

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH-II, CHENNAI
CP/IBC/172(CHE)/2023**

*(filed under Section 7 of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the
Insolvency & Bankruptcy Board of India (Application to Adjudicating Authority) Rules,
2016)*

*In the matter of **Infiniti Metal Products India Limited***

MSA VENTURES PRIVATE LIMITED

Represented by Ms. S. Chithra, Manager Finance & Accounts

Reg Off:

Old No. 6, New No. 11, Brahadambal Street,
Nungambakkam, Chennai – 600 034

... Petitioner/Financial Creditor

-Vs-

INFINITI METAL PRODUCTS INDIA LIMITED

Reg Off:

No.3, GNT Road, Opp. Sivanesan Company,
Gummadipoondi,
Thiruvallur – 601 201

... Respondent/Corporate Debtor

Order Pronounced on **03rd May 2024**

CORAM

SHRI SANJIV JAIN, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Appearances:

For Petitioner : Mr. T. Ravichandran, Advocate

Liquidator : Set Ex-Parte vide order dated 12.01.2024

ORDER

1. The present petition is filed by MSA Ventures Private Limited (herein after referred to as 'the Financial Creditor') through its Manager, Finance & Accounts under Section 7 of the Insolvency & Bankruptcy Code, 2016 (herein after referred to as 'the Code') against M/s. Infiniti Metal Products India Limited (herein after referred to as 'the Corporate Debtor') seeking initiation of Corporate Insolvency Resolution process against the Corporate Debtor.

2. Part – I of the Application sets out the details of the Financial Creditor. It is stated that the Financial Creditor is a Private Limited Company incorporate as per the provisions of Companies Act, 1956 on 11.03.2010 with CIN no. U67120TN2010TC085948 and is having its registered office at old no. 6, new no. 11, Brahadambal Street, Nungambakkam, Chennai – 600 034.
3. In Part – II of the Application, it is stated that the Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act 1956 on 16.10.1998, having its registered office at No. 3, GNT Road, Opp. to Sivanesan Company, Gummadipoondi, Thiruvallur – 601 201.
4. In Part – III of the Application, it is stated that the Financial Creditor has proposed the name of *MRS. MUMMANENI VAZRO LAXMI* (Reg. No: IBBI/IPA-001/IP-P00919/2017-2018/11526) as the Insolvency Resolution Professional.
5. In Part – IV of the Application, the Financial Creditor has claimed total sum of **Rs.15,30,12,000.00/-** (Rupees fifteen crore thirty lakh & twelve thousand only) as on 10.10.2023 from Corporate Debtor. It is stated that, the date of default is **02.07.2023**.
6. It is stated that the Corporate Debtor approached the Financial Creditor on 15.11.2022 seeking loan facility to the tune of Rs. 14,00,00,000/- (Rupees fourteen crore only) to clear the credit facility availed by it from UCO Bank, Banjara Hills, Hyderabad.
7. It is stated that the above referred loan facility was sanctioned and disbursed on various dates as follows,

<i>S.No.</i>	<i>Date</i>	<i>Amount (Rs.)</i>
1.	21.11.2022	50,00,00,00/-
2.	28.11.2022	30,00,00,00/-
3.	29.11.2022	35,00,00,00/-
4.	30.11.2022	25,00,00,00/-
Total		14,00,00,000/-

8. It is stated that the Corporate Debtor executed a deed of hypothecation on 02.01.2023 hypothecating the following assets,
- a) Movable Plant and Machinery, equipment, appliances, furniture, vehicles, machinery spares and stores, tools and accessories, whether or not installed.
 - b) Inventory including raw materials, work in progress, furnished goods, and stock in trade.
 - c) Book debts and
 - d) Related movables in the course of transit or delivery whether now belonging or which may hereafter belong to the Company or which may be held by any person at any place within or outside India to the order or disposition of the Company and all documents of titles including bills of lading, Shipping documents, Policies of insurance and other instruments and documents relating to such movables together with benefits of all rights thereto.
9. It is stated that in terms of repayment schedule-III of the Deed of Hypothecation, the Corporate Debtor has to repay the loan in 42 months i.e., 7 half yearly instalments at Rs. 2 crore each with interest at the rate of 12% per annum. It is further stated that the Corporate Debtor did not adhere to the repayment terms as set out in the deed

of hypothecation and thereof committed default on 02.07.2023. It is also stated that the Corporate Debtor did not even pay its 1st instalment.

