NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD
SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)
PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 18.01.20201 AT 10:30 AM

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| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | CP (IB) No. 231/7/HDB/2020 |
| NAME OF THE COMPANY | Affluence Engineering & Enterprises Limited |
| NAME OF THE PETITIONER(S) | Foster Infin & Trading Pvt Ltd |
| NAME OF THE RESPONDENT(S) | Affluence Engineering & Enterprises Limited |
| UNDER SECTION | 7 of IBC |

Counsel for Petitioner(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
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| | | | |

Counsel for Respondent(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
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## ORDER

The application is admitted vide separate order.

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)

Karim

# IN THE NATIONAL COMPANY LAW TRIBUNAL
# HYDERABAD BENCH, HYDERABAD

**CP(IB)No. 231/7/HDB/2020**
**U/s.7 of the I & B Code, 2016**
**r/w Rule 4 of the I & B (AAA) Rules, 2016**

**In the matter of:**

Foster Infin and Trading Private Limited
5/A, Vengala Rao Nagar
Hyderabad – 500 038

... Financial Creditor

**Vs.**

M/s. Affluence Engineering and
Enterprises Ltd.
Plot No.48, Ground Floor
Nagarjuna Hills, Punjagutta
Hyderabad – 500 082

...Corporate Debtor

**Date of Order: 18.01.2021**

**Coram:**

Hon'ble Shri. K. Anantha Padmanabha Swamy, Member (Judicial)
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

**Parties / Counsels present:**

For the Petitioner : Mr. Damodar Mundra, Mr.Dinesh K. Gilda, Mayur Mundra, Shreya Mundra, Divya Mundra, Advocates

For the Respondent : Ms. Naveeni Jain, Advocate

**Per: Veera Brahma Rao Arekapudi, Member (Technical)**

**Heard on:** 13.10.2020, 09.11.2020, 26.11.2020, 14.12.2020, 05.01.2021

# ORDER

1. The instant petition is filed by M/s. Foster Infin and Trading Private Limited / Financial Creditor against M/s. Affluence Engineering and Enterprises Ltd./ Corporate Debtor stating that the Corporate Debtor had defaulted in repaying a sum of Rs.1,37,34,514/- (Rupees One Crore Thirty-Seven Lakhs Thirty-Four Thousand Five Hundred and Fourteen only) which includes Principal amount of Rs.61,58,975/- and interest of Rs.75,75,539/- calculated @ 36% per annum from 01.12.2016 to 30.04.2020.

   This petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition and initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Affluence Engineering and Enterprises Ltd. granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments of the petition filed by the Financial Creditor are briefly described hereunder:

   i. M/s. Foster Infin and Trading Private Limited/Financial Creditor was incorporated in the year 2000 under the Companies Act, 1956 with CIN No.U65910AP2000PTC033362. The main objective of the Company is to trade in steel and its allied products. M/s. Affluence Engineering and Enterprises Ltd. / Corporate Debtor is a Company registered under the Companies Act, 1956 with CIN No.U27109TG2000PLC033585 in the year 2000 with the main objective of trading in steel.

ii. It is averred in May, 2016, the Financial Creditor received a Purchase Order with the following terms and conditions for supply of 130 MTs of TMT bars from Corporate Debtor and supplied the same:

a) The material should be supplied within 30 days from the date of Purchase Order; and

b) Payment terms are 30 days from the date of supply, failing which interest @ 36% p.a. shall be charged.

iii. It is averred in October, 2016, the Financial Creditor received another Purchase Order from Corporate Debtor for supply of 30 MTs of TMT bars and supplied the same. The invoices were sent to the Corporate Debtor for total sale value of Rs.61,58,975/- Since the expiry of the credit period from the supply of goods, the Financial Creditor was continuously requesting the Corporate Debtor to make the payment and put severe pressure by issuing a legal notice also.

iv. It is averred on 01.11.2017, both the parties agreed and entered into a Loan Agreement on the terms and conditions to return the money in 8 quarterly instalments starting from 01.12.2017 along with interest @ 36% per annum from 01.12.2016 being the due date for payment of the invoices amount till the receipt of the payment. But the Corporate Debtor failed to make even a single instalment.

