

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

IA. NO. 4488/ND/2022

IN

Company Petition No. (IB)-913(ND)/2020

IN THE MATTER OF:

SREI Infrastructure Finance Limited

... Applicant/Financial Creditor

Versus

M/s. Alstrong Enterprises India Private Limited

... Respondent

AND IN THE MATTER OF IA. NO. 4488/ND/2022:

M/s. Alstrong ACP Manufacturing India Private Limited

Through its Resolution Professional

Mr. Alok Kumar Agarwal

Address at:

605, Suncity Business Tower,

Golf Course Road, Sector 54

Gurugram, Haryana - 122002

... Applicant

Order Delivered on: 21.04.2023

SECTION: Section 60(5) of IBC 2016

CORAM:

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Apoorv Agarwal, Adv. Riya Thomas

ORDER

PER: SH. L. N. GUPTA, MEMBER (T)

The present IA No. 4488 of 2022 has been filed by M/s. Alstrong ACP Manufacturing India Private Limited, through its Resolution Professional Mr. Alok Kumar Agarwal (hereinafter referred to as the '**Applicant**') under Section 60(5) of IBC, 2016, read with Rule 11 of NCLT Rules, 2016 seeking the following relief:

- “a) Dismiss the captioned Petition;*
- b) Pass the directions ensuring that the assets of Alstrong ACP Manufacturing India Pvt. Ltd are protected, preserved and not dealt with in the Corporate Insolvency Resolution Process of the Corporate Debtor;*
- c) Pass such other or further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.”*

2. Since two reliefs have been sought in the present application, therefore, we would like to deal with each of the two prayers.

3. With respect to prayer (a), it has been brought to our notice by the Respondent that earlier too, the Punjab National Bank had filed an application bearing no. IA-1615/2021 to seek dismissal of the main Petition (IB)-913 of 2020 seeking a relief similar to what is being sought by the Applicant herein.

4. This Adjudicating Authority vide order dated 02.07.2021 had dismissed the said IA-1615/2021 and observed the following as regards to the right of a third party to intervene in an application filed for initiating the CIR process:

“9. A bare perusal of the provision shows that in order to trigger the Section 7 of IBC, 2016, the Adjudicating Authority has to examine only two aspects - whether there is a Financial Debt and whether there is any default in payment of the Financial Debt. The moment these two aspects are established by the applicant and further, if it is found that the application is complete under Section 7(2) IBC 2016 and there is no disciplinary proceeding pending against the proposed IRP, the Adjudicating Authority under Section 7(5) IBC 2016 has no option but to admit the application.

10. We further notice that under the scope of Section 7 of IBC, 2016, the third person is not a necessary party. Only the Financial Creditor and the Corporate Debtor are the necessary party in these proceedings.

11. We further notice that the applicant has filed this application under Section 60(5) of IBC, 2016. Admittedly, the IB/913/2020 has not been admitted as yet. Therefore, in our considered view, the applicant is not a necessary party and even their prayer, which has been made under Section 60(5) of the IBC, 2016, cannot be allowed.

12. For the reason discussed above, we are unable to allow the Applicant's prayer for permitting them to participate/intervene in the proceedings of the Company Petition No. IB/913/ND/2020.

13. Accordingly, the prayer of the applicant is hereby rejected and the IA -1615/2021 stands Dismissed.”

5. In this regard, we also consider it appropriate to refer to the Judgement of the Hon'ble NCLAT in the matter of **Vekas Kumar Garg vs. DMI Finance Pvt. Ltd. & Anr. in Company Appeal (AT) (Insolvency) No. 113 of 2021,**

dated 18.02.2021, wherein the following is held with respect to the right of a third party to intervene in a Section 7 Application at a pre-admission stage.

“3. After hearing learned counsel for the Appellant and going through the record, we are of the view that the ground projected by the Appellant in his capacity as Resolution Professional of NDL for seeking impleadment in CP IB2115/ND/2019 pending consideration before the Adjudicating Authority does not warrant impleadment of Appellant as party Respondent. In an application under Section 7, the Financial Creditor and the Corporate Debtor alone are the necessary party and the Adjudicating Authority is, at the pre-admission stage, only required to satisfy itself that there is a financial debt in respect whereof the Corporate Debtor has committed a default warranting triggering of CIRP. The Adjudicating Authority is required to satisfy itself in regard to there being a financial debt and default thereof on the part of the Corporate Debtor besides the application being complete as mandated under Section 7(5) of the ‘I&B Code’ and then pass an order of admission or rejection on merit as mandated under sub-section (4) of Section 7 within 14 days. No third party intervention is contemplated at that stage.

4. No lengthy hearing is warranted at the pre-admission stage nor can the dispute in regard to shareholding or inter se directorial issue be entertained.

5. Viewed from this perspective, we find no legal infirmity in the impugned order passed by the Adjudicating Authority. The course open to Appellant would be to apprise the IRP of the admission of the claim in CIRP of NDL if the application under Section 7 pending before the Adjudicating Authority is admitted and IRP is appointed. Such situation may not arise if the Adjudicating Authority is not satisfied about debt and default.”

6. In view of the Judgement (supra), we are of the view that the aforesaid finding is applicable to the facts of the present case, and **accordingly the Prayer (a) is not maintainable and therefore, rejected.**

7. With respect to prayer (b), we are of the considered view that there is no need for any such separate direction as the IRP on appointment has to act in terms of the provision of the IBC, 2016, and Regulations made therein. Till the time any actual violation of the Code is pointed out to this Adjudicating Authority, there is no cause of action as on date for the Applicant to pursue such a prayer.

8. **Accordingly, the prayer (b) requires no consideration.**

9. **In terms of the aforesaid observations, the IA-4488 of 2022 is Dismissed.**

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (J)

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-913(ND)/2020

IN THE MATTER OF:

SREI Infrastructure Finance Limited

(Under Corporate Insolvency Resolution Process)

Through its Power of Attorney Holder

Registered office at:

“Vishwakarma” 86 C,

Topsia Road (S), Kolkata – 700046

... Applicant/Financial Creditor

VERSUS

Alstrong Enterprises India Private Limited

Registered Office at

75, Khirki Village,

Malviya Nagar,

New Delhi – 110017

... Respondent

Section: 7 of IBC, 2016

Order Delivered on: 21.04.2023

CORAM

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Sr. Adv. Krishnendu Datta, Adv. Arijit Mazumdar,
Adv. Shambo Nandy

For the Respondent : Sr. Adv. P. Nagesh, Adv. Mr. Karan Gandhi,
Adv. Komal Kalva

ORDER

PER: SHRI L. N. GUPTA, MEMBER (T)

M/s. SREI Infrastructure Finance Limited (for brevity, the **'Applicant/ Financial Creditor'**) has filed the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **'IBC, 2016'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s. Alstrong Enterprises India Limited (for brevity, the **'Respondent'/AEIL**).

2. The Respondent namely, M/s. Alstrong Enterprises India Limited (AEIL) is a Company incorporated on 16.09.2011 under the provisions of the Companies Act, 1956 with CIN U28910DL2011PTC225135 having its registered office at 75, Khirki Village, Malviya Nagar, New Delhi – 110017, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs.2,75,00,000/- and Paid-up Share Capital is Rs.2,44,54,550/- as per the master data annexed with the Application.

3. It is subsequently submitted by the Applicant that during the pendency of the present application, CIR process in respect of the Applicant Company has been initiated by the NCLT, Kolkata Bench vide order dated 08.10.2021 in C.P. (IB) No. 295/2021 and currently, its affairs are vested with Sh. Rajneesh Sharma, the Administrator, who

had further authorized Mr. Pradeep Faujdar vide Power of Attorney dated 01.04.2022 to pursue the present application.

4. It is stated by the Applicant that on request of the Respondent and Worlds Window Infrastructure & Logistics Pvt. Ltd. (hereinafter referred to as “WWILPL”), the Applicant vide its sanction letter dated 18 June, 2018 agreed to grant the financial assistance of Rs.1,00,00,00,000/- to the Respondent and WWILPL. It is further stated that the following documents were executed by and between the parties in connection with the said Loan:

- i. Common Loan Agreement No. SRE 760 dated 7th July, 2018 between Applicant, WWILPL, and Respondent (“Loan Agreement”);
- ii. Unattested Deed of Hypothecation dated 7th July 2018, executed by the Respondent along with WWILPL and one World's Window Wardha Infrastructure Pvt. Ltd. (“WW Ward out of the Applicant, whereby a charge by way of hypothecation over the Assets (as defined therein) of the Respondent, WWILPL and WW Wardha was created in favour of the Applicant;
- iii. Deed of Personal Guarantee dated 7th July 2018 executed by Mr. Piyooosh Goyal, who is a shareholder in both Respondent and WWILPL, in favour of the Applicant;
- iv. Demand Promissory Note for Rs. 100 Crore dated 7th July 2018 issued by the Respondent in favour of SREI;
- v. Demand Promissory Note for Rs. 100 Crore dated 7th July 2018 issued by WWILPL in favour of SREI etc.

