

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

Company Petition (IB) No. 80/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) Rule, 2016.*

IN THE MATTER OF:

M/s Manavta Tradelink Private Limited ... Applicant/ Financial Creditor.

Verses

M/s Manikaran Vincom Private Limited ... Respondent/ Corporate Debtor.

Date of Hearing: October 18, 2023

Date of Pronouncement: October 20, 2023

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI ARVIND DEVANATHAN, HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant:

- 1. Ms. Urmila Chakrabarty, Adv.**
- 2. Ms. Ranjana Seal, Adv.**

For the Respondent:

- 1. Rahul Auddy, Adv.**
- 2. Aditya Goptu, Adv.**

O R D E R

PER Bidisha Banerjee, Member (Judicial):

- 1. This Court is congregated through hybrid mode.**
- 2. This instant Application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" by M/s Manavta Tradelink Private Limited, a Private Non-Government Company, Limited by shares**

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having CIN: U51909WB2012PTC188967, hereinafter referred to as the **Applicant/Financial Creditor** against **M/s Manikaran Vincom Private Limited**, a Private Non-Government Company, Limited by shares, having CIN: U51109WB2008PTC122141, hereinafter referred to as the **Respondent/Corporate Debtor**, seeking direction to initiate Corporate Insolvency Resolution Process (for brevity "CIRP") in respect of the Corporate Debtor.

3. The Corporate Debtor has the Authorized Share Capital of Rs. 45,00,000/- and the Paid-up Capital of Rs. 44,54,000/-, incorporated on 28.01.2008. Copy of Master Data of the Corporate Debtor is annexed as **Annexure "A" to this Application at Pages 12-13.**

Brief fact of the Case:

4. The **total amount claimed to be in default** is of **Rs. 2,72,04,493/-** as on 25.12.2022 along with the Interest at the rate of 12% per annum till the date of repayment and **Date of default is claimed** as on **31.03.2021.**

Ld. Counsel for the Applicant submits:

5. That, the loan was sanctioned as an unsecured loan of Rs. 1,40,00,000/- Rupees One Crore and Forty Lakh Only) by assignor i.e., SSA Hire Purchase Private Limited Loan Agreement were duly accepted and agreed to by the Corporate Debtor. The Assignor had disbursed the Sum of Rs.1,40,00,000/- (Rupees One Crore and Forty Lakhs only) on 01.04.2016 said disbursement was confirmed by the Corporate Debtor and also issued the receipt and promissory notes.
6. Ld. Counsel for the Applicant further submits that the Assignor had intimated the Corporate Debtor that the debt has been assigned in favour of M/s Manavta Tradelink Pvt. Ltd., the Applicant herein and requested the Corporate Debtor to make payment of the Debt along with the interest directly in favour of the Assignee *vide* letter dated May 02, 2022 annexed to the application as **Annexure "K" at page 52.**
7. It is submitted that pursuant to the assignment of the Debt, the Applicant herein, has sent a letter dated 31.05.2022, **annexed at page 54 as Annexure "M" to the**

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application (which was duly received by the corporate debtor on the same date) and intimated that loan should be paid along with the interest from the beginning.

8. The Corporate Debtor *vide* a letter dated 15.07.2022 has acknowledged the debt and sought for extension of time in repayment of loan. The same is annexed at Page 55 to this application as Annexure “N”. However, the Corporate Debtor did not pay the amount as agreed upon. Therefore, due to non-payment of the said dues, this application under Section 7 of the IBC has been filed.
9. The Ld. Counsel for the Financial Creditor has proposed the name of **Sri Anal Basu, (Registration no.: IBBI/IPA-001/IP-P-02436/2021-2022/13742), Address: 27, HALADHAR BARDHAN LANE, Kolkata, West Bengal, Pin Code: 700012, Email ID: basu_anal@rediffmail.com, MOB: +91 9830160535** for the appointment of **Interim Resolution Professional (IRP)**.

Ld. Counsel for the Respondent per contra submits:

10. That, the assignment is a registered and therefore, the applicant has no locus standi to file this application. Once held the assignment is invalid, the debt becomes time barred and therefore the application will not legally survive.

