



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

Company Petition (IB) No. 217/KB/2024

***A 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.***

IN THE MATTER OF:

SAMBHAV MERCANTILES PRIVATE LIMITED

... Financial Creditor.

Versus

PABITRA ENCLAVE PRIVATE LIMITED

... Corporate Debtor.

Date of Pronouncement: November 14th, 2024.

CORAM:

**SMT. BIDISHA BANERJEE HON'BLE MEMBER (JUDICIAL)
SHRI BALRAJ JOSHI HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Financial Creditor: Ms. Shreya Choudhary, Adv.

**For the Corporate Debtor: Ms. Meenakshi Manot, Adv.
Mr. Biswajit Sarkar, Adv.**

ORDER

Per: Smt. Bidisha Banerjee Hon'ble Member (Judicial)

- 1.** The Court congregated through a hybrid mode.
- 2.** Ld. Counsel appearing on behalf of the parties were heard *in extenso*.

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3. This application has been preferred by Sambhav Mercantiles Private Limited, the Financial Creditor (FC) to initiate CIR Process against Pabitra Enclave Private Limited, the Corporate Debtor (CD) for an alleged debt and default of Rs. 1,09,71,177.16 as on June 30, 2023.

4.1 Submission of the Financial Creditor:

4.1 It is stated that a financial assistance in the form of an **Inter-Corporate Deposit (ICD)** was provided by the **Financial Creditor (Sambhav Mercantile Private Limited)** to **Corporate Debtor (Pabitra Enclave Private Limited)**.

4.2 The Corporate Debtor approached the Financial Creditor on February 10, 2023, requesting an ICD of Rs. 1,00,00,000/- to meet its short-term debt requirements and for investment activities.

4.3 It is stated that the Corporate Debtor, in its letter dated February 10, 2023 (Pages 52-53) explicitly mentioned the need for a short-term loan and the urgency to meet its obligation. The Financial Creditor agreed to provide the required financial assistance and entered into a formal agreement with the Corporate Debtor on February 13, 2023 (Pages 54-57).

4.4 It is further stated that vide the agreement dated February 13, 2023, the Financial Creditor agreed to disburse the requested loan amount to the Corporate Debtor. The loan was to be repaid by the Corporate Debtor on or before March

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31, 2023 (Page 58), with an interest rate of 8% per annum. In line with the agreement, the Financial Creditor disbursed the agreed-upon loan amount to the Corporate Debtor's designated bank account on February 16, 2023 (Pages 50-51).

4.5 It is stated that on March 31, 2023, the Corporate Debtor, citing an inability to repay the loan by the stipulated date, sent a letter (Page 58) to the Financial Creditor requesting an extension of three months for the repayment which also included an affirmation from the part of CD that the interest rate of 8% per annum would continue to accrue on the outstanding loan during the extended period.

4.6 In response to the same, the Financial Creditor, by way of a letter dated April 1, 2023 (Page 60), accepted the request for extension until June 30, 2023, but clearly stated that no further extension would be granted beyond this date.

4.7 Moreover, the Corporate Debtor, on April 1, 2023 (Page 59), also provided a Confirmation of Accounts, formally admitting the outstanding debt payable to the Financial Creditor, including the accrued interest.

4.8 It is further contended that despite the extended repayment deadline of June 30, 2023, the Corporate Debtor failed to repay the loan by the agreed date.

4.9 As such, the Financial Creditor was constrained to issue a demand notice to the Corporate Debtor on July 8, 2023

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(Page 61), demanding the repayment of the principal loan amount along with the interest accrued up to June 30, 2023.

4.10 The Corporate Debtor having failed to respond to this notice, the Financial Creditor to send another demand notice on July 31, 2023 (Page 62).

4.11 The Corporate Debtor, in response to the second demand notice, vide its letter dated August 3, 2023 (Page 63), admitted being under financial stress and low on funds. Moreover, a further extension of one month was sought by the Corporate Debtor, promising to repay the outstanding principal amount along with accrued interest by the end of August 2023. However, despite such assurance, no repayment was made by the Corporate Debtor within the extended time frame.

4.12 In response to the continued failure to repay, three demand notices were sent by the Financial Creditor sent on:

- September 15, 2023, demanding immediate repayment (Page 64).
- December 30, 2023, again highlighting the outstanding debt and interest (Page 65).
- January 27, 2024, which also served as a legal notice, stating that legal proceedings would be initiated if the debt remain unpaid (Page 66), respectively.

