



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-I)  
KOLKATA**

**C.P. (IB) No. 39/KB/2023**

*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:***

**Aditya Birla Finance Limited**

*.....Financial Creditor/Petitioner*

*-Versus-*

**Shomuk Consultancy Services Private Limited**[CIN: U74140WB2003PTC096328]

*.....Corporate Debtor/ Respondent*

**Date of Hearing:10.05.2023**

**Date of Pronouncement: 11.06.2024**

**Coram:**

<b>Smt. Bidisha Banerjee</b>	<b>:</b>	<b>Member (Judicial)</b>
<b>Shri Balraj Joshi</b>	<b>:</b>	<b>Member (Technical)</b>

**Appearances (via video conferencing/physically)**

<i>For the Financial Creditor</i>	<b>:</b>	Mr. Rishav Banerjee, Adv. Mr. Amit Kumar Nag, Adv. Ms. Ranjabati Ray, Adv.
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<i>For the Corporate Debtor</i>	<b>:</b>	<i>Ex- Parte</i>
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**ORDER**

***Per: Bidisha Banerjee, Member (Judicial)***

1. The Court convened through hybrid mode.



2. This Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein after referred as “the Code” or “IBC”) by **Aditya Birla Finance Limited** hereinafter referred to as “*Financial Creditor*” seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Shomuk Consultancy Services Private Limited**, hereinafter referred to as “*Corporate Debtor*”.
3. The Corporate Debtor is a private limited company incorporated on 05.06.2003. The authorized share-capital of the company ₹5,00,000/- and the paid-up share capital of the company is ₹2,00,000/-.
4. The total amount claimed to be in due to the Financial Creditor, is Rs. 24,97,11,863.75/-. The date of default mentioned in the petition is 18.10.2022.

**Submissions behalf of the Financial Creditor:**

5. It is stated that *vide* sanction letter dated 28 April 2021, the Financial Creditor sanctioned and credited two (2) Line of Credit facilities for amounts of Rs. 8,00,00,000/- (Rupees Eight Crores only) in loan Account No MINACS0168101 and Rs. 1,55,00,000/- (Rupees One Crore Fifty-Five Lakhs only) in loan Account No HCFKOILOC00001000575 by executing a Loan Agreement Line of Credit dated 28th April 2021.
6. Further the Financial Creditor sanctioned and credited three term loan facilities for amounts of Rs. 80,00,000/- (Rupees Eighty Lakhs only) in Loan Account HCFKOITER00001000574, Rs. 8,53,00,000/- (Rupees Eight Crores Fifty Three Lakhs only) in Loan Account No HCFKO1TER00001000572, Rs. 4,30,00,000/- (Rupees Four Crores Thirty Lakhs only) in Loan Account No HCFKO1TER00001000571 by executing a Term Loan Agreement dated 28th April 2021.
7. In terms of the said sanction and the said two loan agreements, a total sum of Rs. 23,18,00,000/- (Rupees Twenty-Three Crores Eighteen Lakhs only) was disbursed by Financial Creditor in favour of the Corporate Debtor. The loans were sanctioned against Equitable Mortgage of various immovable properties. The said two loan agreements both dated 28 April 2021 were duly executed between



Corporate Debtor and Financial creditor under several terms and conditions as recorded therein.

8. Pursuant to the execution of the said loan agreements between the Borrowers and Financial Creditor, the Co- borrowers namely Aniruddha Banerjee had also executed with the Financial Creditor, certain other documents like the Mortgage Deed, Memorandum of Entry and Deed of Declaration to create charge on the Mortgaged Properties in favour of the Financial Creditor and to create mortgage thereof.
9. The Borrowers had failed to adhere to the financial discipline of the repayment schedule in accordance with the aforesaid loan agreements. As such, the Borrowers committed breach of the terms and conditions of the said loan agreements by defaulting in payment of equated monthly instalments due and payable by the Borrowers to ABFL under the said agreements. As the instalment of interest and/or principal of the said loan accounts remained overdue for a period of more than 90 (ninety) days, the said accounts were declared as Non-Performing Assets (hereinafter referred to as "NPA") on 9th July 2022 by ABFL in accordance with the guidelines issued by RBI with respect to assets classification.
10. The Borrowers of ABFL, who were under a liability to ABFL to repay the debts incurred by them from ABFL, had defaulted in payment of the secured debt including instalments in respect thereof. On account of the default, the Borrowers were liable to pay to ABFL the entire current balance due to ABFL.
11. As per the statements of accounts maintained by ABFL in ordinary course of business, there is total balance outstanding amount of Rs. 24,97,11,863.75/- (Rupees Twenty Four Crores Ninety Seven Lakhs Eleven Thousand Eight Hundred Sixty Three and Seventy five paise only) by way of outstanding principal, arrears (including accrued late charges) and interest till 9th July 2022. In addition to the said outstanding dues, the Borrowers are also liable to pay interest and penal interest due in future till the entire outstanding dues are paid.
12. That by means of a notice dated 28 October 2022, under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement Act, 2002



("SARFAESI Act, 2002"), the Financial Creditor had called upon the Borrowers and Co-borrowers to repay the above said amount of Rs. 24,97,11,863.75/- (Rupees Twenty Four Crores Ninety Seven Lakhs Eleven Thousand Eight Hundred Sixty Three and Seventy five paise only) only within 60 (sixty) days from the date of receipt of the notice, together with any interest and penal interest, and/or other charges which may fall due thereupon. However, the Borrowers have failed to make any such payments and hence, this application has been preferred by the Financial Creditor.

