

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**C.P. (IB) 786/MB/2023**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016

*In the matter of*

**Krishkan Investment Private Limited**

Having its address at- 7/1A, Grant Lane,  
2<sup>nd</sup> Floor, Chambers Room No.2,  
Kolkata- 700012

Also at- A-102/2, A Wing, Hillview CHS.  
Ltd. JP Road, Near Navrang Cinema,  
Mumbai- 400058

**..... Petitioner/ Financial Creditor**

**Versus**

**4B Networks Private Limited**

Having its address at- 4<sup>th</sup> Floor, Gayatree  
Plaza, Turner Road, Bandra (West),  
Mumbai- 400050

**..... Respondent/Corporate Debtor**

**Order Delivered on :- 12/01/2024**

*Coram:*

**Mr. Anil Raj Chellan**  
**Member (Technical)**

**Mr. Kuldip Kumar Kareer**  
**Member (Judicial)**

*Appearances:*

For the Financial Creditor : Adv. Yash Jariwala

For the Corporate Debtor : Adv. Rohit Agarwal

**ORDER**

*Per: -Mr. Kuldip Kumar Kareer, Member (Judicial)*

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Krishkan Investment Private Limited**. (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s 4B Networks Private Limited** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Financial Debt of Rs. 1,20,54,818/- as on 10.08.2023.

**The submissions of the Financial Creditor are as follows:**

2. The Financial Creditor is a company incorporated under the provisions of the Companies Act, 1956 and a Non-Banking Financial Company registered with the Reserve Bank of India. It is engaged in the business of providing

business loans, long-term loans, short-term loans, loans against property or personal loan.

3. The Corporate Debtor is a company incorporated under the provisions of the Companies Act, 2013. It is one of a prop-tech companies with a revolutionary tech platform that enables and empowers brokers and developers.
4. The financial facility was initially provided by Ace Housing and Construction Private Limited. In need of financial assistance, the Corporate Debtor approached the Original Lender for availing unsecured Inter Corporate Deposit facility and pursuant to rounds of discussion and negotiations, the Original Lender agreed to grant a limit of an amount upto Rs. 3,00,00,000/- on simple interest at 24% p.a. to the Corporate Debtor.
5. Accordingly, the Original Lender and Corporate Debtor executed an Agreement for Inter Corporate Deposit on 22.01.2023 under the terms and conditions as mentioned in extenso therein. It is pertinent to mention that the Agreement for Inter Corporate Deposit is backed by a Board Resolution passed by Corporate Debtor on 19.01.2023 wherein it can be seen that the Corporate Debtor had authorized one of its directors to execute the above-mentioned agreement.
6. Pursuant thereto, the Original Lender disbursed an amount of Rs. 2,20,00,000/- in different tranches to the Corporate Debtor.
7. It is submitted that the Original Lender vide Letter dated 02.06.2023 demanded the Corporate Debtor to release the outstanding amount. In response to the letter issued by the Original Lender, the Corporate Debtor

vide Letter dated 06.06.2023 requested for some time to release the outstanding amount. It is pertinent to mention that the Corporate Debtor had acknowledged the receipt of the amount and never disputed the same.

8. It is submitted that even after seeking additional time, the Corporate Debtor did not take any initiative nor gave any satisfying assurance with regard to repayment of the outstanding amount. Pertinently, even after giving multiple opportunities to the Corporate Debtor, the Corporate Debtor failed to honor its promise of repayment.
9. Therefore, the Original Lender was constrained to issue a Demand Notice dated 17.06.2023 calling upon the Corporate Debtor to release the outstanding amount, however, the Corporate Debtor miserably neglected to even respond to the same.
10. It is submitted that since the Original Lender was unable to recover the money from the Corporate Debtor, it assigned the Inter Corporate De facility of the Corporate Debtor to the Financial Creditor by way an Assignment Agreement dated 25.07.2023 on the terms and conditions as mentioned therein.
11. Accordingly, the Financial Creditor vide Letter dated 10.08.2023 informed the Corporate Debtor about the assignment as well as the due amount payable to the Financial Creditor.
12. It is submitted that upon crystalizing the default, the Financial Creditor still held meetings of negotiations with the Corporate Debtor to release the outstanding amount as early as possible to keep the account regular.

