

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

**CP (IB) No. 221/KB/2022**

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

In the matter of:

**Navshikha Multitraders Private Limited**  
[CIN: U74999MH2014PTC254623]

*...Financial Creditor*

*Versus*

**Zoom Dealcomm Private Limited**  
[CIN: U51109WB2008PTC121668]

*...Corporate Debtor*

**Date of pronouncement: 02.11.2023**

**Coram:**

**Rohit Kapoor** : **Member (Judicial)**

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

**Appearances (through video conferencing):**

For the Financial Creditor : Mr. Anurag Mitra, Advocate

For the Corporate Debtor : Ms. Tanvi Luhariwala, Advocate

**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 by Navshikha Multitraders Private Limited, represented by **Ms. Sushma Jagdishchandra Mundra**, being the Authorised Representative of the Financial Creditor authorized *vide* a Board Resolution<sup>1</sup> dated 10.01.2022 seeking to initiate Corporate

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<sup>1</sup> Annexure-G, Pg.72 of the Petition

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Insolvency Resolution Process (“CIRP”) against Zoom Dealcomm Private Limited (“Corporate Debtor”).

3. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor.
4. Part –IV of the Petition contains details Financial debt for an amount of **Rs.1,10,74,500/- (Rupees One Crore Ten Lakh Seventy Four Thousand and Five Hundred only)**.
5. The Corporate Debtor was incorporated on 11 January 2008, having CIN: U51109WB2008PTC121668, under the Companies Act, 1956. It’s registered office is at 66 Nalini Seth Road, Ground Floor, Kolkata-700007. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 8<sup>th</sup> February 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of **Rs.1,10,74,500/- (Rupees One Crore Ten Lakh Seventy Four Thousand and Five Hundred only)** as on 06.01.2022. The date of default is stated to be 30.09.2021.

***Brief facts of the case:***

7. The Financial Creditor had entered into a Memorandum of Understanding<sup>2</sup> (MoU) with the Corporate Debtor on 01.01.2021 whereby it was agreed that the Financial Creditor would provide a sum of Rs.1,05,00,000/- as loan to the Corporate Debtor till 31.03.2021. By way of the said MoU, the Corporate Debtor had agreed to add a further sum of Rs. 2,00,000/- in the principal amount and return the total sum of Rs.1,07,00,000/- to the Financial Creditor as on 30.06.2021.

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<sup>2</sup> Annexure-B, Pg.11-14 of the Petition

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8. It was further agreed that the said loan will not attract any interest till 30.06.2021 and the Corporate Debtor was to pay the amount on or before 30.06.2021. In case, the Corporate Debtor failed to repay such amount within 30.06.2021, the said loan would attract an interest @ 7% per annum w.e.f. 01.07.2021 upto 30.09.2021.
9. The said MoU was executed and a Loan Agreement dated 01.04.2021<sup>3</sup> was entered between the Financial Creditor and the Corporate Debtor upon the same terms and conditions as mentioned in the MoU.
10. Consequently, the Corporate Debtor failed to pay the loan amount within the time prescribed and the Financial Creditor issued a demand notice dated 15.12.2021<sup>4</sup> calling upon the Corporate Debtor to repay the same.
11. The Financial Creditor has placed the following documents on record which includes:
  - a. A copy of the Memorandum of Understanding (MoU) dated 01.01.2021 [**Annexure B @ Pgs. 11-14 of the Company Petition**]
  - b. A copy of the Loan Agreement dated 30.03.2019 [**Annexure C @ Pgs. 15-20 of the Company Petition**]
  - c. A copy of the demand notice dated 15.12.2021 issued by the Financial Creditor for repayment of dues [**Annexure D @ Pgs. 21-22 of the Company Petition**]
  - d. A copy of the MOA, AOA and COI of the Corporate Debtor [**Annexure E @ Pgs. 23-45 of the Company Petition**]
  - e. A copy of the MOA, AOA and COI of the Financial Creditor [**Annexure F @ Pgs. 46-71 of the Company Petition**]
  - f. A copy of the Board Resolution [**Annexure G @ Pg. 72 of the Company Petition**]

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<sup>3</sup> Annexure-C, Pgs.15-20 of the Petition

<sup>4</sup> Annexure-D, Pgs.21-22 of the Petition

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12. The Financial Creditor has proposed the name of Mr. Bhavesh Mansukhbhai Rathod, registration number IBBI/IPA-001/IP-P01200/2018-2019/11910, 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.

