



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**COURT- III**

**IB-1103/ND/2020**

U/S. 7 of the IBC, 2016 Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

**IN THE MATTER OF**

**M/s Kaliber Associates Private Limited**

**Registered office at:**

**B-1/12, 2<sup>nd</sup> Floor, Safdarjung Enclave,  
New Delhi - 110029**

...Financial Creditor

**Versus**

**M/s Diamond IT Infracon Private Limited**

**Regd. Office:**

**C-10/3, 1<sup>st</sup> Floor, Vasant Vihar  
New Delhi-110057**

...Corporate Debtor

*Delivered on: 03.01.2023*

**Coram:**

**Shri Bachu Venkat Balaram Das**  
Hon'ble Member (Judicial)

**Shri Binod Kumar Sinha**  
Hon'ble Member (Technical)

**Appearances:**

Financial Creditor: Adv. Anirban Bhattacharya

Corporate Debtor : None



## ORDER

**Per: Binod Kumar Sinha, Member (Technical)**

1. This instant application bearing IB-1103/ND/2020 is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Financial Creditor, M/s Kaliber Associates Private Limited, is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Diamond IT Infracon Private Limited, to declare moratorium and to appoint (Interim Resolution Professional (hereinafter referred as 'IRP')). The Corporate debtor is registered with RoC, Delhi & Haryana and is therefore within the jurisdiction of this Adjudicating Authority.

2. The Financial Creditor/Petitioner has averred as follows: -

- a. It is submitted that, the Applicant i.e., Financial Creditor is presently undergoing the Liquidation process vide order dated 02.01.2020 passed in C.A. No. 1524/CII/ND/2019 in C.P (IB) No. 228/2018 by this Hon'ble Adjudicating Authority whereby this Hon'ble Authority admitted an application filed by the Resolution Professional of M/s Kaliber Associates Pvt. Ltd. under Section 33(1) and Section 33(2) of IBC for liquidation of M/s Kaliber Associates Private Limited. On



12.10. 2020 an application bearing I.A. No. 4559/ 2020 in C.P. (IB) No. 228/2018 under Section 33(5) read with Section 35(1)(k) of IBC was filed by the Liquidator of the Applicant seeking approval for institution of suit or other legal proceedings including filing of application under Section 7 of IBC against various borrowers including the Corporate Debtor herein. That vide order dated 01.12.2020 the Hon'ble NCLT allowed the said application and the Applicant/ Financial Creditor was allowed to institute any suit or legal proceeding against the defaulting borrowers before any appropriate forum.

- b. It is submitted that the Financial Creditor has disbursed various loans and advances to the Corporate debtor. Financial creditor disbursed a total sum of Rs. 27,69,02,500/- as loan amount to the Corporate debtor from December, 2013 to December, 2017. As per the Audited Financial Statements, both Financial creditor and Corporate debtor are related parties.
- c. It is further submitted that, one Mr. Mohan Lal Jain the RP of M/s Kaliber Associates Pvt. Ltd. issued demand letter dated 18.07.2019 to the Corporate debtor to pay the sum of Rs. 27,69,14,300/- with interest within 7 days from the date of aforesaid demand letter. However, the Corporate debtor failed to give any reply. Thereafter, Liquidator of Financial creditor issued another letter dated



09.03.2020. All the efforts of Financial Creditor fell on deaf ears as Corporate debtor neither responded to the said letters nor paid the disputed amount. The Corporate Debtor has not repaid the amount of default till date even after persistent reminders and notices.

3. Notice was issued to the Corporate Debtor on 09.02.2021. Service was duly effected. However there was no appearance and no averments were made by the Corporate Debtor in this matter and on 02.12.2021, the matter was proceeded as *ex parte*.
4. We have heard the arguments advanced by Ld. Counsel for the Financial Creditor and also perused the record.
5. The Financial Creditor's claim is based on the fact that a sum of Rs. 27,69,02,500/- was paid by the Financial Creditor to the Corporate Debtor as a loan amount and the Corporate debtor has committed default on payments from 14.12.2013 to 28.12.2017.
6. We do not have the benefit of assistance from the Corporate Debtor. However, in this matter, before deciding the issue of admission of the Corporate Debtor into CIRP on the basis of the instant Application filed u/s 7 of the Code, we are required to check the following facts and documents annexed by the Financial creditor.

A handwritten signature in green ink, appearing to be 'A. S. S.', located at the bottom center of the page.



7. The following facts are noted:

A) The applicant, Financial Creditor has disbursed various loans and advances to the Corporate debtor. Financial creditor disbursed Rs. 27,69,02,500/- as loan amount to the Corporate debtor from December, 2013 to December, 2017. The extract of the Computation table is reproduced below:

Particulars	Account No.	Cheque No.	Amount
Diamond Infracon	349401010928400	32171449	20,000,000
Diamond Infracon	349401010928400	33139826	30,000,000
Diamond Infracon	349401010928400	33139830	50,000,000
Diamond Infracon	349401010928400	33139832	25,000,000
Diamond Infracon	349401010928400	33139831	30,000,000
Diamond Infracon	349401010928400	33139834	19,750,000
Diamond Infracon	90061010015808	48518703	9,652,500
Diamond Infracon	90061010015808	48518706	20,000,000
Diamond Infracon	90061010015808	48518707	50,000,000
Diamond Infracon	90061010015808	48518708	22,500,000
<b>Total:</b>			<b>Rs. 27,69,02,500/-</b>



8. At the outset, while pursuing the records we found copy of balance sheet of M/s Diamond IT Infracon i.e., Corporate Debtor marked as Annexure – 11, wherein it is shown that Corporate Debtor availed loan facility from Financial creditor. Further, true copy of record of default is also available on record marked as Annexure – 3. The record of the default is also available on National E-Governance Services Limited, where Corporate Debtor is allotted Unique Debt Identifier No. AACCK3483G\_7. Thus, on the proof of Balance sheet of Corporate Debtor marked as Annexure – 11 and record of default authenticated by NESL marked as Annexure – 3, we are inclined towards the view that Corporate debtor was fully aware of the loan amount disbursed by the Financial creditor. It is pertinent to mention that the nature and scope of enquiry for the purposes of admission and initiation of the CIRP under Section 7 of the Code has already been well settled and laid down by the Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd vs. ICICI Bank and Anr.(2018) 1 Supreme Court Cases 407***. The Hon'ble Supreme Court has laid down that the scope of enquiry by the Adjudicating authority under Section 7 of the Code is confined only to two issues i.e. (1) completeness of the application with respect to the form and manner prescribed under the Code along with the requisite fee and (2) occurrence and existence of financial default on the basis of evidence produced by the financial creditor. Apart from this, no other issue or question is required to be examined for admission of an application under Section 7 of the Code. The



relevant extract is as hereunder:

*"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

A handwritten signature in green ink, appearing to be 'A. G. S.' with a horizontal line underneath.



9. In the light of the decision referred to ***supra***, when we consider the submissions of the Financial Creditor for the claims towards the Loan amount disbursed to the Corporate debtor, it appears to us that the failure of the Corporate debtor to make payment of the Loan amount will be considered as 'Default'. The Financial creditor has placed adequate evidence to establish that there exists a Financial Debt of an amount exceeding the threshold as provided U/s 4 of the Code, which the Corporate debtor was liable to pay but defaulted in making such payments. Accordingly, we hereby admit the instant application filed by Financial Creditor U/s 7 of the IBC, 2016.

10. The Financial Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Rajiv Bajaj having Regn. No. IBBI/IPA-002/IPN00276/2017-18/10834 (rbajajip@gmail.com) as IRP. The written Consent and IBBI registration certificate of IRP is taken on record. The IRP is directed to place on record valid Authorisation for Assignment (AFA) within 2 (two) days of pronouncement of this Order .The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.



11. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

- a. 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;
- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor's assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d. 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. The explanation below section - 14 (1) also stipulates "that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a

A handwritten signature in green ink, appearing to be 'A. Chandra', located at the bottom center of the page.



similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

12. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, the provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

13. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the Code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

14. The Financial Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor’s

A handwritten signature in green ink, appearing to be 'A. G. S.', written over a horizontal line.




assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

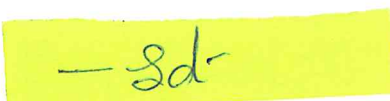
15. The Financial Creditors are directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further Financial creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks' time from the date of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

16. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

17. The IB-1103/ND/2020 is admitted.

18. The order is pronounced by this Adjudicating Authority in Virtual Hearing.

  
**(Dr. Binod Kumar Sinha)**  
Member (Technical)

  
**(Bachu Venkat Balaram Das)**  
Member (Judicial)