



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 494/ND/2024

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

KDS CORPORATION PRIVATE LIMITED

Registered Office at: Plot No. F-5, Rajiv Gandhi IT Park,
Chandigarh- 160101

...Applicant/Financial Creditor

Versus

ALCHEMIST HOLDINGS LIMITED

Registered Office at: 1511, Hemkunt Chambers,
89 Nehru Place, New Delhi- 110019

...Respondent/Corporate Debtor

Order Delivered on: 04.06.2025

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:


For the Applicant: Mr. Vaibhav Tyagi, Adv.

For the Respondent: Mr. Kunal Godhwani, Ms. Kinjal Chadha, Advs..

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. This is a Company Application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with rule 4 of the Insolvency



and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by M/s KDS Corporation Private Limited (hereinafter referred to as 'Financial Creditor'), through its Authorised Representative Mr. Khadak Kumar, authorized vide Board Resolution dated 15.04.2024, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against Alchemist Holding Limited ("Corporate Debtor"). The Financial Creditor was incorporated on 25.09.2003, having CIN: U00000CH2003PTC026400.

2. The Corporate Debtor was incorporated on 22.12.1995, having CIN: U74899DL1995PLC074874 under the Companies Act, 1956. Its registered office is at 1511, Hemkunt Chambers, 89 Nehru Place, New Delhi, 110019. Therefore, this Bench has jurisdiction to deal with this petition. The Authorized Share Capital of the Corporate Debtor is Rs. 520,00,00,000/- (Rupees Five Hundred Twenty Crores Only). The Paid-Up Capital of the Corporate Debtor is Rs. 275,95,46,112/- (Rupees Two Hundred Seventy-Five Crores Ninety-five Lakhs Forty-Six Thousand One Hundred and Twelve Only).
3. The present application was filed on 22.07.2024 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 2,68,58,599/- (Rupees Two Crore Sixty-eight Lakhs, Fifty-Eight Thousand, Five hundred and ninety-nine) as on alleged date of default i.e. 31.07.2022.

Submissions of Learned Counsel appearing for the Applicant are as under: -

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
 - a) In the present case, the Corporate Debtor had approached the Financial Creditor for sanction of an unsecured loan and the Financial Creditor herein had advanced a total sum of INR 1,85,29,530/- to the Corporate Debtor under the Loan Agreement dated 01.04.2017 entered into between the Financial Creditor and the Corporate Debtor herein. In terms of the Loan Agreement, the tenure of the loan advanced to the Corporate Debtor was for a total period of 3 years, starting with effect from 01.04.2017, i.e. up to 31.03.2020. It is submitted that the said Loan Agreement also provided for a period of moratorium for a period of 9 (Nine) months after the end of availability period



of the Loan amount. It is further pertinent to note that the Loan Agreement also provided for default interest at the rate of 10% (ten percent) per annum for the period of such default.

- b) It is pertinent to note before the expiry of the period of loan agreement, the Corporate Debtor, vide its letter dated 20.02.2020 sought extension of the Loan Agreement for an additional period of 1 year, starting with effect from 31.03.2020 till 31.03.2021. It is submitted that after considering the request made by the Corporate Debtor, the Financial Creditor was pleased to grant an extension by a period of one year, vide email dated 17.03.2020 and accordingly, the term of the Corporate Debtor now stood from 01.04.2017 till 31.03.2021. It is also pertinent to note that by virtue of the 9-month moratorium granted under the Loan Agreement with effect from 01.04.2021, the Corporate Debtor was duty bound to repay the entire loan amount by 31.12.2021.
- c) Accordingly, the Financial Creditor addressed a letter dated 07.12.2021 along with the total sum due and payable by 31.12.2021, to the Corporate Debtor, thereby reminding the Corporate Debtor of its liability to repay the debt. However, due to failure on part of the Corporate Debtor to repay the loan, the Corporate Debtor committed first default on 31.12.2021. Thereafter, the Corporate Debtor, vide its email dated 17.02.2022 sought an additional time period, up to 30.06.2022 and also duly acknowledged its debt to the tune of INR 2,30,58,550/- up to 31.03.2021. However, even during this extended period, the Corporate Debtor failed to repay the outstanding loan amount and thus, again committed default on 30.06.2022. It is pertinent to note that the Financial Creditor again sent a letter dated 02.08.2022 to the Corporate Debtor, reminding the Corporate Debtor about its liability to the tune of INR 2,68,58,599/- as on 31.07.2022.
- d) Thereafter, the Financial Creditor made several attempts to seek repayment of the debt owed by the Corporate Debtor. However, as is evident from the aforesaid factual matrix, the Corporate Debtor has defaulted in meeting its debt obligations to the Financial Creditor herein and thus, the instant Application. It is further submitted that the instant Application is within the period of limitation from the date of Default.



