

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI
COURT - II**

C.P. (IB) No. 942 / MB / 2024

*[Under Section 7 of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of

Jana Small Finance Bank Limited

(CIN: L65923KA2006PLC040028)

...Financial Creditor

V/s.

Brandscale Innovations Private Limited

(CIN: U51909MH2021PTC36951)

...Corporate Debtor

Pronounced: **24.04.2025**

CORAM:

ANIL RAJ CHELLAN

HON'BLE MEMBER (TECHNICAL)

K.R. SAJI KUMAR

HON'BLE MEMBER (JUDICIAL)

Appearances: Hybrid

For Applicant	:	Adv. Rishabh Chandra a/w. Adv. Sandhya Iyer
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For Corporate Debtor	:	Adv. Swati Sood and Adv. Anjali Jain i/b. Areness (VC)
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ORDER

1. BACKGROUND

This Application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC/Code) on 20.09.2024, by **Jana Small Finance Bank Limited**, the Financial Creditor (FC), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of **Brandscale Innovations Private Limited**, the Corporate Debtor (CD), for alleged default of Rs.11,33,97,466.11/- (Eleven Crore Thirty-Three Lakh Ninety-Seven Thousand Four Hundred and Sixty-Six Rupees and Eleven Paise), inclusive of interest amount and default interest amount w.e.f. 01.09.2024. The FC has notably cited multiple date(s) of default per Part-IV of the instant Application.

2. CONTENTIONS OF FC

2.1. The FC submits that financial assistance was provided to the CD for working capital in the form of overdraft and sales invoice discounting facilities to the tune of Rs.25,00,00,000/- by way of a Facility Agreement dated 28.12.2023 executed between the parties, which was superseded by a fresh Facility Agreement dated 19.07.2024 (Agreement) so as to correctly set out the bifurcation of the credit facility amount, that is, Overdraft Facility, Sales Invoice Discounting (SID) and Purchase Invoice Discounting (PID) per the FC, although never availed by CD. The break-up of the said financial assistance pursuant to the revised Agreement dated 19.07.2024 is extracted hereunder for ready reference:

Particular	Amount (in Rs. Crore)
Overdraft Facility	19.00
SID (Sales Invoice Discounting)	6.00

PID (Purchase Invoice Discounting) which is sub-limit of SID	6.00
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- 2.2.** In relation to the aforementioned Overdraft Facility of Rs.19 Crore, the disbursements in the overdraft account to the tune of Rs.15 Crore (*approx.*) were made to take over the facility from IDFC bank. Further, the balance amount to the tune of Rs. 4 Crore (*approx.*) was granted for additional payments, and the same was disbursed on 25.04.2024. In relation to the SID, the FC submits that the requisite disbursements were made on 23.04.2024 and 24.04.2024 to take over the facility from one Equentia Financial Services Pvt. Ltd.
- 2.3.** Schedule 1 of the Agreement sets out terms of repayment of the aforementioned facilities for (i) Overdraft Facility: Interest to be served on monthly basis and principal is repayable on demand, (ii) SID: Invoices discounted to be repaid within tranche tenor of 90 days, and (iii) PID: Invoices discounted to be repaid within tranche tenor of 90 days. The repayment of the outstanding amounts was further secured by way of exclusive charge over all current and fixed assets of the CD, and lien marking of FDs, amounting to Rs.12.5 Crore, as provided for in the Deed of Hypothecation dated 12.12.2023 read with Deed of Hypothecation dated 19.07.2024.
- 2.4.** The FC had taken over the facility in the SID of Equential Financial Services Pvt. Ltd. to the tune of Rs.5,82,63,490.18/-, being discounting of multiple invoices. The FC further submits that the said invoices fell due on three instances viz., 14.05.2024; 24.06.2024; and 26.06.2024, and that there was a part payment of Rs.34,73,568.87/- made on 29.05.2024 towards principal amount and Rs.42,824.82/- made on 29.05.2024 towards interest. Thereafter, since the remaining sales invoices were not paid on due dates, the Lien Marked Fixed Deposit was encashed and appropriated towards the dues on 12.07.2024. Hence, the amount outstanding qua sale invoice discounting is *Nil*.

