

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
(Court-II)  
KOLKATA**

**C.P. (IB) No. 68/KB/2022**

*An application under Section 7 of the Insolvency & Bankruptcy Code, 2016.*

***In the matter of:***

**Oriclean Private Limited** [CIN U24241OR1990PTC002481], having its registered office at Bandalo, Kota Sahi, Tangi, Orissa – 754022.

*...Financial Creditor*

-Versus-

**G.R. Polyfilm Private Limited** [CIN U25209WB1990PTC049788] having its registered office at 620, Diamond Harbour Road Industrial Estate, Plot No. D/1, Behala, Kolkata – 700 034;

*...Corporate Debtor*

**Date of hearing: 15 June, 2023  
Order Pronounced on: 07 August, 2023**

**Coram:**

***Smt. Bidisha Banerjee, Member (Judicial)***

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

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

For the Financial Creditor : Mr. Jishnu Chowdhury, Adv.  
Mr. Nikunj Berlia, Adv.  
Mr. Varun Kothari, Adv.

For the Corporate Debtor : Mr. M.S. Tiwari, Adv.

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**ORDER**

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

1. The Court convened *via* hybrid mode.
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 Ms. Susmita Das, Officer, Oriclean Private Limited (***‘Financial Creditor’***) duly authorised *vide* Board Resolution dated 12 November, 2021<sup>1</sup> for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against G.R. Polyfilm Private Limited (***‘Corporate Debtor’***).
3. The present Petition was filed on ***17 February, 2022*** before this Adjudicating Authority. The total amount claimed in default is Rs.1,33,95,039/- (Rupees One Crore Thirty Three Lakh Ninety Five Thousand Thirty Nine only). The ***date of default*** is stated to be as on ***01 April, 2021***;
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs. 6,75,00,000/- (Rupees Six Crore Seventy Five Lakh only) with subscribed share capital of Rs. 6,37,91,100/ (Rupees Six Crore Thirty Seven Lakh Ninety One Thousand One Hundred only). Part – IV of the Petition deals with the particulars of the Financial Debt.
5. ***Submissions by the Ld. Counsel appearing on behalf of the Financial Creditor.***
  - 5.1 The Financial Creditor had made an advance payment of Rs.50,00,000/ (Rupees Fifty Lakhs only) to the Corporate Debtor for the supply of packing materials on March 18, 2014.
  - 5.2 Pursuant to the aforesaid advance, the Corporate Debtor supplied packing material worth Rs. 10, 10,000/- (Rupees Ten Lakh Ten Thousand only). The Corporate Debtor further made a refund of Rs.2,00,000 (Rupees Two Lakh only) and then of Rs. 5,00,000/- (Rupees Five Lakh only)dated 25 April,

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<sup>1</sup>Annexure –B, Page 17 of the Petition.

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2015 and 19 March, 2016, respectively, against the Initial Advanced Amount of Rs. 50,00,000/-

5.3 As on 19 March, 2016 sum of Rs 32,90,000 /- was due and payable by the Corporate Debtor to the Financial Creditor out of the total disbursement of Rs. 50,00,000/-.

5.4 After having considered the proposal of the Corporate Debtor and its credentials and creditworthiness, it was agreed by the parties that a sum of Rs.32,90,000 / - (Rupees Thirty Two Lakh Ninety Thousand only), would continue as loan for a period of 60 months as bearing compound interest @ 24% per annum and the principal amount along with compound interest payable was refundable on the expiration of the loan agreement.

5.5 The Corporate Debtor was already in receipt of the entire loan amount of Rs. 32,90,000/- from the financial creditor. The Corporate Debtor has failed to repay the aforesaid loan of Rs.32,90,000/- and the compound interest applicable thereto on expiry of the said loan agreement i.e. March 31, 2021.

5.6 The financial creditor has issued a demand notice dated 01 October, 2021 upon the Corporate Debtor demanding the payment of Rs.1,33,95,039/-.

