

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

**C.P. (IB)/187(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 Rules, 2016).*

***In the matter of:***

**S.R. Data Services Pvt Ltd.**

**[CIN: U72200WB1998PTC092777]**

... Financial Creditor

*-Versus-*

**LQI Infra Ltd.**

**[CIN: U64120WB2019PLC233889]**

... Corporate Debtor

**Date of Pronouncement: 23 April 2024**

**Coram:**

<b>Shri Rohit Kapoor</b>	<b>:</b>	<b>Member (Judicial)</b>
<b>Shri Balraj Joshi</b>	<b>:</b>	<b>Member (Technical)</b>

**Appearances (via video conferencing/physically)**

Mr. Kanishk Kejriwal, Adv.	<b>:</b>	For Financial Creditor
Mr. Sayantak Das, Adv.		

Mr. Sarvapriya Mukherjee, Adv.	<b>:</b>	For Corporate Debtor
Mr. Arnab Sardar, Adv.		

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**ORDER**

*Per: Balraj Joshi, Member (Technical)*

1. The Court convened through hybrid mode.
2. This Petition has been filed by **S.R. Data Services Private Limited** (“**Financial Creditor**”) represented by Mr. Dipendu Dutta, authorised by Board Resolution dated 26 April 2023<sup>1</sup>, under section 7 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Financial Creditor seeks initiation of Corporate Insolvency Resolution Process in respect of **LQI Infra Limited** (“**Corporate Debtor**”).
3. The Corporate Debtor was incorporated on 12 September 2019, having CIN: U64120WB2019PLC233889. It’s registered office is 46/31/1 Gariahat Road Ballygunge, New Market (AC), 5<sup>th</sup> Floor, Kolkata-700019. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 31 August 2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.21,47,08,570/- (Rupees Twenty-One Crore Forty-Seven Lakh Eight Thousand Five Hundred and Seventy only) as on 31 May 2023. The date of default has been mentioned as 31 January 2020.

*Submission of learned Counsel appearing for the Financial Creditor*

5. It is submitted that the Corporate Debtor is engaged in the business of *inter alia* implementing telecom projects in the field of OFC and OFC-related activities, supply of services in the telecom sector carrying out installation, commissioning and laying of fiber cable services.
6. A loan agreement dated 01 February 2017<sup>2</sup> was executed between the Financial Creditor and the Corporate Debtor for providing a loan upto Rs.15,00,00,000/- (Rupees Fifteen Crore only) to be repayable by or before 31 January 2020. The

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<sup>1</sup> Annexure A @ Page 28 of the C.P.

<sup>2</sup> Annexure H 2 Pp. 82-84 of the C.P

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applicable rate of interest was to be 12.5% p.a. till 31 July 2017 and 14% p.a. from 01 August 2017.

7. The learned Counsel submits that the Financial Creditor had sanctioned loan of Rs.16,70,00,000/- (Rupees Fourteen Crore Ten Lakh only) on several dates from 16 February 2017 to 27 March 2019. The Corporate Debtor repaid Rs.1,60,00,000/- (Rupees One Crore Sixty Lakh only) on 07 September 2017 and Rs.1,00,00,000/- (Rupees One Crore only) on 14 February 2018. Therefore, a sum of Rs.14,10,00,000/- (Rupees Fourteen Crore Ten Lakh only) is due as the principal amount.
8. It is further submitted that the Corporate Debtor was obliged to pay accrued interest on the outstanding loan amount by the 15<sup>th</sup> day of each month. Payments were made on regular basis till May 2019 and the Corporate Debtor defaulted in making payments from June 2019.
9. It is further submitted that despite several communications the Corporate Debtor failed to regularise the payments. Two payments were made on 26 August 2020 and 16 September 2020 for Rs.15,00,000/- and Rs.10,00,000/- respectively.
10. The Corporate Debtor has verified the account confirmation statements on 01 April 2021<sup>3</sup> and on 01 February 2022<sup>4</sup> confirming the outstanding interest as had accrued till 30 December 2020.
11. The Financial Creditor issued demand notices to the Corporate Debtor on 22 March 2021 and on 26 May 2023, despite receipt of notices, no payment was made by the Corporate Debtor.
12. The Financial Creditor has proposed the name of **Mr. Rajesh Lihala**, registration number IBBI/IPA-001/IP-P00525/2017-2018/10950, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2<sup>5</sup> as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

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<sup>3</sup> Annexure J @Pp. 87-89 of the C.P.

