

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**



I.A. (IB) No. 38/KB/2025

In

C.P. (IB) No. 342/KB/2022

(hereinafter referred as “**Corporate Debtor**”) seeking following reliefs:

- “(a) Admit the Section 7 application being Company Petition (IB) NO. 342/KB/2022 in accordance with the Order of the Appellate Tribunal dated 18th December 2024;
- (b) Direct that the proceedings under Section 7 of the Code be initiated against the Corporate Debtor herein, namely Brick and Mortar Realty Private Limited;
- (c) Pass any other Order(s) or further Order(s) as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the instant case.”

4. This matter is being re-heard in terms of the Order dated 18.12.2024, of the Hon’ble NCLAT in Company Appeal (AT) (Insolvency) No. 318 of 2024, wherein the following Order was passed:

“34. After going through the submissions and also materials on record, **we find that the debt and default is established** in the matter. In fact, the Respondent has not even bothered to appear before this Tribunal to defend its case. Under these conditions when the Applicant has been able to establish the debt and default, **the finding of the Adjudicating Authority dismissing the Section 7 Petition cannot be sustained.** Accordingly, the order of the Adjudicating Authority dated 21.11.2023 is set aside. **The Corporate Debtor, namely Brick and Mortar Realty Private Limited, is ordered to be proceeded under Section 7 of the Code. The NCLT, Kolkata Bench, is to issue necessary order in this regard within 30 days of its presentation** before the NCLT, Kolkata Bench.”

(Emphasis added)

5. In view of the clear and unambiguous Order passed by the Hon’ble NCLAT, which records that the “debt default is established in the matter” and the direction that “the corporate debtor is ordered to be proceeded under Section 7 of the Code,” this Bench is only left with

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- the liberty to issue necessary Orders “in this regard” that too “within 30 days of its presentation”.
6. Ld. Counsel appearing for the financial creditor would submit that in view of the clear observation of the Hon’ble NCLAT that the debt in default is established thus, Section 7 application against the corporate debtor ought to be admitted.
 7. Per contra Ld. Counsel Ms. Urmila Chakraborty, drawing our attention to Para No. 16 of the said decision would submit that the respondents had neither appeared nor made its submissions, which fact has been clearly noted by the Hon’ble NCLAT and hence, on the basis of the submissions made by the corporate debtor as placed before this Adjudicating Authority which were part of the Appeal Paper Book, the Order passed by this Adjudicating Authority on 21.11.2023, was set aside. Thus, the corporate debtor has to be heard afresh.
 8. Ld. Counsel would urge that the decisions referred to while setting aside the Order namely, ***Narendra Kumar Aggarwal & Anr. v. Monotron Leasing Pvt. Ltd. and Agarwal Polysacks (supra)***, that it was not mandatory to have written financial contract to establish financial debt where decisions were not in connection with any NBFC and therefore, the said decisions had no manner of application in present case and were clearly not applicable.
 9. Ld. Counsel would also place paragraph 29 of the Judgment of Hon’ble NCLAT where it is noted that this Adjudicating Authority relied upon an RBI Circular dated 18.02.2013, whereas reliance was
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placed by Hon'ble NCLAT on a circular of 2015. The circular which this Adjudicating Authority placed reliance on reads as under:

“[...] the NBFCs should convey in writing to the borrower in the vernacular language as understood by the borrower by means of sanction letter or otherwise, the amount of loan sanctioned along with the terms and conditions including annualized rate of interest and method of application thereof and keep the acceptance of these terms and conditions by the borrower on its record. The RBI's circulars have statutory force, and this is well recognised in law. Hence, it is mandatory on the part of Financial Creditor, being a NBFC to keep the terms and conditions recorded in writing.”

(Emphasis added)

Hon'ble NCLAT has concluded that:

“Adjudicating Authority has placed great reliance on **RBI Master circular on Fair Practices Code, which makes written agreement mandatory. It is to be noted that **this was issued on 01.07.2015**. However, **corporate debtor had approached the financial creditor in the year, 2013** and there was an oral agreement and furthermore **three disbursements of the loan amount were made on 24.05.2013 and 28.06.2024 i.e. prior to RBI Circular, therefore, making it inapplicable in the present case.**”**

(Emphasis added)

Thus, although this Adjudicating Authority had applied circular dated 18.02.2013 (having statutory and mandatory force), which was clearly applicable to transactions made on 24.05.2013 and 28.06.2014, Hon'ble NCLAT felt that the circular dated 01.07.2015, was applied to transactions of 2013 and 2014 and thus, held the circular as inapplicable.

- 10.** As already indicated, this Adjudicating Authority has a very limited scope to deal with, it cannot venture to sit on appeal over any Order

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passed in the High Fora and as such, in terms of the foregoing discussion, the petition bearing **Company Petition (IB) No. 342/KB/2022** filed under **Section 7 of the I&B Code is allowed and accordingly, is allowed and following Orders are passed:**

- i.** The Application filed by **Desana Impex Limited (Financial Creditor)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Brick and Mortar Reality Pvt. Ltd. (Corporate Debtor)**.

- ii.** As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - 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 asset 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*

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*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 possession of the Corporate Debtor.*

[Explanation--*For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]*

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The petition has proposed the name of **“Chandra Kumar Jain”**, Address: 18, Rabindra Sarani, Poddar Court, Gate No. 1, 8th Floor, Room No. 816, Kolkata - 700001, registration no. IBBI/IPA-001/IP-P0214/2017-18/10414, contact no.: +919748488836, Email ID: ckcasc@yahoo.co.in, as the “IRP”. We have perused that there is a written communication and
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consent of IRP in Form 2 with Affidavit, annexed as Annexure “A4” at pages No. 19 to 21 to the petition, as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or the Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by **“Chandra Kumar Jain”** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **“Chandra Kumar Jain”** as the **Interim Resolution Professional (IRP)** of the Corporate Debtor to carry out the functions as per the I&B 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 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 I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made

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immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every 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. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical report with regard to the progress of the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/- (Rupees Three Lakh Only)** as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency
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Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), to whom the company is registered with, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.

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- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- xvii.** We would also note that submissions made by the Ld. Counsel constitutes good grounds for appeal. The same cannot be considered at this stage since, the limited scope is left to this Tribunal to venture.
- 11.** Post the Company Petition on **26.03.2025**, for filing the Periodical Progress Report by the IRP as appointed herein. Accordingly, this **I.A. (IB) No. 38/KB/2025 is allowed and disposed of.**
- 12.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

Madhu Sinha
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 18th day of February, 2025.

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