

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

**CP (IB) No. 327/KB/2022**

In the matter of:

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

In the matter of:

**Mandyati Dealcomm Private Limited**  
[CIN: U51109WB1996PTC079192]

*...Financial Creditor*

*Versus*

**Kanika Buildcom Private Limited**  
[CIN: U45200BR2005PTC011502]

*...Corporate Debtor*

Order pronounced on: 08 November 2023

**Coram:**

**Shri Rohit Kapoor** : **Member (Judicial)**  
**Shri Balraj Joshi** : **Member (Technical)**

**Appearances (through hybrid mode):**

For the Financial Creditor : Mr. Joy Saha, Senior Advocate  
Mr. Barnik Ghosh, Advocate

For the Corporate Debtor : Mr. Nishant Maitin, CA  
Ms. Nyhan, CA

**ORDER**

**Per Balraj Joshi, Member (Technical)**

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") by Mandyati Dealcomm Private Limited, represented by its Director, Mr. Awi Bajaj, authorized through

a Board Resolution dated 21 November 2022 seeking to initiate Corporate Insolvency Resolution Process (“*CIRP*”) against Kanika Buildcon Private Limited (“*Corporate Debtor*”).

3. The Corporate Debtor was incorporated on 02 August 2005, having CIN: U45200BR2005PTC011502. It’s registered office is 203/314, NP Centre, New Dak Bungalow Road, Patna-800001, Bihar. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 09 December 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.18,37,51,400/- (Rupees Eighteen Crore Thirty Seven Lakh Fifty One Thousand and Four Hundred only) comprising of principal amount of Rs.1,22,50,000/- and interest of Rs.17,15,01,400/- as on 31 July 2022. The date of default has been mentioned as 02 August 2021.

***Submission of learned Senior Counsel appearing for the Financial Creditor***

5. The learned Senior Counsel submitted that the Financial Creditor had advanced a loan of Rs. 9,13,00,000/- (Rupees Nine Crore Thirteen Lakh only) on and from September 2010 to April 2017.
6. The Director of the Corporate Debtor issued a letter on 20 September 2010 wherein the conditions of the loan were set out in writing. The loans were disbursed through two bank accounts of the Financial Creditor to two bank accounts of the Corporate Debtor.
7. It was agreed between the Financial Creditor and the Corporate Debtor that the loan amount would be payable after an initial moratorium period of three years but it was agreed that the interest would be levied and computed even during the moratorium period.

8. Accordingly, the Corporate Debtor started making payment of the loan amount on and from May 2014 and made payments till August 2021, thereafter the Corporate Debtor stopped making payments.
9. The Financial Creditor issued a demand notice on 17 August 2022, and a legal notice for payment on 16 September 2022. However, the Corporate Debtor did not respond to the demand notices sent by the Financial Creditors.
10. It is further submitted that the balance sheet of the Corporate Debtor for the financial years 2019-2020 and 2020-2021, reflects the loan amount taken from the Financial Creditor.
11. The Financial Creditor has placed the following documents on record:
  - a. Copies of Bank Statements. [**Annexure G and Annexure H @Pgs. 60-121 of the Company Petition**]
  - b. Copy of Financial Statements for the years 2019-2020 and 2020-2021. [**Annexure K @ Pgs. 127-153 of the Company Petition**]
12. The Financial Creditor has proposed the name of Mr. Madhur Agarwal, registration number IBBI/IPA-002/IP-N00608/2018-19/11859, 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 registration<sup>1</sup>.

***Submission of learned Authorized Representative appearing for the Corporate Debtor***

13. The learned Authorized Representative appearing on behalf of the Corporate Debtor submitted that the Financial Creditor has relied on a letter sent by Mr. Ajay Kumar Bajaj but on perusal of the MCA Data it

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<sup>1</sup> Annexure D @Pp. 51-55 of C.P.

was seen that Mr. Ajay Kumar Bajaj was the Director of the Corporate Debtor from the period of 12 May 2014 to 26 February 2021 and not on the date on which the letter was signed.

14. Hence, the letter dated 20 September 2010 is a fabricated and forged document.

15. The learned Authorized Representative submitted that the Corporate Debtor owes a sum of Rs.1,22,50,000/- to the Financial Creditor and the same is reflected in the audited Financial Statements of the Corporate Debtor, the same is also submitted in paragraph 13 of the Reply Affidavit filed on behalf of the Corporate Debtor.

16. It is further submitted that the Company Petition has been filed with the intention of recovery and hence such Petition should be rejected. The learned Authorized Representative has placed reliance on *Agarwal Venners, C.A. (AT) (Ins.) No. 968 of 2020*.

#### *Analysis and Findings*

17. Heard the learned Senior Counsel appearing for the Financial Creditor and the learned Authorized Representative appearing for the Corporate Debtor and perused the record.

18. Before going into the merits and contentions of the Company Petition, there is no doubt that the law relating to insolvency in India for initiation of CIRP under Section 7 of the Code speaks of two conditions i.e. debt and default.

19. The Hon'ble Supreme Court has in *M. Suresh Kumar Reddy v. Canara Bank & Ors*<sup>2</sup>. has observed that:

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<sup>2</sup> Civil Appeal No. 7121 of 2022, dated 11.05.2023

*“10. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7.”*

20. There is a clear admission on the part of the Corporate Debtor that there is a debt owed to the Financial Creditor.
21. With respect to default, on perusal of the Bank statements filed by the Financial Creditor, the last payment made by the Corporate Debtor was on 02 August 2021.
22. Further, in its own admission, during the course of hearings, the learned Counsel on 28 July 2023 submitted that the Corporate Debtor was to pay an amount of Rs.1,22,50,000/- to the Financial Creditor and time was granted to the Corporate Debtor to do so. Thereafter on 01 September 2023, the Authorized Representative submitted that the Corporate Debtor would be able to pay the amount within a period of four months, however, the learned Senior Counsel appearing for the Financial Creditor was not acceptable to the said proposition.
23. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition and the submissions establishes 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. 327/KB/2022** filed Mandyati Dealcomm Private Limited, 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 *Kanika Buildcon 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 Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. Mr. Madhur Agarwal, registration number IBBI/IPA-002/IP-N00608/2018-19/11859, email id: [madhuragarwal75@gmail.com](mailto:madhuragarwal75@gmail.com), phone no. 9830066008, 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 his 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. He 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.
- i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakh 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, email and WhatsApp 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, Bihar, 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. 327KB/2022** to come up on **01-12- 2023** 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)

**Rohit Kapoor**  
Member (Judicial)

This order is pronounced on the 8<sup>th</sup> day of November 2023.

GGRB\_LRA