

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA**

CP (IB) No. 149/KB/2022

*A petition 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:

CFM Asset Reconstruction Private Limited

...Financial Creditor

Versus

**Tantia Sanjauli Parkings Private Limited
[CIN: U70109WB2010PTC155717]**

...Corporate Debtor

Date of hearing: 03.01.2023

Date of pronouncement: 23.03.2023

Appearances (through hybrid mode):

For the Financial Creditor : Mr. Vikram Wadhera, Advocate

Ms. Nupur Rathi, Advocate

Mr. M. Roy, Advocate

For the Corporate Debtor : Mr. R.N. Ghose, Advocate

Ms. Urmila Chakraborty, Advocate

Mr. Bimalendu Das, Advocate

Ms. Pritha Bose, Advocate

Ms. S. Santra, Advocate

Coram:

Rohit Kapoor : **Member (Judicial)**

Balraj Joshi : **Member (Technical)**

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by CFM Asset Reconstruction Private Limited (*“Financial Creditor”*), represented by **Shri Tapan Panda**, authorized through a Letter of grant of Authority dated 22.11.2021 alongwith a Board Resolution dated 17.07.2021¹ seeking to initiate Corporate Insolvency Resolution Process (*“CIRP”*) against Tantia Sanjauli Parkings Private Limited (*“Corporate Debtor”*).
3. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor.
4. Part –IV of the Petition contains details of financial debt for an amount of Rs.36,41,72,558/- (Rupees Thirty Six Crore Forty One Lakh Seventy Two Thousand Five Hundred and Fifty Eight only) as on 31.03.2022.
5. The Corporate Debtor was incorporated on 14 December 2010, having CIN: U70109WB2010PTC155717, under the Companies Act, 1956. Its registered office is at DD30, 7th Floor, Sector 1, Salt Lake City, Kolkata-700064. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 12 April 2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.36,41,72,558/- (Rupees Thirty-Six Crore Forty-

¹ Annexure-A, Pages 23-26 of the Petition

One Lakh Seventy-Two Thousand Five Hundred and Fifty-Eight only)
as on 31 March 2022.

Submission of Learned Counsel appearing for the Financial Creditor

7. The learned Counsel submitted that the Financial Creditor is an asset reconstruction company incorporated under the Companies Act, 2013 and also registered with the Reserve Bank of India in terms of Section 3 of the SARFAESI Act, 2002. Pursuant to an Assignment Agreement dated 02.01.2019, the Financial Creditor is an assignee of the entire debt due by the Corporate Debtor together with the rights, title, interest and the underlying securities in favour of the Dena Bank **(the erstwhile Bank)**.
8. It is submitted that the erstwhile Bank had granted a sum of Rs.25,00,00,000/- (Rupees Twenty-Five Crores Only) to the Corporate Debtor *vide* a sanction letter dated 14.09.2011² and in order to avail such facilities and to secure repayment of such facilities, the Corporate Debtor had executed various loan and security documents in favour of Dena Bank. The said credit facility was revised on various occasions, lastly *vide* a sanction letter dated 15.04.2016.³
9. The Learned Counsel submits that the account of the Corporate Debtor was classified as a Non-Performing Asset (NPA) on 31.07.2017. Thereafter the erstwhile Bank has assigned its debts to the Financial Creditor under a Deed of Assignment dated 02.01.2019.⁴
10. After such assignment, the Financial Creditor approached the Corporate Debtor with a settlement proposal and *vide* a Sanction Letter dated 22.05.2019 sanctioned a settlement whereunder as per the schedules of payments, the Corporate Debtor was required to make payment of a sum

² Annexure-G, Pages 55-66 of the Petition

³ Annexure-M, Pages 146-150 of the Petition

⁴ Annexure-Q, Pages 175-219 of the Petition

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

CFM Asset Reconstruction Pvt Ltd v. Tantia Sanjauli Parkings Pvt Ltd
CP (IB) No. 149/KB/2022

of Rs. 18,80,000/-(Rupees Eight Lakh Eighty Thousand Only) on 30.06.2019. But the Corporate Debtor only paid a sum of Rs.2,00,000/- (Rupees Two Lakh Only) on 19.06.2019 and Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand Only) on 03.07.2019.

