

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
CUTTACK**

**CP (IB) No. 135/CTB/2019**

**CORAM: 1. Shri Rajasekhar V.K. Member (Judicial)  
2. Shri Satya Ranjan Prasad Member (Technical)**

**In the matter of:**

**INSOLVENCY AND BANKRUPTCY CODE, 2016.**

**-And-**

**In the matter of:**

**An application for initiation of Corporate Insolvency Resolution Process 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**

**-And-**

**In the Matter of:**

**PEC LIMITED** having its Registered Office at; Hansalaya 15, Barakhamba Road, New Delhi-110 001.

**... .. Financial Creditor**

**-VERSUS-**

**MAA TARINI INDUSTRIES LIMITED** having its Registered Office at; N4/12, Ground Floor, Civil Township, Rourkela, Sundargarh, Odisha- 769 004.

**... .. Corporate Debtor**

**Counsel appeared for Petitioner:**

1. Mr. Saswat K. Acharya, Adv.

**Counsel appeared for Petitioner:**

1. Mr. Akhil Pal Chhabra Adv.

**Date of pronouncement of Order: 26<sup>th</sup> day of July, 2021**



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**ORDER**

**Per: Shri Satya Ranjan Prasad, Member (Technical)**

1. This application is filed by **PEC LIMITED**, the Financial Creditor (“**FC**” for brevity), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short “**the Code**”), for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor i.e., **MAA TARINI INDUSTRIES LIMITED**. FC, the applicant herein, is a Company registered and incorporated under the Companies Act 1956, and is a Government of India Enterprise, operating under the aegis of the Department of Commerce, Ministry of Commerce and Industry, having its registered office at New Delhi. The Corporate Debtor (**CD**) herein, is a Company incorporated under the provisions of the Companies Act, 1956 in the year 2000, having its registered office at: Post Balanda, Kalunga, Rourkela – 770031, District Sundargarh in the state of Odisha.
2. It is stated in the petition that the Financial Creditor had extended the financing facility to the Corporate Debtor vide Associateship Agreement dated 05.10.2012 which has been further extended by way of Addendums. (Details in this regard have been provided at Annexure 1, Pg. 23-28 of the Petition). Said Agreement bears the signature of both the parties i.e., the Financial Creditor as well as Corporate Debtor herein. The Petitioner states that this financing facility was also secured by the Corporate Debtor by way of issuance of post-dated Cheques in favour of the Financial Creditor.
3. The Respondent Corporate Debtor herein has, *inter alia*, disputed that Petitioner is a Financial Creditor. It is stated by the Corporate Debtor that a perusal of the agreement shows that it was envisaged that the Applicant would supply services and

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goods for which payment would be made. Thus, Applicant does not fall within the definition of Financial Creditor as provided for under the IBC. However, the Petitioner, herein states that the relevant clauses/documents to ascertain that the nature of debt provided to the Corporate Debtor was a financial debt, are as follows-

(i) The Associateship Agreement provided with the petition at Pg. 23 state as under –  
*“AND WHEREAS Associate has approached PEC and requested for extending the financing facility to the tune of Rs. 8.00 crores for purchases of iron ore and coal for consumption in their plant/domestic trading.”*

(ii) The above referred Associateship Agreement at Clauses 1, 7 and 8 at Pg. 24 state as under –

Clause 1: *“Associate will give Post Dated cheques for the amount financed by PEC along with an undertaking, which will remain with PEC as collateral security and will be returned to Associate on successful completion of the contract and settlement of account.”*

Clause 7: *“Before taking the delivery of cargo, the Associate will issue cheques in favour of PEC for the financed amount plus service charges, interest and other expenses, if incurred along with the legal undertakings. On receipt of above said payment, PEC would issue delivery order.” “*

Clause 8: *“An account of finance released on account of procurement of cargo, expenses spent by PEC on behalf of Associate, and freight, if any, will be maintained by PEC for which Associate will pay interest @13 % on the amount financed by PEC. PEC’s exposure shall not be more than Rs.8.00 crore on iron ore and coal. Associate shall clear his account within a period of six months. If the repayment is extended beyond six months additional interest rate of 1.5 % p.a. i.e., a total interest of 14.50 % p.a. would be charged from the Associate.*