Submissions of Learned Counsel appearing for the Corporate Debtor are as under:

The details of the submissions made by the Corporate Debtor are as follows:

- a) The Applicant and the Corporate Debtor executed a Loan agreement dated 01.04.2017 for a loan facility amounting to Rs. 1,85,29,530/-. The tenure of the Loan advanced was for a total period of 3 years which was thereafter extended by the Applicant. That the Loan Agreement further provided for a period of moratorium for a period of 9 months after the end of availability period of the Loan amount. The period of extension of the current Loan Agreement came to end on 31.03.2021. Thereafter, moratorium clause for a period of 9 months as mentioned in the Loan Agreement was invoked on the very date of the end of Loan Agreement viz. 31.03.2021. Hence, the moratorium period came to an end on 31.12.2021. Moreover, the Loan Agreement provided for default interest at the rate of 10% with consent of the creditors. per annum for the period of such default
- b) The Respondent Company has been facing severe financial difficulties for the past few years. Despite these challenges, the company has been making continuous endeavours to repay its debt obligation to the Financial Creditor/Applicant. That it is evident from the Balance Sheet of the Respondent Company as on 31.03.2022, that the reserves and surplus of the Respondent Company stood at mere Rs. 25,33,13,193/-, while its current liabilities, including trade payables and other current liabilities, totalled Rs. 3,29,36,205/-
- c) That the cash and cash equivalents available with the Respondent are limited to Rs. 30,45,309/-, reflecting severe liquidity issues. Moreover, the Respondent Company is also burdened with significant long-term borrowings amounting to Rs. 1,86,47,335/-, which is owed to the Financial Creditor herein and has faced challenges in managing these liabilities due to its poor financial health. The Respondent Company has made continuous and genuine efforts to repay the debt owed to the Applicant as evident from the letter issued to the Applicant by the Respondent Company dated 20.02.2020 requesting extension of the Loan Agreement for an additional period of 1 year, i.e., 31.03.2021. That vide letter dated 17.03.2020, the Financial Creditor was pleased to approve the extension of Loan Agreement for a period of one year.



- d) However, in the said letter dated 17.03.2020, the Applicant had explicitly stated “keeping the view of your financial condition”, the said acknowledgment by the Applicant demonstrates that the Applicant/Financial Creditor was fully aware of the financial condition/status of the Corporate Debtor. The period of extension of the current Loan Agreement came to end on 31.03.2021. Thereafter, moratorium clause for a period of 9 months as mentioned in the Loan Agreement was invoked on the very date of the end of Loan Agreement viz. 31.03.2021. That vide letter dated 07.12.2021, the Applicant intimated the Respondent that the moratorium period will end on 31.12.2021 and that the Respondent Company shall pay the entire amount including any interest therein owed to the Applicant.
- e) The endeavour to payback its debt owed to the Applicant is evident from the fact that vide letter 17.02.2022, the Respondent Company requested the Applicant to grant a 4-month time from the said communication to repay the entire debt. That the Corporate Debtor due to limited cash flow and liquidity issues, at the moment is not in a position to pay the entire debt obligation in one go.
- f) Further, in terms of Section 3(12) of the Code, the date of default is calculated from the day when part or instalment of the amount of debt is due and payable on part of the Corporate Debtor. However, the Financial Creditor has mentioned two date of defaults, the first date of default is alleged to have been committed on 31.12.2021, while the second alleged date of default is mentioned as 30.06.2022. The Respondent herein states that the uncertainty pertaining to the date of default raises significant doubts about the validity and accuracy of the claims being made. This inconsistency is critical, especially given the fact that the commencement of CIRP is contingent upon a precise determination of the date of default.
- g) Moreover, the corporate debtor has all the bona fide intent to repay its dues to the financial creditor within the earliest possible time span. The invocation of the corporate insolvency resolution process against the corporate debtor would be a harsh step and would lead to the corporate death of the company. Hence, the present petition liable to be dismissed.



Analysis and Findings

We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and written submission. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.

7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “financial debt” owed to the Financial Creditor and, if so whether there is a “default” with respect to such debt.
8. In the instant application, the Applicant had granted a loan facility to the Respondent, to the tune of Rs. 1,85,29,530/- and accordingly, entered into a Loan Agreement dated 01.04.2017. A copy of the Loan Agreement is placed on record as Annexure P-5. The respondent was obligated to repay the Loan Amount, with interest, at the end of 3 years’ period. However, prior to the end of 3 years’ tenure, the said loan facility was extended for a period of 1 year, at the request of the Corporate Debtor, as is evident from the letter dated 20.02.2020. The Letter dated 20.02.2020 is placed on record as Annexure P-6 and in the said letter the Corporate Debtor has also acknowledged its liability to repay the debt amount to the tune of Rs. 1,85,29,530/-. Therefore, one essential ingredient with respect to Section 7, that there has been a “debt”, stands substantiated.
9. Thereafter, the period of extension granted came to an end i.e. 31.03.2021. Further, the period of moratorium of 9 months in terms of Definition Clause of the Loan Agreement also came to an end on 31.12.2021, and accordingly, in terms of Clause 5 of the Loan Agreement the Corporate Debtor became liable to make payment of outstanding dues on 31.12.2021. The Applicant sent a letter dated 07.12.2021 to the Respondent to repay the entire debt amount. The Corporate Debtor did not make any payment. Thereafter, the Corporate Debtor, vide email dated 17.02.2022 sought an additional time period of 6 months (i.e. up to 30.06.2022) and also duly acknowledged the debt to the tune of Rs. 2,30,58,550/-. The letter dated 17.02.2022



