



**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA**

CP (IB) No. 39/KB/2024

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Nirmal Kanodia

...Financial Creditor

Versus

**Balajee Ingot India Private Limited
[CIN: U27310WB1989PTC139464]**

...Corporate Debtor

Order pronounced on: 25.06.2024

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For the Financial Creditor : Mr. Shiv Ratan Kakrania,, Advocate

Mr. Amandeep Singh, Advocate

Mr. Tanuj Kakrania, Advocate

Ms. Shreya Goenka, Advocate

For the Corporate Debtor : Mr. Tanish Ganeriwala, Advocate

Mr. Snehasish Chakraborty, Advocate

ORDER

Per Bidisha Banerjee, Member (Judicial)

1. This Court convened through hybrid mode.

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2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (**“Code”**) by Nirmal Kanodia, seeking to initiate Corporate Insolvency Resolution Process (**“CIRP”**) against Baljee Ingot India Private Limited (**“Corporate Debtor”**).
3. The Corporate Debtor was incorporated on 07 December 1989, having CIN: U27310WB1989PTC139464. It’s registered office is 2/7, sarat Bose Road, 6th Floor, Vasundhara Building, Kolkata- 700020. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 13 February 2024 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.1,28,44966/- (Rupees One Crore Twenty Eight Lakh Forty Four Thousand Nine Hundred and Sixty Six only) as on 01 February 2024. The date of default has been mentioned as 31 March 2023.

Submission of learned Counsel appearing for the Financial Creditor

5. The learned Counsel submitted that the Financial Creditor had advanced a loan of Rs. 1,14,27,453/- (Rupees One Crore Fourteen Lakh Twenty Seven Thousand Four Hundred and Fifty Three only) in several tranches in the following manner:
 - a. 17 February 2022- Rs.35,00,000/-
 - b. 15 March 2022- Rs.1,00,000/-
 - c. 15 March 2022- Rs.5,00,000/-
 - d. 23 March 2022- Rs.10,00,000/-
 - e. 24 March 2022- Rs.63,27,453/-
6. It is submitted that the Corporate Debtor was liable to repay the entire amount by 31 March 2023 as was agreed upon under the loan agreement dated 10 April 2022, but the Corporate Debtor failed to repay the agreed amount along with interest by 31 March 2023.
7. The learned Counsel submits that the interest as on 01 February 2024 has been calculated @12% per annum from the various dates of disbursement



till 31 March 2023 and thereafter at 18% per annum after deduction of amounts that were partly paid on several dates i.e. 01 May 2023, 07 July 2023, 27 July 2023, 28 July 2023.

8. The Financial Creditor issued a demand notice on 31 March 2023¹ demanding the outstanding amount of Rs.1,14,27,453/- along with interest totaling to Rs.1,28,67,424/- as on 31 March 2023 and informed the Corporate Debtor that it would be liable to pay an additional interest @6% p.a. over and above the rate of interest of 12% p.a. from the effective dated of 01 April 2023.
9. The Corporate Debtor has made payment of Rs.17,30,001/- on different dates from 01 May 2023 till 28 July 2023.
10. The Financial Creditor has placed the following documents on record:
 - a. Copy of Bank Statement. [**Annexure A-4 @Pp. 42of the Company Petition**];
 - b. Copy of Loan Agreement [**Annexure A-5 @Pp. 44-47of the Company Petition**];
11. The Financial Creditor has proposed the name of **Mr. Niraj Kumar Agarwal**, registration number IBBI/IPA-001/IP-P00949/2017-2018/11569, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration².

Submission of learned Counsel appearing for the Corporate Debtor


12. The learned Counsel submitted that according to the Financial Creditor, the Financial Creditor disbursed a sum for Rs.1,14,27,453/- on and from 17 February 2022 up to 24 March 2022. Thereafter, the Corporate Debtor has

¹Annexure A-6 @ Page 48

²Annexure A-3 @ Pp. 39-41 of CP

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made a payment of Rs.17,30,001/- towards the loan disbursed, which leaves the principal outstanding to a sum of Rs.96,97,452/- which is lesser than the threshold limit as prescribed under section 4 of the Code.

