

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

**CP (IB) No.635/KB/2020**

*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:*

**Chaitanya Manufacturers Private Limited** [CIN U51109WB1973PTC028840],  
having its registered office at 207, Maharshi Devendra Road, Kolkata – 700007.

*... Financial Creditor*

*Versus*

**Venkateshwar Vyawsay Private Limited** [CIN U70101WB1996PTC080758], having  
its registered office at 60A, Diamond Harbour Road, P. S. Behala, Kolkata – 700063.

*... Corporate Debtor*

**Date of hearing: 01 April, 2022**

**Order pronounced on: 25 May, 2022**

***Coram:***

***Shri Rajasekhar V.K.*** : ***Member (Judicial)***

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

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

***For Financial Creditor*** : Mr. Ranjeet Prasad, Advocate.

***For the Corporate Debtor*** : None

**ORDER**

***Rajasekhar V.K., Member (Judicial)***

1. This Court convened *via* video conferencing.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Chaitanya Manufacturers Private Limited (*'Financial Creditor'*), filed by Mr. Tapas Chakraborty, Director, duly authorised *vide* board resolution dated 22 January, 2022<sup>1</sup> for initiating Corporate Insolvency Resolution Process (*'CIRP'*) against Venkateshwar Vyawsay Private Limited (*'Corporate Debtor'*).
3. The present Petition was filed on 04 February, 2020 before this Adjudicating Authority on the ground that the Financial Creditor had provided Inter-Corporate Deposit (*'ICD' or 'Loan'*) of Rs.5,00,000/- (Rupees Five Lakh only) to the Corporate Debtor, bearing simple interest @18% p.a.<sup>2</sup> The date of default is 14 August, 2019.<sup>3</sup>
4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.11,10,00,000/- (Rupees Eleven Crore Ten Lakh only) with paid up Capital as Rs.32,00,000/- (Rupees Thirty Two Lakh only).
5. ***Submissions by the Ld. Counsel appearing on behalf of the Financial Creditor.***
  - 5.1 *Vide* letter dated 07 May, 2019 the Corporate Debtor approached the Financial Creditor with a request to disburse a loan facility amount of Rs.5,00,000/- (Rupees Five Lakh only) on mutual terms and conditions, as decided between the parties.

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<sup>1</sup> Annexure – A of the Petition.

<sup>2</sup> Inter Corporate Deposit Agreement dated 14 May, 2019 at pages 26 – 34 of the Petition.

<sup>3</sup> Supplementary Affidavit at page no. 7 of the Petition.

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- 5.2 Accordingly, a sum of Rs.5,00,000/- (Rupees Five Lakh only) was disbursed by the Financial Creditor on 15 May, 2019<sup>4</sup> and the same was acknowledged by the Corporate Debtor *vide* its letter dated 15 May, 2019<sup>5</sup>.
- 5.3 Subsequently, an Inter-Corporate Deposit Agreement (**'Agreement'**) was entered between the parties on 17 May, 2019. As per the Agreement the Corporate Debtor shall be liable to pay principal amount of Rs.5,00,000/- (Rupees Five Lakh only) along with interest rate at 18% p.a., on expiry of three months from the date of receipt of the Loan i.e., 14 August, 2019.
- 5.4 However, the Corporate Debtor failed to pay the Principal amount along with interest. The Financial Creditor sent various demand notices on 23 August, 2019, 04 September, 2019 and 15 October, 2019 to the Corporate Debtor but neither any payment nor any reply was received by the Financial Creditor.

***Analysis and Findings***

6. Heard the Ld. Counsel for the Financial Creditor and perused the concerned documents annexed to the Petition. None appeared on behalf of the Corporate Debtor even after receiving notices dated 02 March, 2020 and 03 February, 2022 from the Registry. The matter was set *ex-parte* on 25 February, 2022
7. Upon perusal of the Balance sheets of the Corporate Debtor for the Financial year ending on 31 March, 2011, 31 March, 2012, 31 March, 2013, 31 March, 2014 and 31 March, 2016, it is observed as follows;

| Financial Year | Observation   |
|----------------|---|
| 2010-2011      | Reserve & Surplus – Rs.11,73,15,000/-<br>Loans & Advances (under the heading assets) –<br>Rs.1,00,56,39,475/- |

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<sup>4</sup> Cheque/Reference No.0000000000000605

<sup>5</sup> Annexure – I of the Petition.

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|           |  |
|-----------|--|
| 2011-2012 | Reserve & Surplus – Rs.11,59,94,366.44/-<br>Fixed Assets – Rs.36,69,777/-<br>Loans & Advances (under the heading assets) –<br>Rs.66,73,41,000/-  |
| 2012-2013 | Reserve & Surplus – Rs.12,41,82,129.88/-<br>Fixed Assets –Rs.36,69,777/-<br>Non-Current Investment – Rs.27,63,50,000/-<br>Loans & Advances (under the heading assets) –<br>Rs.63,40,81,000/- |
| 2013-2014 | Reserve & Surplus – Rs.12,34,78,922.15/-<br>Fixed Assets –Rs.36,69,777/-<br>Non-Current Investment – Rs.27,63,50,000/-<br>Loans & Advances (under the heading assets) –<br>Rs.62,64,29,000/- |
| 2015-2016 | Reserve & Surplus – Rs.(149799111.39)/-<br>Non-Current Investment – Rs.3,70,22,298/-/-<br>Loans & Advances (under the heading assets) –<br>Rs.48,80,90,000/-                                 |

8. From the above Balance Sheets of the Corporate Debtor it is observed that the Corporate Debtor had sufficient amount in its account. It is also pertinent to mention that the Corporate Debtor has given loan and advances, which are running into Crore but is unable to pay a loan taken for Rupees Five Lakh only. Further, upon perusal of the Master Data it is also perceived that registered e-mail IDs of both the parties are same i.e., [nrddh\\_dutta@yahoo.co.in](mailto:nrddh_dutta@yahoo.co.in).
9. Further, in light of the Judgment by the Hon'ble NCLAT in *Hytone Merchants Private Limited v. Satabadi Investment Consultants Private Limited*<sup>6</sup> decided on

<sup>6</sup> Company Appeal (AT) (Insolvency) No. 258 of 2021

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30 June, 2021 (*para 34, 37, 39, 42 and 45*), we are of the opinion that there is collusion between the parties. Hence, the *C.P. (IB) No. 635/KB/2020* is *dismissed*.

10. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
11. File be consigned to record.

BALRAJ  
JOSHI

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BALRAJ JOSHI  
Date: 2022.05.25  
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**Balraj Joshi**  
**Member (Technical)**

Rajasekhar  
V K

Digitally signed by Rajasekhar V K  
DN: c=IN, o=Personal, title=0605,  
pseudonym=490a45134c9adf68ed2365dbf55b7304ee4  
3a6491cfe4899ac8d67bacffde65cc, postalCode=600018,  
st=Tamil Nadu,  
serialNumber=f05120aee9b7978ef74f18a3ac75eb59d0  
5e036c92d850593b5c6edc8a8c7396, cn=Rajasekhar V K  
Date: 2022.05.26 15:44:56 +05'30'  
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**Rajasekhar V.K.**  
**Member (Judicial)**

The Order is pronounced on 25<sup>th</sup> day of May, 2022

Safura A., LRA