4.13 In its reply dated January 29, 2024 (Page 67) to the above demand notices, the Corporate Debtor, once again

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requested an extension, citing financial constraints and assuring repayment by February 14, 2024.

4.14 It is further contended that despite the Corporate Debtor's Promise, no repayment was made by February 14, 2024, leading the Financial Creditor to issue another demand notice on February 15, 2024 (Pages 68-68A).

4.15 Additional demand letters were sent on March 4, 2024 and March 30, 2024 (Pages 69-73), but Corporate Debtor Continued to remain silent and failed to make any payment towards the outstanding loan or interest.

4.16 A Confirmation of Account was further issued by Corporate Debtor on April 1, 2024, (Page 74), acknowledging the outstanding debt and the interest accrued up to March 31, 2024.

4.17 Consequently, upon several months of non-payment, the Financial Creditor issued a Final Demand Notice on May 30, 2024 (Page 75), demanding repayment of the outstanding principal amount along with interest accrued at 8% per annum. In this letter, the Financial Creditor made their stand clear that legal proceedings would be initiated if the Corporate Debtor failed to make full and final payment.

4.18 It is further contended that despite the numerous extensions and opportunities given by the Financial Creditor, the Corporate Debtor failed to make any payment towards the loan amount or the accrued interest.

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4.19 The outstanding financial debt amounts to Rs. 1,09,71,177.56, which remains due and payable by the Corporate Debtor as of the date of this application. The Corporate Debtor's failure to repay the debt despite repeated extensions and demand notices demonstrates its financial insolvency.

5. Per Contra the Corporate Debtor would allege as under:

5.1 No disclosure has been made by the Financial Creditor regarding any resolution under Section 186 of the Companies Act, 2013. In the absence of any such board resolution no loan could have been given by the financial creditor.

5.2 The petition is defective and such defects are fatal in nature which strikes at the very maintainability of the petition. The proper and specific authorisation forms the basis of the entire proceedings under the Code. An incomplete or improper authorisation vitiates the entire proceedings at the inception itself.

5.3 The petition is replete with irregularities and is full of discrepancy. The purported date of default 30th June, 2023 as given in the petition is wrong, completely misconceived and baseless.

5.4 The computation sheet as annexed by the financial creditor is inconclusive. The purported claim of the financial creditor is totally inflated. The alleged computation does not provide any date of default. The alleged computation sheet is wholly misconceived and false and therefore no reliance can be placed on the same, thus rendering the said petition defective.

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5.5 The Corporate Debtor has no intention to defraud its creditors. In view of the above, it is abundantly clear that FC has filed the said application by suppressing material facts and with mala fide intent and is liable to be dismissed.

6. In rebuttal the FC would submit as under:

6.1 There is no intention to “twist the arms” of the Corporate Debtor or to extort money. It is also contended by the Financial Creditor that it has followed all legal protocols to recover the amount due, as evidenced by multiple demand notices and clear communication with the Corporate Debtor. As a consequence of repeated defaults by the Corporate Debtor and their inability to repay the debt despite several extensions the Financial Creditor has approached this Hon'ble Tribunal. The actions of the Financial Creditor are neither based on surmises nor conjectures but on documentary evidence, including the loan agreement, demand notices, and the Corporate Debtor's own acknowledgments of the debt.

6.2 It is further contended that the claim made by the Financial Creditor is neither inflated nor fictitious. The principal loan amount and the interest charged are strictly in accordance with the agreement dated February 13, 2023, and the extensions granted to the Corporate Debtor. The Financial Creditor dissented the allegations made by Corporate Debtor regarding "suppressio veri" (suppression of truth) and "suggestio falsi"(suggestion of falsehood) stating those to be unsubstantiated and without any factual basis. The Financial Creditor has disclosed all material facts, and the Corporate

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Debtor's admission of debt through their own communications and Confirmation of Accounts dated April 1, 2024, stands as conclusive proof of the outstanding debt.

6.3 On the allegation of lack of authorization and Board Resolution under Section 186 of the Companies Act, 2013, the Financial Creditor submitted that its authorization to grant the loan is properly documented, and all procedures were followed in accordance with the relevant laws. The Financial Creditor also denied the claim that no board resolution under Section 186 of the Companies Act, 2013 was produced, stating it to be baseless. It was contended by the FC that the loan transaction was conducted as a result of an agreement between the Financial Creditor and the Corporate Debtor, and the loan was disbursed as per the terms agreed upon by both parties. Additionally, the Corporate Debtor has already acknowledged the receipt of funds and the liability to repay the same, thus negating the argument regarding any procedural defect.

