

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**

**KOLKATA BENCH,**

**KOLKATA**

**C.P (IB) No.64/KB/2021**

**In the matter of**

An application 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.

And

**In the matter of:**

**1. M/s Sreenath Finvest Pvt. Ltd. CIN: U65993WB1996PTC076487** a company incorporated under the provision of Companies Act,1956, having its registered office at 51 Nalini Sett Road, 6<sup>th</sup> Floor, Kolkata- 700007, West Bengal.

**2. M/s Kamna Commercial Pvt. Ltd. CIN: U51109WB1996PTC077621** a company incorporated under the provision of Companies Act,1956, having its registered office at 51 Nalini Sett Road, 6<sup>th</sup> Floor, Room No. 601, Kolkata-700007, West Bengal.

**3. M/s Chiki Finance Pvt. Ltd. CIN U51909WB1991PTC052613,** a company incorporated under the provision of Companies Act,1956, having its registered office at 51 Nalini Sett Road, Kolkata- 700007, West Bengal.

*... Financial Creditors*

Versus

**In the matter of:**

**M/s Pami Metals Private Limited, CIN U27106WB1989PTC046439,** a company registered under the Provisions of Companies Act, 1956, having its Registered Office at 22, Biplabi Trilakya Maharaj Sarani, (Brabourne Road), 3<sup>rd</sup> Floor, Kolkata, 700001, West Bengal.

*...Corporate Debtor*

Date of hearing : 06/08/2021

Order Pronounced on : 03 /11/2021

**Coram:**

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

**Mr. Harish Chander Suri, Member (Technical)**

**Counsels appeared through Video Conference**

1. Ms. Manju Bhuteria. Adv. } For the Financial Creditor  
2. Mr.Saurav Jain, Adv.

1. Mr. Ratul Das ,Adv. } For the Corporate Deb tor  
2. Mr. Niraj Shukla, Adv.

**ORDER**

**Per: Harish Chander Suri, Member (Technical)**

1. The Court is convened by video conference today.
2. This petition 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 has been filed by **M/s Sreenath Finvest Pvt. Ltd. (Petitioner No.1) CIN: (U65993WB1996PTC076487)**, **M/s Kamna Commercial Pvt. Ltd.** (Petitioner No.2) CIN: (U51109WB1996PTC077621 ) and **M/s Chiki Finance Pvt. Ltd. Petitioner No. 3, CIN (U51909WB1991PTC052613)** a corporate entity, having its registered office at 51 Nalini Sett Road, 6<sup>th</sup> Floor, Kolkata-700007, West Bengal (hereinafter referred as the Financial Creditors) seeking initiation of corporate insolvency resolution process in respect of **M/s Pami Metals Private Limited**, CIN U27106WB1989PTC046439, another corporate entity, having its Registered Office at 22, Biplabi Trilakya Maharaj Sarani, (Brabourne Road), 3<sup>rd</sup> Floor, Kolkata, 700001, West Bengal (hereinafter referred as the Corporate Debtor).
3. In Part IV of Form I, the Financial Creditors have submitted that a total sum of debt initially granted jointly to the Corporate Debtor amounted to Rs. 1,71,00,000/- (Rupees One Crore Seventy One Lakhs only) during

2014-15, carrying interest @ 7.5% p.a. It is further submitted that only petitioner no. 1 has received part payment of Rs. 15,00,000/- (Rupees Fifteen lakhs only) vide RTGS. It is submitted that the petitioners are NBFCs. The Financial Creditors have annexed statement of the loan granted and the dates of disbursements in Annexure-B to the petition. It is further submitted that the total amount claimed to be in default jointly by all the Financial Creditors is Rs. 1,77,50,877/- (Rupees One Crore Seventy Seven Lakhs Fifty Thousand Eight Hundred Seventy Seven only) inclusive of interest @ 7.5% p.a. from 1<sup>st</sup> April, 2019 to 31<sup>st</sup> January, 2021. The Financial Creditors have not received any interest since 01/04/2019.