However, even after repeated assurances, the Corporate Debtor failed to pay the outstanding amount and most importantly, the Corporate Debtor had already defaulted in repayment of the outstanding amount to the Original Lender even after issuing a Demand Notice from the side of the Original Lender.

13. Therefore, based on the documents placed on record, it is sufficiently evident that the Corporate Debtor has failed in making the payment of the interest and the Original amount. Hence, the Financial Creditor is left with no alternative but to file the present Company Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor. Hence the present Company Petition.

**Reply filed on behalf of the Corporate Debtor**

14. In reply, the Corporate Debtor has denied all allegations and/ or contentions and/or insinuations and or aspersions and/or statement and/or grounds and/or submissions contained in the present Petition as are contrary to and/or inconsistent with what has been stated and submitted herein. He further, submits that the present Petition is not maintainable as there are prima facie grounds of maintainability.
15. It is further submitted that the Corporate Debtor is one of India's fastest-growing Prop-Tech companies with a revolutionary tech platform that facilitates, enables, and empowers brokers and developers. The Corporate Debtor is a hybrid of new-age technology and human ingenuity, creating opportunities and efficiencies for people at large.

16. It is further submitted that the Corporate Debtor approached Ace Housing and Construction Private Limited (hereinafter after referred to as the "**Original Lender**") to meet its working capital requirement. The Original Lender sanctioned a loan by way of a Inter Corporate Deposit Facility Agreement dated 22.01.2023 (hereinafter after referred to as the "**ICD**").
17. It is further submitted that due to on-going global pandemic situation at the time, the Original Creditor requested for a repayment from the Corporate Debtor. At the time, the Corporate: Debtor was also facing losses due to the certain financial breakdowns and, therefore, requested for an extension for repayment.
18. The Corporate Debtor further submits that despite oral discussions on the extension of repayment by the Corporate Debtor, the Original Creditor chose to issue the Demand Notice dated 17.06.2023 calling upon the Corporate Debtor to repay the entire outstanding amount.
19. The Corporate contends that the said ICD facility was, however, without any prior intimation to the Corporate Debtor, assigned to Financial Creditor herein by way of an Assignment Agreement dated 25.07.2023. It is imperative to mention that the Corporate Debtor was intimated of the same only vide Letter dated 10.08.2023 issued by the Financial Petitioner after execution of the Assignment Agreement.
20. It is further submitted that the Financial Creditor miserably failed to abide by the provisions of the IBC since no demand notice has been issued by the

Financial Creditor which itself manifests the dishonest conduct on part of the Financial Creditor and that the whole proceedings initiated by the Financial Creditor are void-ab-initio and the same cannot be adjudicated by the Hon'ble Adjudicating Authority.

21. It is further submitted that it is a settled position of law that the provisions of the IBC cannot be invoked for recovery of outstanding amounts but can be invoked to initiate CIRP for justifiable reasons as per the IBC. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited* has, Inter alia, held that IBC is not intended to be a substitute to a recovery forum and cannot be used to jeopardize the financial health of an otherwise solvent company by pushing it into insolvency.
22. The Corporate Debtor further submits that it is also important to note that that in case of *Vidarbha Industries Power Limited versus Axis Bank Limited* reported in (2022) SCC Online SC 841, the Hon'ble Supreme Court has held that, "there can be no doubt that a corporate debtor who is in the red should be resolved expeditiously, following the timelines in the IBC. No extraneous matter should come in the way. However, the viability and overall finance health of the Corporate Debtor are not extraneous matters.
23. In the end, the Corporate Debtor has prayed for the dismissal of the Petition.