6.4 On the allegation that the date of default is incorrect, it is averred that the default date of June 30, 2023 is accurately stated in the petition, in accordance with the final extension granted to the Corporate Debtor. After this date, despite repeated notices from the Financial Creditor, the Corporate Debtor failed to make any payments. The Corporate Debtor's admission in their letter dated August 3, 2023, requesting more time due to financial difficulties, further validates the default.

6.5 On Corporate Debtor's Financial Constraints due to poor market condition, it is submitted that the Corporate Debtor's

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failure to repay over several months, despite multiple extensions and assurances, demonstrates continued financial default. The Financial Creditor has acted fairly by granting extensions to the Corporate Debtor and refraining from taking immediate legal action, which contradicts the allegation of "step-motherly treatment."

6.6 On the allegation of malicious intent and no aim for resolution it is averred that there is no malicious intent behind the filing of the petition. The Corporate Debtor has repeatedly failed to honour its financial commitments, and the Financial Creditor is left with no choice but to seek relief through this Hon'ble Tribunal.

6.7 On the allegation that the Computation Sheet is inconclusive and inflated, it is contended that the computation sheet annexed to the petition is accurate and reflects the correct amounts due, based on the loan agreement and the interest rate of 8% per annum, as agreed by both parties. The Corporate Debtor has failed to produce any evidence that contradicts the figures presented in the computation sheet. Their own Confirmation of Accounts dated April 1, 2024 acknowledges the debt, including the accrued interest, up to March 31, 2024, which further validates the accuracy of the Financial Creditor's claim.

6.8 The allegation that the petition is incomplete and defective is vehemently opposed by FC stating that the Corporate Debtor's allegations are without substance and appear to be an attempt to delay proceedings and avoid

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repayment of the legitimate debt owed to the Financial Creditor.

7. We have noted and duly considered the rival contentions made by the Learned Counsels and perused records.

8. Analysis and Findings

8.1 In *Innoventive Industries Ltd. v. ICICI Bank* reported in (2018) 1 SCC 407: MANU/SC/1063/2017, it has been laid down that:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”

xxx xxx xxx xxx

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

(Emphasis added)

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8.2 In *Pioneer Urban Land and Infrastructure Ltd. v. Union of India* reported in (2019) 8 SCC 416, it has been laid down that:

“any debt to be treated as financial debt, there must happen disbursement of money to the borrower for utilization by the borrower and that the disbursement must be against consideration for time value of money.”

(Emphasis added)

8.3 While in *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited* reported in (2020) 8 SCC 401 Hon'ble Apex Court holds:

“the essential condition of financial debt is disbursement against the consideration for time value of money.”

(Emphasis added)

8.4 In *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) the Hon'ble Apex Court holds that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor...”

(Emphasis added)

9. In the present petition, we discern as under:

9.1 It is evident from the **Confirmation of Accounts** as in page 74, that the Corporate Debtor has repeatedly acknowledged its indebtedness to the Financial Creditor.

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9.2 Moreover, contemporaneous evidence exists confirming the outstanding debt and applicable interest as in page 74.

9.3 The debt is substantiated by written evidences and financial records as discussed supra.

9.4 The Petition is not barred by Limitation.

9.5 The failure is evident on the part of Corporate Debtor to meet the required claims.

10. In the aforesaid backdrop this petition deserves to be **admitted.**

11. In terms of the foregoing discussion, we **ALLOW** the application bearing **Company Petition (IB) No. 217/KB/2024** filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIR Process)** in respect of the Corporate Debtor by the following **Orders**:

i. The Application filed by **Sambhav Mercantiles Private Limited (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/s. Pabitra Enclave Private Limited (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

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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 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

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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 Applicant has proposed the name of “**Mr. Abhit Kumar Singh**”, Address – 289 GT Road, Vishnu Vatika, Block 4, Flat 1A, Belur, Howrah -711202, West Bengal, Registration No. IBBI/IPA-001/IP-P02380/2021-22/13564, Emailid.-

abhit1981@hotmail.com, Contact No.- 9681999675 as the “IRP”.

We have perused that there is a written communication and consent of IRP in Form 2 with Affidavit, annexed as letter D at pages 36-38 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 IIIP of ICAI. In addition, further necessary disclosures have been made by **Abhit Kumar Singh** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **Abhit Kumar Singh** 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

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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 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

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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 CIR Process in respect of the Corporate Debtor.

xi. The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency 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

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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/RP 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.

xvi. The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.

12. Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

13. Post the Company Petition on **16th day of December, 2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 14th day of November 2024.

Arunav. P [LRA]

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