IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT NO. II)

CP (IB)146/AHM/2021

(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:

ARDENT VENTURES LLP

...Applicant / Financial Creditor

Versus

KANEL INDUSTRIES LIMITED

...Respondent / Corporate Debtor

Order Pronounced On: 03/12/2021

Coram:
DR. DEEPTI MUKESH,
HON'BLE MEMBER (JUDICIAL)

KAUSHALENDRA KUMAR SINGH,
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

ARDENT VENTURES LLP
E-704, Maple Tree, Near Surdhara Circle,
Ahmedabad, Gujarat- 380052

...Applicant/ Financial Creditor

Versus

KANEL INDUSTRIES LIMITED
203, Abhijeet Building,
Near Mithakhali Six Roads,
Ellisbridge, Ahmedabad- 380006

...Respondent / Corporate Debtor

Present:
For the Applicant: Mr. Navin Pahwa, Adv.
For the Respondent: Mr. Pratik Thakkar, Adv.

ORDER

Per: Dr. Deepti Mukesh, Member (Judicial)

1. The instant Application is filed by Ardent Ventures LLP (for brevity '**the Applicant**') through its designated partner Mr. Keyoor Bakshi, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as a Financial Creditor for initiation of Corporate Insolvency Resolution Process ('**CIRP**') against the Kanel Industries Ltd. (for brevity '**Corporate Debtor**').

2. The Applicant is a Limited Liability Partnership, incorporated under the provisions of the Limited Liability Partnership Act, 2008 and duly registered with the Registrar of Companies, Ahmedabad, with LLPIN: AAI-9404. The registered office is located at E-704, Maple Tree, Nr. Surdhara Circle, Ahmedabad, Gujarat - 380052.

3. The Corporate Debtor is a company limited by shares, incorporated under the provisions of the Companies Act, 1956 on 29.01.1992, duly registered with Registrar of Companies, Ahmedabad with CIN: L15140GJ1992PLC017024 and its registered office is located at 203 Abhijeet Building Near Mithakhali Road, Ellisbridge, Ahmedabad-380006. The authorized share capital of the Corporate Debtor is Rs. 20,00,00,000/- and the Issued, Subscribed and Paid-up share capital of the Corporate Debtor is Rs. 18,41,24,400/-. The Corporate Debtor was formerly known as Kanel Oil & Export Industries Ltd.

4. It is the case of the Applicant that the Corporate Debtor had availed business advance of Rs. 5 crores from Adani Enterprises Ltd., against mortgage of various immovable properties by executing a registered mortgage deed dated 04.11.2008. The said business advance was repayable on demand or within six months whichever is earlier with interest @ 15% p.a. from the date of advance made i.e. 11.06.2008. Copy

of Promissory Note, Mortgage Deed, Deed of Guarantee and Agreement of Acceptance of Terms and Conditions for Business Advance of Rs. 5 crores are annexed. The Corporate Debtor made part payment of total amount of Rs. 1,60,00,000/- on 18.03.2017 and 11.12.2017 to Adani Enterprises Ltd., the original creditor. Thereafter through Assignment Agreement dated 05.03.2021, Adani Enterprise Ltd. had assigned its debts to the Applicant and after the said assignment the Corporate Debtor had acknowledge the debt to the Applicant vide letter dated 03.04.2021. The Copy of Assignment Agreement and letter dated 03.04.2021 are annexed. The Applicant submits that the Corporate Debtor had acknowledged the debt on various occasions in various documents. The copies of documents reflecting acknowledgment by the Corporate Debtor to the Applicant with respect to said assigned debt are annexed. The Applicant had sent reminder letters dated 17.03.2021 and 17.06.2021 for payment of outstanding amount but all in vain.

5. Thus, the Applicant filed present Application under Section 7 of the Code. As per Form-I of the Application, total amount claimed by the Applicant is Rs. 29,11,77,568/- including interest @ 15% p.a from the date of disbursement till 31.07.2021.

6. An affidavit in reply dated 15.11.2021 is filed by the Corporate Debtor through its director, Mr. Dhiren Thakkar admitting its debt and making following submissions:

> *"I say that the respondent has been facing financial crunch. I say that due to financial crisis, the respondent cannot pay the outstanding debt. In the circumstances, this Hon'ble Adjudicating Authority may make suitable orders in the matter."*

7. After hearing arguments, liberty was granted to file a written submission. The Applicant has filed its written submissions and further argued that the Corporate Debtor had acknowledged the outstanding amount in its balance sheet from time to time during the period from 31.03.2008 to 31.03.2019, which shows continuous cause of action and accordingly the present application is within the period of limitation. The written arguments of the Corporate Debtor has not came on record.

