

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH, (COURT NO.-II)  
KOLKATA

C.P.(I.B)340/KB/2024

*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

JDM Udyog Private Limited, a  
private limited Company  
incorporated within the meaning of  
Companies Act, 1956 having its  
registered office at Mansarovar, B  
Block, 2<sup>nd</sup> Floor, Flat No. 43B,  
Camac Street, Kolkata 700 016.

...Financial Creditor/Applicant

VERSUS

Digi Cablecomm Services Private  
Limited, (Corporate Identification  
No. U64204WB2003PTC096420), a  
company incorporated under the  
Companies Act, 1956, having its  
registered office at Unit No.  
41A/44, Legacy Building, 4th  
Floor, 25A, Shakespeare Sarani,  
Kolkata-700 017.

...Corporate Debtor/Respondent

Date of Pronouncement: 25.06.2026

**CORAM:**

Shri. Labh Singh, Hon'ble Member (Judicial)

Ms. Rekha Kantilal Shah, Hon'ble Member (Technical)

**Counsel appeared through physically or virtually**

Mr. S. Chakraborty, Adv. ] For Financial Creditor  
Mr. R. Agarwal, Adv. ] For the Corporate Debtor

**O R D E R**

(Heard Through Hybrid Mode)

**LABH SINGH, MEMBER (JUDICIAL)**

1. JDM Udyog Private Limited, the Financial Creditor has filed the present company petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ( for short 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process (for short 'CIRP') in respect of respondent Company Digi Cablecomm Services Private Limited.
2. The Applicant JDM Udyog Private Limited, is a private limited Company and a Non-Banking Financial Company, having

its Registered Office at Mansarovar, B Block, 2nd Floor, Flat No. 43B, Camac Street, Kolkata-700016.

3. Mr. Pramod Kumar Eshwa, authorized on behalf of the Applicant, has preferred the instant application on behalf of the Applicant for initiation of CIRP process against the respondent under the Code. A copy of the board resolution dated 15.07.2024 has been placed on record.
4. The Respondent Company Digi Cablecomm Services Private Limited(hereinafter referred as 'Corporate Debtor'), against whom initiation of CIRP has been prayed for, was incorporated on 19.06.2003. Since the registered office of the respondent corporate debtor is situated at Kolkata, West Bengal, and this Tribunal having territorial jurisdiction over the State of West Bengal is the Adjudicating Authority in relation to the prayer for initiation of CIRP in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
5. Briefly stated, the factual matrix of the applicant case is that on or about 01.04.2010, the Corporate Debtor approached the Financial Creditor requesting credit facilities not exceeding Rs. 6,00,00,000/-(Rupees Six Crore Only). On 21.02.2011, the Financial Creditor granted credit facilities of Rs. 50,00,000/- to the Corporate Debtor, which were duly repaid on 03.03.2011. Subsequently, from the financial year 2013-14 through 2016-17, the Financial Creditor extended

several loan amounts by way of several tranches. During FY 2013-14, loans aggregating to Rs. 1,41,00,000/- were disbursed till 29.03.2014. In Financial Year 2014-15, further loans aggregating to Rs. 3,22,40,000/- were disbursed, resulting in a principal outstanding of Rs. 4,24,40,000/- as of 27.10.2014. For Financial Year 2015-16, the disbursements aggregating to Rs. 33,00,000/ with a principal outstanding of Rs. 2,27,40,000/- is as on 31.03.2016. During the Financial Year 2016-17, a loan amount aggregating to Rs. 3,14,37,500/- were further disbursed till 28.03.2017.

- 5.1. On 29.03.2017, the Corporate Debtor approached the Financial Creditor to enhance the overall limit from Rs. 6,00,00,000/- to Rs. 12,00,00,000/-. The Corporate Debtor, vide letter of the same date, acknowledged a principal outstanding of Rs. 3,14,37,500/- and interest of Rs. 89,43,729/- outstanding as on 31.03.2017. Consequently, a loan renewal agreement was executed on 01.04.2017 and it was agreed that the loan was to terminate on 20.03.2024. The agreement stipulated that 30% of the outstanding principal and interest would become due and payable within 10 days of date of termination, and the remaining 70% would become due upon expiry of 30 days from the date of termination. The agreed interest rate ranged from a minimum of 9% p.a. to a maximum of 18% p.a.

5.2. The Financial Creditor disbursed loan amounts of Rs. 10,00,000/- in FY 2018-19, Rs. 10,00,000/- in FY 2019-20, Rs. 24,00,000/- in FY 2021-22, Rs. 78,91,821/- in FY 2022-23, and Rs. 3,42,94,800/- in FY 2023-24. As of 22.02.2024, after adjusting the repayments and giving credit to all monies received, the principal outstanding was Rs. 7,29,69,121/-. The interest was charged during every financial year at mutually agreed rates between 9% to 18% per annum. The total interest outstanding was Rs. 3,67,85,920/- as of 31.03.2024,. The total aggregate sum due and payable, inclusive of interest up to 31.03.2024, amounted to Rs. 10,97,55,041/-.