- 2.5.** In view of the default committed by CD in repayment of outstanding dues (after adjustment of available fixed deposit proceeds), in respect of the overdraft facility, it addressed two Loan Recall Notices dated 20.06.2024 and 06.08.2024 to the CD for repayment of the same, but to no avail. Therefore, in view of the adjustment of Lien Marked Fixed Deposit of Rs.12.5 Crore in its entirety, the following is the total amount of principal and interest outstanding with respect to the overdraft account:

Principal Amount	Rs.110,723,633.44/-
Interest Outstanding	Rs.26,57,907/-
Default Interest Outstanding	Rs.15,905/-

- 2.6.** In view of the above default, the FC, prays that CIRP may be ordered in respect of the CD.

3. CONTENTIONS OF CD

- 3.1.** The CD submits that it availed overdraft and sales invoice discounting facilities from the FC for its business of manufacturing of audio accessories on mutually discussed terms, *vide* Sanction Letter dated 12.12.2023 and Facility Agreement dated 28.12.2023. In order to secure the said loan facilities, the FC marked a lien on the FD of Rs.12.5 Crore and created a *pari-passu* charge on all current and fixed assets of the CD, present and future. The CD submits that a Deed of Hypothecation dated 28.12.2023 was also executed between the FC and the CD in order to secure the repayment of outstanding amounts.

- 3.2.** The CD had duly informed the FC of its requirement of invoice discounting facilities, which was not considered by the latter, and that the CD was thus forced to execute a revised Facility Agreement dated 19.07.2024, resulting in the facilities being shuffled arbitrarily. An unattested Deed of Hypothecation was also executed on 19.07.2024, whereby the FC took undue advantage of the financial condition of the CD by completely

vitiating from the initially discussed terms.

3.3. The CD submits that a Deed of Assignment was further executed on 31.07.2024 with the FC, without its consent, to assign, sell and transfer the Receivables underlying the discounted invoices amounting to Rs.6 Crore, and that the same is void ab initio on account of being unattested, unregistered and improperly executed. Owing to the aforementioned, the CD suffered bonafide loss in business, but consistently assured the FC that the outstanding dues shall be promptly repaid. To its dismay, however, the FC arbitrarily encashed the Lien Marked Fixed Deposit and appropriated the said monies towards the dues in respect of discounted invoices, without issuing any notice/ intimation/ warning letter, etc., to the CD.

3.4. The CD thus contends that the FC has not only failed to intimate the adjustment of the FD amount but also failed to issue recall notice before the declaration of the CD's account as NPA, and that it was served with a fraudulent notice under Section 138 of the Negotiable Instruments Act, 1881, on 09.07.2024. The CD has further disputed the interest claimed by the FC, by contending that the latter has been charging an exorbitant rate of interest and undue penal charges, hence aggravating the stress on the former.

3.5. The CD has further placed reliance on the Hon'ble Apex Court's judgement of ***Vidarbha Industries Power Limited v. Axis Bank Limited*** [(2022) 8 SCC 352] to contend that this Tribunal ought to exercise its discretionary power while dealing with an application under Section 7 of IBC, and that the same deserves to be dismissed.

4. ANALYSIS AND FINDINGS

4.1 We have heard both the Ld. Counsel for the FC and the CD, and have perused all the documents and pleadings on record.

4.2 It is the admitted case of the parties that the FC sanctioned various credit facilities to the CD, and the CD availed overdraft facilities and SID facilities from the FC *vide* Sanction Letter dated 12.12.2023, and Facility Agreement dated 28.12.2023, which was later revised on 19.07.2024. The facilities are secured on all current and fixed assets of the CD with lien marking on the FD of Rs.12.5 Crore. On account of the defaults by the CD to repay the facilities, the FC has filed the present Application after fully adjusting the balance availed under the FD.

4.3 While the CD has not disputed the debt and default, the CD has raised the following contentions:

(a) The FC has not considered the CD's requirement of invoice discounting facilities and arbitrarily revised the Facility Agreement on 19.07.2024 against the initially discussed terms. A Deed of Assignment was executed on 31.07.2024 with the FC without its consent, to assign, sell and transfer the Receivables underlying the discounted invoices amounting to Rs.6 Crore, and the FC failed to appreciate that the CD failed to honour their obligations due to the bona fide loss in business. The above factors, in a sense, contributed to the default of the CD and, hence, urged that the Application under Section 7 should not be admitted.

(b) Even when the existence of financial debt and default on the part of the CD is established, the Adjudicating Authority is not under obligation to admit the application under Section 7 of the Code. In the instant case, there are good reasons for not admitting the Application by the Adjudicating Authority.