8. As per the Application, the first default occurred on 11.12.2008 i.e. six months from the date of disbursement of the advance i.e. 11.06.2008. The balance sheet of the Corporate Debtor for the year ended 31.03.2010, 31.03.2013 and 31.03.2015 annexed with the Application reflects that the principal amount of advance is outstanding to the original creditor, Adani Enterprises Ltd. Also in letter dated 07.11.2016 sent by the Corporate Debtor to the original creditor Adani Enterprises

Ltd., the Corporate Debtor had acknowledged and also promised to pay the debt. The extract of the letter is reproduced below:

> *"This has with reference to the business advance of Rs. 5 cr availed by us from you for which following documents were executed by us/directors/guarantors to secure the advance:*
>
> 1. *Agreement for business advance dated 11th June 2008.*
> 2. *Deed of guarantee executed by all guarantors dated 11th June 2008*
> 3. *Promissory note dated 11th June 2008*
> 4. *Agree to mortgage cum power of attorney dated 11th June 2008*
>
> *We hereby confirm the enforceability of the above documents and re-affirm all these agreements to secure above debt.*
> *We also confirm that above debt is payable by us to Adani Enterprise Ltd. and agree to pay the same on demand."*

9. Thereafter in 2017 the Corporate Debtor made part payment to the original creditor, Adani enterprises Ltd. Further the balance sheet of the Corporate Debtor for the year ended 31.03.2019 also reflects that an amount of Rs. 34,00,00,000/- is due to Adani Enterprises Ltd. Consequent to assignment of debt to the Applicant on 05.03.2021, the Corporate Debtor through letter dated 03.04.2021again acknowledged its debt to the Applicant. The relevant extract of the letter is reproduced herein below:

> *"We, Kanel Industries limited hereby confirm and acknowledge to* ***ARDENT VENTURES LLP*** *(the Creditor) that we are indebted to the said Creditor in the amount of Rs. 27,80,13,865/- (Rupees*

Twenty seven Crore Eighty Lakh Thirteen Thousand Eight Hundred sixty five only) on 31st March, 2021."

10. The Hon'ble Apex Court in its judgment dated 15.04.2021 in ***Asset Reconstruction Company (India) Limited versus Bishal Jaiswal & Anr. (Civil Appeal No. 323of 2021)*** observed that if the default is admitted by the corporate debtor, and that the signed balance sheet of the corporate debtor is not disputed by the corporate debtor, then it will result in extension of the limitation period and thus the application is not barred by limitation.

11. In the instant matter, the Corporate Debtor had time and again acknowledged the debt within limitation period which resulted in fresh period of limitation. The Corporate Debtor never disputed the balance sheet or any other documents annexed by the Applicant. The last acknowledgement by the Corporate Debtor was vide letter dated 03.04.2021 and again in its affidavit in reply dated 15.11.2021 to the instant Application. Therefore, the present Application is within the period of limitation and not barred by law.

12. The Registered Office of the Corporate Debtor is situated in Ahmedabad and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application.

13. Considering the admission of debt by the Corporate Debtor, and the present Application being complete in terms of Section 7(5) of the Code we admit the application and initiate Corporate Insolvency Resolution Process of the Corporate Debtor.

14. The Applicant has proposed the name of Mr. Prashant Bharatkumar Patel to be appointed as Interim Resolution Professional (IRP), who is hereby appointed as IRP of the Corporate Debtor having Registration No. IBBI/IPA-002/IP-N00827/2019-2020/12627 and address at 51, Hari Om Villa, Nr. Iscon Flower Flats, Bopal Ghuma Road Ahmedabad-380058, Gujarat. The written consent of IRP in Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 is filed.

15. As a consequence of the Application being admitted, the moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate Debtor prohibiting all of the actions mentioned under Section 14(1)(a) to (d).

16. We direct the Applicant to deposit a sum of Rs. 2,00,000/- with the Interim Resolution Professional, namely Mr. Prashant Bharatkumar Patel to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

Regulation, 2016. The needful shall be done within one week from the date of receipt this of order by the Financial Creditor.

17. Copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP appointed herein, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records and also to RoC for updating the Master Data. RoC shall send compliance report to the Registrar, NCLT.

Application is allowed and disposed of.

SD/-

Kaushalendra Kumar Singh,
Member (Technical)

Dr. Deepti Mukesh
Member (Judicial)

Certified to be True Copy of the Original
7.12.21
Joint Registrar
NCLT, Ahmedabad Bench
Ahmedabad

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD