



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH [SPECIAL], COURT NO. II
KOLKATA**

Company Petition C.P. (IB) No. 314/KB/2021

*An Application 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:

KRISHNA KUMAR MINTRI ... Applicant No. 1/ Financial Creditor No. 1.

And

JYOTI MINTRI ... Applicant No. 2/ Financial Creditor No. 2.

Verses

**DEW TEA PLANTATION PRIVATE LIMITED
(CIN: U15492WB1959PTC024269)**

... Respondent/ Corporate Debtor.

Date of Hearing: November 10, 2023.

Date of Pronouncement: November 21, 2023.

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI BALRAJ JOSHI, MEMBER (TECHNICAL)

APPEARANCE:

For the Financial Creditor:

**Mr. Abhrajit Mitra, Sr. Adv.; Ms. Nilina Chatterjee, Adv. and Mr. S. Dasgupta,
Adv.**

For the Corporate Debtor:

**Mr. Joy Saha, Sr. Adv.; Mr. Shaunak Mitra, Adv.; Mr. Kanishk Kejriwal, Adv.
and Mr. Patita Paban Bishwal, Adv.**

ORDER

Per Balraj Joshi, Member (Technical):

- 1. This Court is congregated through hybrid mode.**
- 2. Heard the Ld. Senior Counsel, Shri Abhrajit Mitra for the Applicant and the Ld. Senior Counsel, Shri Joy Saha for the Respondent.**

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3. This instant application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “**I&B Code**”/ “**IBC**”), jointly by one **Mr. Krishna Kumar Mintri** (hereinafter referred to as “**Applicant No. 1**”/ “**Financial Creditor No. 1**”) and one **Mrs. Jyoti Mintri** (hereinafter referred to as “**Applicant No. 2**”/ “**Financial Creditor No. 2**”) against **Dew Tea Plantation Private Limited** (hereinafter referred to as “**Respondent**”/ “**Corporate Debtor**”) seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process, (for brevity “**CIR Process**”/ “**CIRP**”) in respect of the Corporate Debtor herein.
4. The Corporate Debtor, herein, a private limited company, was incorporated on June 15, 1959, having authorized Share Capital of Rs. 60,00,000/- and Paid-up Share Capital of Rs. 59,00,800/-, registered office at Flat No. C, Ananya Apartment, Ashutosh Mukherjee Road, College Para, Siliguri – 734001.
5. The **Total amount of Financial Debt** as claimed to be in default is of **Rs. 6,78,42,701.88/-**, in which the total Principal amount is claimed as of Rs. 6,56,53,858.00/- along with interest at the rate of **15%** per annum on monthly compounding basis from 09.07.2021 to 30.09.2021. The **Date of Default** is claimed as on **July 09, 2021**. The computation of the outstanding dues payable to the Applicants is **annexed at Pages 30–31 as Annexure “E” to this Application**.

Submissions of the Financial Creditors, herein:

6. Ld. Senior Counsel, Shri Abhrajit Mitra appearing for the Financial Creditor submits that “Unsecured Loan” Agreements dated April 24, 2015, were entered into between the Applicants herein and the Mintri Tea Company Pvt. Limited, **annexed at Pages 58–62 and 63–67 to the Application as Annexure “I”**, where both the Financial Creditors herein have agreed upon to extend unsecured loans to the Mintri Tea Company Pvt. Limited, (renamed as “**Dew Tea Plantation Private Limited**” vide a “Certificate of Incorporation pursuant to change of name” dated 19th Day of January 2021, under Rule 29 of the

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Companies (Incorporation) Rules, 2014 issued by the RoC – Kolkata, **annexed at Page 172 to the Reply Affidavit as Annexure “A-12”**). The Agreement has been agreed upon with the condition that the Loan(s) so provided by the lenders to the borrower would remain interest-free so long the lender continues to be a shareholder of the company, however, the loan will carry interest at a rate 15% per annum on monthly compounding basis from the day lender ceases to be a shareholder of the borrowing company. Further, if the borrower fails to make the payment due under the agreements within 30 days after the demand is made, the borrower shall be liable to pay to the lender, penal interest at the rate of 3% Per Annum on a monthly compounding basis. The Applicants have supplied the Bank Statement substantiating the proof of disbursement of the amount, **annexed at Pages 44-53 as Annexure “G”** to this Application and also supplied the Promissory Notes dated 24.04.2015, **annexed at pages 54-57 as Annexure “H”** to this Application.