4.4 We have given a careful consideration to the submissions made by the parties. Section 7(5)(a) of the Code states that the Adjudicating Authority may admit an application filed under Section 7, if (a) a default has occurred; (b) the application is complete; and (c) there is no disciplinary

proceeding pending against the proposed resolution professional. The Hon'ble Supreme Court in **Innovative Industries Limited v. ICICI Bank and Another** [3 (2018) 1 SCC 407] has explained the scope of Section 7 holding that the moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the Adjudicating Authority. In the case of a corporate debtor who commits a default of a financial debt, the Adjudicating Authority has to merely see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. The view taken as above has been consistently followed by the Hon'ble Supreme Court in many other decisions of the Hon'ble Supreme Court, including in **E.S. Krishnamurthy and Others v. M/s. Bharath Hi Tech Builders Pvt. Ltd** [Civil Appeal No. 3325 of 2020]. However, the Hon'ble Supreme Court in the case of *Vidarbha Industries* (**supra**) held as under:

“86. Even though Section 7(5) (a) IBC may confer discretionary power on the adjudicating authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner.

87. Ordinarily, the adjudicating authority (NCLT) would have to exercise its discretion to submit an application under Section 7 IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the corporate debtor in payment of the debt, unless there are good reasons not to admit the petition.”

- 4.5** The Hon'ble Supreme Court, while taking a re-look at the Review Petition filed in *Vidarbha Industries* (**supra**), reiterated in **M. Suresh Kumar Reddy v. Canara Bank & Ors.** [Civil Appeal No. 7121 of 2022] that the said judgment had been passed on the basis of the facts and circumstances of that particular case. Hence, the Hon'ble Supreme Court

held that the mandatory nature of Section 7 as enumerated by *Innoventive Industries* (supra), still holds good.

4.6 In the circumstances, we do not consider it necessary to delve into factors relating to the solvency and financial health of the CD or reasons that caused the default when the twin test of existence of a debt and default to pay the debt is admitted. Even if it is assumed that we have discretionary power to reject an application filed under Section 7 of the Code, no good reasons are made out to reject the present Application.

4.7 In view of the foregoing findings and discussions, we hold that the debt and default have been satisfactorily established from the records. Further, we hold that the Application has been filed within the limitation period. We are also satisfied that a default of well over One Crore Rupees has been committed by the CD, thereby satisfying the minimum threshold prescribed under Section 4 of the Code.

ORDER

5. We are thus inclined to admit this petition, and it is ordered accordingly in the following terms:

(I) The C.P. No. (IB) 942/MB/2024 is hereby **Admitted** and initiation of CIRP is ordered in respect of **Brandscale Innovations Private Limited**, viz. the CD herein.

(II) We further declare moratorium under Section 14 of IBC with consequential directions as mentioned below: We prohibit-

(a) the institution of suits or continuation of pending suits or proceedings against the CD including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

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- (b) transferring, encumbering, alienating or disposing of by the CD 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 CD 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 possession of the CD.
- (III) That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- (IV) That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.
- (V) That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- (VI) That this Bench hereby appoints **Mr. Divyesh Desai**, a registered Insolvency Professional having Registration No **IBBI/IPA-001/IP-P00169/2017-2018/10338** and with Email ID: **divyeshdesai@singhico.com** having valid Authorisation for Assignment up to **31.12.2025**, as the Interim Resolution Professional (IRP) of the CD to carry out the functions as mentioned under IBC. The fee payable to the IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

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- (VII)** That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.
- (VIII)** That the IRP/IP shall submit to this Tribunal periodical reports with regard to the progress of the CIRP in respect of the CD.
- (IX)** In exercise of the powers under Rule 11 of the NCLT Rules, 2016, the FC is directed to deposit a sum of Rs. 5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost arising out of issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds becoming available with IRP/RP from the Committee of Creditors (CoC). The expenses incurred by IRP out of this fund are subject to approval by the CoC.
- (X)** A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai for updating the Master Data of the CD.
- (XI)** A copy of the Order shall also be forwarded to the IBBI for record; dissemination on their website; and for maintaining data.
- (XII)** The Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of Speed Post, e-mail and WhatsApp.

(XIII) Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Aditya, LRA

Sd/-

**K. R. SAJI KUMAR
MEMBER (JUDICIAL)**
