

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court– I)
KOLKATA**

C.P. (IB)257/KB/2022

*A petition 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:

India Resurgence ARC Private Limited a company within the meaning of Companies Act, 2013 having CIN U67190MH2016PTC272471 and having its registered office at 304, 3rd Floor, Piramal Tower, Peninsula Corporate Park, Ganpatrao Kadam Marg, Lower Parel, Mumbai- 400013, Maharashtra.

..... *Financial Creditor/ Petitioner*

-versus-

Kundan Suppliers Private Limited, a company within the meaning of Companies Act, 2013 having CIN U51909WB2010PTC149444 and having its registered office at 1, Hindustan Park, Ground Floor, Kolkata, West Bengal 700029 IN

..... *Corporate Debtor/ Respondent*

Date of Hearing: 7th December, 2022

Date of Pronouncement of the order: 11th January 2023

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/physical):

For the Financial Creditor:

Mr. Sanjeev Singh, Adv.

Ms. Taniya Bansal, Adv.

Ms. Ridhi Pahuja, Adv.

Mr. Anujit Mookherji, Adv.

ORDER

Rohit Kapoor, Member (Judicial):

1. This Court convened through hybrid mode.
2. This is a Company Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code”) by **India Resurgence ARC Private Limited**, hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Kundan Suppliers Private Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 26 May 2010. The authorized share-capital of the company ₹1,00,000/- and the paid-up share capital of the company is ₹1,00,000/-.
4. The total amount claimed to be in default by the Financial Creditor, is ₹1,37,39,799/-. The date of default is 31.10.2016.
5. Part – I of this petition contains particulars of the Financial Creditor. Part- II of this petition contains the particulars of the Corporate Debtor. Part – III of the petition caters to the particulars of proposed Interim Resolution Professional. Part – IV of this petition provides the particular of Financial Debt and Part -V of this petition contains the particulars of the Documentations, Record and Evidence of Default.
6. The Financial Creditor has relied on the various documents in support of its claims, including:
 - a) Master Data of the Corporate Debtor, marked with Exhibit “**P-2**”;
 - b) Sanction letter dated 30.06.2014 along with facility agreement dated 30.06.2014, annexed as Exhibit “**P-6 (Colly.)**”;
 - c) Copy of Deed of Assignment dated 05.11.2019, annexed as Exhibit “**H**”;
 - d) Copy bank statements, annexed as Exhibit “**P-9 (Colly.)**”.

7. Submissions on behalf of the Financial Creditor:

- 7.1 The case of the Financial Creditor is that Religare Finvest Limited (hereinafter referred to the "Original Lender") had granted financial facility to the Primary Borrower being H.R. International Private Limited and co-borrower *i.e.* Corporate Debtor herein *vide* sanction letter and Facility Agreement both dated 30.06.2014 to the tune of Rs. 70,70,000/-.
- 7.2 In order to secure the said financial facility, the Corporate Debtor, in the capacity of owner of the concerned property, created security interest/ mortgage by deposit of original title deeds of a property belonging to the Corporate Debtor.
- 7.3 The Corporate Debtor herein failed to maintain financial discipline and committed defaults in the repayment schedule of the loan facility availed. Accordingly, the account of the Corporate Debtor was classified as Non- Performing Asset (NPA) on 31.10.2016. Thereafter, the original lender initiated SARFAESI actions and enforced their security interest.
- 7.4 It is further submitted that the Corporate Debtor continued to intermittently make certain part payments towards the installments from time to time. The said part payments, though not as per agreed loan repayment schedule, were made before expiry of limitation of 3 years and each such payment created a fresh period of limitation. Moreover, the last successful part payment was received on 08.04.2019. As per the provisions of Section 19 of the Limitation Act, 1963 a fresh period of limitation shall be computed from the date of each such part payments.
- 7.5 Thereafter, *vide* Deed of Assignment dated 05.11.2019, the Original Lender assigned/transferred all its rights, title, and interest in respect of the debt of the Corporate Debtor with the underlying security interest, pledges and guarantees in respect of such loans in favour of

the Financial Creditor herein. It also transferred the secured receivables in favour of the Financial Creditor.

7.6 A total amount of financial debt due to the Financial Creditor herein is Rs.1,37,39,799/- as on 19.08.2022. The petition is within limitation and there is no decree or award in favour of the Corporate Debtor against any third parties equivalent to the present financial debt.

8. Analysis and Findings:

8.1 Due to continued non-appearance of anyone on behalf of the Corporate Debtor, this Adjudicating Authority, *vide* order dated 4th November 2022, set the Corporate Debtor *ex parte*.

8.2 Heard the Ld. Counsel on behalf of the Financial Creditor and the Ld. Counsel on behalf of the Corporate Debtor and perused the record.

8.3 A loan agreement was signed between the parties, as can be seen from page no. 50 of the petition. Accordingly, disbursement of loan took place on 30.06.2014, 08.07.2014 and 23.07.2014, as can be seen from page no. 175 of the petition. It can further be seen from the account statements from 30.06.2014 to 31.10.2020 that multiple cheques issued by the Corporate Debtor towards the payment of its dues were returned on presentment due to insufficient funds in the Corporate Debtor's bank account. Further, the notice under section 13(2) of the SARFAESI Act, 2002 on page 204 of the petition indicates that the account of the Corporate Debtor was classified as NPA on 31.10.2016. the said facts indicate that there exists a debt, due from the Corporate Debtor to the Financial Creditor and the Corporate Debtor has defaulted in the payment of the same.

8.4 Further the account statements from 30.06.2014 to 31.10.2020 show that the Corporate Debtor kept making part-payment of the debt over the years. Such part payments made on various occasions including those made on 01.01.2015, 31.12.2017 and 08.04.2019 will have the effect of extending the limitation period in light of section 19 of the Limitation

Act, 1963 which provide that if payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. As such the instant petition is within the limitation period.

8.5 In light of aforesaid facts and circumstances, this Adjudicating Authority is satisfied that the instant petition ought to be *admitted*.

8.6 The name and the particulars of Interim Resolution Professional (IRP) have been proposed in the petition. The petition is within the period of limitation. As such, the instant petition is complete in all respects.

8.7 It is, accordingly, hereby ordered as follows:-

- i) The application bearing **CP (IB) No. 257/KB/2022** filed by **India Resurgence ARC Private Limited** (*Financial Creditor*), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Kundan Suppliers Private Limited**, CIN: U51909WB2010PTC149444, the Corporate Debtor, is *admitted*.
- ii) There shall be a moratorium under section 14 of the IBC.
- iii) 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.
- iv) 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.

- v) **Mr. Ajay Kumar Agrawal**, having registration number **IBBI/IPA-001/IP-P02339/2021-22/13540**, email: **akassociates1988@gmail.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 his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- vi) 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.
- vii) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii) The Financial Creditor shall initially deposit a sum of ₹4,00,000/- (Rupees Four 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). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and

Bankruptcy Board of India, as published in the in the Official Gazette.

- ix) 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.
- x) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata 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.

9. CP (IB) No. 257/KB/2022 to come up on **14.02.2023** for filing the progress report.

10. 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)

Signed on this, the 11th day of January, 2023

SM(LRA)