



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

COMPANY PETITION NO. (IB)-1122(ND)/2020

(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 Private Limited
Through its Liquidator
Mr. Mohan Lal Jain

...Applicant/Financial Creditor

Versus

M/s. J.R. Modi Associates Private Limited

...Respondent/ Corporate Debtor

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 10.07.2025

PRESENT:

For the Applicant : Mr. Anirban Bhattacharya, Mr. Rajeev Chowdhary, Advs.

For the Respondent : Ms. Nishtha, Mr. Tushar, Advs.



ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Company Application is filed by M/s. Kaliber Associates Private Limited ('Applicant') through its liquidator Mr. Mohan Lal Jain 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 (for brevity 'the Rules') with the following prayer with a prayer to trigger Corporate Insolvency Resolution Process in respect of Respondent Company M/s. J.R. Modi Associates Limited ('Corporate Debtor') for default in repayment of financial debt of Rs.9,05,00,000/- (Rupees Nine Crores and Five Lakhs Only).
2. The Applicant M/s. Kaliber Associates Private Limited is presently under going through liquidation process vide NCLT, New Delhi order dated 02.01.2020 in C.A. 1524/ND/2019 in CP(IB)No. 228/2018 wherein Mr. Mohan Lal Jain was appointed as Liquidator. The NCLT vide order dated 01.12.2020 in I.A./4559/2020 allowed the applicant to institute any suit, prosecution or other legal proceedings, civil or criminal, on behalf of the corporate debtor against defaulting borrowers.
3. The Corporate Debtor i.e., M/s. J.R. Modi Associates Limited having CIN: U45209DL1997PTC085650 is incorporated on 06.03.1997 under the provisions of the Companies Act, 1956 having its registered office situated at 26, Ground Floor, Siri Fort



Road, New Delhi – 110049. Since the registered office of the Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

4. Briefly stated facts of the case as mentioned in the Company Application, which are relevant to the issue in question, are as follows:-

- a) The Applicant/Financial Creditor has disbursed various loans and advances to the Corporate Debtor aggregating to a sum of ₹29,05,00,000/- (Rupees Twenty-Nine Crores and Five Lakhs Only). While the Corporate Debtor has made certain repayments towards the said facilities, a sum of ₹9,05,00,000/- (Rupees Nine Crores and Five Lakhs Only) remains outstanding and unpaid to the Applicant/Financial Creditor as on date.
- b) It has been submitted by the Applicant that the loan extended by the Applicant/Financial Creditor to the Corporate Debtor was a short-term facility, repayable on demand. Accordingly, the Interim Resolution Professional of M/s Kaliber Associates Pvt. Ltd., Mr. Vinay Talwar, issued a demand notice dated 31.01.2019 to the Directors of the Corporate Debtor. The said notice, based on the Audited Financial Statements of the Applicant as on



31.03.2017, recorded an outstanding sum of ₹8,55,00,000/- (Rupees Eight Crores and Fifty-Five Lakhs Only) payable by the Corporate Debtor and called upon them to confirm and discharge the said liability along with applicable interest. However, no response was received from the Corporate Debtor to the said demand.

- c) That the Resolution Professional, Ms. Ritu Rastogi, vide letter dated 10.05.2019, informed the Directors of the Corporate Debtor that, as per the Audited Financial Statements of the Applicant/Financial Creditor, M/s Kaliber Associates Pvt. Ltd., for the year ending 31.03.2018, an amount of ₹9,05,00,000/- (Rupees Nine Crores and Five Lakhs Only) was due and payable by the Corporate Debtor. The letter called upon the Corporate Debtor to discharge the said liability. However, no response was received from the Corporate Debtor.
- d) Thereafter, vide letter dated 18.07.2019, the then Resolution Professional of M/s Kaliber Associates Pvt. Ltd., Mr. Mohan Lal Jain (who succeeded Ms. Ritu Rastogi), once again called upon the Corporate Debtor, M/s J.R. Modi Associates Ltd., to pay the outstanding amount of ₹9,05,00,000/- (Rupees Nine Crores and Five Lakhs Only) along with interest within seven days. Upon failure of the Corporate Debtor to respond, the Liquidator of the Applicant/Financial Creditor issued a further demand



through legal notice dated 20.07.2020, reiterating the demand for payment of ₹9,05,00,000/- along with interest, to be paid within seven days. However, no response was received from the Corporate Debtor.

e) The applicant had placed reliance on the following documents to prove the existence of Financial Debt and Default thereto -

- i. Copy of the Bank Statement of M/s. Kaliber Associates Private Limited from 01.04.2008 to 01.06.2019.
- ii. Copy of the Audited Financial Statements of Corporate Debtor as on 31.03.2017, 31.03.2018 and 31.03.2019.
- iii. Copy of the Record of Default as registered with NeSL.
- iv. Copy of the legal notice dated 18.07.2019 and 20.07.2020 issued by the Applicant to the Corporate Debtor demanding the repayment of the outstanding amount.

5. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- a) The Respondent submitted that the Financial Creditor "KAPL" is presently undergoing the Liquidation process vide order dated 02.01.2020 passed in C.A. No. 1534/C-II/ND/2019 in C.P. (1B) No. 228/2018 by the Hon'ble Tribunal whereby this Hon'ble Tribunal admitted an Application filed by the Resolution Professional of Kaliber



Associates Private Limited under Section 33(1) and Section 33(2) of the IBC for liquidation of Kaliber Associates Private Limited.

- b) That Respondent submitted that it has never availed any loan or financial facility from the purported Financial Creditor, as alleged. That the claims made by the Kaliber Associates Private Limited, Financial Creditor are totally baseless, Un-lawful, unwarranted & without any Merits as will be reflected with financial transaction between Kaliber Associates Private Limited and J R Modi Associates Limited.
- c) The Respondent submitted that J. R. Modi Associates Limited never took any loan or Financial Credit from Kaliber Associates Private Limited, Financial Creditor as claimed by KAPL and further no Agreement or any documents are being signed by J. R. Modi Associates Limited on account of loan as claimed by Financial Creditor Kaliber Associates Private Limited.
- d) The respondent submitted that as per Audited Accounts submitted that there is an advance against property which has been received by J R Modi Associates Limited at arm length price for the transfer of the property. As the transactions are still pending so this continue to be advances against property in Books of Accounts of J. R. Modi Associates Limited.



- e) The Respondent submitted that on 01.09.2018, R. K. Chhabra & Co., Chartered Accountants submitted its Independent Auditors Report to the members of J R Modi Associates Limited wherein it audited the Financial Statements of J R Modi Associates Limited, comprising the Balance Sheet as on 31.03.2018 and the Statement of Profit and Loss for the year ended. The Balance Sheet on 31.03.2018 reflected a sum Rs. 9,05,00,000/- (Rupees Nine Crores and Five Lakhs Only) as 'Advance Against Property from Kaliber Associates Private Limited.
- f) Further, it submitted that Shashi Verma and Co., Chartered Accountants submitted it in independent Auditor's Report wherein it audited the Financial Statements of Kaliber Associates Pvt. Ltd. comprising the Balance Sheet as on 31.03.2018, Statement of Profit and Loss and Cash Flow Statement for the year ended. An amount of Rs. 9,05,00,000/-(Rupees Nine Crores and Five Lakhs Only) is reflected in the Balance Sheet of Kaliber Associates Private Limited as on 31.03.2018 as 'Short Term Loans and Advances' to J R Modi Associates Ltd.

ANALYSIS AND FINDINGS

6. We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the Application, Reply filed by the Corporate Debtor.



7. On perusal of the case-file, we record that at first this Adjudicating Authority, vide order dated 31.03.2022, had admitted the CIRP against the Corporate Debtor in the present matter, i.e., I.B. No. 1122/ND/2020. Prior thereto, the Corporate Debtor was proceeded ex-parte vide order dated 23.09.2021. The Corporate Debtor subsequently preferred Appeals bearing CA (AT) (Ins) No. 443 of 2022 and CA (AT) (Ins) No. 523 of 2022 before the Hon'ble NCLAT, inter alia, on the ground that its Reply, filed on 12.08.2021 along with the requisite cost, was inadvertently not placed on record. Accordingly, the Corporate Debtor sought an opportunity to be heard on merits. The Hon'ble NCLAT, vide common order dated 27.05.2022 in the aforementioned appeals, set aside the CIRP admission order dated 31.03.2022 and remanded the matter to this Adjudicating Authority for a fresh consideration of CP (IB) No. 1122/ND/2020 after taking into account the Corporate Debtor's Reply.
8. In compliance with the directions issued by the Hon'ble NCLAT vide order dated 27.05.2022, this Adjudicating Authority, vide order dated 05.07.2022, listed the matter for arguments on 23.08.2022. However, on the said date, none appeared on behalf of the Corporate Debtor, and further, the Reply of the Corporate Debtor was not uploaded on the e-portal of this Adjudicating Authority. In view of the continued non-appearance and non-compliance, this Adjudicating Authority had no alternative but to proceed ex parte against the Corporate Debtor vide order dated



20.09.2022. Consequently, the Corporate Insolvency Resolution Process (CIRP) was re-initiated against the Corporate Debtor vide order dated 21.04.2023.