7. The Ld. Senior Counsel would further contend that the Financial Creditors sold their shares in the Corporate Debtor Company in September 2020.
8. It is further submitted that despite intimation and several reminders, the Corporate Debtor failed to clear the outstanding dues and having no option left, the Applicants issued a Demand notice on 21.06.2021, **annexed at Pages 32-43 as Annexure “F” to this application** to the Corporate Debtor to pay the outstanding loan amount including the updated interest till 30.06.2021 due to each Financial Creditor herein, within 15 days from the receipt of the demand notice, however, neither any reply nor any payment has been made on behalf of the Corporate Debtor.
9. The Applicant has proposed the name of **Mr. Yogesh Gupta**, Address: M/S. S. Jaykishan, Chartered Accountants, Suit No. 2D, 2E, 2nd Floor, 12, Ho Chi Minh Sarani, Kolkata – 700071, Email ID: yogeshgupta31@rediffmail.com, Registration No.: IBBI/IPA-001/IP-P00349/2017-18/10650, as the Interim Resolution Professional, for brevity “IRP” of the Corporate Debtor.

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Submissions of the Corporate Debtor, herein:

- 10.** Per contra, the Ld. Senior Counsel, **Shri Joy Saha** appearing for the Corporate Debtor, submits that previously, due to default in repaying the loan, on an application filed by the Punjab National Bank (PNB) under Section 7 of the I&B Code against the Mintri Tea Company Pvt. Limited, CIRP was initiated against the Mintri Tea, vide an order dated September 20, 2017 in **C.P. (IB) No. 421/KB/2017** passed by this Adjudicating Authority. It is claimed that as on September 20, 2017, Applicant No. 1 was the Managing Director having 16.22% equity share capital and Applicant No. 2 was the Director having 19.10% equity share capital of Mintri Tea Company Pvt. Limited.
- 11.** Ld. Sr. Counsel for the Respondent claims that in order to rescue Mintri Tea Company Pvt. Limited, Applicant No. 1 approached the Corporate Debtor herein to purchase Mintri Tea Company Pvt. Limited, together with its tea estate and accordingly, after discussions, the Applicant No. 1 as the promoter of Mintri Tea Company Pvt. Limited, entered into a **“Memorandum of Understanding”** dated April 06, 2018 (for brevity **“MoU”**), **annexed at Pages 60-65 as Annexure “A-3” to the Reply Affidavit**, for the sale of Mintri Tea Company Pvt. Limited for a total consideration amount of Rs. 28.50 Crore.
- 12.** It is claimed that under the MoU, it is agreed upon that the Applicant, herein would arrive at a settlement with the PNB regarding the outstanding loan of Mintri Tea Company Pvt. Limited and utilise the sale consideration paid by the Corporate Debtor, herein for liquidating such loan amount and further, Applicant No. 1 shall be liable for all the liabilities of Mintri Tea Company Pvt. Limited up to December 31, 2017.
- 13.** It is further contended that after the execution of the MoU, on April 13, 2018, the new management paid a total of Rs. 11 Crore, in which Applicants No. 1 and 2 individually were paid Rs. 2.60 Crore by the Corporate Debtor. A copy of the Declaration dated May 04, 2018, is **annexed at Page 66-70 to the Reply Affidavit as Annexure “A-4”**.