is placed on record as Annexure P-9. Hence, it is evident that the Respondent has committed a default in repaying the outstanding loan amount. Therefore, another major essential ingredient of Section 7 i.e., “default” with respect to the debt stand substantiated.

10. Further, the Respondent contends that it is making bona-fide attempts to repay the loan of the Financial Creditor / Applicant. The Corporate Debtor is slowly reviving its business and is trying to pay off all its debt to the creditors. The said defense taken by the Respondent in the instant case is immaterial for the adjudication of the present matter as the Corporate Debtor has itself acknowledged the debt.
11. Further, the Hon’ble Supreme Court in the judgement of “**Innoventive Industries Limited v. ICICI Bank and Another**” held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the Application under Section 7 of I & B Code, 2016. The relevant extract of the said judgment is reproduced hereunder as:

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.

12. It is pertinent to mention that this Adjudicating Authority vide order dated 28.02.2025 had directed the Financial Creditor to file an affidavit to the effect that the present Section 7 petition is not a collusive petition and is not filed for the purpose other than the resolution of the Corporate Debtor. Further, vide order dated 28.02.2025, the Corporate Debtor was also directed to file an affidavit clarifying that their reply is not collusive one. Moreover, certain other clarification were required from the petitioner companies such as:



a) Whether the Financial Creditor is in the business of lending of money and whether their AOA and MOA provides for the same?

b) Whether any Board Resolution for providing loan to the Corporate Debtor and for extension of time for repayment was passed by the Financial Creditor or not? If so, a copy of the same may be placed on record.

c) The Financial Creditor should provide the copy of the Bank Statement to substantiate the fact that the money was disbursed from the account of Financial Creditor to the Bank Account of the Corporate Debtor.

13. In compliance of the order dated 28.02.2025, the Financial Creditor has filed an affidavit dated 25.03.2025 clarifying that the petition is not in collusion with the Corporate Debtor and is not intended for any purpose other than resolution of the Corporate Debtor. Further, the Corporate Debtor has also filed affidavit dated 28.03.2025 clarifying that the present petition has not been filed by the Financial Creditor in any collusion with the Corporate Debtor and the Corporate Debtor further clarifies that the Corporate Debtor has, in a bona fide manner, proceeded in the present proceedings. In compliance of the order dated 28.02.2025 the Financial Creditor has placed on record the Memorandum of Association at Annexure A-2 clarifying that it permits the Financial Creditor to lend money to any other entity. In compliance of the order dated 28.02.2025, the Financial Creditor has also placed on record Board Resolution dated 03.01.2017 at Annexure A-3 clarifying that the it can grant financial assistance up to the extent of Rs. 3 Crores to the Corporate Debtor. Further, the Financial Creditor has also placed on record the Bank Statement demonstrating disbursement of financial debt along with ledger statement at Annexure A-34.

14. The Petition established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 22.07.2024, and even admittedly the debt owed to the Financial Creditor is an amount of Rs. 2,68,58,599/- (Rupees Two Crore Sixty-eight Lakhs, Fifty-Eight Thousand, five hundred and ninety-nine) which meets the threshold of Rs. One Crore.




In light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/494(ND) 2024** filed by KDS Corporation Private Limited, the Financial Creditor, under Section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Alchemist Holdings Limited, the Corporate Debtor, stands **admitted** and CIRP of Alchemist Holdings Limited is initiated.

16. That the petitioner in Part-III of the petition has proposed the name of Manoj Kumar Jain, as Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P02707/2022-23/14173 and E-mail ID mkjain365@gmail.com, is hereby appointed as an Interim Resolution Professional (IRP) for Corporate Debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. The proposed Interim Resolution Professional is directed to give his written consent in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration certificate as well as a valid AFA within 5 days of receipt of this order.
17. 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.*
 - (e) *The IB Code 2016 also prohibits Suspension or termination of any 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, 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, concessions, clearances or a similar grant or right during the moratorium period.

18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and 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.
19. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 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.
20. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Manoj Kumar Jain to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
21. The Interim Resolution Professional shall perform all his functions as 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.
22. 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 tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.

23. 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 his 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.
24. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
25. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./494 (ND)/2024, stands admitted.**
26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)