Admission of CIRP Applications on the basis of Form D (Record of Default) issued by NeSL-Information Utility

NCLT, New Delhi Bench, Court-III, in the CIRP Application filed by M/s Kaliber Associates Private Limited under Section 7 of IBC, 2016 (IB-1103/ND/2020), has admitted the application for initiation of Corporate Insolvency Resolution against the Corporate Debtor M/s Diamond IT Infracon Private Limited, vide Order dated 03-01-2023.

In the above-mentioned Order, the Hon'ble members of NCLT have placed reliance on the contents of the Records of Default issued by NeSL-IU in determining the debt availed by the Corporate Debtor, in admitting the application filed under Section 7 of IBC, 2016, read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP.

The relevant extracts of the Orders of NCLT are as under:

"Page 6 - Para 8:

*At the outset, while pursuing the records we found …………. true copy of record of default is also available on record…. **The record of default is also available on National E-Governance Services Limited, where Corporate Debtor is allotted Unique Debt Identifier No. AACCK3483G_7**. This, on the proof of ………….. record of default authenticated by NeSL…….. we are inclined towards the view that Corporate debtor was fully aware of the loan amount disbursed by the Financial creditor. ………………………………. **the Hon'ble Supreme Court in the case of Innoventive Industries Ltd vs. ICICI Bank and Anr. (2018 1 Supreme Court Cases 407.** The Hon'ble Supreme Court has laid down that the scope of enquiry by the Adjudicating authority under Section 7 of the Code is confined only to two issues i.e (1) completeness of the application with respect to the form and manner prescribed under the Code along with the requisite fee and (2) occurrence and existence of financial default on the basis of evidence produced by the financial creditor. Apart from this, no other issue or question is required to be examined for admission of an application under Section 7 of the Code. The relevant extract is as hereunder: 28. ……………..The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.*

Page 8 - Para 9:

*In the light of the decision referred to **supra**, when we consider the submissions of the Financial Creditor for the claims towards the Loan amount disbursed to the Corporate debtor, it appears to us that the failure of the Corporate debtor to make payment of the Loan amount will be considered as 'Default'. The Financial creditor has placed adequate evidence to establish that there exists a Financial Debt of an amount exceeding the threshold as provided U/s 4 of the Code, which the Corporate debtor was liable to pay but defaulted in making such payments. Accordingly, we hereby admit the instant application filed by Financial Creditor…."*