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14. Further, it is claimed that the Applicants and the members of its family were paid a further sum of Rs. 1.44 Crore in which through RTGS, Applicant No. 1 was paid Rs. 70 Lakh on 08.06.2018 and 20 Lakh on 22.02.2019 and Applicant No. 2 was paid Rs. 57 Lakh on 08.06.2018 by the Corporate Debtor.
15. Further, it is submitted that around July/August 2018 the Applicants herein arrived at a settlement with the Punjab National Bank, the sole member of the Committee of Creditors in respect of Mintri Tea. Two applications, being CA(IB) No. 462/KB/2018 and CA(IB) No. 648/KB/2018 were filed by the present Applicants for withdrawal of the insolvency petition filed by Punjab National Bank. The applications were dismissed by this Adjudicating Authority vide an order dated August 03, 2018.
16. It is contended that challenging the said order passed by this Adjudicating Authority on August 03, 2018, an appeal was preferred by Applicant No. 1 and the **Hon'ble NCLAT** set aside the order of this Adjudicating Authority and dismissed the insolvency proceedings against Mintri Tea Company Pvt. Limited vide an order dated February 27, 2019, **in Company Appeal (AT) (Insolvency) No. 456 of 2018.**
17. It is claimed that the Corporate Debtor and one Babul Nath (the other director and shareholder of Dew Tea) paid over Rs. 12.40. Crore to the Applicants in order to discharge the outstanding liability up to December 31, 2017, and further Rs. 8,18,50,000 was paid in cash by the Corporate Debtor and the said Babul Nath between April 06, 2018, to September 2020.
18. It is alleged that there is no debt due to the Applicants from Dew Tea and there can be no default as alleged in the present Application. It is denied that Dew Tea approached or requested the Applicants to extend unsecured loans to them or that the Applicants extended unsecured loans to Dew Tea or that there was any question of the alleged interest upon the Applicants being discontinued as shareholders of the company or that there was any agreement for such terms or that the company repeatedly assured the Applicants for repayment of the alleged

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loans or that the company could have made such assurance or that the Applicants extended any loans to Dew Tea, as alleged or at all.

Submissions of the Applicant in Rejoinder:

19. The Ld. Sr. Counsel, Shri Abhrajit Mitra would argue that the purported MoU was not a legally binding document or agreement that substantiated the repayment of the debt. Further, the reply filed by the Corporate Debtor is false and vexatious with the intention to harass the applicants.
20. It is claimed that the loans extended by the Financial Creditor are still due and payable by the Corporate Debtor despite intimation on innumerable occasions, therefore, a legal notice dated 21.06.2021 has been issued. However, neither any reply nor any payment has been made to the Applicants herein.
21. It is alleged that the Corporate Debtor as well as the said Babul Nath did not make any attempt to convert the purported MoU into a legally binding document at any point of time and never made any payment to the Applicants.

Counter Submissions by the Corporate Debtor:

22. The Ld. Sr. Counsel for the Respondent claims that the alleged financial creditors paid a total sum of about 12.09 Crore between April 2018 to March 2019, only upon receiving Rs. 12.47 Crore from the Corporate Debtor and said Babul Nath, annexed the details of payments made by Babul Nath at **Pages 111-114 as Annexure "A-8" to the Reply Affidavit**. The members of the family of the alleged financial creditors have confirmed that the amount received, **annexed the Loan confirmation at Pages 66-70 to the Reply Affidavit**.
23. It is further claimed that the Loan obtained by the Mintri Family from said Babul Nath and the Corporate Debtor, a part of such loan was given by the Mintri Family to Dew Tea and further sums were paid by the said Babul Nath and the Corporate Debtor to Mintri family in cash towards the purchase of Dew Tea. The entire transactions were part of a single transaction and cannot be treated separately.

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Analysis and Findings:

24. It is evident that on **24.4.2015** Krishna Kumar Mintri who was a director in the company enters into a Loan agreement with Mintri tea company for advancing a loan up to Rs. 6.75 Crores. A promissory note from the company is also issued for the same amount in favour of Krishna Kumar Mintri.
25. Similar Unsecured loan agreement has been entered into by Jyoti Mintri, another director of the company. and the company has issued a promissory note for an amount having an upper limit of Rs. 3,75,00,000.
26. Krishna Kumar Mintri being a director has accepted the loan on behalf of the company, so much so that in the first Loan agreement, he has signed both as a lender and as a borrower. No board resolution has however been found annexed.
27. Nevertheless, from the purported loan transaction, it appears that the company was going through a rough patch and therefore the Directors decided to lend personal loans to the company i.e., Mintri Tea Company. The company on its part issued the Promissory notes of the like amounts to the Directors.
28. The company was eventually put under CIR Process in **September 20, 2017** in C.P. (IB) No. 421/KB/2017 on a Section 7 Petition filed by the **PNB**. While the Mintris were trying to save the company by entering into some settlement with the lender bank i.e., PNB, the current set of directors namely Mr. Babul Nath enters the scene through an MoU (supra) and agrees to buy the Mintri tea company for a consideration of Rs. 28.5 Crores, out of which 11 Cr, have been admittedly paid to the Mintris for making a settlement with the PNB in a bid to make them withdraw the CIRP. It is stated by the CD that an amount of Rs. 8.85 Cr has also been paid in cash by them over a period of time for meeting the liabilities of the company, which were in fact an agreed liability of the Mintries as per the MoU. Various bank statements also show various tranches of money being paid by Babul Nath to the Mintri's. One of the dates which is seen to be very important is **16.04.2018**, on which date a number of transactions have been made and apparently the loan of the PNB has been paid back. This date acquires