<sup>4</sup> Annexure J @ Pp. 90-

<sup>5</sup> Annexure D @ Pp. 60-63 of the CP

**Analysis and Findings**

13. Heard the learned Counsel appearing on behalf of the Financial Creditor and the learned Counsel appearing on behalf of the Corporate Debtor and perused the records. Despite having granted three opportunities, the Corporate Debtor failed to file its reply affidavit and the opportunity to file the same stood closed on 28 November 2023.
14. When this matter was taken up on 14 December 2023, the Learned Counsel appearing for the Corporate Debtor stated that the loan is admitted, however, he disputed the genuineness of stamp of Corporate Debtor at page 92-93 of the Company Petition which is the receipt of the demand notices Learned Counsel for the Corporate Debtor restricted his argument to this aspect only.
15. In Part IV, the Financial Creditor has given the dates in which the amounts were disbursed to the Corporate Debtor and has referred to the bank statement of the Financial Creditor reflecting the disbursement of the loan amount. On perusal of the Bank Statements<sup>6</sup> of the Financial Creditor annexed by the Financial Creditor, there are disbursements made to the Corporate Debtor but at the same time, the amounts disbursed by the Financial Creditor can be correlated to the amounts being deposited on the same day by one “Linkquest Telecom”. An identical pattern has been followed from 06 February 2017 till 27 March 2019. This prima facie leads us to believe that the transactions are nothing but a round tripping of money with an eye to push the Corporate Debtor to insolvency by setting a stage. As was expected, the Corporate Debtor has chosen neither to file its reply nor contest any of the charges of the Petitioner.
16. On perusal of the financial statements<sup>7</sup> of the Corporate Debtor that “*Linkquest Technologies Limited (formerly Linkquest Teleom Limited)*” is a shareholder of the Corporate Debtor holding 49.992% of the shareholding.

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<sup>6</sup> Annexure E @ Pages 64-77 of the C.P.

<sup>7</sup> Page 49 of the C.P.

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17. Thereafter, we looked into the master data of the Financial Creditor<sup>8</sup> as well as the Corporate Debtor, it is astonishing to note that the registered address of the Financial Creditor and the Corporate Debtor is same, i.e. “46/31/1, Gariahat Road, Ballygunge New Market (Ac) 5th Floor, Kolkata, West Bengal, India, 700029” which is also evident from the cause title given in the Company Petition.
18. While skimming through the master data of the Financial Creditor and the Directors, we discovered that two of the Board of Directors of the Financial Creditor are the partners in the Corporate Debtor i.e. when it was initially formed as Linkquest Infra LLP in 2015 and thereafter the LLP was dissolved and the Company was registered as a private limited company in 2019. It is also important to note that the Authorised Capital of the Financial Creditor is Rs.1,00,000/- and the Paid Up Capital is Rs.1,00,000/- and the same Corporate Entity is lending Crores to a related company.
19. We then looked at the master data of the Corporate Debtor<sup>9</sup> and observed that there are four charges for Rs. 43,39,36,871/-, Rs. 43,39,36,871/-, Rs. 25,00,00,000/- and Rs. 1,60,00,00,000/-, which are still open.
20. Be that it may, the Corporate Debtor has submitted that there is a debt, but the Financial Creditor has not filed any documents to establish that there is a default. The Financial Creditor has only filed bank statement for 26 August 2020 and 16 September 2020 in relation to the two payments made, but thereafter no bank statements have been filed from which it could be discerned that no other payments have been made by the Corporate Debtor. However no such statement, data or averments are submitted and consequently the Financial Creditor has failed to establish default.

