



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI**

**BENCH-VI**

**IB-692/(ND)/2022**

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

**In the matter of:**

**M/s. Clix Capital Services Private Limited**

**At:** 4<sup>th</sup> Floor, Kailash Building,  
Kasturba Gandhi Marg,  
Connaught Place, New Delhi  
Pin 110001

...Applicant/Financial Creditor

**Versus**

**M/s. Kiran Udyog Private Limited**

**At:** 27 V/7 New Rohak Road  
New Delhi 110005

...Respondent/ Corporate Debtor

**Coram:**

**Shri. Bachu Venkat Balaram Das, Member (Judicial)**

**Shri. Rahul Bhatnagar, Member (Technical)**



**Counsel for Petitioner:** Adv. Jasvin Dhama and Adv. Shobhit Jain

**Counsel for Respondent:** Adv Ekta Rai

**ORDER**

**PER: BACHU VENKAT BALARAM DAS, MEMBER**

**(JUDICIAL)**

**Date: 24.05.2023**

1. This is an application filed by M/s Clix Capital Services Private Limited to initiate corporate insolvency resolution process (“CIRP”) against M/s. Kiran Udyog Private Limited under Section 7 of the Insolvency and Bankruptcy Code 2016 (“the Code”) for the alleged default on the part of the Respondent in settling an amount of Rs.4,34,70,286.80/- (Rupees Four Crore Thirty Four Lakh Seventy Thousand Two Hundred Eighty Six And Eighty Paise) The details of transactions leading to the filing of this application as averred by the Applicant are as follows:



- i. That the Corporate Debtor approached Financial Creditor and applied for an Equipment Term Loan for purchasing 6 machines i.e. Die Casting Machine PDC 850 TON, Die Casting Machine PDC 560 TON, CNC Vertical Machining Centre Model "MCV450" [M30-2340], CNC Vertical Machining Centre Model "MCV450" [M30-2341], CNC Vertical Machining Centre Model "MCV450" [M30-2342] and CNC Vertical Machining Centre Model "MCV450" [M30-2367]
- ii. The Financial Creditor had granted a loan amounting to Rs.3,06,00,000/- (Rupees Three Crore Six Lakh) for the abovesaid machines vide Facility-Cum-Hypothecation Agreement dated 13.09.2018 under Loan Agreement No. 00070869910020001 which was also signed & executed between the Corporate Debtor and Financial Creditor.
- iii. The date of disbursal of the said loan was 06.09.2018. The Financial Creditor had granted another loan amounting to Rs.1,98,00,000/-



(Rupees One Crore Ninety Eight Lakh) vide Facility-cum-Hypothecation Agreement dated 19.02.2019 under Loan Agreement No. 00070869910050001 which was duly signed & executed between the Corporate Debtor and Financial Creditor. The date of disbursement of the said loan was 19.02.2019.

iv. Thereafter, the Financial Creditor had granted another loan amounting to Rs. 70,00,000/- (Rupees Seventy Lakh) vide Facility-cum-Hypothecation Agreement dated 12.03.2021 under Loan Agreement No. SGUHFS0000020965 which was duly signed & executed between the Corporate Debtor and Financial Creditor. The date of disbursement of the said loan was 12.03.2021.

v. The total loan disbursed by the Financial Creditor to the Corporate Debtor is Rs. 5,74,00,000/- (Rupees Five Crore Seventy Four Lakh). The Corporate Debtor agreed to repay the entire loan along with interest thereupon, in the



mode of equated monthly installments as per terms of loan agreement, executed in this regard and schedule of charges provided at the time of loan disbursal. In consideration of the loan agreement, Corporate Debtor had executed various documents in favour of Financial Creditor, including the facility cum Hypothecation Agreement, promissory note, power of attorney etc. to secure the repayment of the loan and has also created a first and exclusive charge on the said financed equipments in favour of Financial Creditor. However, the Corporate Debtor defaulted in payment of equated monthly installment since the day loan was disbursed and till date had not repaid the said Loan Amount, which resulted in accrual of outstanding amount against the said loan account to Rs. 4,34,70,286.80/- (Rupees Four Crore Thirty Four Lakh Seventy Thousand Two Hundred Eighty Six And Eighty Paisa) which is recurring in nature as the financial



assistance advanced to the Corporate Debtor are yet to be returned to the Financial Creditor. The Financial Creditor had issued a multiple Notices which were neglected by the Corporate Debtor.

vi. Hence, the Financial Creditor has approached this Tribunal in light of default committed by the Corporate Debtor with respect to the amount owed to the Financial Creditor

2. The Counsel for the Corporate Debtor/Respondent appeared on 10.03.2022 and submitted that the Corporate Debtor has admitted the debt and default and does not wish to file any reply.
3. We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused the averments made in the application. The Applicant has claimed the default on part of the Respondent for an amount of Rs.4,34,70,286.80/- (Rupees Four Crore Thirty Four Lakh Seventy Thousand Two Hundred Eighty Six And Eighty Paisa)
4. Mere reading of the provision under section 7 of IBC shows that in order to initiate CIRP under Section 7 the



Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.

5. The Corporate Debtor has acknowledged the debt and default vide order dated 10.03.2022. The contents of the said order are reproduced as under: -

*“Heard Ms. Jasvin Dhama, Ld. Counsel appeared for the Petitioner. **Ms. Ekta Rai, Ld. Counsel appeared for the Corporate Debtor submitted that the Corporate Debtor has admitted the debt and default and does not wish to file any reply.** The parties are at liberty to file written submissions, if any, within a week. Order is reserved”*



6. In the light of the aforesaid facts, we find that the Loan agreements executed between the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has defaulted on repayment which is duly admitted by Corporate Debtor.
7. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.
8. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
9. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Shashi Bhushan Prasad for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00676/2018-IB-692/(ND)/2022



2019/12114. The Proposed IP has a valid AFA which is valid upto 29.12.2023. Accordingly, this Adjudicating Authority, hereby appoints Mr. Shashi Bhushan Prasad (Email – shashibpd@gmail.com), to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

10. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

11. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:



“(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 Securitization 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.”

12. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the

Central Government or the supply of the essential goods



or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

13. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there



is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

14.The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.



Let copy of the order be served to the parties concerned.

Sd/-

**(RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**