9. Aggrieved by the order dated 21.04.2023 passed by this Adjudicating Authority, the Respondent preferred an appeal before the Hon'ble NCLAT. The Hon'ble NCLAT observed that the Adjudicating Authority ought to have considered the Corporate Debtor's reply, and in the event, it was not available on the e-portal, an opportunity should have been granted to place it either on the portal or in physical form. It was held that proceeding ex parte and admitting the Section 7 application without considering the reply amounted to an error. Accordingly, the Hon'ble NCLAT set aside the impugned order and revived the Section 7 application. Further, the Appellant (respondent herein) undertook to upload the reply on the e-portal within two weeks, after curing any defects. The Adjudicating Authority was directed to fix a date after two weeks and pass a fresh order in accordance with law after hearing both parties.
10. This Adjudicating Authority vide order dated 08.05.2024, had directed the respondent to approach the Registry and upload the reply filed on 12.08.2021 vide filing No. 0710102117242020 within a week's time and the same was filed on 05.09.2024 and brought on portal of this Adjudicating Authority on 13.09.2024. It is also observed that the respondent has also filed one more reply on 31.10.2023 (brought on DMS on 14.11.2023) which was



not allowed by this Adjudicating Authority since the Hon'ble National Company Law Appellate Tribunal (NCLAT) vide order dated 27.05.2022 passed the following order

*".... Keeping in view that CA (AT) (Ins) No. 523 of 2022 is allowed, the impugned order dated 31.03.2022 is also set aside and **the matter is remanded back to the Adjudicating Authority, NCLT, New Delhi to decide CP(IB) No. 1122/ND/2020 afresh taking into consideration the Reply filed by the Appellant on 12.08.2021 and decide the matter as expeditiously as possible.**"*

11. However, it is observed that the Respondent has subsequently filed one more reply dated 31.10.2023, which was not taken on record, as per the NCLAT Order dated 27.05.2022. Therefore, arguments were heard based on the reply filed on 05.09.2024. Furthermore, the Respondent, in their Written Submissions, has advanced arguments beyond the scope of the pleadings contained in the reply dated 05.09.2024 (original reply 12.08.2021). The submissions which have gone beyond the original reply dated 12.08.2021, filed on 05.09.2024 have not been considered by this Adjudicating Authority while passing the present Order.
12. Upon perusal of the facts in the present case, we note that the Applicant has disbursed an aggregate sum of ₹29,05,00,000/- to the Corporate Debtor in multiple tranches. While part payments



have been made by the Corporate Debtor, a net outstanding amount of ₹9,05,00,000/- remains unpaid. The Audited Financial Statements of the Corporate Debtor for the financial year ending 31.03.2018 record the said sum of ₹9,05,00,000/- as “Advance against Property” payable to the Applicant. Furthermore, the record of default in respect of the said amount is duly registered with the Information Utility, i.e., National E-Governance Services Limited (NeSL), and is corroborated by the said Financial Statements.

13. The Applicant has submitted that the amount in question was a short-term loan extended by Kaliber to the Corporate Debtor, which was repayable on demand. In this regard, the Interim Resolution Professional (IRP) of Kaliber, vide letter dated 31.01.2019, issued the first demand notice to the Directors of the Corporate Debtor, stating that as per the audited financial statements of Kaliber as on 31.03.2017, a sum of ₹8,50,00,000/- was due and payable by the Corporate Debtor. The IRP called upon the Corporate Debtor to confirm the outstanding balance along with applicable interest and to make payment of the same. Subsequently, the IRP of *Kaliber*, vide letter dated 10.05.2019, once again called upon the Directors of the Corporate Debtor to clear the outstanding dues amounting to ₹9,05,00,000/-, inclusive of interest accrued thereon.

14. As per part IV of the of form 1 in the Application filed, the date of default is mentioned as 18.01.2019 which has been



supplemented by Copy of the Record of Default as registered with NeSL and since the application was filed on 18.12.2020, it is within the limitation period.

- 15.** As regards the time value of money, it has been held by Hon'ble Supreme Court that even if interest is not chargeable as per the agreed transaction, still the principal amount shall qualify as a Financial Debt. Section 5(8) of the Code, 2016 defines Financial Debt as under:-

(8) "financial debt" means a debt along-with interest, if any, which is disbursed against the consideration for the time value of money and includes-

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;



(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;

- 16.** As per the definition of "Financial Debt" under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, the term encompasses various forms of credit transactions as enumerated in clauses (a) to (i). Notably, Section 5(8)(f) specifically includes within its ambit any amount raised under a transaction, including any forward sale or purchase agreement, which has the commercial effect of a borrowing. It is well settled that the essential elements of a financial debt are (i) disbursal, and (ii) the time value of money. In the present case, the element of disbursal is not in dispute



and, in fact, stands acknowledged by the Corporate Debtor in its Audited Financial Statements for the year ending 31.03.2018.