**Supplementary Affidavit filed on behalf of the Financial Creditor:**

13. The outstanding debt of the respondent till 18 October 2022 was Rs. 24,97,11,863.75 (Rupees Twenty-Four Crores Ninety Seven Lakhs Eleven Thousand Eight Hundred Sixty Three and seventy five paise) only along with interest.
14. The applicant Financial Creditor had also filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court at Delhi (hereinafter referred to as "Section 9 application") and in the said application, the Hon'ble High Court at Delhi passed an order of ad interim injunction in favour of the applicant Financial Creditor on 02.02.2023.
15. Thereafter, the personal guarantor and the director of the Corporate Debtor herein vide proposal dated 30 June 2023 seeking permission from the applicant Financial Creditor to exit from the loan facilities by making payments of Rs. 18,00,00,000/- (Rupees Eighteen Crores only) on or before 30 September 2023 as full and final payment towards discharge of its outstanding liabilities.
16. Consequently, after deliberations and discussions, the parties settled on certain terms and conditions for settlement of their disputes which were sent by the applicant Financial Creditor to the respondent Corporate Debtor by way of a letter dated 26 July 2023 and was duly acknowledged and accepted by the Corporate Debtor in pursuance of which a Settlement Agreement<sup>1</sup> dated 26 July 2023 was

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<sup>1</sup>Annexure A to Supplementary Affidavit



duly executed between the parties. However, the Corporate Debtor failed to abide by the terms of the Settlement Agreement dated 26 July 2023.

17. On 22 December 2023, the Hon'ble High Court at Delhi passed an order extending the time for settlement till 30 April 2024. The said time for settlement and clearance of dues of the Corporate Debtor was further extended by the Hon'ble High Court at Delhi based on the submissions of the Corporate Debtor by way of orders<sup>2</sup> dated 1 February 2024 and 16 February 2024.
18. By way of an email dated 17 February 2024, the Corporate Debtor further sought for an extension of time to settle its dues. Upon considering the same, the applicant Financial Creditor granted an extension of time to settle the said dues by way of an email<sup>3</sup> dated 21 February 2024.
19. Pursuant to the abovementioned settlement terms, certain amounts have been paid by the Corporate Debtor from time to time. Till date, the Corporate Debtor has repaid an amount of Rs. Rs.12,50,00,000/- (Rupees Twelve Crores Fifty Lakhs Only) and hence, an amount of Rs.5,50,00,000/- (Rupees Five Crores Fifty Lakhs Only) is due and payable by the Corporate Debtor.

**Analysis and Findings:**

20. Heard the Ld. Counsel on behalf of the Financial Creditor and perused the record.
21. As directed *vide* order dated 30.03.2023, notice was sent from the Registry to the Respondents *via* speed post and email which were duly delivered. Despite service of notice, the Respondents failed to appear and hence were declared as *ex-parte* on 03.10.2023.
22. Thereafter, the Ld. Counsel on behalf of the Financial Creditor sought one week's time to file a supplementary affidavit for the purpose of placing on record the re-payment schedule as well as the acknowledgement of default on part of the Corporate Debtor. The Adjudicating Authority allowed the same *vide* order dated 04.01.2024. The said supplementary affidavit has been duly filed and taken on record.

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<sup>2</sup>Annexure B to Supplementary Affidavit