3. The averments made in the Counter filed by M/s. Affluence Engineering and Enterprises Ltd. / Corporate Debtor are described hereunder;

i. The Corporate Debtor denies all the averments made by the Financial Creditor in the application except the averments which are specifically admitted hereunder.

ii. It is averred that the Corporate Debtor company is a public listed company with CIN U27109TG2000PLC033585 having its registered office at Plot No.48, Ground Floor, Nagarjuna Hills, Punjagutta, Hyderabad, Telangana, India.

iii. It is averred that the Corporate Debtor Company is engaged in engineering and trading of steel and other allied products. It had issued Purchase Orders to Financial Creditor for supply of 130 MTs of TMT bars for its operations.

iv. It is averred that the Company Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 is not maintainable being barred by limitation and liable for outright rejection and to be dismissed in limini. It is also averred that the Company Petition is not maintainable as it is purely in respect of the provision of goods and services and as such the Company Petition is liable to be dismissed on this ground alone.

v. It is averred that the Corporate Debtor suffered huge losses in the years 2017 to 2019 as the banks were not inclined to provide additional credit facilities due to which the Corporate Debtor failed to make payments to the Financial Creditor.

vi. It is averred that the Corporate Debtor was not in a position to repay the amount and requested the Financial Creditor to convert the defaulted amount into a loan. Both the parties agreed and entered into an unregistered Loan Agreement on 01.11.2017 and the Corporate Debtor agreed to pay the due amount in 8 quarterly instalments from 01.12.2017 but failed to honor the said Loan agreement as the Corporate Debtor continued to suffer financial problems.

vii. It is averred that the Corporate Debtor has defaulted in making the payment due to purely the financial problems suffered by the Corporate Debtor. It is also averred that the Company Petition filed under Section 7 pf the Insolvency & Bankruptcy Code, 2016 is not maintainable as the debt arose purely through business transaction and the debt is operational in nature and requested to dismiss the present petition.

4. The averments made in the Reply to the Counter filed by the Financial Creditor in brief are described hereunder:

i. In reply to para 5 of the counter, it is averred that the present application is barred by the Law of Limitation which is not correct. The application filed under Section 7 of Insolvency & Bankruptcy Code is not barred for three years from the date of default as provided by Article 137 of the Limitation Act, 1963. It is averred a perusal of Loan Agreement entered between the parties on 01.11.2017 for payment of the amount in 8 instalments beginning from 01.12.2017 and the Corporate Debtor defaulted in paying all the instalments agreed upon and the same has been admitted in para 9 of the counter as well as in their letter dated 02.07.2018 addressed to the Financial Creditor. Even if the date of the first default of 01.12.2017 is used to adjudicate the question of limitation, the Financial Creditor is well within the permissible period of limitation as the application was filed on 12.05.2020.

ii. In reply to para 6 & 9 of the counter as regarded to maintainability of the present application on the ground that there exists a prior operational relationship between the Financial Creditor and the Corporate Debtor and Financial

Creditor cannot file the present application. It is averred that the Loan Agreement entered between the parties on 01.11.2017 postulates the nature of relationship between the parties and the same conforms to be a financial one and the Loan Agreement between the parties on 01.11.2017 was for the protection of the 'time value of money' and hence falls with the definition of a financial debt as provided under Section 5(8) of the I&B Code, 2016.

iii. In reply to para 7 of the counter, it is averred that five separate reminders have been sent between 2017 to 2020 for repayment of the loan amount and the Corporate Debtor never disputed the Loan Agreement.

iv. It is averred that the Corporate Debtor had admitted the default on three occasions and acknowledged the same vide letters dated 02.07.2018, 06.08.2019 and 04.12.2019 asking the extensions for payment and even failed to adhere to these self-imposed extensions, which was admitted in the respective letters and para 9 of the counter.

v. It is averred the Corporate Debtor is trying to mislead this Hon'ble Court by raising all frivolous allegations which cannot be looked into. It is also averred that the Corporate Debtor has admitted the debt and the execution of the loan agreement in its counter before the Hon'ble Tribunal and prayed to allow the present application.

**Observations:**

5. It is the case of the Financial Creditor that he has received a Purchase Order in May, 2016 for supply of 130 MTs of TMT bars from Corporate Debtor. Considering the long relationship with the Corporate Debtor, the Financial Creditor accepted to supply the

material as per the Purchase Order and supplied the material as per the purchase order. Subsequently, in October, 2016, the Financial Creditor received another purchase order for supply of 30 MTs of TMT bars. The total sale value of first and second invoices being Rs.61,58,975/-. Since then, Financial Creditor was continuously requesting Corporate Debtor to make the payment. In the light of the non-payment, both the parties agreed and entered into a Loan Agreement on 01.11.2017 on the terms and conditions to pay back the money due in 8 quarterly instalments from 01.12.2017 with interest @ 36% per annum from 01.12.2016.

