



NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.1-CP(IB)/90(MP)2023

Proceedings under Section 7 IBC

IN THE MATTER OF:

Kuber Lighting Pvt Ltd
V/s

.....Applicant

Indolux Electronics Pvt Ltd

.....Respondent

Order delivered on 21/08/2024

Coram:

Chitra Ram Hankare, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

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**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

Narendra Tomar/Stenographer

-sd-

**CHITRA RAM HANKARE
MEMBER (JUDICIAL)**



**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB) 90 of 2023

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

Kuber Lighting Private Limited

Flat No.602, Sixth Floor
Premium Tower III, Shalimar Township
Niranjanpur, Sanwer Link Road
Indore-452010

Financial Creditor

Versus

Indolux Electronics Private Limited

A-54, Abhinandan Nagar
Sukhliya, Indore

Corporate Debtor

Order pronounced on: 21.08.2024

**Coram: Hon'ble Mrs. Chitra Hankare, Member (J)
Hon'ble Kaushalendra Kumar Singh, Member (T)**

Present:

For the Applicant: Ld. Adv. Mr. Rajesh Jain

For the Respondent: Ld. Adv. Mr. Vijayesh Atre a.w. Ld. Adv. Ms.
Aarya Changani

JUDGMENT

1. The instant application was filed on 09.10.2023 by Kuber Lighting Private Limited (Applicant) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**CODE**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)



Rules, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against Indolux Electronics Private Limited (Respondent) for the default amount of Rs. 1,05,31,660/-. The date of default is 31.03.2023.

2. The applicant is a company incorporated under the provisions of the Companies Act, 1956 on 04.05.1981. Mr. Subhro Majumdar is an authorized director of the applicant to file the present application by virtue of board resolution dated 10.08.2023. The respondent is a private limited company incorporated under the provisions of the Companies Act, 1956 on 21.08.1991.

3. Succinctly, the facts of the case as submitted by the applicant are such that the applicant and the respondent entered into a loan agreement dated 31.01.2021 wherein the applicant lended Rs.2,10,00,000/- to the respondent at an interest of 7% p.a.. The terms of the loan repayment were such that the respondent was to pay principal & interest monthly from 01.03.2021 until 01.03.2024.

The respondent paid interest and repaid part principal amount during the period 31.01.2021 to 31.03.2023. Subsequently, the applicant sent a loan recall notice on 13.07.2023 for an outstanding amount of Rs.1,40,00,000/-. The respondent through its letter dated 20.07.2023 expressed their inability to make the payment. However, the respondent paid Rs.30,00,000/- & Rs.10,00,000/- on 19.08.2023 & 21.09.2023 respectively after the loan recall notice. Thus the balance amount of outstanding is Rs.1,05,31,660/- as on 22.09.2023.

4. The objections raised by the corporate debtor/respondent in its reply dated 01.05.2024 and as argued by the learned counsel for the respondent are summarised as under:



i. There are two directors in the respondent company and the same were the ex-employees of the applicant company. The promoter of the applicant company – Mr. Subhro Mazumdar after realizing that the business is going into losses and there being no possibility of recovery of outstanding from the market, designed a trap and used his life time employees (i.e. directors of the respondent company) as a tool to run the loss making business as his proxy.

ii. Further, the promoter of the applicant company, made the said two employees as the director w.e.f 21.01.2018 in an already existing company i.e. respondent company, which was also promoted by the family members of the Promoter of the applicant company. The Promoter then transferred the slow-moving stock amounting to Rs.4,27,41,533/- into the respondent company with a condition that the same would be realized by the respondent from the market and would be paid back to the applicant.

iii. The said stock transfer was recorded in the books of the company as supply of material by the applicant to the respondent and GST was to be collected from the respondent on such transaction. However, no GST was ever levied and when the Promoter of the applicant company realised the same, the transaction was reversed by paying a sum of Rs.2,10,00,000/- to the respondent as a loan which was repaid by the respondent to the applicant against supplies of stock.

iv. Further the applicant and the respondent entered into a lease agreement dated 28.02.2018 according to which the respondent was to pay Rs.3,50,000/- per month to the



applicant. However, the applicant subsequently cancelled the lease agreement and executed 'Use Agreement' dated 30.11.2019 for a period of 3 years which was twice extended on 30.10.2022 & 31.03.2023 till 30.06.2023. According to Use Agreement the respondent was to pay Rs.1,00,000/- per month to the applicant for the use of machineries instead of Rs.3,50,000/- per month as was agreed in the lease agreement.

v. Moreover, the applicant also executed the Consulting Agreement on the same date i.e. 30.11.2019 wherein the Promoter of the applicant was appointed as Consultant and the respondent was to pay Rs.2,00,000/- per month as consultation fees. Thus the applicant recovered huge amount of money amounting to Rs.2,65,33,996/- from his own employees in the form of lease rent, usage fee, consultancy fees, service charges & interest.

