



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
CP (IB) – 244(PB)/2023**

Order 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:**

**M/s Kaliber Associates Pvt. Ltd. .... Financial Creditor**

(Through its Liquidator, Sh. Mohan Lal Jain)

**Versus**

**M/s L.V. Universal Pvt. Ltd.**

Registered Office:

E-20, Lajpat Nagar- III, New Delhi- 110024

CIN No: U70101DL2011PYC215680 .... **Corporate Debtor**

**Order Pronounced On: 31.10.2023**

**CORAM:**

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SHRI AVINASH K SRIVASTAVA  
HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Petitioner** : Adv. Rajeev Chowdhary

**For the Respondent:** Adv. Deepak Gupta



## **ORDER**

1. The present application was filed on 23.04.2023 by M/s Kaliber Associates Pvt. Ltd. through its liquidator before this Adjudicating Authority under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016), r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Corporate Debtor (CD) viz. M/s L.V. Universal Pvt. Ltd.
2. The total amount claimed to be in default as per Part-IV of the application is **Rs. 4,13,74,418/-** (Rupees Four Crores Thirteen Lakhs Seventy-Four Thousand Four Hundred and Eighteen Only).
3. The Corporate Debtor was Incorporated on **10/03/2011**, having CIN: U70101DL2011PTC215680, under the Companies Act, 1956 and is involved in Real estate activities with own or leased property (This class includes buying, selling, renting and operating of self-owned or leased real estate such as apartment building and dwellings, non-residential buildings, developing and subdividing real estates into lots etc.) The registered address of the Corporate Debtor is at E-20, Lajpat Nagar-III, New Delhi-110024. Therefore, this Bench has jurisdiction to deal with this application. A copy of the master data of the Corporate Debtor is attached as



Annexure-3 of the application at Page 35 of the application.

**4. Facts of the Case and Submissions made by the Liquidator**

- i. It is submitted that the Applicant/Financial Creditor (FC) is presently undergoing the Liquidation process vide order dated 02.01.2020 passed in C.A No. 1524/C-II/ND/2019 in C.P (IB) No. 228/2018 by the NCLT, New Delhi Bench-II whereby the Bench-II admitted an application filed by the Resolution Professional of M/s Kaliber Associates Pvt. Ltd under Section 33(1) and Section 33(2) of the IBC for liquidation of M/s Kaliber Associates Pvt. Ltd.
- ii. It is submitted that on 12.10.2022 an application bearing I.A. No. 4559/2020 was filed under Section 33(5) read with Section 35(1)(k) of IBC in C.P (IB) No. 228/2018 before Bench-II of NCLT, Delhi by the Liquidator of Applicant seeking approval for the institution of the suit or other legal proceedings and that vide order dated 01.12.2020, Bench-II of NCLT, Delhi allowed the said application and the Applicant, Financial Creditor was allowed to institute any suit or legal proceeding against the defaulting borrowers before any appropriate forum.
- iii. It is submitted that the Liquidator being the Authorized Representative of the applicant is authorized to file the present application under Section 7 of the Code and for initiating the CIRP



against the Corporate Debtor. Copy of Authority Letter dated 27.03.2023 is annexed as Annexure-5 of the application.

- iv. It is submitted that the Financial Creditor disbursed loans and advances of Rs. 4,13,74,418/- (Rupees Four Crores Thirteen Lakhs Seventy-Four Thousand Four Hundred and Eighteen Only) during the tenure 13.09.2014 to 26.10.2018 to the Corporate Debtor and that disbursement of loans and advances is clearly reflected in the bank statement of the Financial Creditor and ledger of Corporate Debtor as maintained by the Financial Creditor.
- v. It is submitted that the audited financial statement as of 31.03.2018 and the provisional financial statement as of 18.01.2019 (CIRP commencement date of Kaliber Associates) as shared by the Ex-Director of the Applicant/Financial Creditor reflect that the total disbursed amount of Rs. 4,13,74,418/- remains unpaid to the applicant/financial creditor and relevant entry can be found under the heading "Short Term Borrowings" in the Corporate Debtor's audited financial statement as of 31.03.2019.
- vi. It is submitted that on 10.05.2019, Ms. Ritu Rastogi, Resolution Professional of the financial creditor intimated to the directors of the Corporate Debtors and called upon them to pay the amount due of Rs. 4,07,43,618/-