5.3. It has further been submitted that the Corporate Debtor, in order to confirm the loan, executed several balance confirmations on 01.04.2021, 01.04.2022, 01.04.2023, and 01.04.2024, confirming the correctness of the statement of account and the outstanding debt. The Corporate Debtor also sent letters dated 09.05.2022, 15.07.2022, and 07.04.2023 acknowledging the debt. Despite these acknowledgments, the Corporate Debtor failed to clear the outstanding dues within the stipulated time following the termination of the loan agreement on 20.03.2024. On 11.06.2024, the Financial Creditor issued a Demand Notice calling upon the Corporate Debtor to repay Rs. 7,29,69,121/- as principal and Rs.

3,67,85,920/- as interest. The Corporate Debtor defaulted in the repayment of the outstanding dues in its loan accounts.

5.4. Sub-section (3)(b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the Applicant has proposed the name of Mr. Hansraj Jaria, for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00835/2019-2020/12663 resident of 36, Abinash Sashmal Lane, Belegkata, Kolkata-700010, West Bengal with email - id: hansrajjaria@gmail.com. Mr. Hansraj Jaria has agreed to accept the appointment as the interim resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Hansraj Jaria as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7(3)(b) of the Code has been satisfied.

5.5. The Applicant has placed following documents on record to prove its claim:

- i. Master data of the corporate debtor (Annexure 1-C) at page S 45-46 of the application;

- ii. Balance sheet of the corporate debtor for the year ended 31<sup>st</sup> March, 2023 (Annexure 1-D) at pages 47-75 of the application;
- iii. Letter dated 29.03.2017 (Annexure 1-F) at page 81 of the application;
- iv. Loan renewal agreement dated 01.04.2017 executed by the corporate debtor (Annexure 1-G) at page 82-84 of the application;
- v. Computation sheet of principal outstanding calculation showing the details of disbursement for the financial year 2014-24 (Annexure 1-H) at pages 85-96 of the application;
- vi. Interest calculation sheet for the period of 31<sup>st</sup> March, 2014 to 31<sup>st</sup> March, 2024 (Annexure 1-I) at pages 97-105 of the application;
- vii. Demand Notice dated 11.06.2024 along with postal receipts (Annexure 1-J) at page 106 of the application;
- viii. Balance confirmations dated 01.04.2021, 01.04.2022, 01.04.2023, and 01.04.2024 (Annexure 1-K) at pages 107-121 of the application;
- ix. Letters dated 09.05.2022, 15.07.2022, and 07.04.2023 (Annexure 1-L) at pages 122-124 of the application;

- x. Statement of Account containing details of computation of amount (Annexure 1-M) at pages 125-216 of the application;
  - xi. NESL Report (Annexure 1-N) at pages 217-218 of the application;
  - xii. Loan Agreement dated 1<sup>st</sup> April, 2010 (Annexure A) at pages 8-10 of the Rejoinder.
- 5.6. The Applicant has also placed on record a copy of record of default in Form 'C' filed with NeSL (information utility) in respect of default on the part of the Corporate Debtor in its repayment owed to the Financial Creditor.
- 5.7. Therefore, as per Part IV of the application, it is claimed that as on 31.03.2024, a sum of Rs. 10,97,55,041/- is due and payable by the respondent company. The present application requires to be allowed and the Corporate Debtor should be admitted into CIRP process.
6. Respondent appeared in pursuance of notice issued by this Tribunal and filed its reply stating therein that the application has been filed in abuse of process of law and is not maintainable either in law or on facts. The application has been filed with mala fide intention, fraudulently and not to resolve any insolvency of the Corporate Debtor. The Financial Creditor has not approached this Tribunal with clean hands and does not deserve any reliefs or orders as prayed for in the present application.