4. It is submitted that the date of default(s) along with computation of amount claimed to be in default and days of default in tabular form is annexed as Annexure-C. With respect to the petitioner no. 1, the Corporate Debtor has repaid Rs. 15,00,000/- on 14/10/2015 towards principal sum of loan amounting to Rs. 89,00,000/- Thereafter, the Corporate Debtor has received interest @ 7.5% till 31/03/2019. It is submitted that the Corporate Debtor has paid the interest amount till 31/03/2019 after deduction of TDS on interest. Subsequent to that even after several follow-ups, the corporate debtor has not paid any interest amount nor repaid the principal sum. Copy of Form 26AS (petitioner no.1) for the financial year 2013-2019 is annexed as Annexure-D.
5. It is further submitted that the entire financial transaction can be seen through the ledger of the corporate debtor in the books of financial creditor. Copy of the ledger of the corporate debtor in the books of Petitioner no.1 for the period commencing from 01/04/2013 to 31/03/2020 is annexed as Annexure -E. The Corporate Debtor has confirmed the entire financial transactions and remittance of the debt granted by the financial creditors through the confirmation of accounts for the period of 01/04/2013 to 31/03/2020. The copy of the

confirmation of the books of accounts for the period of 01/04/2013 to 31/03/2020 (Petitioner No.1) is annexed as Annexure-F to the petition. The Financial transactions between the Financial Creditor and the Corporate Debtor are reflected in the bank statement, a copy whereof is annexed and collectively marked as Annexure-G.

6. It is submitted that with respect to Petitioner No.2, the Corporate Debtor has not repaid any amount towards principal. Total sum outstanding amounts to Rs. 62,00,000/-. The Financial Creditor No.2 has received interest @ 7.5% up till 31/03/2019. The Corporate Debtor has paid the interest amount till 31/03/2019 after deducting TDS on interest. Subsequent to that, even after several follow-ups, the Corporate Debtor has neither paid any interest amount nor repaid back the principal sum. Copy of Form 26AS (Petitioner No.2) for the financial year 2013-2019 is annexed as Annexure-H. The entire financial transactions are reflected in the ledger of the Corporate Debtor in the books of Financial Creditor, a copy for the period commencing from 01/04/2013 to 31/03/2020 is annexed as Annexure-I. The Corporate Debtor has confirmed the entire financial transactions and remittance of the debt granted by the financial creditor through the confirmation of accounts for the period from 01/04/2013 to 31/03/2020. The copy of the confirmation of the books of accounts for the period of 01/04/2013 to 31/03/2020 (Petitioner No.2) are annexed as Annexure-J. The financial transactions between the Financial Creditor and the Corporate Debtor are reflected in the Bank statement, (Annexure-K).
7. It is submitted that with respect to Petitioner No.3, the Corporate Debtor has not repaid any amount towards principal. Total sum outstanding amounts to Rs. 20,00,000/- The Financial Creditor has received interest @ 7.5% up till 31/03/2019 from the Corporate Debtor, after deduction of TDS on interest.
8. It is submitted that even after several follow-ups, the corporate debtor

has not paid any interest amount nor repaid back the principal sum. Copy of Form 26AS (Petitioner No.3) for the financial year 2013-2019 is Annexure-L to the petition. The entire transactions can be seen through the ledger of the corporate debtor in the books of financial creditor, a copy of the ledger of the corporate debtor in the books of petitioner no.3 for the period commencing from 01/04/2013 to 31/03/2020 is Annexure-M. The Corporate Debtor has confirmed the entire financial transactions and remittance of the debt granted by the financial creditor through the confirmation of accounts for the period of 01/04/2013 to 31/03/2020, a copy of the confirmation of the books of accounts for the period of 01/04/2013 to 03/03/2020 (Petitioner No.3) are annexed collectively as Annexure- N. The Financial transactions between the Financial Creditors and the Corporate Debtor are all mentioned in the bank statement, a copy whereof is Annexure- O.

9. The Financial Creditor(s) have jointly not received principal amount of Rs. 1,71,00,000/- and interest since 01/04/2019 thereby making the date of default on 01/04/2019. The Corporate Debtor has failed to repay the debt due to the Financial Creditors.
10. The Financial Creditors have also annexed the following documents:-
  - i. Copy of Bank Statement of the Financial Creditors(s) reflecting the financial transactions are annexed as Annexure G, Annexure K, Annexure O respectively for all the Petitioner(s).
  - ii. Copy of master data of financial creditor and the Corporate Debtor downloaded from MCA website are annexed collectively as Annexure-P.
  - iii. Copy of NBFC certificate of the financial creditor is annexed as Annexure-Q.
  - iv. Copy of Written communication in Form2 by the proposed interim resolution professional as set out, along with Certificate of Registration of proposed Insolvency Resolution Professional

(IRP) as Annexure R.