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<sup>8</sup> <https://www.mca.gov.in/content/mca/global/en/mca/master-data/MDS/company-master-info.html>

<sup>9</sup> <https://www.mca.gov.in/content/mca/global/en/mca/master-data/MDS/company-master-info.html>

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21. We would like to place reliance on the judgment of the Hon'ble NCLAT passed in *Hytone Merchants Pvt. Ltd. v. Satabadi Investment Consultants Pvt. Ltd.*<sup>10</sup> wherein the Hon'ble NCLAT dealt with the following question:

*“Whether the petition complying with all requirements of Section 7(5) of the Insolvency and Bankruptcy Code, 2016, but if it appears that the Application is filed collusively, not with the intention of Resolution of Insolvency, and so with malicious intent, or malafides, then whether the Application can be rejected relying on Section 65 of the Code?”*

39. Thus, it is clear that the Adjudicating Authority should be very cautious in admitting the Application so that Corporate Debtor cannot be dragged into Corporate Insolvency Resolution Process with mala fide for any purpose other than the resolution of the Insolvency. Therefore, to protect the Corporate Debtor from the mala fide Initiation of CIRP, the law has provided a penalty under sections 65 and 75 of the Code. Before admitting the Application, every precaution is necessary to be exercised so that the insolvency process is not misused for any other purposes other than the resolution of Insolvency.

40. It is pertinent to mention that Hon'ble Supreme Court in *Arcelor Mittal India Private Limited (supra)* while interpreting the statutory provision of Section 29 A of the Insolvency and Bankruptcy Code 2016, has held that the corporate veil may be lifted when a statute itself contemplates lifting the veil, or improper conduct is intended to be prevented, or a taxing statute or beneficial statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern.

41. The doctrine of “piercing the corporate veil” stands as an exception to the principle that the Company is a legal entity separate and distinct from a shareholder with its own legal rights and obligations. It seems to disregard the separate personality of Company and attribute the acts of the Company to those who are allegedly in direct control of its operation.

42. The concept of the corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned.

43. The expression “acting jointly” in the opening sentence of Section 29-A cannot be confused with “joint venture agreements”. All that is to be seen by the expression “acting jointly” is whether certain persons have got

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<sup>10</sup> C.A. (AT)(Ins.) No. 258 of 2021; (2021)ibclaw.in 287 NCLAT

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*together and are acting “jointly” in the sense of acting together. If this is made out on the facts, no superadded element of “joint venture” as is understood in law is to be seen. The other important phrase is “in concert”. Section 3 (37) of the Code, words and expressions used but not defined in the Code but defined, inter alia, by the SEBI Act, 1992, and the Companies Act 2013, shall have the meanings respectively assigned to them under those Acts.*

*44. Thus it is clear that Hon’ble Supreme Court in Arcelor Mittal India Private Limited (supra) while interpreting the statutory provision of Section 29 A of the Insolvency and Bankruptcy Code 2016, has recognised the principle of lifting the corporate veil in matters relating to Insolvency under the Code. Section 65 of the Insolvency and Bankruptcy Code, 2016 provides for punishment or fraudulent or malicious initiation of proceedings. It does not mean that Section 65 will not be applicable to prevent such fraudulent or malicious initiation of proceedings. When a statute makes a provision for punishment for any wrong, it also contains deemed power to prevent it. Therefore it cannot be said that section 65 will be applicable only after initiation of the Corporate Insolvency Resolution Process fraudulently or with malicious intent.*

*45. Based on the above discussion, we believe that even if the petition complies with all requirements of Section 7 of the Insolvency and Bankruptcy Code, 2016, it is filed collusively, not with the intention of Resolution of Insolvency but otherwise. Therefore, it is not mandatory to admit the Application to save the Corporate Debtor from being dragged into Corporate Insolvency Resolution Process with mala fide.”*

22. In the absence of the default being proven and the observations made in relation to the Financial Creditor and Corporate Debtor and keeping in view the law laid down by the Hon’ble NCLAT in the abovementioned judgment, we are of the view that the Company Petition appears to have been filed in collusion and the Code is being used as an escape mechanism for reaping the fruits of Moratorium, which is in the teeth of Section 65 of the Code. Thus, in exercise of the powers conferred by the code on this Adjudicating Authority, we hereby impose a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) each on the Financial Creditor and Corporate Debtor for initiating the IRP maliciously and for purposes other than resolution of the insolvency.

23. In view of the above position, **CP (IB) No. 187/KB/2023** is hereby rejected.

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24. 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 23<sup>rd</sup> day of April , 2024.

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