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more significance, since the MoU signed by Mr. Babul Nath, who happens to be the new management now, also stipulates that any settlement with the bank has to happen within 18th April 2018, since the date set for submission of the resolution plans in the earlier CIRP was 25.04.2018, so as a matter of abundant caution the settlement amount is paid to PNB in various tranches on 16.04.2018. A reference of this time line also finds a mention in the MoU. These payments have been made by the first party to the Second party, who has in turn made the payments to PNB. So, it is noteworthy here that even though the payments were to be made by the First party on behalf of the second party as per the terms of the MoU, however the same could not have been made by them for the purpose of withdrawal of the CIRP process, as they (new entrants) were not directors of the then Corporate Debtor i.e., Mintri Tea company.

29. The date of prior liabilities which has been set as 31.12.2017, is also in sync with the chain of events as the CIRP had started to progress whereby after the settlement, two applications came to be filed before this Adjudicating Authority under section 12A for withdrawal of CIRP, which were rejected vide order dated 03.08.2018. This order was challenged before Hon'ble NCLAT.
30. Clearly, these aspects have been suppressed by the Applicants herein. It must also be mentioned here that the MoU under the heading TERMS AND STIPULATIONS inter-alia provides as under:

1. CONSIDERATION: The out and out sale consideration of the company will be to the tune of Rs. 28.50 crore (rupees Twenty-Eight Crore Fifty Lacs) and mode of payment will be under following terms;

(Emphasis supplied)

31. It is evident from the above that the sale consideration was '**out and out**', which means that this would be the total consideration for satisfaction of the loan of PNB as well as other liabilities till 31.12.2017. Once having agreed for **an outright** sale of the company on 06.04.2018 as per the MoU, the Financial Creditor cannot be allowed to rake out the issue of previous financial support that he may have lent to the Corporate Debtor in its previous avatar as Mintri

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Tea Company. This aspect has also been pleaded in the reply of the Corporate Debtor, wherein it has been averred that:

“The Application is barred by the principles of estoppel, waiver and acquiescence.”

32. Keeping the foregoing, we are inclined to agree with this logic of the Corporate Debtor that once having agreed for **out and out** sale, the financial creditor is estopped from claiming additional money than what has been agreed in the MoU. Further the Financial creditor has not been able to show from the documents that whether the total consideration has not been paid by the new set of directors for acquisition of the Mintri Tea Company on “Out and out” sale basis in terms of the MoU, particularly since the issue of the cash disbursements over a period of time is also involved. Nevertheless, it is further evident from the “Financial Statement” for the year ended March 31, 2021, annexed to the Reply Affidavit at Pages 117-171 (Annexure “A-11”), relevant Page no. 157, that the Applicants had the shareholdings as at March 31, 2020 of 13.89% (Applicant No. 1) and of 7.55% (Applicant No. 2) whereas as at March 31, 2021, both the Applicants have **NIL** shareholdings. This goes on to show that the consideration as envisaged under the MoU having been paid, the shareholding of the Mintri’s has been shown to be **ZERO**. Additionally, it has been further stated that the Corporate Debtor herein that is the Dew Tea Plantation is a solvent company, meaning thereby that the Corporate Debtor does not need the classical resolution exercise, entailed under the I&B Code. The relevant page of the Financial Statement reflecting the facts above is reproduced here under:

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**DEW TEA PLANTATION PRIVATE LIMITED
(Formerly known as Mintri Tea Co. Private Limited)
NOTES TO THE FINANCIAL STATEMENTS FOR THE YEAR ENDED MARCH 31, 2021**