5. The Applicant has furnished particulars of the total unpaid financial debt and the date of default in Part IV of the application, which is reproduced below, for the sake of convenience:

Part – IV

PARTICULARS OF FINANCIAL DEBT			
1	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Contract No.	Debt Granted (Amount in Rs.)
		SRE760	40,00,00,000
		SRE760	20,00,00,000
			Date of first Disbursement
			24-07-2018
			31-08-2018
		SRE760	40,00,00,000
		TOTAL	100,00,00,000/-
			14-09-2018
2	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	Total Amount Claimed as on 06-02-2020:Rs. 104,97,68,105 /- (Rupees One Hundred Four Crores Ninety Seven Lakhs Sixty Eight Thousand One Hundred and Five Only)	
		Contract Ref No. SRE760	
		Contract Number 1155	
		Loan Amount (POS) (Rs)	890,000,000
		Overdue (Principal +Interest) (Rs)	147,564,891
		Overdue Charges (Rs)	12,203,214
		Total (Rs)	1,049,768,105
		Amount Claimed to be in default as on 06-02-2020: Rs. 147,564,891 /-, (Rupee Fourteen Crore Seventy Five Lakh Sixty Four Thousand Eight Hundred Ninety One Only)	
		The dates of default as mentioned in the table below:	
		Contract no.	Date on which default occurred
1155	31-10-2019	42,007,013	98
1155	31-10-2019	15,400,347	98
1155	30-11-2019	14,215,630	68
1155	31-12-2019	15,454,364	37
1155	31-01-2020	45,000,000	6
1155	31-01-2020	15,487,537	6
	Total	147,564,891	
Days of Default has been calculated upto 6 February			
		2020.	

6. As per Part IV of the Application, the Applicant has claimed the amount of Rs.104,97,68,105/- as an unpaid financial debt and relied on 06.02.2020 as the date of default.

7. Based on the abovementioned facts and documents, the Applicant has prayed for the initiation of the CIR Process against the Respondent.

8. On issuance of a notice, the Respondent filed its reply and stated that –

8.1. The Applicant had transferred its fund-based business division along with all its assets and liabilities to an entity namely SREI Equipment Finance Limited vide Business Transfer Agreement dated 16.08.2019. The effect of such transfer was that all sums, including the one alleged to be outstanding against the Respondent, stood assigned to SREI Equipment Finance Limited - the Assignee, along with all the rights and interests. Such transfer of business was intimated by the Applicant to the Respondent vide letter dated 01.10.2019. In view of such transfer of debt by the Applicant to SREI Equipment Finance Limited, the Applicant is not entitled to invoke the provisions of section 7 of the Code and thus the application is not maintainable.

8.2 The amount of Rs.1,04,97,68,105/- claimed in the application is not due and payable in terms of the repayment schedule of the loan agreement. The Applicant has failed to show the default of Rs.1,04,97,68,105/- and no demand was made by the Applicant. The

Applicant in its e-mail dated 29.02.2020 (annexed as Annexure 22 @ 1451 of the Main Application) stated that in case the Respondent failed to pay the outstanding installment, the Applicant would be compelled to recall the entire loan totaling Rs.1,04,97,68,105/-. However, Applicant has not recalled/demanded the entire loan amount. Thus, the amount claimed is not due and payable.

8.3 The Applicant has claimed different amounts in the Form as appearing in part IV. On the one hand, the Applicant has claimed an amount of Rs.1,04,97,68,105/- and on the other hand, it has mentioned that the amount claimed to be in default is Rs.14,75,64,891/-. The amount claimed by the Applicant cannot be different. The Hon'ble Adjudicating Authority, Mumbai Bench in the matter of Urban Infrastructure Trustee Ltd v. Neelkanth Township and Construction Pvt. Limited (C.P. No. 21/1 & BP/NCLT/MB/MAH/2017) observed that the amount to be claimed and default occurred cannot be two different amounts.

8.4 Against the same debt, the Applicant has filed two Applications against the two Corporate Debtors i.e., the Respondent herein and M/s Worlds Window Infrastructure & Logistics Pvt. Ltd., in respect of which CIR Process has already been initiated by the NCLT Principal Bench.

8.5 The Applicant has failed to show the working computations as mandated in Part IV in para 2 of the form. The Respondent has an apprehension that the Applicant has charged the exorbitant and

unreasonable interest on the overdue amount. Application is thus, incomplete and liable to be dismissed.