11. The Ld. Counsel further submits that the Corporate Debtor has failed to make payments within the specified timelines as per the sanctioned settlement and made certain sporadic payments just to keep the settlement alive. The Financial Creditor has made several attempts to recover the money from the Corporate Debtor and had also filed proceedings before the Learned Debt Recovery Tribunal at Kolkata.
12. The Ld. Counsel submits that the Corporate Debtor lastly made a payment on 04.05.2021 and thereafter has failed to make any payment. The Financial Creditor *vide* a letter dated 11.03.2022⁵ revoked the settlement sanctioned. It is further submitted that the debt owed to the Financial Creditor is undisputed and has been admitted by the Corporate Debtor.
13. The Financial Creditor has placed the following documents on record which includes:
 - a. A copy of a Certificate of Modification of Charge dated 22.03.2019
[Annexure E @Pg. 53 of the Company Petition]
 - b. A copy of the order dated 14.12.2021 passed in O.A 426 of 2021
[Annexure F @Pg. 54 of the Company Petition]
 - c. Copies of sanction letters dated 14.09.2011, 15.04.2016
[Annexure G @Pgs. 55-66 of the Company Petition],
[Annexure M @Pgs. 146-150 of the Company Petition]

⁵ Annexure-Z, Pages 336-337 of the Petition

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

CFM Asset Reconstruction Pvt Ltd v. Tantia Sanjauli Parkings Pvt Ltd
CP (IB) No. 149/KB/2022

- d. Copies of Term Loan Agreement dated 31.12.2011, 16.06.2015, 10.11.2016 [**Annexure H @Pgs. 67-75 of the Company Petition**], [**Annexure L @Pgs. 133-145 of the Company Petition**], [**Annexure N @Pgs. 151-159 of the Company Petition**]
- e. Copies of Letter of Guarantee and Deed of Corporate Guarantee dated 31.03.2011, Letter of Guarantee dated 10.11.2016 [**Annexure I @Pgs. 76-89 of the Company Petition**], [**Annexure J @Pgs. 90-104 of the Company Petition**], [**Annexure P @Pgs. 161-174 of the Company Petition**]
- f. A copy of Escrow Agreement dated 30.12.2011 [**Annexure K @Pgs. 105-132 of the Company Petition**]
- g. A copy of the Demand Promissory Note dated 10.11.2016 [**Annexure O @Pgs. 160 of the Company Petition**]
- h. A copy of the Assignment Agreement dated 02.01.2019 [**Annexure Q @Pgs. 175-219 of the Company Petition**]
- i. A copy of the letter dated 22.05.2019 sanctioning settlement [**Annexure R @Pgs. 220-224 of the Company Petition**]
- j. A copy of the Substitution Agreement dated 30.12.2011 [**Annexure U @Pgs. 299-309 of the Company Petition**]
- k. A copy of Undertaking cum Declaration dated 31.12.2011, a General Undertaking dated 10.11.2016 and a Specific Undertaking dated 10.11.2016 [**Annexure V @Pgs. 310-317 of the Company Petition**], [**Annexure X @Pgs. 321-329 of the Company Petition**], [**Annexure Y @Pgs. 330-335 of the Company Petition**]

- l. A copy of the Letter of Consent dated 31.12.2011 [**Annexure W @Pgs. 318-320 of the Company Petition**]
 - m. A copy of the letter dated 11.03.2022 revoking settlement [**Annexure Z @Pgs. 336-337 of the Company Petition**]
 - n. A copy of the statement of accounts of the Corporate Debtor [**Annexure BB @Pgs. 339-350 of the Company Petition**]
14. The Financial Creditor has proposed the name of Mr. Ravi Bagri, registration number IBBI/IPA-001/IP-P00789/2017-2018/11344, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Submission of the learned Counsel appearing for the Corporate Debtor

15. The learned Senior Counsel appearing on behalf of the Corporate Debtor submitted that the Corporate Debtor is carrying on its business as a going concern and because it is not an insolvent company, it does not require any resolution process.
16. The Corporate Debtor submits that the assignment agreement dated 02.01.2019, on which the Financial Creditor relies upon, is inadmissible in evidence as it is unstamped and unregistered.
17. The Corporate Debtor further submits that as per the letter dated 22.05.2019 for sanctioning settlement, the Financial Creditor and Corporate Debtor have agreed for a Negotiated Settlement ('NS') of Rs. 18,96,58,000/- (Rupees Eighteen Crore Ninety-Six Lakh and Fifty-Eight Thousand Only) payable in 5 (five) years based on the progress made in the completion of project, cash flow and expected receivables.

18. The Corporate Debtor states that it had made further payments to the Financial Creditor even after filing of this instant petition, lastly on 28.05.2022, but the Financial Creditor has suppressed such facts in the petition as well as the Supplementary Affidavit.
19. The Corporate Debtor further submits that as per the terms and conditions of the Negotiated Settlement, in respect of any default by the Corporate Debtor, the Financial Creditor could impose penal interest @ 12% per annum on the default amount till the date of receipt of such overdue instalment and also for each default, the Financial Creditor was contractually obligated to provide a cure period of 60 days for payment of the amount in default.
20. The Financial Creditor issued a settlement revocation letter dated 11.03.2022 but has failed to show service of such notice. The Corporate Debtor submits that without first giving the Corporate Debtor an opportunity or without notifying the Corporate Debtor to cure such default, the Financial Creditor cannot issue a revocation letter.
21. The Corporate Debtor contends that after the issuance of the settlement letter dated 22.05.2019, the question of going back to the NPA date being 31.07.2017 by Dena Bank cannot arise. It is further submitted that there is no due on the part of the Corporate Debtor and that the contentions of the Financial Creditor are untrue and incorrect.