Note : 2 :: SHARE CAPITAL

Particulars	As at March 31, 2021		As at March 31, 2020	
	No. of Shares	Amount (Rs.)	No. of Shares	Amount (Rs.)
Equity Shares of Rs. 100/- each	55,000	55,00,000	55,000	55,00,000
Preference shares of Rs. 100/- each	5,000	5,00,000	5,000	5,00,000
Total	60,000	60,00,000	60,000	60,00,000
Issued, Subscribed and Fully Paid-up				
Equity Shares of Rs. 100/- each	54,008	54,00,800	54,008	54,00,800
Preference shares of Rs. 100/- each	5,000	5,00,000	5,000	5,00,000
Total	59,008	59,00,800	59,008	59,00,800

Note: 1.1 :: Reconciliation of number of Equity Shares outstanding

Particulars	As at March 31, 2021	As at March 31, 2020
	No. of shares	No. of shares
Shares outstanding at the beginning of the year	54,008	49,008
Shares Issued during the year	-	5,000
Shares bought back during the year	-	-
Shares outstanding at the end of the year	54,008	54,008

Note: 1.2 :: Reconciliation of number of Preference Shares outstanding

Particulars	As at March 31, 2021	As at March 31, 2020
	No. of shares	No. of shares
Shares outstanding at the beginning of the year	5,000	5,000
Shares Issued during the year	-	-
Shares bought back during the year	-	-
Shares outstanding at the end of the year	5,000	5,000

Note: 1.3 :: The rights, preferences and restrictions attaching to each class of shares including restrictions on the distribution of dividends and the repayment of capital :
All the equity shares of the company are issued with same rights & privileges as other equity shares

Note: 1.4 :: List of Shareholders holding more than 5% shares in the Company

Name of the Shareholder	As at March 31, 2021		As at March 31, 2020	
	No. of Shares	Holding %	No. of Shares	Holding %
Kr. Jai Kumar Muntri	-	0.00%	7,500	13.89%
Jyoti Muntri	-	0.00%	4,080	7.55%
Shivani Muntri	-	0.00%	4,062	7.52%
Pranaya Muntri	-	0.00%	3,470	6.42%
Bhavesh Muntri	-	0.00%	4,900	9.07%
Babul Nath	43,206	80.00%	21,553	39.91%
Ashit Ghosh	10,802	20.00%	5,451	10.09%

Note : 3 :: RESERVE & SURPLUS

Particulars	(Amount in Rs.)	
	As at March 31, 2021	As at March 31, 2020
Securities Premium Reserve	71,74,320	71,74,320
Capital Reserve	1227,62,148	1227,62,148
Total (A)	1299,36,468	1299,36,468
Profit & Loss A/c		
Opening Balance	(1410,38,629)	(1326,78,973)
Less: Adjustment of previous years	214,35,735	26,28,663
Add: Profit for the year	(1196,02,894)	(1410,38,629)
Total (B)	(1196,02,894)	(1410,38,629)
Total	103,33,574	(111,02,161)

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DEW TEA PLANTATION PVT. LTD.

Mallik
Director

Ashit Ghosh
Director

KANCHAN BHADRA
Notary, Siliguri
Appd by Govt. Of India

DEW TEA PLANTATION PVT. LTD.

Ashit Ghosh
Director

33. Further, it has not been conclusively proved by the Financial Creditor that a financial debt exists as defined in the I&B Code, particularly in view of the assertion of the Corporate Debtor that the purported Unsecured Loan agreement and the Promissory note are fabricated documents, and have been presented as an afterthought. Even if it is assumed that such a financial support might have

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been provided, but the same was done on 24.5.2015 i.e. much before the ‘**Out & out sale**’ of the company as per the MoU. Notwithstanding the above, the issue of Cash deposits as well as the allegation of the fabricated documents cannot be adjudicated in a summary jurisdiction of this Adjudicating Authority and the petition is therefore liable to be rejected.

- 34.** Accordingly, Company Petition **C.P. (IB) No. 314/KB/2021 is rejected.** The petitioner shall however be at liberty to seek other remedies that may be available to it under any other law.
- 35.** 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.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 21th Day of November, 2023.

Bose, R. K. [LRA]