vi. Furthermore, the applicant influenced the respondent to infuse their funds and the respondent infused a sum of Rs.85,50,000/- from their personal accounts which was then used for payment to the applicant company.

vii. Subsequently, on 13.07.2023 the applicant issued a loan recall notice to the respondent for Rs.1,40,00,000/-. However, the respondent has made payment of Rs.30,00,000/- & Rs.10,00,000/- on 19.08.2023 & 21.09.2023 respectively. Further, the applicant also failed to take into consideration the adjustments made by the respondent amounting to Rs.72,11,553/- (stock seized by the applicant; equipment, tools, furniture etc seized by the applicant, Debit Note No.8 for rejected filaments & Debit Note No. 9 for excess interest charged on



rejected material) about which the respondent had informed the applicant much prior to the filing of the present application.

viii. Further, the respondent denies the execution of the loan agreement dated 31.01.2021 and that the amount claimed is less than the threshold limit as defined under section 4 of the Code, since the same has been wrongly calculated. Moreover, as per the NeSL certificate also the said default is disputed. Thus, the petition deserves to be dismissed.

5. The applicant has through its rejoinder dated 30.05.2024 submitted that the loan was given to the respondent and the same can be inferred from the bank statement of the applicant. Further the respondent repaid loan in instalments deducting tax from interest as per law. Furthermore, the respondent has acknowledged the said loan in its audited balance sheets of the company for the years 2021, 2022 & 2023.

6. We have heard the learned counsel for the applicant as well as for the respondent and perused the material available on record. It is the case of the applicant that the loan amounting to Rs.2,10,00,000/- was given to the respondent between 13.01.2021 to 29.01.2021 for which a loan agreement dated 31.01.2021 was also executed between the applicant & the respondent. The said loan agreement contained a clause of repayment of the amount within 3 years with an interest of 7% p.a. The repayment terms of the said loan agreement is reproduced hereunder for ready reference:

Payment

2. This loan will be repaid in consecutive monthly instalments of principal and interest commencing on 1st March, 2021 and continuing on the first of each following month until 1st March 2024 with the balance then owing under this Agreement being paid at that time.



3. At any time while not in default under this Agreement, the borrower may make lump sum payments or pay the outstanding balance then owing under this Agreement to the lender without further bonus or penalty.

7. It is further noted that the respondent made part repayment of the principal amount and paid the interest after deducting tax to the applicant. Moreover, on failure to repay the entire amount the applicant sent a loan recall notice dated 13.07.2023 to the respondent claiming the outstanding amount of Rs.1,40,00,000/-. It is also noted that the respondent has through its reply dated 20.07.2023 to the said loan recall notice informed the applicant about the losses incurred to the respondent due to which it is unable to make the repayment, however, the respondent in the same reply assured the applicant to repay 60 lakhs within 4 months. The relevant part of the said reply is reproduced hereunder for ready reference:

7. Due to above we operated at below break even, resulting in financial losses.

8. We have shut down our manufacturing operations on 30th June, 2023, and have incurred cumulative loss of approx.. Rs.210.00 lakhs. We have closing stock of Raw Material & Finished goods amounting to Rs.78.30 lakhs & having a trade receivables of Rs.63.00 lakhs, we have trade payables of Rs. 88.20 lakhs.

9. After payment of creditors, there is an amount of Rs.53.00 lakhs available to repay the loan amount taken.

We will try & sell consumables, wire scrap, dies etc. and pay approx.. 7.00 lakhs, amounting total of Rs.60.00 lakhs

We will pay the above amount after realization of debtors & sale proceeds of raw material, finished goods & other saleable consumables within a period of four months from now.

We have brought 85.50 lakhs loan in the company as working capital which has been totally wiped off due to losses.

We humbly request you to please settle the outstanding as full & final payment.



8. It is further noted that pursuant to the said reply dated 20.07.2023 the respondent paid Rs.30,00,000/- & Rs.10,00,000/- on 19.08.2023 & 21.09.2023 respectively total amounting to Rs.40,00,000/- after the loan recall notice.

9. It is also noted that the bank statement of the applicant reflects that the applicant transferred an amount of Rs.2,10,00,000/- between 13.01.2021 to 29.01.2021 (i.e. 50,00,000/-, 50,00,000/-, 30,00,000/-, 30,00,000/- & 50,00,000/- on 13.01.2021, 18.01.2021, 25.01.2021, 27.01.2021 & 29.01.2021 respectively). Further, on perusal of the audited balance sheet of the respondent company as on 31.03.2021 it is noted that the respondent has recorded an amount of Rs.2,10,00,000/- in the name of Kuber Lighting Private Limited (i.e. the applicant) as Inter corporate deposit under the head Long Term Borrowings. The same was again recorded in the balance sheet as on 31.03.2022 & 31.03.2023 with an amount of Rs.1,90,00,000/- & Rs.1,40,00,000/- respectively under the same head.