10. It is stated that the Petitioner issued demand notice dated 01.08.2023 calling upon the Respondent to make the payment of 1st instalment within 7 days of the said notice, however, no response was received.

11. It is stated that, in terms of Clause 7(c) of the Deed of Hypothecation, non-adherence to the repayment schedule attracts default and in terms of Clause 8(a), the Petitioner is entitled to recall the entire loan. Accordingly, vide letter dated 26.09.2023, the Petitioner herein recalled the entire payment to the tune of Rs. 14,00,00,000/- (Rupees fourteen crore) together with interest @ 12% per annum. No reply to the said letter was also received. In terms of the above facts and circumstances, the instant application has been moved by the Petitioner seeking initiation of insolvency against the Corporate Debtor.

12. Notice of this Petition was given to the Respondent, however, none appeared. Thereafter, two more notices were sent to the respondent however, none appeared. Accordingly, this Tribunal vide order dated 12.01.2024 set the respondent Ex-parte and closed the right of the Respondent to file the Vakalat & Reply. In the said circumstances, we are constrained to proceed in this matter in the absence of the Corporate Debtor.

13. We have heard the submissions made by the Learned Counsel for the Financial Creditor and perused the documents including the record of default.

14. From the documents on record, it is evident that the parties had entered into a deed of hypothecation for a sum of Rs. 14,00,00,000/- (Rupees fourteen crore). The same was disbursed in different dates as mentioned in para 7 above. The said principal as per the table as extracted above produced by the Corporate Debtor shows that the amount in default is more than Rs.1.0 crore which is the minimum statutory threshold. Not moving further, based on the Form C (NeSL) and on verification of Form D (RoD) issued by the NeSL we find the status of the debt as “Deemed to be Authenticated” as on 30.09.2023, which is as per section 21 of IBBI (IU) Regulations, 2017. The RoD issued by NeSL is as below,

Filing of Default(Submission ID No.)	Submitted on	Status of Authentication(Authenticated/Disputed/Deemed to be authenticated)	Authentication completed on
(1)	14-09-2023 16:32:42	*DEEMED TO BE AUTHENTICATED Colour Code :YELLOW	30-09-2023 00:06:51

15. At this juncture it is relevant to place reliance upon the Judgement passed by the Hon'ble Supreme Court of India in the matter of *Innovative Industries Limited v. ICICI Bank* reported in ((2018) 1 SCC 407), wherein, it is held that once there is a default, the application should be admitted. The relevant portion is reproduced below:

“On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the

information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

16. In the lights of the facts stated *supra*, we are of the view that the 'financial debt' is proved by the Financial Creditor. Admittedly the Corporate Debtor has committed the 'default' in payment of instalments/repayment of loan. The instant petition is within limitation. This Tribunal therefore admits the instant application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

17. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a) The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

18. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
- (3) The provisions of sub-section (1) shall not apply to
 - a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - b) a surety in a contract of guarantee to a corporate debtor.

19. The duration of a period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

20. The Financial Creditor has proposed the name of **Mrs. Mummaneni Vazra Laxmi**, having *Reg. No. IBBI/IPA-001/IP-P00919/2017-2018/11526; Email ID: emailtolak@gmail.com* as the Interim Resolution Professional (IRP) who has also filed her consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 30.10.2024 and has no remarks against her.
21. **Mrs. Mummaneni Vazra Laxmi**, is appointed as the IRP. She is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of a claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
22. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15, 17, and 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a

consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

23. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

24. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with a copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

25. Accordingly, the present petition stands **admitted**.

-Sd-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Order pronounced under Rule 151 of NCLT Rules 2016, by Hon'ble Technical Member Ravichandran Ramasamy on behalf of the Bench comprising of Sanjiv Jain, Member (Judicial) and Ravichandran Ramasamy, Member (Technical).