- 6.1. It is submitted that the application has been filed by concealing and suppressing material facts. The Financial Creditor is wrongfully misusing the provisions of the Code, and no debt as claimed or otherwise is recoverable. The purported claims made in the application are ex-facie misconceived, untenable, and wholly without any basis.
- 6.2. It is submitted that there exists no sum due, payable, or outstanding, and there is no question of any default having been committed by the Corporate Debtor. Therefore, the application is liable to be dismissed with heavy costs.
- 6.3. On merit, it has been replied that the Financial Creditor has failed to annex any loan agreement save and except the renewal of the loan document dated 1<sup>st</sup> April, 2017. The alleged loan document, which forms the basis of the alleged loan, has neither been annexed nor disclosed by the applicant in the present application. It is submitted that the failure to disclose the original loan agreement raises serious doubts regarding the legitimacy of the claim and renders the application incomplete and non-maintainable. It is submitted that in the absence of an agreement in writing, it is impossible to determine the real nature of such a transaction or the terms and conditions of such arrangement.
- 6.4. It is submitted that the renewal loan agreement dated 1<sup>st</sup> April, 2017, is an unstamped and/or insufficiently stamped document. Any instrument, if not sufficiently stamped,

cannot be looked into or acted upon for any purpose whatsoever. Until the requisite stamp duty is paid, the Applicant cannot derive or claim any right on the basis of such document.

6.5. It is submitted that the sums disbursed by the Applicant to the respondent were without any fixed stipulation of interest, and time has never been the essence of such transaction; and accordingly, it does not qualify to be a 'financial debt'. It is submitted that the commercial arrangement between the parties would not constitute a financial debt, and hence the applicant cannot be termed as a Financial Creditor. It is submitted that the disbursements made by the Financial Creditor were a gratuitous act for meeting the business requirements of the Corporate Debtor.

6.6. The respondent denied that any alleged acknowledgment by the Corporate Debtor shall be construed as an acknowledgment of the debt under Section 18 of the Limitation Act, 1963. The veracity, legality, enforceability, and validity of the said renewal loan agreement is denied and disputed. It is submitted that in between 2011 to 2021, there was not a single demand for repayment of the alleged loan and therefore, time was never an essence of such alleged agreement.

6.7. It has further been replied that the Applicant has wrongfully calculated the interest and other charges,

inflating the claim and presenting an exaggerated amount. The claim is not supported by a clear contractual term, and the Financial Creditor has unilaterally altered the terms of the agreement. It is submitted that the real nature of the transaction needs to be unearthed in order to prevent any person from taking undue benefit to the detriment of the rights of legitimate creditors.

- 6.8. It is submitted that the Financial Creditor has failed to fulfil the mandatory requirements of Section 7, including the submission of a valid record of default from an Information Utility. It is submitted that the application lacks crucial supporting documents such as a legally enforceable loan agreement and formal notices of default, rendering it legally defective.
- 6.9. It is submitted that the present application has been filed with an ulterior motive to pressurize the Corporate Debtor into an unjustified settlement as a coercive recovery mechanism in bad faith. Consequently, there is no default on the part of the respondent, and the present application is incomplete and defective.
7. The applicant filed its rejoinder denying the content of reply affidavit and reaffirming the facts pleading in the company petition and the same are not reproduced here in entirety for sake of brevity.

- 7.1. The Applicant submitted that the proceedings under the Code are summary proceedings. Therefore, the Applicant is only required to present documents that clearly prove the existence of the financial debt to the Tribunal. It is submitted that the Financial Creditor has annexed the loan renewal agreement dated 1<sup>st</sup> April 2017, which sufficiently proves that the Financial Creditor has extended financial debt to the Corporate Debtor.
- 7.2. It is submitted that a perusal of the contents of the said renewal agreement dated 1<sup>st</sup> April, 2017 explicitly states the parties had executed an agreement on 1<sup>st</sup> April 2010 for a maximum amount of Rs. 6,00,00,000/-; thus, the jural relationship between the parties has been rightly acknowledged by the Corporate Debtor itself in the renewal agreement. It is submitted that for the records of this Tribunal and for the sake of brevity, the Financial Creditor has also annexed the copy of the Loan Agreement dated 1<sup>st</sup> April 2010.
- 7.3. Regarding the defence that the loan agreement is unstamped or inadequately stamped, it is submitted that it is res integra that the primary objective of the Code is to facilitate the revival of the Corporate Debtor rather than being a mere debt recovery legislation. As such, the question of inadequate stamping cannot come to the aid of the Corporate Debtor as long as the debt and the default are

established before the Tribunal. In the present case, the Corporate Debtor also acknowledged the debt in its letter dated 29.03.2017, rendering the defence of inadequate stamping superfluous, unlawful, and illegal in the eyes of law.

7.4. It is further submitted that from a conjoint perusal of the loan agreement dated 1<sup>st</sup> April, 2010, the renewal agreement dated 01.04.2017, and the statement of accounts, it is evident that the loan has been disbursed in favour of the Corporate Debtor and it was mutually agreed that interest shall be charged between 9% to 18%. The Corporate Debtor, through various letters dated 29.03.2017, 09.05.2022, 15.07.2022, and 07.04.2023, has unequivocally acknowledged the principal as well as the interest outstanding.