Issues

22. The contentions raised by the Corporate Debtor are:
 - a. The Assignment Agreement dated 02.01.2019 is inadmissible as it is unstamped and unregistered.
 - b. The non-issuance of cure notice in the event of default as contained in the settlement letter is bad in law and hence the petition is not maintainable.

- c. The settlement cannot be revoked as the Corporate Debtor has made several payments in due course of time and also the revocation letter was not served upon the Corporate Debtor.

Analysis and Findings

23. Heard the learned Counsel appearing for both the parties and perused the records.

24. After perusing the Assignment Agreement dated 02.01.2019, we find a Challan (MTR Form Number-6) at Page 218 of the Petition where in the Payer details column the name of the Financial Creditor is reflected. In view of the above we find the first issue raised by the Corporate Debtor is not maintainable.

25. While referring to the second issue, we rely upon the relevant terms of the Negotiated Settlement dated 22.05.2019 which was sanctioned by the Financial Creditor and received by the Corporate Debtor are as follows: -

“5. Conditions of default:

- a. *Failure to make any payment due under NS or failure to comply with any other terms and conditions of NS will constitute an event of default.*
- b. *For each default, a cure period of 60 days will be given for payment of defaulted amount.*
- c. *In case default continues beyond the 60 days period, CFM ARC shall have right to revoke the NS*
- d. *Upon revocation of NS any amount paid shall stand forfeited. Thereafter CFMARC will be entitled to recover total dues of Dena*

Bank along with interest at contractual rates, further interest and other charges from the said date till date of realization after adjusting amount forfeited.”

From the above terms it is evident that when the Corporate Debtor failed to make payment of Rs. 18.80 Lakh on 30.06.2019, it amounted to default as per clause 5(a) above and as a result the cure period commenced from 01.07.2019 up to 60 days but the Corporate Debtor failed to cure the default committed. There is no express provision in the Negotiated Settlement that the Financial Creditor should give a **notice for cure period** of 60 days. However, it is noteworthy to mention that the Corporate Debtor failed to pay the remaining amount even within such 60 days cure period.

It is significant to note that subsequent to the default committed, the Corporate Debtor has made several payments to the Financial Creditor lastly on 28.05.2022⁶, but such payments are of meagre amounts and not in accordance with the repayment schedule as mentioned in the Negotiated Settlement. In spite of getting sufficient time to repay the amount, the Corporate Debtor did not do so. Therefore, the Financial Creditor finally revoked the sanctioned settlement.

26. The sanctioned settlement issued by the Financial Creditor on 22.05.2019 was received, signed and stamped by the Corporate Debtor which is an acknowledgment under Section 18 of the Limitation Act, and the present petition was filed on 12.04.2022, therefore it is clear that the present petition is well **within the period of limitation**.

⁶ Page 104 of the Reply Affidavit

27. In **Innovative Industries Limited v. ICICI Bank & Anr**⁷, the Hon'ble Supreme Court held:

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.”

28. It is a settled law that while deciding an application under Section 7 of the Code, it needs to be considered whether there is a debt and there has been a default with regard to such debt. From the above facts and circumstances,

⁷ Civil Appeal Nos. 8337-8338 of 2017, decided on 31.08.2017

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

CFM Asset Reconstruction Pvt Ltd v. Tantia Sanjauli Parkings Pvt Ltd
CP (IB) No. 149/KB/2022

it is evident that there was a debt and the Corporate Debtor defaulted in repayment of such debt.

29. In view of the above observations, this Adjudicating Authority is satisfied that the instant petition is complete in all respects and should be **admitted**.

30. It is, accordingly, hereby ordered as follows:-

- a. The application bearing **CP (IB) No. 149/KB/2022** filed CFM Asset Reconstruction Private Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Tantia Sanjauli Parkings Private Limited**, the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under section 14 of the IBC.
- c. 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.
- d. 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.
- e. **Mr. Ravi Bagri**, registration number IBBI/IPA-001/IP-P00789/2017-2018/11344, email: ravibagri@yahoo.com 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. 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.

- f. 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. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. 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.
- i. The Financial Creditor shall deposit a sum of **Rs. 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).

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

CFM Asset Reconstruction Pvt Ltd v. Tantia Sanjauli Parkings Pvt Ltd
CP (IB) No. 149/KB/2022

- j. 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.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, 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.
31. **CP (IB) No. 149/KB/2022** to come up on **25.04.2022** for filing the periodical report.
32. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on the 23rd day of March, 2023.

(FA, LRA)