

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

C.P. (IB)191/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:*

**Unicon Vanijya Private Limited**, a company within the meaning of Companies Act, 2013 having CIN U65999WB2009PTC136609 and having its registered office at 7, Mangoe Lane, 3<sup>rd</sup> Floor, Room No. 311, Kolkata - 700001.

..... *Financial Creditor/ Petitioner*

*-versus-*

**Nouvelle Advisory Services Private Limited**, a company within the meaning of Companies Act, 2013 having CIN U93000WB2010PTC141445 and having its registered office at 66A/2 Kankulia Road, LP Service UG, Kolkata, 700029

..... *Corporate Debtor/ Respondent*

**Date of Hearing:** 12<sup>th</sup> December, 2022

**Date of Pronouncement of the order:** 11<sup>th</sup> January 2023

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

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

**Appearances (via video conferencing/physical):**

For the Financial Creditor:

1. Mr. Ratul Das, Adv.
2. Mr. Sanwal Tibrewal, Adv.
3. Ms. Sutapa Mitra, Adv.

For the Corporate Debtor:

1. Ms. Aparajita Rao, Adv.
2. Ms. Ankana Basu, Adv.

**ORDER**

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

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 **Unicon Vanijya Private Limited**, hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Nouvelle Advisory Services Private Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 28 January 2010. The authorized share-capital of the company ₹5,01,00,000/- 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 ₹1,35,12,500/- including interest of ₹11,25,000/- and after deduction of TDS of ₹1,12,500/- from the date of first disbursement up to 31.03.2022. The default occurred due to the failure of the payment of the interest as well as principal by the Corporate Debtors from the date it became due *i.e* 07.10.2021.
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 “C”;

- b) Calculation of total debt due along with the ledger account of the Corporate Debtor in the books of Financial Creditor, marked as Annexure F;
- c) Sanction letter, loan agreement, marked as Annexure I;
- d) Copy confirmation of books of accounts, annexed as Annexure K;
- e) Copy of request by Corporate Debtor, for extension of time for repayment, annexed as Annexure M.

**7. Submissions on behalf of the Financial Creditor:**

7.1 The Financial Creditor is a Non-Banking Financial Company (NBFC) engaged inter-alia in the business of loans and advances. In or around May 2021, the Corporate Debtor approached the Financial Creditor representing that they are into investment and trading business and sought Loan to fund their new business venture. The Corporate Debtor represented that they planned to buy a certain piece of land in Lucknow and needed temporary short term credit facility to finance the same. The Corporate Debtor further represented that the said loan was required for short term needs of the CD for about 6 months as the Corporate Debtor intended to liquidate its own investment amounting to ₹ 8.00 Crores in next 6 months and repay the loan availed as well fund the entire venture. The Corporate Debtor also provided their last Audited Annual Balance Sheet for the Financial Year Ended 31.03.2020.

7.2 The Corporate Debtor accordingly made an application for availing the loan on 15 June 2021. After requisite due diligence, the Financial Creditor agreed to offer the Loan to the Corporate Debtor *vide* its sanction letter dated 20th June 2021 which was duly accepted by the Corporate Debtor. The said loan would bear an interest of 12% p.a. chargeable on monthly basis and payable along with the principal loan.

The said amount would be repayable after 6 months of disbursement along with due interest.

7.3 It was further decided that in case of breach of any terms of the loan the Financial Creditor can recall the Loan advanced along with due interest forthwith giving 30 days' time to the Corporate Debtor for repayment irrespective of the terms of repayment as agreed. As such the loan agreement was signed on 21 June 2021 and as agreed the Financial Creditor advanced the Loan amounting to Rs. 1.25 Crores to the Corporate Debtor on 29 June 2021.

7.4 The Financial Creditor however being uncomfortable with the activities of the Corporate Debtor, on 17.01.2022, issued a demand notice requesting the Corporate Debtor to refund the loan along with interest payable. The said demand was made in view of the fact that the Corporate Debtor failed to repay the loan in time and further failed to upload its annual account for the year ended 31.03.2021 with Ministry of Corporate Affairs (MCA).