13. It is further submitted that it was not the understanding between the parties that the interest would be payable to the Financial Creditor for disbursement of the sum.
14. The learned Counsel submitted that the amount disbursed does not fall within the meaning of section 5(8) of the code as the same was not for time value of money and accordingly no interest can be charged against the same.
15. It is further contended that the loan agreement dated 10 April 2022 has neither been stamped or registered in terms of the time being in force and accordingly cannot be relied upon while ascertaining the understanding between the parties.

Analysis and Findings

16. Heard the learned Counsel appearing for the Financial Creditor and the learned Counsel appearing for the Corporate Debtor and perused the record.
17. The learned Counsel for the Corporate Debtor has raised three contentions:
 - a. Debt is not a financial debt;
 - b. Amount due is below the threshold limit;
 - c. Loan agreement not properly stamped.
18. Let us first consider whether the loan agreement being improperly stamped can be taken into consideration or not. In this respect we would like to place reliance on a judgment of the Hon'ble NCLAT, Chennai Bench in *Ashique*

*Ponnampambath Member of Suspended Board of Directors v The Federal Bank Limited*³ wherein the Hon'ble NCLAT observed that:


“19. In reply to the above, the learned Counsel for the Respondent/Financial Creditor had taken a stand before the Adjudicating Authority that the contention of the Corporate Debtor that ‘Term Loan Agreement’ is an insufficiently stamped document, hence inadmissible in evidence, was an incorrect one. The Term Loan Agreement is a document that purports to create a right, title and interest in immovable property that is incorrect. At the broadest imagination, the same could only amount to security for payment of money. At the same breath, it is to be noted that the said document would not create a mortgage concerning the property mentioned therein. In the circumstances, the said document is not such a document for which registration is compulsory.”

19. Referring to the above, it is clear that a loan agreement that does not create a security interest can be taken into consideration if not properly stamped or unregistered. Hence, the Loan Agreement dated 10 April 2022 is taken into consideration. The Loan Agreement has stated the details of disbursements and has also stated the interest component and repayment date.
20. Taking into consideration the Loan Agreement, the first contention of the Corporate Debtor is not sustainable as the debt is alongwith interest which is disbursed against the consideration for the time value of money and hence, squarely falls within the definition of section 5(8) of the Code
21. Even if the Loan Agreement is not considered, the Financial Creditor has relied on Bank statements wherefrom the disbursements have been made and the payments have been received. A demand notice was sent on 31 March 2023 which has not been disputed by the Corporate Debtor wherein

³(2021) ibclaw.in 336 NCLAT

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the interest component has been stated. Hence, considering these documents provided by the Financial Creditor, the debt is a financial debt as envisaged

22. After consideration of the amount of interest and deduction of the amount paid, the debt as calculated by the Financial Creditor at Annexure A-8 of the Company Petition is above the threshold limit and hence, the contention of the Corporate Debtor cannot be accepted.
23. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition and the submissions establish that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.
24. In the light of the above facts and circumstances, it is, hereby ordered as follows:-
- a. The application bearing *CP (IB) No. 39/KB/2024* filed **Nirmal Kanodia**, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Balajee Ingot India Private Limited** the Corporate Debtor, is *admitted*.
 - b. There shall be a moratorium under section 14 of the IBC.
 - 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 IBC, as the case may be.
 - d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the

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Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- e. Mr. Niraj Kumar Agarwal, registration number IBBI/IPA-001/IP-P00949/2017-2018/11569, email id: nka_sa@hotmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out the functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The Directors, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever, and is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

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- i. 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).
- j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby 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.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means 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.

25. **CP (IB) No. 39/KB/2024** to come up on **25th July 2024** for filing the periodical report.
26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This order is pronounced on the 25th day of June 2024.

GGRB/ SM (LRA)