

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)**

**C.P. (IB) No.95/BB/2021
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016**

IN THE MATTER OF:

**Invoice Discounters of BNH Infra
Projects (India) Private Limited**

Represented by Mr. Manish Kumar,
G 1102, Mantri Espana, Kariyamana
Agrahara, Bellandur,
Bengaluru- 560 103.

... Applicant/Financial Creditors

VERSUS

BNH Infra Projects (India) Private Limited

No. 29, K.H. Road Bangalore
Karnataka 560 027

... Respondent/Corporate Debtor

Order delivered on: 13th April, 2023

Coram:

1. Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri. Arjun K Perikal, Adv.
For the Respondent : Shri K.S Ponnappa, Adv.

ORDER

Per: Manoj Kumar Dubey (Technical)

The present Company Petition has been filed on 13.07.2021 by Invoice Discounters of BNH Infra Projects (India) Private Limited, Represented by Mr. Manish Kumar (for brevity 'Financial Creditors') under Section 7 of the IBC, 2016, r/w Rule 4 of the I&B (Application to Adjudicating Authority)

Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against BNH Infra Projects (India) Private Limited (hereinafter called as 'Corporate Debtor'), on the ground that it has committed default for total amount of Rs. 1,07,03,088 /-(Rupees One Crore Seven Lakh Three Thousand and Eighty- Eight Only) as on 11.06.2021.

1. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:

- I.** The Corporate Debtor is a private limited company incorporated under the provisions of the Companies Act, 1956, having its business in the engineering and construction services sector. It provides services such as infrastructure surveying, advanced construction, planning, structural engineering, town planning, etc.
- II.** It is submitted that the Respondent had approached KredX, platform for online bill discounting curated by Minion Ventures Private Limited, seeking to enter into an invoice discounting arrangement with KredX in respect of the invoices raised by the Respondent against Tata Projects Limited ('Customer'). Further, a Tripartite Agreement/Bank Confirmation Agreement dated 02.03.2019 was executed by and Respondent, Tata Projects Limited and KredX.
- III.** The Respondent had listed Invoice bearing No. RA-13 dated June 07, 2019 for Rs. 1,42,76,603.04/- and Invoice bearing No. Royalty - 16 dated June 10, 2019 for Rs. 48,44,925/-, both raised by the Respondent on the Customer, on KredX's platform for the purpose of discounting the Invoices. Thereafter, the 67 (sixty seven) financiers including the Petitioners evinced their interest in discounting the Invoices.
- IV.** Further, separate Agreement of Transfer of Rights (ATRs) were executed between the Financiers, the Respondent and KredX. It is submitted that KredX has executed the agreements in the capacity of an administrator/ facilitator.
- V.** In accordance with the ATRs, the Financiers including the Petitioners have disbursed Rs. 1,01,69,880/- to the Respondent towards the

Invoices. Out of the said amount, the Petitioners have disbursed Rs. 88,59,356/- during June 2019 to the Respondent towards the Invoices.

- VI.** The Financiers were accordingly required to receive Rs. 91,72,726/- on September 12, 2019 and September 18, 2019 from the Respondent/Customer as per the ATRs. It is submitted that in view of the failure of the Customer to repay the outstanding dues, KredX vide E-mail dated October 21, 2019 shared with the Customer a list of all invoices which remain unpaid and called upon the Customer to make the payment towards all the unpaid invoices.
- VII.** The KredX on multiple occasions has similarly requested the Customer to make payments towards the outstanding dues. However, the Customer neither responded to KredX nor made any payments in respect of the Invoices.
- VIII.** Further, the action of the Customer failing to pay the Invoice Receivables to the Petitioners before the stipulated Due Dates tantamount as a material breach of the ATRs. Moreover, in accordance with Clause 6 of the ATRs, the same stands terminated and the liability to pay the Restitution to the Petitioners is cast on the Respondent.
- IX.** However, despite several reminders issued by KredX, the Respondent failed to pay the Restitution to the Petitioners. The respondents had issued a Post dated cheque dated 21.10.2019 for a sum of Rs. 1 crore as a security for availing the Invoice discounting facility on KredX platform. Therefore, Kredx exercised its rights in accordance with the ATRs and presented the Cheque with its banker on October 24, 2019. However, the Cheque was returned dishonoured vide return memo dated October 24, 2019 with an "insufficient funds" endorsement.
- X.** Thereafter, KredX having no other alternative, filed C.C No. 51847/2020 under Section 200 of the Code of Crininal Procedure, 1973 read with Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881 before the jurisdictional magistrate court in Bengaluru against the Respondent and its directors. The said complaint is currently

pending at the stage of service of notice on the Respondent and its directors, as they are continuously evading service of the notice.

- XI.** Further, in the interregnum, the Respondent made a partial payment of Rs. 26,55,257.05/- on December 12, 2019 towards Invoice 1 to the Petitioners. However, the Respondent thereafter failed to pay the balance due amount towards Invoice 1 and the entire due amount towards Invoice 2.
- XII.** As on June 11, 2021, the amount payable by the Respondent to the Petitioners is Rs. 1,07,03,088/- and as of today, the amount payable is much more in view of the penal interest at rate of 1% per month being levied on the Consideration.
- 2.** The Learned Counsel for the respondent filed objection vide diary No. 2934 dated 08.07.2022 and diary no. 4538 dated 20.10.2022 interalia stating as follows:
- a. It is submitted that the Corporate Debtor entered into an agreement with Tata Projects Limited as a contractor, for the construction of the western dedicated freight corridor. The Corporate Debtor was approached by representatives of Minions Ventures Private Limited who marketed their online bill discounting platform and invited them to use their platform for bill discounting.
- b. Further, the Corporate debtor uploaded its invoices for online bill discounting on KredX. It is submitted that the Corporate Debtor at no point of time had any interaction with the actual persons who had discounted its bills since all transaction were managed on the web Portal of KredX. Further, the only point of contact for the Corporate Debtor was Mr. Manish Kumar the representative of KredX. Moreover, Mr. Manish Kumar is also the person to whom the letter of authority has been issued by all the discounters to initiate these proceedings against the Corporate Debtor.
- c. It is submitted that the Corporate Debtor had received a payment of Rs. 8,04,70,745/- on the online bill discounting platform KredX and has paid an amount of Rs. 8,15,99,330/-. While Tata Projects had made part