17. Further, Reliance is placed on the judgment of the Hon'ble National Company Law Tribunal, Kolkata Bench, in *Alliance Broadband Services Private Limited vs. Manthan Broadband Services Private Limited* [Order dated 18.09.2019, MANU/NC/7518/2019], wherein it was categorically held that an "advance against property" constitutes a **financial debt** within the meaning of Section 5(8) of the Insolvency and Bankruptcy Code, 2016. Further reliance is placed on the judgment of the Hon'ble National Company Law Appellate Tribunal in *Black Soft Tech Pvt. Ltd. vs. Quinn Logistics India Ltd.*, Company Appeal (AT) (Insolvency) No. 43 of 2017, wherein the Hon'ble NCLAT, while interpreting the scope of "financial debt" under Section 5(8) of the Code, held as under:

"36. ... The investment was made to derive benefit from the development of the 'O-City', which constitutes consideration for the time value of money. Thus, we find that the Respondent ('Financial Creditor') falls within the definition of 'Financial Creditor' and is eligible to file an application under Section 7, there being a 'debt' and 'default' on the part of the 'Corporate Debtor'."

18. This decision reinforces the principle that investments or advances made with an element of commercial return or benefit satisfy the test of "time value of money" and qualify as financial debt under the Code.



- 19.** It is also relevant to refer to the judgment of the Hon'ble Supreme Court in M/s Orator Marketing Pvt. Ltd. v. M/s Samtex Desinz Pvt. Ltd., Civil Appeal No. 2231 of 2021, decided on 26th July, 2021, wherein the Court observed:

22. The NCLT and NCLAT have overlooked the words "if any" which could not have been intended to be otiose. "Financial debt" means outstanding principal due in respect of a loan and would also include interest thereon, if any interest were payable thereon. If there is no interest payable on the loan, only the outstanding principal would qualify as a financial debt. Both NCLAT and NCLT have failed to notice clause(f) of Section 5(8), in terms whereof "financial debt" includes any amount raised under any other transaction, having the commercial effect of borrowing.

31. At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. "Default" means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of "debt" is also expansive and the same includes inter alia financial debt. The definition of "Financial Debt" in Section 5(8) of IBC does not expressly exclude an interest free loan. "Financial Debt" would have to be construed to include interest free loans advanced to finance the business operations of a corporate body."

- 20.** It is evident that the amount disbursed by the Applicant to the Corporate Debtor as an advance against property squarely falls within the ambit of "financial debt" as defined under Section 5(8)(f) of the Insolvency and Bankruptcy Code, 2016, as the transaction bears the commercial effect of borrowing.



Accordingly, the Applicant qualifies as a "Financial Creditor" under Section 5(7) of the Code. The documents and material placed on record, as discussed hereinabove, clearly establish the existence of a financial debt, as well as the default committed by the Corporate Debtor in repayment thereof.

21. Having regard to the above discussion, and the fact that the outstanding amount exceeds the pecuniary threshold prescribed under Section 4 of the Code, this Adjudicating Authority is satisfied that the present application under Section 7 is complete in all respects and merits admission. In terms of Section 7(5)(a) of the Code, the petition bearing I.B. No. 1122/ND/2020 is accordingly **admitted**, and the **Corporate Insolvency Resolution Process (CIRP)** in respect of **M/s J.R. Modi Associates Limited** shall be initiated.
22. The applicant in Part-III of the application has proposed the name of Mr. Rajiv Bajaj as proposed Interim Resolution Professional, having Registration Number IBBI/IPA-002/IP-N00276/2017-2018/10834. Mr. Rajiv Bajaj, having registration number IBBI/IPA-002/IP-N00276/2017-2018/10834 and email – id rbajajip@gmail.com is appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution profession in Form-2 is taken on record. The IRP so appointed shall file a valid AFA and disclosure about non-initiation of any disciplinary proceedings against him, within three (3) days of pronouncement of this order.



23. 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.”



- 24.** It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or 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.
- 25.** 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.
- 26.** We direct the Applicant/Financial Creditor to deposit a sum of Rs. 2,00,000/- (Two Lakh Rupees Only) with the Interim Resolution Professional namely Mr. Rajiv to meet out the expenses to perform the 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.

- 27.** 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.
- 28.** 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 Tribunal with a prayer for passing appropriate orders.
- 29.** 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.
- 30.** In terms of section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Financial



Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.

- 31.** Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./1122/2020 stands admitted.**

Sd/-
ATUL CHATURVEDI
MEMBER (TECHNICAL)

Sd/-
MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)