**Analysis and Findings:**

24. We have heard the Counsel for the parties and gone through the record.

25. During the course of arguments, it has been pointed out by the Counsel for the Petitioner that the Corporate Debtor was advanced an Inter Corporate Loan vide agreement dated 22.01.2023 whereby the original lender agreed to advance an Inter Corporate Deposit of Rs. 3,00,00,000/- to the Corporate Debtor on simple interest @ 24% per annum. In pursuance to the said agreement, a sum of Rs. 2,00,00,000 crores was disbursed on 01.05.2023 and another amount of Rs. 20,00,000/- was disbursed on 03.05.2023. Counsel for the Financial Creditor has further referred to the ledger account (Exhibit m) which shows that the aforesaid amount was disbursed and further that as on 25.05.2023, a sum of Rs. 1,09,37,577/- was outstanding against the Corporate Debtor as Original sum. Counsel for the Petitioner has further referred to the notices issued to the Corporate Debtor dated 06.06.2023 and 17.06.2023 whereby the Corporate Debtor was called upon to repay the outstanding sum but despite that it has failed to repay.
26. Counsel for the Petitioner has further pointed out that the loan was advanced by the original Lender i.e. Ace Housing Construction Private Limited which has since assigned the loan to the Petitioner vide assignment agreement dated 25.07.2023 which is annexed with this Petition and on the basis of the same, the Petitioner has filed the present Petition under Section 7 of the Code. Counsel for the Financial Creditor has further urged that since the existence of financial debt and its default by the Corporate Debtor has been proved on record, the Petition be admitted.
27. On the other hand, Counsel for the Corporate Debtor has argued that the NeSL relied upon by the Petitioner is not legal and valid as it is not in conformity with the Information Utility Regulations, 2017. The Counsel for the Corporate Debtor has further argued that the Corporate Debtor should

not be pushed into insolvency on account of default of a meagre of Rs. 1.09 crores as due to market condition, the Corporate Debtor was in distress and could not repay the financial debt.

28. We have weighed the contentions raised by the counsel for the parties and have also gone through the records carefully.
29. So far as the existence of the financial debt is concerned, in our considered view, the same stands proved on record on the basis of agreement dated 22.01.2023 executed between the original Lender i.e. Ace Housing Construction Private Limited and the Corporate Debtor. It is, further evident from the ledger statement (Exhibit m) that the amount of Rs. 2,20,00,000/- was disbursed by way of two tranches on 01.05.2023 and 03.05.2023 respectively. The Corporate Debtor has not repaid the outstanding amount despite notices have been served upon it and, therefore, the factum of existence of financial debt and its default on the part of the Corporate Debtor stands proved on record.
30. No substantive defence has been raised by the Corporate Debtor in the reply filed by it. It has only been stated that due to on-going global pandemic situation, the Corporate Debtor was facing losses due to which it requested for an extension for repayment. It has also been claimed in the reply filed on behalf of the Corporate Debtor that the Financial Creditor has not issued any demand notice to the Corporate Debtor. However, the defences raised by the Corporate Debtor do not appear to be tenable at all and are hereby summarily rejected as demand notice dated 17.06.2023 was duly issued to the Corporate Debtor.

31. The contentions raised by the Counsel for the Corporate Debtor raising objections about the NeSL report and its inadmissibility are also not tenable considering the fact that the factum of debt and default stands proved on record, even if the NeSL report is not taken into consideration. Similarly, the case law laid down in *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited* and Vidarbha Industries' case, which have been relied upon by the Corporate Debtor in reply, cannot be applied to the facts and circumstances of the present case as no evidence has been brought on record by the Corporate Debtor to establish that the Corporate Debtor is financially sound enough that it should not be pushed into Insolvency.
32. No other points have been raised by the Corporate Debtor.
33. As a result of brief discussion, we hold that the petitioner has been able to prove the existence of financial debt and its default having been committed by the Corporate Debtor and further that the Petition is filed within the period of limitation. Therefore, the Petition deserved to be admitted and it is ordered accordingly in following terms:-

**ORDER**

- a. **The above Company Petition No. (IB) 786 (MB)/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s 4B Networks Private Limited.**
- b. **This Bench hereby appoints Mr. Ravindra Chaturvedi , Registration No: IBBI/IPA-001/IP-P00792/2017-2018/11359 as the Interim Resolution**

**Professional having his address at BKC Centre, 31-E Laxmi Industrial Estate, New Link Road, Andheri (West), Mumbai- 400053** , to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
  
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or

lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their

possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

34. **Accordingly, this Petition is admitted.**

35. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**  
**ANIL RAJ CHELLAN**  
**(MEMBER TECHNICAL)**  
*Sushil*

**Sd/-**  
**KULDIP KUMAR KAREER**  
**(MEMBER JUDICIAL)**