7.5. It is submitted that the assertion that there is no time value of money since no fixed interest has been charged is completely an afterthought and is perverse and arbitrary. It remains an undisputed fact that the Corporate Debtor availed the debt facilities and has defaulted in repayment as stipulated in the agreement.

8. Based on pleading of the parties and the rival contentions raised by the Ld. Counsels for both the parties, the following points have arisen for determination:

I. Whether the disbursements made by the Financial Creditor constitute a financial debt;

- II. Whether there has been an occurrence or existence of default;
- III. Whether the present application is complete and legally maintainable;
- IV. Whether the claim is within the period of limitation.
9. We have gone through the case file carefully and perused the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present application on its merits, specifically within the ambit of points involved in the instant application.
10. Insofar as record of default registered with information utility is concerned, the applicant has not placed on record Form 'D' and accordingly, much reliance is not placed on form C submitted with the present application.
11. It is settled proposition of law that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs. 1,00,00,000/-. In view of Section 4 of the Code, the moment default is of Rupees One Crore or more, the application to trigger CIRP under the Code is maintainable. The present petition satisfies this threshold limit, given that the total aggregate sum claimed as due and payable is

Rs. 10,97,55,041/-. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

12. The respondent has submitted that no original loan agreement has been placed on record for which renewal was granted from time to time. The applicant along with its rejoinder has filed a copy of Loan Agreement dated 1<sup>st</sup> April, 2010 (Annexure A) at pages 8-10 wherein it is clearly mentioned that the loan agreement was entered between the applicant and the Corporate Debtor. It has categorically been mentioned therein that Financial Creditor shall provide loan to the Corporate Debtor as and when required with maximum amount of rupees six crores with interest @ 18% per annum. Therefore, the plea of the Corporate Debtor that there is no such original loan agreement between the parties is devoid of merits.
13. In the facts, it is seen that the Applicant clearly comes within the definition of Financial Creditor. The material placed on record further confirms that Applicant financial creditor had extended financial debt and disbursed several loan amounts to the corporate debtor from time to time, which were duly acknowledged by the corporate debtor and confirmed by balance conformation from 01.04.2023 to 31.03.2024 as is evident from Balance Confirmation Annexure 1-K(Collectively).

14. In the present case, as the debt was periodically acknowledged in writing before the expiry of the limitation period. The provision of Section 18 of the Limitation Act 1963 provides that where a liability is acknowledged in writing before the expiration of limitation, it will extend time from the said date of acknowledgment. It has been proved on record that the Corporate Debtor, vide acknowledgment letter dated 29.03.2017 (Annexure-‘1-F’), has acknowledged a principal outstanding of Rs. 3,14,37,500/- and interest of Rs. 89,43,729/- outstanding as on 31.03.2017 and loan has to be repaid on or before 20.03.2024.

15. Insofar as effect of acknowledgment in writing is concerned, it is relevant to refer the provision of Section 18 of the Limitation Act 1963 and same read as under:

*“18. Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

*(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.”*

16. Therefore, the plea of the Corporate Debtor that the claim is barred by limitation is devoid of merits. Accordingly, this Tribunal finds that the present application is well within the prescribed period of limitation.
17. On a bare perusal of Form - I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.
18. We are satisfied that the present application is complete in all respects and the Applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.
19. As a sequel to the above discussion and in terms of Section 7(5)(a) of the Code, the present company petition being **C.P(IB) No. 340/KB/2024** is allowed and the Corporate Debtor is admitted in the CIRP process with the following order:
  - i. Mr. Hansraj Jaria, having registration number IBBI/IPA-002/IP-N00835/2019-2020/12663, having email - id:

hansrajjaria@gmail.com, is appointed as an Interim Resolution Professional for the corporate debtor.

- ii. In pursuance of Section 13(2) of the Code, We direct that public announcement shall be made by the Interim Resolution Professional immediately (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 IBC, 2016.
- iii. We direct the Applicant Financial Creditor to deposit a sum of Rs. 3,00,000/- (Rupees Three Lakh Only) with the Interim Resolution Professional namely Mr. Hansraj Jaria to meet out the expenses to perform the functions/duties assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) 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.
- iv. The moratorium is declared 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.”*

- v. 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.

- vi. The Interim Resolution Professional shall perform all his functions 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. 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 exmanagement 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 an appropriate order. 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 its 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.
20. The Registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, West

Bengal, Kolkata at the earliest possible but not later than three days from today.

21. The Registry is further directed to send a copy of this order to the IBBI for its record.
22. Accordingly, CP (IB)/340/KB/2024 stands admitted. A certified copy of the order may be issued, if applied for, upon compliance with all requisite formalities.

**Rekha Kantilal Shah**  
Member (Technical)

**Labh Singh**  
Member (Judicial)