5.7 Despite receipt of the demand notice dated 01 October, 2021 the Corporate Debtor has not repaid the outstanding amounts payable in the aforesaid loan.

**6. *Per contra, submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor would be as under:***

6.1 That, the said petition is misconceived, harassive and is liable to be dismissed with exemplary costs. The petition was filed in its form under Section 7 of the Insolvency & Bankruptcy Code, 2016 is not maintainable as the petitioner is the Operational Creditor and not financial creditor and solely on such ground the application should be dismissed.

6.2 The allegation made in paragraphs Part- I, Part-II and Part III and its sub-clauses of the said petition are all matters of record.

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- 6.3 The allegation made in Part-IV paragraph 1 of the said application are denied and disputed. It is denied that the total amount of debt granted amounting to Rs.32,90,000/- as wrongly alleged.
- 6.4 The allegation made in Part -IV paragraph 2 & Part – V of the Petition are denied and disputed.

***Analysis and Findings***

7. We have heard the Learned Counsel appearing on behalf of the Financial Creditor and the Corporate Debtor and perused the documents on record.
8. On perusal of the record it is apparent that transaction held between the parties squarely falls under the definition of financial transaction. The Financial Creditor has also relied on the existing ***financial contract/agreement*** between the parties, which includes the agreed rate of interest and the amount of interest being received by the Financial Creditor from the Corporate Debtor.
9. As envisaged under Section 8 of the Code;
- “(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—***
- (a) money borrowed against the payment of interest;***
- (b) any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) receivables sold or discounted other than any receivables sold on nonrecourse basis;*

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- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;”

[Emphasis Supplied]

10. Further, the Hon’ble NCLAT in *Pawan Kumar v. Utsav Securities Private Limited &Anr.*<sup>2</sup>, has held that;

“13. Certain essential conditions are required to be satisfied by a Financial Creditor seeking to invoke the provisions of CIRP as against the Corporate Company Appeal (AT) (Ins) No. 251 of 2020 Debtor. We have taken into consideration [Section 5\(7\)](#), [Section 5](#) (8) read with Section 7 of IBC. Following essential conditions are required to be satisfied by a Financial Creditor.

- (i) There must be disbursal of loan amount.
- (ii) Such disbursal should be made for a consideration for time value of money, and
- (iii) When the debt (Whole or any part or instalment) become due and payable and is not paid by the Corporate Debtor means committed default.

14. The above all conditions are to be satisfied by the Financial Creditor then Adjudicating Authority **may** admit the Application under Section 7 of the IBC and initiate the CIRP against the Corporate Debtor.....”

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<sup>2</sup>Company Appeal (AT) (Ins) No.251 of 2020.

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- 11.** In view of the above facts and circumstances, we are satisfied that the present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.
- 12.** Accordingly, it is, hereby ordered as follows:-
- (a) The application bearing CP (IB) No. 68/KB/2022 filed by Oriclean Private Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against G.R. Polyfilm Private Limited, the Corporate Debtor, is *admitted*.
  - (b) There shall be a moratorium under section 14 of the IBC.
  - (c) 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.
  - (d) 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.
  - (e) *Mr. Madhur Agarwal*, registration number *IBBI/IPA-001/IP-P00653/2017-2018/11127*, email: *madhuragarwal75@gmail.com*, 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

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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.

- (f) 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 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. No separate notice for cooperation by the suspended management should be expected.
- (g) The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (h) The Financial Creditor shall deposit a sum of **Rs.5,00,000/- (Rupees Five 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).
- (i) 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 and email immediately, and in any case, not later than two days from the date of this Order.
- (j) 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

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report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

- 13. CP (IB) No. 68/KB/2022** to come up on **25 September, 2023** for filing the periodical report
- 14.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

The order is pronounced on 07<sup>th</sup> day of August, 2023

SA [LRA]