>3.</td> <td>Rs.1,00,00,000</td> <td>18.04.2013</td> </tr> <tr> <td>4.</td> <td>Rs.25,00,000</td> <td>22.04.2013</td> </tr> <tr> <td>5.</td> <td>Rs.67,00,000</td> <td>27.12.2016</td> </tr> <tr> <td>Total</td> <td>Rs.3,92,00,000</td> <td>-</td> </tr> </tbody> </table>			S. No.	Amount	Date	1.	Rs.1,00,00,000	11.04.2013.	2.	Rs.1,00,00,000	17.04.2013	3.	Rs.1,00,00,000	18.04.2013	4.	Rs.25,00,000	22.04.2013	5.	Rs.67,00,000	27.12.2016	Total	Rs.3,92,00,000
S. No.	Amount	Date																						
1.	Rs.1,00,00,000	11.04.2013.																						
2.	Rs.1,00,00,000	17.04.2013																						
3.	Rs.1,00,00,000	18.04.2013																						
4.	Rs.25,00,000	22.04.2013																						
5.	Rs.67,00,000	27.12.2016																						
Total	Rs.3,92,00,000	-																						

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2.	Amount claimed to be in default and the date on which the default occurred	<u>Amount Claimed:</u> Rs.4,36,68,800/- Total Principal Amount: Rs.3,92,00,000/- Total Interest Due: Rs.44,68,800/-* Date from which Debt fell Due: 31.03.2021
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* Calculated as per the Terms & Conditions of the Loan Agreement

10. The Corporate Debtor in its reply vide Diary No. 1840/2021 dated 13.9.2021 acknowledged the outstanding dues of the Financial Creditor and accepted that it is under severe financial distress and therefore, is not in position to repay the entire outstanding dues of the Financial Creditor.
11. The Non-Applicant stated that due to Corona Pandemic, the Corporate Debtor has not been able to service its debt in a time bound manner and therefore, there has been delay in making payment of interest to the Financial Creditor. Before the pandemic situation, the Corporate Debtor has been particular in making payments of the dues to the applicant right from the beginning and has made timely payments of interest, however, it suffered huge financial loss making it default for the payment of dues.
12. The secured creditor(s) of the Corporate Debtor in August 2021 initiated SARFAESI proceedings against the Corporate Debtor and presently, the entire focus of the Corporate Debtor is towards in settling the dues of the Union Bank of India (Secured Creditor) and has prayed for an extension / relaxation of the period of loan for arrangement for payment of its dues.

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13. The Financial Creditor in its Rejoinder *vide* Diary No. 2144/2021 dated 21.10.2021 has stated that initiation of recovering proceeding under the SARFESI Act against the Corporate Debtor is no barred to the commencement of CIRP, the default in repayment of the amount of debt along with interest is sufficient for initiation of CIRP. Further, the purpose of the IBC is to reorganisation of the insolvency proceedings in a time bound manner for maximisation of value of assets to such person(s), to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders, hence the request for prolonging / extending the period for re-payment of loan should be rejected.
14. The Applicant submits further that the Corporate Debtor has admitted the default in the repayment of the dues and granting time to the corporate debtor for payment of dues is beyond scope of Sec 7 of the IBC. The applicant has also mentioned the judgement of Anchor Leasing Private Limited v. Euro Ceramics Limited, C.P. No. 66 / IBC / NCLT / MB / MAH / 2018 dated 25.02.2019, where it has been held that admissions are the best proof of facts admitted.
15. According to Section 10A of the Code, which was inserted on 05.06.2020 in relation to suspension of IBC for defaults arising on or after 25.03.2020, which reads as follows:

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“10A. Notwithstanding anything contained in Sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.”


16. Thus, no insolvency proceedings can be instituted against any entity whatsoever for the default caused / committed in the period beginning from 25.03.2020 to 25.09.2020. The suspension period was extended *vide* Notification No. S.O. 3265(E) dated 24.09.2020 issued by the Ministry of Corporate Affairs, New Delhi extending the same for a further period of three months. The said suspension was further extended for a further period of three months ending on 25.03.2021 *vide* Notification No. S.O. 4638(E) dated 22.12.2020, i.e., till 25.03.2020.

17. The Application filed under Section 7 of the Code will stand outside purview of Section 10A of the Code as default occurred on 31.03.2021 which is after the completion of suspension period of IBC and cease to be in operation after 25.03.2021.


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18. To initiate proceedings under the Sec 7 of the IBC the financial debt and further the default in the payment of the debt should be established, in the present matter the Corporate Debtor has admitted and acknowledged the liability and the subsequent default of the liability, therefore the Adjudicating Authority is of the view that CIRP of the Corporate Debtor should be initiated.
19. Upon a detailed consideration of the application and documents filed by the Applicant, it is apparent that the payment of the claim amount has been defaulted by the Corporate Debtor. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.
20. The Applicant has named one Mr. Satyendra Prasad Khorania with Registration No. IBBI/IPA-002/IP-N00002/2016-17/10002, duly registered with the Insolvency and Bankruptcy Board of India, to be appointed as the Interim Resolution Professional ('IRP'). The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, stating therein that no disciplinary proceedings are pending against the named IRP. The credentials of the proposed IRP have been checked from IBBI website and nothing adverse is found on record.
21. Consequences of initiation of CIRP shall be inter-alia as follows:



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- (i) Mr. Satyendra Prasad Khorania is hereby appointed as the IRP to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016 including issuance of publication in widely circulated Newspapers as contemplated under the provisions of IBC, 2016 and calling for claims from the creditors of Corporate Debtor and collation of the same shall be done.
- (ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked in relation to the Corporate Debtor which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in accordance with the provisions of IBC, 2016 and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall duly file a status report apprising this Tribunal about the progress of CIRP as unfolding in relation to the Corporate Debtor. In terms of Section 17 & 19 of IBC, 2016 all personnel of the Corporate Debtor

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including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 7 of IBC, 2016, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out the CIRP. A copy of this order shall also be communicated to IBBI for its records.

22. In the circumstances, CP No. (IB) 192/7/JPR/2020 is admitted.



DEEP CHANDRA JOSHI
JUDICIAL MEMBER



RAGHU NAYYAR
TECHNICAL MEMBER