6. It is averred by the Financial Creditor that the Corporate Debtor failed to honour even a single instalment as per the Loan Agreement. Hence, the present application is filed for recovery of their dues. Counsel for the Corporate Debtor however submitted that the Corporate Debtor has not willfully defaulted any amount. He further averred that the Corporate Debtor suffered huge losses during 2017 to 2019 and as the financial lenders of the Corporate Debtor, particularly banks were not inclined to provide additional credit facilities enabling the Corporate Debtor to tide over its financial problems. He further submitted that it is only due to the above circumstances he failed to repay dues to the Financial Creditor and he also agreed with the submissions made by the Financial Creditor that due to the default in repayment of the goods supplied, the Financial Creditor herein has converted the due into a loan. He also agreed that the due amount has to be repayable in eight (8) quarterly instalments from 01.12.2017.

7. The Counsel for the Corporate Debtor however claimed that this application filed under Section 7 of Insolvency & Bankruptcy Code, 2016 is not maintainable as the debt arose purely through business transaction and the said debt is operational in nature.

8. From the above submissions, it is observed that it is a fact that the Financial Creditor has supplied material as per the purchase orders issued by the Corporate Debtor. Due to non-payment as per the terms of the invoices, the Financial Creditor herein has converted the due amount into a loan and accordingly the Loan Agreement has been entered into between the parties on 01.11.2017 to repay the amount claimed to be in default in eight (8) quarterly instalments from 01.12.2017. As the Corporate Debtor continued to suffer financial losses, he could not honour his payments under the said Loan Agreement.

9. In the light of the default made by the Corporate Debtor, the Financial Creditor has filed this application for recovery of its dues in terms of the Loan Agreement dated 01.11.2017. In fact, Counsel for the Corporate Debtor has not made any new submissions, he only submitted that the inability of the Corporate Debtor for the default is only due to heavy financial losses suffered by the Corporate Debtor due to non-cooperation of the banks. As such, Corporate Debtor also sought the intervention of the Adjudicating Authority for granting time for repaying the loan amount for which the Counsel for the Financial Creditor has vehemently objected.

10. It is observed from the record before us, it is a fact that the present Financial Creditor has supplied the goods as per the purchase orders issued by the Corporate Debtor. However, the amount due under the purchase orders issued by the Corporate Debtor was not paid even though the goods was supplied as per the purchase order issued by the Corporate Debtor. In view of the default, both the parties have converted the due amount on account of invoices into a Loan Agreement on 01.11.2017 repayable in eight (8) quarterly instalments starting from 01.12.2017. Thereby, the operational debt has become financial debt in view of the Agreement entered into between the parties. Accordingly, the Financial Creditor who supplied the goods initially, the Applicant herein who was the supplier of goods initially

has become the Financial Creditor as per the terms of the Loan Agreement. Accordingly, the Applicant filed the application under Section 7 as subsequently loan agreement entered into between the parties for repayment of the due amount. As such, the contention of the Corporate Debtor that it is an amount was due only for supply of goods is untenable and cannot be taken as stand for dismissing the application. Taking into account, the subsequent developments in the matter which was agreed for by both the parties.

11. In the light of the above observations, we are of the view that there is a financial debt which was due and not paid. Accordingly, the application has been admitted.

12. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions:-

    i. The Bench hereby prohibits 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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

    ii. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

iii. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

iv. That the order of moratorium shall have effect from the date of the Order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

v. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

vi. The Financial Creditor proposed the name of Mr. Madhusudhan Rao Gonugunta as Interim Resolution Professional and he has given his consent in Form-2 and Authorisation for Assignment in Form-B which was valid upto 02.12.2021. Accordingly, this Tribunal appoints Mr. Madhusudan Rao Gonugunta as Interim Resolution Professional, having Registration No. IBBI/IPA-001/IP-P00181/2017-2018/10360, e-mail id: madhucs1@gmail.com as Interim Resolution Professional.

vii. Accordingly, this Petition is admitted.

viii. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

18/01/21

**VEERA BRAHMA RAO AREKAPUDI**
**MEMBER (TECHNICAL)**

**K. ANANTHA PADMANABHA SWAMY**
**MEMBER (JUDICIAL)**

**Syamala**