7.5 The Corporate Debtor failed to repay the loan after the end of 6 months *i.e.* 29 December 2021 and sought extension of time by another 2 months. To show its bonafide intention, the Corporate Debtor provided the Financial Creditor with the agreement entered into with Ms Smriti Tandon towards the proposed purchase of the land. The Corporate Debtor further in noncompliance of the agreed terms of the arrangement failed to provide the Audited Balance Sheet for the year ended 31.03.2021 despite several requests citing delay due to Covid Pandemic. The Financial Creditor, in good faith permitted the same. The Corporate Debtor assured repayment within 28.02.2022, however again failed and neglected to pay the outstanding loan amount or interest thereof.

7.6 Thereupon the Financial Creditor once again raised a demand on 05.03.2022. The Corporate Debtor did not respond to the said demand

letter and calls made to the Directors of Corporate Debtor have gone unanswered.

7.7 Further, on verification of Form 26AS, a consolidated statement of TDS and other taxes paid or received it transpires that the CD has duly deposited the TDS on interest provided against the instant loan transaction.

8. **Submissions of the Corporate Debtor:**

8.1 The Corporate Debtor has submitted that it is a financially solvent company carrying on business in Investment and Trading, since year of 2010. In order to tide over some temporary deficiency in the usual course of business, the Corporate Debtor had approached the Financial Creditor for a temporary credit limit to purchase the plot of land in Lucknow. The deal for the said property however did not materialize.

8.2 In the year 2021 due to back to back covid pandemic waves, the CD faced a severe setback thus hampering the business of the CD, and the same was intimated to the FC.

8.3 The CD had duly informed the FC about the temporary deficiency and the FC had duly agreed to extend the tenure of repayment. To ensure that the FC is protected against the advance made by them, the CD had also executed a Confirmation of accounts on 1.04.2022.

8.4 To the utter shock and surprise of the CD, on 17.01.2022 the FC issued a notice on 15.01.2022 recalling the entire limit. The FC was well aware that the CD needed time to repay the dues of the FC. However, under coercion of the FC, the CD was forced to furnish a letter in writing to the FC requesting them to extend the time to repay the loan. Immediately thereafter the FC issued another recall notice on the CD on 28.2.2022.

8.5 The CD was always willing to repay the loan amount, and is still willing to pay the amount due and seeks extension of time to repay the same.

8.6 Though the loan agreement provides that the advance was repayable by 29.12.2021, the Financial Creditor had agreed that the time for repayment would be extended if so requested by the CD. The document by which the repayment date was revised was at the coercion of the FC. As such, no default has occurred as alleged. The computation as shown for the alleged amount of default is false and frivolous.

**9. Analysis and Findings:**

- 10.1 Heard the Ld. Counsel on behalf of the Financial Creditor and the Ld. Counsel on behalf of the Corporate Debtor and perused the record.
- 10.2 On perusal of the records, specifically Annexure H and I of the petition, it is clear that the Corporate Debtor applied for the loan and was sanctioned the same by the Financial Creditor *vide* sanction letter dated 21 June 2021. The loan was given for a term of 6 months. A loan agreement has also been executed between the parties.
- 10.3 Further the Corporate Debtor, in its reply affidavit, on pages 3 and 4, has admitted to taking a loan for the period of 6 months in paragraphs 4(b) and 8 respectively. In the course of arguments, on 12 December 2022, the Ld. Counsel on behalf of the Corporate Debtor admitted that the Corporate Debtor is in no position to clear the amount in default as claimed by the Financial Creditor, or any part of it.
- 10.4 Furthermore, the Corporate Debtor's contention that the Financial Creditor had extended the term of the loan is unsupported by any evidence and as such, the same is untenable. As such, it is concluded that a financial debt is due from the Corporate Debtor to the Financial Creditor and the Corporate Debtor has defaulted in the payment of the same.
- 10.5 The petition has been filed within three years from the date of default *i.e* 28.02.2022 and is therefore within limitation period. The total amount claimed *i.e* ₹1,35,12,500/- is above the minimum pecuniary threshold of ₹1 Crore. The particulars of the proposed Interim Resolution

Professional have been provided in Part III of the Form 1. As such, the petition is complete in all respects.

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

- i) The application bearing **CP (IB) No. 191/KB/2022** filed by **Unicon Vanijya 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 **Nouvelle Advisory Services Private Limited**, CIN: U93000WB2010PTC141445, 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. Rajiv Kumar Agarwal**, having registration number **IBBI/IPA-001/IP-P00552/2017-18/10982**, email: **rajiv@kvrassociates.in** 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. 191/KB/2022** to come up on **17.02.2023** 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 11<sup>th</sup> day of January, 2023**

SM(LRA)