- vii. It is submitted that on 07.06.2019, the Corporate Debtor in its reply to the communication dated 10.05.2019 stated that the outstanding amount as shown in the balance sheet of the Financial Creditor is neither confirmed nor due and payable to the Financial Creditor.
- viii. It is submitted that the applicant/ financial creditor issued a legal notice dated 20.07.2020 through his legal counsel directing the Respondent/Corporate Debtor to pay the outstanding amount of Rs. 4,13,74,418/- together with 12% interest is due and payable within a period of 7 days.
- ix. It is submitted that on 31.01.2022 the financial creditor with the intention to settle the dispute, had filed an application for Pre-Institution Mediation under Section 12A of Chapter IIIA of Commercial Courts Act, 2015 before the Delhi High Court Legal Services Committee against M/s LV Universal Pvt. Ltd. The Delhi High Court Legal Services Committee issued notice to the Corporate Debtor and informed the Corporate Debtor regarding the interest of the Financial Creditor to settle the matter through mediation. Further, the Delhi High Court Legal Services Committee directed the parties to deposit one-time mediation fee of Rs. 75,000/- which was to be shared between the parties in equal proportion on or before 23.02.2022.



- x. Subsequently, as per the notice issued by the Delhi High Court Legal Services Committee, the financial creditor completed his part of the payment i.e. Rs. 37,500. However, the Corporate Debtor, despite accepting notice failed to deposit the one-time mediation fee of Rs. 37,500.
- xi. That on 21.03.2022, due to the default in payment of one-time mediation fee of Rs. 37,500 by the Corporate Debtor, the Delhi High Court Legal Services Committee treated the application of financial creditor as Non-Starter and subsequently issued a Non- Starter Report in this regard.
- xii. It is submitted that as a matter of record, the audited balance sheet dated as on 31.03.2021 and 31.03.2022 of the Corporate Debtor shows that the Corporate Debtor is liable to pay an amount of Rs. 4,13,74,418 under the head of Long Term Borrowings.

**5. The Financial Creditor has placed the following documents on record:**

- i. Copy of Relevant pages of the Bank Statement for the period 13.09.2014 to 26.10.2018 and copy of ledger of Corporate Debtor as maintained by the Financial Creditor as Annexure-6 of the application.
- ii. Copy of Audited Financial Statement as of 31.03.2018 and the Provisional Financial Statement as of 18.01.2019 (CIRP commencement date) of the Financial Creditor as Annexure-7 of the application.



- iii. Copy of letter dated 10.05.2019 by Ms. Ritu Rastogi, Resolution Professional of the Financial Creditor intimating to the Directors of the Corporate Debtor about the due payment as Annexure-10 of the application.
- iv. Copy of Legal Notice dated 20.07.2020 issued by Applicant/Financial Creditor directing the Respondent/Corporate Debtor to pay the outstanding amount together with 12% interest within a period of 7 days as Annexure-12 of the application.
- v. Copy of Form-1 Mediation Application dated 21.01.2022 before the Delhi High Court Legal Services Committee as Annexure-13 of the application.
- vi. Copy of Record of Default as registered with the National E-Governance Services Ltd. (NeSL) as Annexure- 15 of the application.
- vii. Copy of Written Communication in Form-2 by Mr. Gagan Gulati, the proposed Interim Resolution Professional as Annexure-16 of the application.