10. It is noted that the respondent has taken a defence saying that the Promoter of the applicant had transferred a slow moving stock amounting to Rs.4.27 crore (approx.) with a condition that the same would be realised by the respondent from the market and would be paid to the applicant; that GST was to be collected from the respondent on such direct transactions but that was not done so, and in that context the applicant had reversed the transaction by paying a sum of Rs.2.10 crore to the respondent as a loan. To this the respondent had further added that they had paid lease rental and subsequently executed Use Agreement and that way the applicant has recovered a huge amount of money amounting to Rs.2,65,33,996/- in the form of lease rent, usage fee, consultancy fees, service charges & interest. The respondent further stated that only Rs.27,88,487 is



disputed after all the adjustments and payments made by the respondent to the applicant.

11. We are not satisfied with such an explanation of the respondent. If at all, the supply of slow moving stock, premises given on lease or usage fee basis would further bring the liability to the respondent towards the applicant. Nothing has been placed before us as regards in what manner those liabilities were met out. The respondent has also stated that the applicant has not adjusted an amount of Rs.72,11,553/- from the outstanding loan. The said adjustment is however claimed on account of stock, equipment, tools, furniture etc. seized by the applicant, and Debit note No.8 for rejected filaments and Debit note No.9 for excess interest charged on rejected material. Prima facie it appears that if any adjustment was to be made then that was supposed to be made against the slow moving stock transferred by the applicant valued at Rs.4.27 crore approx. and even otherwise also nothing has been placed on record to show that the other liabilities (such as- Rs.4.27 crore towards supply of stock, lease rent, usage fee, consultancy fees etc.) had been fully paid and the adjustment of Rs.72 lakh approx.. as referred above was to be done against the loan amount of Rs.2.10 crore.

12. Further we also note that in the rejoinder the applicant has also placed a letter dated 30.09.2023 issued by the respondent where it has been categorically stated by the respondent that stock of raw materials, semi finished wire and finished goods are Nil, at the store situated at the applicant premises. If that be so, it is not clear as to how adjustment on that account could be made against loan amount of Rs.2.10 crore. The relevant part of the said letter is reproduced hereunder:



As on date ie, 30th sept 2023 the stock of raw materials semi finished wire and finished goods (filaments) are NIL at the store situated at Kuber Lighting Pvt Ltd, Dewas Factory.

13. Even otherwise in the reply of the respondent dated 20.07.2023 no such explanation or aspect towards said adjustment for repayment of loan was stated therein.

14. Though certificate issued by NeSL as regards the outstanding loan reflects it as disputed liability, however, the other documents such as bank statement, audited balance sheets, reply of respondent dated 20.07.2023 to loan recall notice all confirms the liability which is above threshold limit.

15. In view of the above, we are of the considered opinion that there exists financial debt which is payable and defaulted by the respondent. The same is also recorded in their audited balance sheets. The debt is more than the threshold limit of Rs. 1 crore as per Section 4 of the IBC. This application is filed within limitation and is defect-free; and as such it is a fit case to be admitted under section 7 of the Code.

16. Hence we pass the following order:

ORDER

(i) The application CP(IB) 90 of 2023 is allowed. Corporate Debtor- Indolux Electronics Private Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016 is declared for prohibiting all of the



following in terms of Section 14(1) of the Code.

- (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 Securitisation 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 the possession of the corporate debtor.*

(iii) 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iv) As proposed by the financial creditor, we appoint CA Neha Firoda having registration No. IBBI/IPA – 001/IP-P-01938/2020-2021/13093; to act as an IRP under Section 13(1)(c) of the IBC, 2016 in respect of the CIRP of both the corporate debtors (borrower & Co-borrower). IRP shall conduct the Corporate Insolvency Resolution Process of both the corporate debtors as per the provisions of the Insolvency & Bankruptcy Code, 2016 r.w. Regulations made thereunder.



(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Financial Creditor is directed to pay an advance of Rs. 1,00,000/- (Rupees one lakh only) to the IRP as regards the CIRP



of each of the corporate debtor within two weeks from the date of receipt of this order for smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, within seven working days and upload the same on website immediately after pronouncement of the order.

(xi) The IRP shall also serve a copy of this order to various departments such as Income Tax, GST, State Trade Tax and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/ employee's associations so that they are timely informed about the initiation of CIRP against the corporate debtor.

(xii) The commencement of the Corporate Insolvency Resolution process shall be effective from the date of this order.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

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CHITRA HANKARE
MEMBER (JUDICIAL)

Swati