Analysis and Finding:

11. We find that the total amount of debt along with the interest is not disputed by the respondent. The dispute is only with the legality of the assignment in the absence of the registration of the assignment.
12. We hold that registration of assignment is not mandatory. Even otherwise the Corporate Debtor never disputed the assignment till date. The Corporate Debtor was in correspondence with the applicant seeking time to repay the loan with interest and therefore, at this stage, the Respondent cannot question the validity of assignment. We would rely upon the decision passed by the **NCLT, New Delhi Bench** in the matter of **CFM Asset Reconstruction Private Limited v. Nikhil Footwears Private Limited**, order dated **28.02.2023**, reported in **MANU/NC/1088/2023** as observed:

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“8. At this juncture it is relevant to refer the definition of Financial Creditor as provided in Clause 5(7) of the Code, 2016. The definition of Financial Creditor is reproduced herein in verbatim: -

5. Definitions: -

(7) "financial creditor" means any person to whom a financial debt is owed and include a person to whom such debt has been legally assigned or transferred to;”

“9. We are of the considered view that the assignment of debt essentially being a transaction between the Creditor and the Assignee and assignment being recognized by the Code, 2016 as a valid mode of transfer of rights across the ambit of Section 5(7) of the Code, therefore, the entity who received the said assignment of debt falls within the fold of "Financial Creditor". Further, we are persuaded by the decision of the **Hon'ble NCLAT in Lalan Kumar Singh v. Phoenix ARC (P) Ltd., [MANU/NL/0345/2018, dated 20-12-2018]** wherein the Hon'ble NCLAT while reiterating the objectives of the Code, 2016 observed that, “in the present case we find that the appellant has sought declaration that the assignment made by HSBC to "Phoenix" as illegal, which can be raised only in a civil suit. The appellant is trying to convert the proceedings under the "I&B Code" as civil proceedings akin to a trial which is not the legislative intent.”

xxx xxx xxx xxx

“11. [...] Therefore, considering the exemption provided under Section 5(1A) of SARFAESI Act, 2002 we are not inclined to accept the contention that the said assignment agreement being unregistered is not legally enforceable.”

“12. In a summary proceeding like the IBC proceedings, it is out of the ambit of this Adjudicating Authority to go into the details as regard the requirement or exemption of registration of the Assignment Agreement and other related issues concerning the legality and issue of privity of parties to the Assignment Agreement dated 18.01.2021. Therefore, in this background the assignment cannot be challenged in the petition under Section 7 of the Code, 2016 and as such this issue cannot be decided by the Adjudicating Authority.”

(Emphasis Added)

13. We also rely upon the judgment passed by the **Hon'ble Apex Court** in the case of **Innoventive Industries Ltd. v. ICICI Bank** reported in AIR 2017 SC 4084: MANU/SC/1063/2017 that:

“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

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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.

(Emphasis Added)

14. It is explicit and evidently discernible that there is a default of financial debt, the debt is in excess of threshold limit, debt is not time barred in view of the acknowledgment of debt *vide* a letter dated 15.07.2022 and application under Section 7 of IBC is complete in all respects.
15. In the light of the facts stated in the petition and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 7 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:
 - i. The Application filed by the **M/s Manavta Tradelink Private Limited (Financial Creditor)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/s Manikaran Vincom Private Limited (Corporate Debtor)**.
 - ii. Moratorium Order is passed for a public announcement as stated in Section 13 of the Insolvency & Bankruptcy Code, 2016.
 - iii. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional (IRP) shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in Clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016, shall be made immediately.
 - iv. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following:

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- 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 asset 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 (54 of 2002);*
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*
- v. The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- vi. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii. The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- viii. Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an Order for Liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix. Necessary public announcement as per Section 15 of the Insolvency & Bankruptcy Code, 2016 may be made by the Resolution Professional upon receipt of the copy of this Order.
- x. As per proposal given by the Financial Creditors, **Sri Anal Basu, (Registration no.: IBBI/IPA-001/IP-P-02436/2021-2022/13742), Address: 27, HALADHAR BARDHAN LANE, Kolkata, West**

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Bengal, Pin Code: 700012, Email ID: basu_anal@rediffmail.com, MOB: +91 9830160535, for appointing the “IRP”, is appointed as the **Interim Resolution Professional** of the Corporate Debtor to carry out the functions as per the I&B 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. 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 I&B Code.

- xi.** 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 Seven Days from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- xii.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station to render all assistance as may be required by the Interim Resolution Professional in this regard.
- xiii.** The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xiv.** In terms of section 7(5)(a) of the Code, the **Court Officer** of this Court is hereby directed to communicate this Order to the Financial

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Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

- xv.** Additionally, the Financial Creditor shall serve a copy of this Order upon the IRP; upon the Insolvency and Bankruptcy Board of India and upon 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.
- xvi.** The Financial Creditors shall be liable to pay to IRP a sum of Rs. **3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.
- xvii.** The Resolution Professional shall conduct CIRP in time time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- 16.** Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.
- 17.** Post the matter on **30/11/2023** for filing the Periodical Progress Report.

Arvind Devanathan
Member (Technical)

Bidisha Banerjee
Member (Technical)

This Order is signed in 20th Day of October, 2023.

Bose, R. K. [LRA]