payments towards the invoices, Mr. Manish Kumar and others from KredX/Minion Ventures started pressurising Tata Projects for balance payments for Invoices uploaded on KredX. Therefore, to salvage the situation, the Corporate Debtor made a payment of Rs. 3,70,65,580/- to KredX/ Minion ventures, thus making the total payment of Rs. 8,15,99,330/-. Therefore, the amount claimed as due is actually fully paid; and nothing is outstanding. It is submitted that Minion Ventures Private Limited never forwarded the payments it had received to the Financial Creditors who have now initiated these proceedings at the behest of Minion Venture Private Limited.

- d. Without prejudice to the stand of the Corporate Debtor it is submitted that it has paid all the amounts due, it is necessary to mention that the alleged amounts which the applicants claim is due to them is not financial debt as claimed. The corporate debtor uploaded its invoices on the web portal KredX. These invoices were raised by the Corporate Debtor towards the works it had executed for Tata Projects Limited. The invoices that were uploaded on the web portal was towards the payments that was due to the corporate debtor i.e. towards the operational debt owned to the corporate debtor. As on the date when the invoices was uploaded on the web portal, the corporate debtor stood in the shoes of the Operational Creditor.
- e. It is submitted that this operational debt was transferred to the bill discounters/financial creditors when they paid for the invoices on the web portal. The bill discounters in turn were to be paid by Tata Projects Limited. It is clear from the arrangement between the parties is that the Corporate Debtor had transferred its operational debt owed to it to the bill discounters.
- f. Therefore in this arrangement between the parties wherein the Corporate Debtor has transferred its operational debt i.e the amount due towards its invoices to the bill discounters, the bill discounters can only be classified as Operational Creditors under the I & B Code. This is in accordance with Section 21 (5) of the insolvency & Bankruptcy Code; which reads as under;

“ 21(5) Where an operational creditor has assigned or legally transferred any operational debt to a financial creditor, the assignee or transferee shall be considered as an operational creditor to the extent of such assignment or legal transfer”

3. The Learned Counsel for the Petitioner filed the rejoinder vide diary No. 3500 dated 18.08.2022 and the same is taken on record; in which the contentions made in the Petition were reiterated.
4. On 01.02.2023, Tribunal heard both counsel and directed to file brief synopsis not more than four pages along with the copies of the judgments on which they are placing reliance. The same has been complied by the Learned Counsel for the Respondent vide diary No. 870 dated 14.02.2023 and the same is taken on record. In the written submissions, the same points as mentioned in their objections have been reiterated; while emphasizing that the impugned amount is not a financial debt; but an operational debt. The respondents have also relied upon the NCLAT decision in the case of Cooperative Rabobank U.A Singapore Branch vs. Shailendra Ajmera, 2019 SCC Online NCLAT 812 dated 29.04.2019 in support of their contention; and also explained that the decision of NCLT relied upon by the Petitioners were distinguishable on facts.
5. The primary issue for consideration is the maintainability of the application filed under section 7. The financial debt defined in the IBC contemplates disbursement against the time value of money whereas no such disbursement has been made to the Corporate Debtor by the Petitioners. It is contended by the Respondent that the case is not covered by Section 5(8)(e) but Section 5 (20) and 21(5) of the Code.
6. Further, the Hon'ble Supreme Court in the matter of Jaypee Infratech Ltd. Interim Resolution Professional vs Axis Bank Ltd., (2020) 8 SCC 401, has held that disbursement against the consideration for the time value of money is a pre-requisite for declaring transaction as financial debt.
7. It is argued that petitioner upon the execution of ATRs , discounted the invoice and deposited the amount into the escrow account maintained by the KredX, who had disbursed the said amount into the bank account of the respondent

and upon receiving such amount, the respondent transferred its right to receive the amount under the invoice in favour of the Petitioner. It is seen that at no point of time the amount in question was disbursed to the Corporate Debtor as a loan to pay of the debts of the Seller rather the petitioners took the invoices of the seller at a discounted price and had stepped into shoes of the respondent who is an operational creditor.

8. It is pertinent to mention here that in a recent decision, a similar matter has been dealt by the Hon'ble NCLAT in the case of Minions Ventures Pvt.Ltd Vs. TDT Copper Ltd, (2022)ibclaw.in 286 NCLT, order dated 28.03.2023. The Tribunal dismissed the petition filed under Section 7 of IBC, 2016 holding that *"In this Transaction, the money was never disbursed much less for the time value as a financial debt to the Corporate Debtor and by virtue of discounting the invoice of the Seller, the Financiers entered into shoes of the Seller and had become Operational Creditors in terms of Section 5(20) as well as 21(5), and Section 5(7) and 5(8) (e) of the code is not at all applicable."*
9. Thus, in view the judgment of Hon'ble NCLAT; and also the judgment in the case of Cooperative Rabobank U.A. Singapore Branch vs Shailendra Ajmera cited by the respondent, the Company Petition, **CP(IB) No. 95/BB/2021** filed under section 7 of the IBC, 2016, is hereby **dismissed**.

-Sd-

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

-Sd-

(T. KRISHNAVALLI)
MEMBER (JUDICIAL)