**Contents of Reply Affidavit filed by the Corporate Debtor are summarized as hereunder:**

13. The Corporate Debtor has contended that the present application is not maintainable. It has been filed in abuse of process of law and it has not been filed in accordance with the provisions, rules and regulations of the Code.
14. It is contended that in insolvency proceedings, the proceedings are between the Financial Creditor and Corporate Debtor alone and there is no scope of inclusion of any other party, but the Financial Creditor has made three parties as Financial Creditors and three parties as Corporate Debtors.
15. It has also been contended that the Corporate Debtor has neither provided any documents showing the disbursement of loan nor has complied with the mandatory provisions of Section 186 of the Companies Act, 2013, hence the petition is not maintainable.
16. The Corporate Debtor has contended that the applicant is barred under the provisions of the Bengal Money Lenders Act, 1940 since it does not have any money lending license, nor does it have any appropriate registration under the provisions of the Reserve Bank of India Act, 1934.
17. In para 3(ix) of the Reply Affidavit it is stated by the Corporate Debtor that it is engaged in the business of textile products and had taken the alleged loan for the expansion of its business, but due to the adverse effect

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of Covid-19 pandemic, the Corporate Debtor could not manage and suffered a financial set-back. Due to its inability to repay the loan on time, the Corporate Debtor had on several occasions requested the Financial Creditor seeking extension to repay the amount taken as loan. It has contended that it always had the intention to pay the loan but owing to its poor financial condition some more time should be granted to him to repay the loan availed by it.

18. In para 6 of the Reply Affidavit, the Corporate Debtor has denied that any amount is due to it which is payable to the Financial Creditor. It has also been contended that in the absence of any documents to evidence the disbursement of loan, the present petition shall be dismissed as it is not a fit case for institution or initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

***Contents of Rejoinder Affidavit filed by the Financial Creditor are summarized as hereinafter:***

19. The Financial Creditor in its rejoinder affidavit has stated that the Corporate Debtor has acknowledged its liability in para 3(ix) of the Reply Affidavit and it had also sought some time to repay the loan but instead of giving several opportunities to the Corporate Debtor, it has failed and neglected to make any payments towards the outstanding amount.
20. It has been stated that inclusion of directors along with the Financial Creditor and Corporate Debtor does not make the application defective or not maintainable. It is due to some inadvertence on the part of the Financial Creditor, the bank statements evidencing the disbursement of loan amount could not be annexed and has annexed the said statement of accounts<sup>5</sup> in the affidavit.

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<sup>5</sup> Annexure-A of the Rejoinder Affidavit

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21. Further, the Financial Creditor has also annexed a Board Resolution<sup>6</sup> dated 08.12.2020 evidencing the consent of the Board of Directors to grant loan to the Corporate Debtor.
22. The Financial Creditor has denied that the present petition is not a fit case for initiation of CIRP and has therefore prayed that the present petition be admitted.

***Analysis & findings***

23. Heard the Ld. Counsel appearing for both the parties and perused the records.
24. The Corporate Debtor in para 3(ix) of the Reply Affidavit has admitted that a loan was disbursed by the Financial Creditor to the Corporate Debtor for expansion of its business, which clearly indicates that there was existence of a debt. Further, clause 4 of the Loan Agreement dated 01.04.2021 records the tenure of loan as follows:

*4. Tenure of Loan: The repayment for the loan shall be pay in 6 month alon with Interest i.e 30.09.2021*

It is a fact that upon failure to pay the loan availed by the Corporate Debtor within the above tenure, it committed a default in repaying the loan amount.

25. After having considered the pleadings and arguments submitted by both the parties, we find that there was a debt due which the Corporate Debtor had defaulted to repay. Therefore the essential elements of a Section 7 application i.e., debt and default are satisfied.

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<sup>6</sup> Annexure-B of the Rejoinder Affidavit

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26. We find that the present petition made by the Financial Creditor which is complete in all respects, should be *admitted*. It is hereby ordered as follows:-

- a. The application bearing *CP (IB) No. 221/KB/2022* filed by Navshikha Multitraders 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 Zoom Dealcomm 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. Bhavesh Mansukhbhai Rathod**, registration number IBBI/IPA-001/IP-P01200/2018-2019/11910, **email:** [bhavesh76@gmail.com](mailto:bhavesh76@gmail.com), **Mobile: 9769113490** 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

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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 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 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

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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, 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.

27. **CP (IB) No. 221/KB/2022** to come up on **07-12-2023** for filing the periodical report.

28. 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 2<sup>nd</sup> day of November, 2023

*FA\_LRA*