## **6. Analysis and Findings**

- i. We have heard the Ld. Counsel for the applicant and respondent and perused the documents submitted. We take note that Ld. Counsel for the Respondent has failed to file the reply despite been given two opportunities earlier on 04.07.2023 and 19.07.2023 for filing the reply. Since this is a Section 7 petition, it is time bound and accordingly his right to file any reply was closed. Further, we gave an opportunity to the Ld. Counsel for



the Respondent to argue the matter on merits. Ld. Counsel for the Respondent submitted that this petition is filed to defeat the objectives of the Code and not to revive the company but to make recoveries. He also referred to Pre-Mediation Litigation at Annexure-13, Page-164 of the Application to say that this is a Sub-Judice matter of some mediation.

- ii.** Considering the submissions made and documents placed on record, we take note that the financial creditor disbursed loans and advances of Rs. 4,13,74,418 during the tenure from 13.09.2014 to 26.10.2018 to the corporate debtor. Further the applicant has also reported the default amount of Rs. 4,13,74,418 with the National E-Governance Service Limited (NeSL), though the NeSL report dated 05.01.2022 states the status of Authentication as Disputed. However, the Audited Financial Statement of the CD for the Financial Year ending on 31.03.2021 and 31.03.2022 as attached by the applicant under the head Long-Term Borrowings reflect that the amount of Rs. 4,13,74,418/- is due and payable by the CD to the Applicant/FC
- iii.** Also, the oral plea taken by Ld. Counsel for the Respondent that this is a sub-judice matter of some mediation is not correct, as it is evident from the Non-Starter Report dated 21.03.2022 that mediation has failed between the parties. Relevant portion of the report read as under:

*“As per record, opposite party has failed to deposit their share of mediation fees despite several opportunities granted to them. Though, applicant had*



*deposited their share of mediation fees of Rs. 37,500 and submitted proof of payment on 14.03.2022. In view of the fact that mediation fees is shared by the applicant and opposite party in equal proportion, this pre-institution mediation file be treated as non-starter”*

- iv. Further, we are supported by the judgment of the Hon'ble Supreme Court in the **Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (2018) 1 SC 407**, which clearly held 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 receipt of a notice from the adjudicating authority.*

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of 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 it may reject an application and not otherwise”*

- v. Therefore, we are satisfied that the present petition is maintainable and that the financial debt is due and there is a default in payment of debt.



## ORDER

In light of the above facts and circumstances, it is, **hereby ordered** as follows: -

- i. The Application bearing **C.P. (IB) – 244/(PB)/2023** filed by M/s Kaliber Associates Pvt. Ltd. through its Liquidator, the Applicant/(FC), 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 **M/s L.V UNIVERSAL PRIVATE LIMITED**, the Respondent/(CD), is hereby admitted.
- ii. As a consequence of the Application CP (IB) 244(PB)/2023 being admitted in terms of Section 7 of the 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. The Applicant/(FC) has proposed the name of **Mr. Gagan Gulati** as the IRP. His email id is [advocategulati@gmail.com](mailto:advocategulati@gmail.com). His registration number is **IBBI/IPA-002/IP-N00893/2019-20/12832**. He has filed his written communication, (**Page 207, Volume 2 of the Application**) 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 in the (ICSI) Institute of Insolvency Professional. In addition, further necessary



disclosures have been made by Mr. Gagan Gulati as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code. Hence, we appoint **Mr. Gagan Gulati** as the IRP of the Corporate Debtor.

- iv. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. 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.
- v. During the CIRP period, the management of the CD shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the CD 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.
- vi. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.



- vii. 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 CIRP in respect of the Corporate Debtor.
- viii. The FC shall deposit a sum of **Rs 5,00,000/- (Rupees Five Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
- ix. In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.
- x. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
- xi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Sd/-**

**RAMALINGAM SUDHAKAR  
(PRESIDENT)**

**Sd/-**

**AVINASH K. SRIVASTAVA  
MEMBER (TECHNICAL)**