



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 216/MB-IV/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

Somesh A. Naik & Ors.

...Financial Creditor/Applicant

V/s

Isinox Limited

[CIN: U27100MH1990PLC057523]

...Corporate Debtor/Respondent

Order Dated: 17.03.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Shavez Mukri, Advocate.

For the Respondent(s) : Ms. Ragini Singh, Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application bearing C.P. (IB) No. 216/MB/C-IV/2022 filed by Somesh A. Naik & Ors., the Financial Creditors/Applicants, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Isinox Limited, Corporate Debtor.

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- 1.1. The Application is filed by Mr. Somesh A Naik & 44 others listed at Sl. No. 1 of Part I, Individual(s) claiming total default of Rs.4,37,14,449/-/- (Rupees four crore thirty-seven lakh fourteen thousand four hundred forty-nine only) comprise of Rs.2,34,17,965/- (Rupees two crore thirty-four lakh seventeen thousand nine hundred sixty-five only) as the principal amount and the remaining as interest due thereon. The applicant has been filed for defaults committed to all named persons as permissible in section 7 of the Code.
- 1.2. The Date of Default is stated to be 31.10.2021 in the Part-IV of the Petition. The Petition is filed on 30.12.2021.
2. The Applicant Financial Creditor were lending money through CRED, a fintech platform, against the Bills to the various parties. The bills so assigned in favour of applicants upon disbursement of amounts against such bills was disbursed from time to time. Under these transactions, the applicants paid a sum of Rs. Rs.2,34,17,965/- (Rupees two crore thirty-four lakh seventeen thousand nine hundred sixty-five only) on various dates i.e. 13.08.019, 23.08.2019, 03.09.2019 and 04.09.2019 to the Corporate Debtor under facilitation arrangement with CRED. The Corporate Debtor was to repay the amount within 60 days from the date of disbursement of the said amount to the Corporate Debtor.
- 2.1. The Financial Creditors have filed the Account Statements showing the transfer of funds to the Corporate Debtor.
- 2.2. The Applicant Financial Creditors have also enclosed a copy of Agreement for Creation of Rights dated 13.08.2019 entered into amongst Manhar Alloys Private Limited, the seller; the Applicant(s) as financier; the Corporate Debtor, the buyer; and M/s Million

Ventures Pvt Ltd, platform provider to the application to explain its relationship with the Corporate Debtor.

3. The Corporate Debtor has filed its Affidavit-in-reply dated 06.06.2022 contending following:

3.1. The Corporate Debtor is Medium Enterprise. The Corporate Debtor purchased goods from Manhar Alloys Private Limited (“Manhar Alloys”). The understanding between Manhar Alloys and the Corporate Debtor was that Manhar Alloys would provide raw materials to the Corporate Debtor for the purpose of their plant for a consideration which the Corporate Debtor would pay within 120 days of procurement of the raw material. From the perusal of the invoices annexed to the Petition, it appears that the goods purchased by the Corporate Debtor from Manhar Alloys were a part of the day to day activities and everyday business of the Corporate Debtor. Hence, it can be said that the monies that may have been owed to Manhar Alloys would have been in the nature of an Operational Debt, and Manhar Alloys would accordingly be an Operational Creditor.

3.2. Manhar Alloys sold its unpaid invoices to be paid at future date to KredX/Minion Ventures Private Limited for the purpose of facilitating quick recovery of funds. Since the Manhar Alloys had discounted its invoice receivables and its transferred right and interest in its invoice receivables in favour of KredX/Minion Ventures Private Limited, the Corporate Debtor has been paying KredX/Minion Ventures for the goods purchased from Manhar Alloys. The Books of Accounts of the Corporate Debtor do not

reflect the names of any of the Applicants as Creditors since the Agreement entered into between Manhar Alloys, the Corporate Debtor and KredX/Minion Ventures was never intended as a financial transaction with the Applicants purporting to act as Financiers.