(iii) Clause 22 at Pg. 26 also state as under –

*“This Associateship Agreement shall be effective on fulfilment of the following:*

*A. Signing of this Agreement*

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*B. Submission of security by way of post-dated cheques in favour of PEC for 100 % of the contract value along with undertaking as mentioned in clause 1 of this agreement. ”*

4. It has further been stated that the Corporate Debtor also executed several Deeds of Pledge in favour of the Financial Creditor pledging the Iron Ore stocks of the Corporate Debtor (Relevant details/documents have been provided at Annexures 2 to 6 of the Petition). The above details, *prima facie* acknowledge the fact that it was a Financial Debt.
5. The Corporate Debtor has relied upon another Associateship Agreement dated 05.10.2012 and has laid stress upon the fact that as per the terms of the said agreement, the present Petitioner is an Operational Creditor and not a Financial Creditor. The Associateship Agreement relied upon by the FC is different from the Associateship Agreement provided by CD, which do not bear the signatures of both the parties. Authentication /Signature of the FC is not there in the said Agreement submitted by CD and therefore it appears to be a draft only and cannot be relied upon. Whereas, the Associate Agreement with the clauses stated above, submitted by the FC, bears the signature of both the parties and therefore relied upon.
6. The Financial Creditor has produced certain correspondences and documents by way of which the Corporate Debtor has also acknowledged and admitted that there is a default regarding the debt outstanding in favour of the Financial Creditor. Those are annexed in the instant petition as follows-
  - (i) Annx. 7, Pg. 45- Letter from Corporate Debtor dated 18.11.2015
  - (ii) Annx. 8, Pg. 46, Email from CD dated 03.12.2012
  - (iii) Annx. 10, Pg. 52- Letter from CD dated 17.06.2013

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(iv) Annx. 12, Pg. 55, Paras 2, 6 – Minutes of Meeting dated 23.09.2016

7. The above details, *prima facie*, suggest that there exist a Financial Debt which has been defaulted by the CD.
8. The Corporate Debtor relied upon several documents and details of prior judicial proceedings to show that there were pre-existing disputes between the parties, and therefore, the petition filed by the Financial Creditor is to be dismissed. However, it is noted that for the petition under Section 7 of the Code, the question of pre-existing dispute is not be considered as per the settled position of law. Intimation of a pre-existing dispute under Section 8 of the Code is applicable only to petition by an Operational Creditor under Section 9 of the Code, and it is not applicable to petition under Section 7 of the Code. The documents relied upon by the Corporate Debtor, do not demonstrate that the present Petitioner is not a Financial Creditor. Rather the documents/details relied upon by the Petitioner and the details as stated above, indicate that PEC Limited is Financial Creditor of the Corporate Debtor.
9. The respondent Corporate Debtor has further stated that the Financial Creditor has not disclosed particulars about prior judicial proceedings initiated between the parties. However, it is observed that in order to substantiate a petition under Section 7 of the Code, it is not necessary to verify about any pre-existing dispute. It is settled law that in application under Section 7 of IBC, the Adjudicating Authority has to primarily consider only the two facts – (i) Whether there is financial debt due and payable by the Corporate Debtor and (ii) Whether Corporate Debtor committed default in paying the debt.