11. Petitioners no.2 and 3 vide their resolutions passed on 22/01/2021 have authorized petitioner no.1 to file application under section 7 of IBC on their behalf and had authorized one of their Directors Mr. Pukhraj Saraogi to sign and verified the necessary documents and file their respective resolution authorizing petitioner no. 1 to the present petition as **Annexure-A**.
12. The Financial Creditors have proposed the name of **Mr. Jitendra Lohia**, to act as an IRP having Registration No. **IBBI/IPA-001/IP-PO0170/2017-18/10339**, who has consented vide his affidavit and Form-2 submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.
13. The Corporate Debtor in its reply affidavit filed by Mr. Rajesh Kumar Damani, one of its Directors duly authorised by its Board of Directors in its meeting dated 23<sup>rd</sup> June, 2021, has deposed that the Financial Creditors have filed this joint application under section 7 of IBC, which suffers from incurable and material deficiencies and that the application is frivolous and misconceived and thus not maintainable under the provisions of the IBC, 2016. It is further deposed in the affidavit that the application is absolutely baseless, harassive in nature, has not been properly framed as per Rules framed under the Code and is liable to be dismissed. The Corporate Debtor has further submitted that Mr. Pukhraj Saraogi has not been duly authorised and is not competent to affirm the application on behalf of the Financial Creditors as there is no valid authority by the Financial Creditor No.2 and 3. The Corporate Debtor denied that the debt amount of Rs.1,77,50,877/- had been granted by the Financial Creditors or any amount is due to be repaid back to the

Financial Creditors by the Corporate Debtor.

14. The Corporate Debtor further stated that the Corporate Debtor has undergone severe financial crisis due to various reasons apart from the already existing pandemic scenario. Corporate Debtor's 70% of the supply was made to a company named Schneider Electric and they had stopped operation in Kolkata due to which the revenue of the company dropped drastically and that this is the reason which gave rise to adjacent problems like inability to repay the liability due and to pay the factory workers. Due to this, the workers went on a strike which also further resulted in the shutdown of the factory since January,2020. Above that there has been on and off lockdown in the state of West Bengal which has affected the leftover work. It is submitted that the Financial Creditors were aware of the corporate debtor's current scenario yet the applicants have filed the instant petition claiming the entire debt due to apply undue pressure which will ultimately be of no good as the company is in no state to repay back. The Financial Creditor is taking undue advantage of the law by circumventing the law to coerce the corporate debtor and destroy its reputation.
15. It is submitted that the Corporate Debtor is trying its level best to revive the company.
16. It is submitted that the Corporate Debtor is trying to resolve its financial problem and clear the due of the Financial Creditors as soon as possible. It is submitted that the Corporate Debtor is unable to repay the aforesaid amount claimed by the Financial Creditor as it is not in a good condition to pay any amount.
17. From the pleadings of the parties and the arguments advanced during the hearing , it is very much clear that the Financial Creditors have been able to successfully prove that the amount mentioned in the petition was jointly granted as loan @ 7.5% p.a. interest to the Corporate Debtor and

the Corporate Debtor has only made a part payment of Rs.15,00,000/- as on 31<sup>st</sup> March, 2015 to Financial Creditor No.1, and neither Financial Creditor No.2 nor Financial Creditor No.3 has been repaid any amount out of the loan amount granted by them. Therefore, the date of default is 1<sup>st</sup> April,2019 as stated in the application.

18. The total amount in default including interest till 31<sup>st</sup> January, 2021 is Rs. 1,77,50,876.71/-, which the Corporate Debtor has not repaid despite repeated demands and reminders by the Financial Creditors.
19. The application is otherwise complete in all respects.
20. Since the Corporate Debtor has in clear and unequivocal terms admitted also that the Corporate Debtor is not in a position to repay its debts due to its financially stressed conditions in spite of its best efforts, it is indubitably a good case for admission of the petition jointly filed by the Financial Creditors for non-payment of their respective dues claimed by them from the Corporate Debtor, which has defaulted in making payment thereof.
21. In view of the observations and directions, we hereby admit the petition and pass the following Orders:-

**O R D E R S**

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor **M/s Pami Metals Private Limited** is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- 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 (54 of 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Jitendra Lohia, registered** with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP- P00170/2017-18/10339, Email [jitulohia@knjainco.com](mailto:jitulohia@knjainco.com)** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs. 2,00,000/- (Rupees Two Lakhs only )** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the

preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 12/01/2022 for the filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

**(Harish Chander Suri)**  
**Member (Technical)**

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

Order signed on, this 3<sup>rd</sup> day of November, 2021

Pj