- 3.3. As per Clause 5(h) of the Agreements for Creation of Rights, clearly mentioned that KredX/Minion Ventures, shall initiate proceedings with the Financier's consent under the provisions of law. The said clause makes it clear that it shall be the sole responsibility of KredX/Minion Ventures to represent the Financiers in case of any breach/ default with respect to the said Agreement for Creation of Rights.
- 3.4. The original transaction between Manhar Alloys and the Corporate Debtor was with respect to the day to day running of the business of the Corporate Debtor and as such not in nature of a financial transaction, hence, the Applicants can only come to this Tribunal as Operational Creditors and not the Financial Creditors since the debt, if any, is in the nature of "Operational Debt".
- 3.5. Since the debt appears to be transferred from Manhar Alloys to KredX/Minion Ventures, the Applicants cannot claim it to be financial in nature. Therefore, when an 'Operational Debt' to any other entity is assigned, the assignee or transferee shall also be considered as an 'Operational Creditor' to the extent of such assignment or legal transfer and on this ground alone, the present Application deserves to be dismissed.

- 3.6. The Corporate Debtor has denied that it owes Rs.2,34,17,965/- as Financial Debt to the Applicants and submitted that if any action lie, that can be taken by CRED/Million Ventures for realisation of such operational debt.
- 3.7. It has further submitted that the Applicants jointly filed this Application and the claim of each individual Applicants is below the threshold specified under section 4 of the Code. Since, the pecuniary Jurisdiction is Rs.1,00,00,000/-, the Applicants have filed this Application with an intention to meet the pecuniary threshold.
- 3.8. As per Clause 8 of the Agreement for Creation of Rights, the Courts at New Delhi shall have exclusive jurisdiction in all matters arising out of this Agreement, hence the present application does not lie before this bench.

Findings/Observations:

4. We have heard the arguments of the Learned Counsel for both the parties and perused the material available on record.
- 4.1. It is undisputed fact that the Corporate Debtor's supplier had availed the facility of 'Bills Purchase' of invoice(s), raised for supply of goods by it to the Corporate Debtor, through CRED/Million Ventures, a fintech company engaged in providing finance to enterprise(s) against their bills/invoices by discounting or purchasing thereof. CRED/Million Ventures was acting as facilitator in this arrangement and the persons desirous of lending their money could do so through its platform where the money is disbursed to the seller of goods on behalf of the buyer, upon whom such bill has been raised, and the

financier is paid back within stipulated period or tenure of such bill, which is agreed in terms of sanction of facility by CRED.

4.2. The Corporate Debtor has contested the present application primarily on ground of lack of privity with the applicants; nature of debt; and jurisdiction.

4.3. We have perused the Agreement for Creation of Rights and its provides as follows –

Clause 'D' of recital provides that *“Financiers and Customer have authorised KredX to act as the administrator for the purpose of setting the amounts between the parties, pursuant to this Agreement. Thereby, KredX is desirous of executing this Agreement in the capacity of an administrator.”*

Clause 2.3 provides that

“a. The Financier acknowledges that the right and interest in the receivables under the invoice may be owned fully or partly by the Financier along with one or more Financiers.

b. Where the right and interest in the receivables under the Invoice is sold to one or more Financiers along with the Financier, the Financier's right on the receivables under Invoice shall be to the extent of the Invoice Receivables purchased and shall rank pari-passu among the other Financiers with respect to such Invoice.

c. Upon execution of this Agreement, the Financer shall be the full owner of the Invoice Receivables.

d. The sale made by the Seller is on recourse basis, that is to say, where the Customer does not pay the Invoice Receivables by the Due Date, the Sale shall stand terminated and the Financiers shall be entitled to the receive the amounts as set out in Clause 5 of this Agreement”.

Relevant part of Clause 5 provides that –

b. Pursuant to the termination, the Customer shall be liable to refund the Consideration to the Financier.

f. In the event KredX is unable to encash/exercise the Security Document due to lack of sufficient funds in the Customer’s account or for any other reason, the Parties agree that KredX shall have the right to initiate proceedings against the Customer under Section 138 of the Negotiable Instruments Act, 1881, for the benefit of the Financier. Thus, the right shall be without prejudice to any other right that the Financier may have against the Customer in law or equity.”