<sup>3</sup>Annexure C to Supplementary Affidavit



23. From the loan sanction agreement dated 28.04.2021 and the accompanying entries in the Banker's Books, it is clear that the loan amount was disbursed to the Corporate Debtor. Thereafter, the account of the Corporate Debtor became NPA on 09.07.2022 indicating that the Corporate Debtor had defaulted in its payments.
24. The default of the Corporate Debtor becomes further clear from the settlement agreement dated 26.07.2023. Upon perusal of the said settlement agreement, the following points become clear:
- i. The amount of Rs. 24,97,11,863.75/- was due and payable as on 18.10.2022.;
  - ii. The said sum was due on account of the loan availed by the Corporate Debtor vide sanction letter dated 28.04.2021.
  - iii. The Corporate Debtor, by way of the said settlement agreement, undertook to pay an amount of Rs. 18,00,00,000/- towards settlement and closure of their outstanding liability owed to the Financial Creditor herein;
  - iv. The said sum of Rs. 18,00,00,000/- was undertaken to be paid in full by 30.09.2023 in five (05) instalments;
  - v. In case of failure on part of the Corporate Debtor in making timely payments of any of the aforesaid instalments, the settlement would stand cancelled and the parties would be free to take appropriate legal actions including reviving of pending legal proceedings.
  - vi. Further, in case of failure on part of the Corporate Debtor in making timely payments of any of the aforesaid instalments, the Corporate Debtor would become liable for payment of the original amount of Rs. 24,97,11,863.75/-.
25. It is clear from the email dated 21.02.2024 issued by the financial Creditor that the aforesaid settlement agreement was updated and extension was given to the Corporate Debtor. The Corporate Debtor, vide email dated 22.02.2024, had confirmed to the said extension and agreed to commence payments from the next date.
26. The sanction letter dated 28.04.2021, the settlement agreement dated 26.07.2023 and the emails exchanged between the parties clearly establish that there exists a



debt due from the Corporate Debtor to the Financial Creditor and the Corporate Debtor has defaulted in repayment of the same.

27. Coming to the issue of initiation of IBC proceedings during the pendency of proceedings under the Arbitration and Conciliation Act, 1996, we find it pertinent to refer to the decision of the Ld. National Company Law Tribunal (NCLT) Principle Bench in ***Reliance Commercial Credit Limited v. Ved Cellulose Ltd.***<sup>4</sup>, wherein the Adjudicating Authority while admitting the application filed by the Financial Creditor therein, has held that ongoing arbitration procedures do not prevent the commencement of the Corporate Insolvency Resolution Process as per Section 7 of the Code. The relevant paragraph in this regard is reproduced hereinafter:

*“5. At the hearing, we asked learned counsel for the petitioner that disclosure has been made in para 2 part-V of the petition that the arbitration proceeding were pending and in face of arbitration proceeding how the Corporate Insolvency Resolution Process can be initiated. Learned counsel has stated that under Section 7 of the Code there is no bar to initiate Corporate Insolvency Resolution Process even if arbitration proceeding is pending. According to learned counsel such a bar exists in respect of claim made by Operational Creditor under Section 9 of the Code. In support of his view learned counsel has placed reliance on the observation made by the learned Appellate Tribunal in the case of Kirusa Software Private Limited v. Mobilox Innovations Private Limited, Company Appeal (AT) (Insolvency) No. 6 of 2017 decided on 24.05.2017 and has argued that Section 7 of the Code is free from any such bar of pendency dispute in a civil suit or arbitration proceeding which operate in case of 'Operational Creditor'.”*

28. Keeping with the view taken by the Principal bench, we find that the ongoing arbitration proceedings in the matter will not be a hindrance to the commencement of CIRP of the Corporate Debtor.

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<sup>4</sup> CP (IB) 156/PB/2017



29. Regarding the point of limitation, it is noted that the loan was sanctioned on 28.04.2021 and the account of the Corporate Debtor became NPA on 09.07.2022. As such, the instant petition filed on 22.02.2023 is well within the limitation period.
30. Lastly, in view of the payments made by the Corporate Debtor in terms of the settlement agreement, the Financial Creditor has mentioned that a sum of Rs.5,50,00,000/- is still due and payable by the Corporate Debtor. Further, as per the terms of the said settlement agreement, in case of failure of the same, the original amount of Rs. 24,97,11,863.75/- would become due and payable. Either way, the amount of debt due and payable as on date exceeds the minimum pecuniary threshold stipulated under section 4 of the Code.
31. In light of the record available before us, the 'debt' and 'default' stand established. As such, this Adjudicating Authority is satisfied that this petition deserves to be admitted.
32. It is, accordingly, hereby ordered as follows:-
- i. The application bearing **CP (IB) No. 39/KB/2023** filed by **Aditya Birla Finance Limited** (*Financial Creditor*), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Shomuk Consultancy Services Private Limited** [CIN: U74140WB2003PTC096328], the Corporate Debtor, is *admitted*.
  - ii. There shall be a moratorium under section 14 of the IBC.
  - iii. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
  - iv. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency &

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- v. **Mr. Jitendra Lohia**, having registration number IBBI/IPA-001/IP-P00170/2017-2018/10339 email: jitulohia@knjainco.com, Mobile: 9874044000 , is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.
- vi. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- vii. During the CIRP period, the management of the Corporate Debtor 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 Corporate Debtor 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.
- viii. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix. The Financial Creditor shall initially deposit a sum of **₹ 3,00,000/- (Rupees Three lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.



- x. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- xi. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

33. **CP (IB) No. 39/KB/2023** to come up on 15.07.2024 for filing the progress report.

34. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

*Signed this order on the 11<sup>th</sup> of June, 2024.*

*SM(LRA)*