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10. In Para B of the Reply, the Corporate Debtor has raised an objection that the petition has not been filed by the person duly authorized to do so and therefore not maintainable. However, the petitioner has relied on Company Circular No. 2016-17/002 dated 08.08.2016 as per which CMD/ Director or Company Secretary have the authority to issue a Power of Attorney and submitted that the Company Secretary Mr. Pradeep Kumar has issued the Power of Attorney dated 12.04,2017 on the basis of which the present petition has been filed.
11. The Corporate Debtor has further pointed out that the alleged default occurred in 2013 and the present being only in 2019, is barred by limitation as per Article 137 of the Limitation Act, 1963. However, the Petitioner has clarified that the defaulting of the repayment by the Corporate Debtor started since 12.04.2013, and after that there have been several correspondences and the default has continued till date and as on the date of 31.07.2019 before filing of the instant petition and that the outstanding amount has summed up to Rs. 44,12,47,548/-. It has been noted that the Corporate Debtor has acknowledged debt vide their letter dated 18.11.2015 that has been annexed at Annexure 7 (Page 45) of the petition. This acknowledgement of liability on 18.11.2015 is well within the period of limitation and therefore saves the limitation beyond 11.04.2016 in terms of section 18 of the Limitation Act, 1963. It is further noted that Minutes of the Meeting dated 23.09.2016, which indicate that the Corporate Debtor has signed the minutes, there is mention of PEC's outstanding dues. FC has further stated that by admissions made by CD in 2017 vide their letters dated 18.03.2017, 25.05.2016, 24.03.2017, 05.04.2017, 07.04.2017, 12.04.2017 which indicate that the debt against the Corporate Debtor is well within the period of limitation. As corroborated in the chart at Annx. 13, Pg. 57-60 of the Petition there are references of Cheque Bouncing



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charges as on February 01, 2017 and February 24, 2017. All the above details indicate that although the default occurred on 12.04.2013 the instant petition filed on 29.10.2019 is not barred by limitation in view of section 18 of the Limitation Act, 1963.

12. Corporate Debtor has also disputed the total outstanding amount as shown by the Financial Creditor in the Petition. However, it may be mentioned that disagreement by the Corporate Debtor about the quantum of debt shall not be of a vital consideration in the present case, so long the amount outstanding is more than Rs. 1 lakh (as the application has been filed prior to 24.03.2020 i.e., before the jurisdiction of NCLT was increased from Rs. 1.00 lakh to Rs. 1.00 crore). The above referred documents/details more particularly referred to at Para 6 above indicate the Corporate Debtor admitting the debt, which amounts to more than Rs.1.00 lakh.

13. Thus, it is apparent from the above that the Financial Creditor had extended financing facility to the Corporate Debtor, thereby the amount qualifies to be a "Financial Debt" as per Sec. 2(8) of the Code. Further, there has been a few instances of admitted default on the part of the Corporate Debtor as per Sec. 3(12) of the Code. It is inferred from the above and also the documents/details available on record that there is a financial debt of more than Rs.1.00 lakh payable by the Corporate Debtor and that the Corporate Debtor has committed default in paying the debt.

14. The Financial Creditor has proposed the name of **Mr. Shri Sanjit Kumar Nayak**, having registration number IBBI/IPA-003/IP-N00079/2017-18/10702, e-mail: [sknayak31@gmail.com](mailto:sknayak31@gmail.com) 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 the certificate of registration.

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15. The Petition made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than the minimum amount as stipulated under section 4(1) of the Code at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. Given this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

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

**ORDER**

- a. The Petition bearing CP (IB) No. 135/CTB/2019 filed by PEC LIMITED, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against MAA TARINI INDUSTRIES [CIN: U27105OR2000PLC006295], the Corporate Debtor, is admitted.
- b. There shall be a moratorium under section 14 of the Code.
- 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 Code, as the case may be.

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- 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. Sanjit Kumar Nayak, (Reg. No. IBBI IBBI/IPA-003/IP-N00079/2017-18/10702,), having address at 30E, Haramohan Ghosh Lane "Suryadeep", Flat-2B Beliaghata, Kolkata-700085, e-mail id: [sknayak31@gmail.com](mailto:sknayak31@gmail.com), is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP 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, as the case may be, the RP 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.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

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- h. The Financial Creditor shall deposit a sum of ₹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).
- i. In terms of section 7(5)(a) of the Code, the Court Officer is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, e-mail or WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- j. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata 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.
- k. **CP (IB) No. 135/CTB/2019** to come up on 26.08.2021 for progress report.
- l. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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**Satya Ranjan Prasad**  
Member (Technical)

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**Rajasekhar V.K.**  
Member (Judicial)

*Signed on this, the 26<sup>th</sup> day of July, 2021.*

Ravijeet \_P.S.