4.4. This Agreement for creation of rights executed amongst the seller; the Applicant as financier; the Corporate Debtor; and M/s Million Ventures Pvt Ltd. under this Agreement the Corporate Debtor has been referred as “**Customer**”

4.5. On perusal of aforesaid clause(s), we find that the applicant(s) are entitled to file this application in terms of specific provision in clause 5(b) of the agreement to this effect. This clause permits the financiers to pursue any other right it may have against the customer (Corporate Debtor in this case) in law, other than right to initiate proceedings u/s 138 of the Negotiable Instruments Act. Further, the section 61 of the Code provides that an application against the Corporate Debtor under

this code shall lie before the Bench of National Company Law Tribunal having jurisdiction over the territory of its registered office. In the present case, the registered office of the Corporate Debtor is situated in state of Maharashtra, accordingly this bench has jurisdiction to entertain present application having been filed under the provisions of Code. We feel that the parties can not alter the statutory jurisdiction conferred by special law by their mutual agreement and the provisions of Section 4(1) of the Civil Procedure Code specifically provides that “*In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force*”. Since, the Code is a special law and provides for determination of jurisdiction of Tribunal in the matters under the Code, this contention is not tenable.

4.6. The definition of Financial debt, as contained in Section 5(8), is an inclusive definition and we feel that the present transaction is specifically included in the definition of financial debt. The relevant clause(s) (c) and (f) reads as under -

5(8) “*financial debt*” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes—

.....

(e) *receivables sold or discounted other than any receivables sold on nonrecourse basis;*

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

.....

4.6.1. Upon perusal of the documents on records and the provisions of the Agreement for Creation of Rights, it is observed by the Bench that Financial Creditor has paid Rs.2,34,17,965/- to the supplier of the Corporate Debtor and the said amount is due and payable to the Financial Creditor against the invoice(s) raised upon the corporate debtor by its supplier. The present transaction is in nature of “*receivables sold or discounted*” as contemplated in clause (e) of section 5(8) of the Code.

4.6.2. It also has the effect of commercial borrowing as it facilitates the buyer of goods to provide immediate payment. The said arrangement on CRED platform has been caused on account of financial strength of the Corporate Debtor and it is party to the agreement whereby it has acknowledged to pay the financier on due date of the invoice. The discount levied while providing finance against such invoice(s) is in nature of time value of money.

4.6.3. The amount claimed in default is inclusive of interest i.e. the discount on the invoice amounting to Rs.77,55,534/- and penal interest @ 1% p.m. from the date of default amounting to Rs.1,25,40,951/-.

4.6.4. The contention of the Corporate Debtor is in this regard that the debt due from it partake the character of “Operational Debt” as its

supplier of goods, whose invoice(s) were discounted/purchased by the applicant, is its operational creditor. We do not find any force in this contention, as the transaction of "Receivable Sold or Discounted" is specifically covered under the "Financial Debt" under inclusive part of definition contained in section 5(8) of the Code. It is trite law that the specific rule overrides the general rule. Hence, the legal proposition that assigned debt takes its color from the nature of original debt is not applicable in the present case.

- 4.7. As regards filing of application by clubbing debt due to more than one creditor, as is the present case, we find that section 7(1) of the Code specifically permits a financial creditor, together with other financial creditors, to file application for the amount owed to all such financial creditors. Further, explanation to section 7 of the Code also makes it clear that the debt in default includes amount of debt in default to other financial creditors. Hence, the challenge to maintainability on ground of pecuniary limit does not survive.
- 4.8. On perusal of the documents submitted by the Applicant, it is clear that financial debt exceeds the threshold limit prescribed u/s 4 of the Code i.e. Rs. 1,00,00,000/- (Rupees One Crore Only) and such financial debt is due and payable by the Corporate Debtor to the Applicant, which is not in dispute. There is default by the Corporate Debtor in payment of debt amount. Therefore, the Application u/s 7 of the Code, filed by the Financial Creditor, deserves to be admitted.
- 4.9. The Application is complete and has been filed under the proper form and default of the Corporate Debtor has been established.

5. The Applicant has proposed the name of Mr. Manishkumar Ratanshi Patel, a registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code.

ORDER

6. This Application being C.P. (IB) No. 216/MB/C-IV/2022 filed by Somesh A. Naik & Ors., the Financial Creditors/Applicants, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Isinox Limited, Corporate Debtor, is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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 any of its 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Manishkumar Ratanshi Patel, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01342/2018-2019/12061], as Interim Resolution Professional to carry out the functions as mentioned

under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) 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.
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
Prabhat Kumar
Member (Technical)
17.03.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)