8.6 The applicant in its application claims the default to have occurred in February 2020, whereas, the Applicant had been claiming due amounts till May 2020. Therefore, the application is barred by Section 10A of the IBC, 2016. Further, the applicant has willfully concealed the demands raised by it during the Section 10A period, which otherwise would have rendered the application redundant.

8.7 The Respondent Company since the past has been doing well in its business which is evident from the financial statements from the period 2014-15 to 2018-19. If the present application is admitted, the Respondent company which is doing well in its business, employing 385 employees, and servicing its creditors in a timely fashion, would be put to an unnatural death.

8.8 It is pertinent to mention that the Respondent Company has had borrowings from different Financial Creditors and at present, it owes Rs. 85 Crores approximately to various Financial Creditors, which are not party to the present application. If the present application is proceeded with, it would cause irreparable harm to its creditors.

8.9 It is also pertinent to mention here that the Applicant was aware of the finance availed by the Company while the Respondent was made a co-borrower. As per the financing documents of the main lenders i.e., Punjab National Bank and State Bank of India, a prior no-objection

certificate was required for granting the status of a Co-Borrower to the Respondent under any agreement. In the past, the said main lenders have raised their concerns and objections to the said actions of the Applicant and advised for the necessary corrective action.

8.10 There was no disbursement to the Respondent. The Loan agreement provides for a mechanism by which the Respondent could have requested disbursement in accordance with the Schedule. As a matter of fact, no such request letter was made to the Respondent. Thus, there is no financial debt.

8.11 Additionally, and more importantly, the Respondent only has a relationship with the Applicant through security. It is well settled that security, like in the present case, would not fall within the meaning of financial debt.

8.12 Thus, the facility under the loan agreement was never availed by the Respondent, and thus no money is due and payable from the Respondent to the Applicant. In any event, the Applicant is devoid of any authority to grant loan/disburse any loan to a non-infrastructure company like the Respondent.

9. The Applicant has also filed its rejoinder and Written Submissions stating the following:

9.1 It is denied that the Applicant had transferred its fund-based business division along with all its assets and liabilities to SREI Equipment Finance Limited ("SEFL") vide Business Transfer Agreement

dated 16.08.2019. It is submitted that while a business transfer agreement was executed between the Applicant and SEFL, it did not come into effect and was not acted upon as certain conditions under the business transfer agreement could not be complied with. The letter dated 1 October 2019 was issued in good faith by the Applicant, however, as the business transfer did not come into effect, the letter stands null and void. Therefore, the account of the Respondent remains with the Applicant.

9.2 It is also pertinent to mention that the payment made by the Respondent to SEFL post-issuance of the letter dated 1 October 2019 has been duly credited to the loan account of the Respondent and adjusted against the outstanding dues. A copy of the statement of account of the Respondent as on 6 February 2020 has been annexed along with the present petition (Annexure A-20), which clearly evidences that all the payments made by the Respondent (including those made after 1st October 2019) are reflected in the account statement and factored in for the purpose of calculating debt under section 5(8) of IBC.

9.3 The Applicant had disbursed the Loan in 3 tranches on 24.07.2018 (40 crores), 31.08.2018 (20 crores), and 14.09.2018 (40 crores), which are admitted in the Balance Sheets of the CD.

9.4 The CD/Alstrong/Co-Borrower has raised several defenses to resist the initiation of CIRP. All such defenses were also raised by WWILPL, the Borrower in CP(IB) No. 943/PB/2020 to resist the

initiation of CIRP. However, all such defenses were rejected by the Principal Bench vide its judgment dated 07.03.2022, which has attained finality, as no appeal was preferred against the same.

9.5 The CD has taken a frivolous plea that the petition is barred under section 10A of the Code on the basis that the FC had sent an email dated 28.05.2020, wherein the CD was asked to make good the defaults. The submission of the CD is misleading, as it had started defaulting in its payment obligations from 31.10.2019 onwards. Subsequent dates of default are 30.11.2019, 31.12.2019 and 31.01.2022, and so on.

9.6 The Applicant has stated in Part IV Column 2 that as of 06.02.2020, the amount claimed to be in default is Rs.14,75,64,891/-, which is more than Rs. 1 crore. Thus, the bar under section 10A of the Code is not applicable.

9.7 There is no bar in the Code for filing two simultaneous applications under Section 7 against the Borrower as well as the Co-Borrower. Even as per Section 43 of the Indian Contract Act of 1872, the liability of a borrower and a co-borrower are one and the same and both are jointly and severally liable to pay the debts due.

9.8 Further, the CD herein cannot claim that no disbursement was made to it as its books of accounts reflect the loan of the FC [Annexure 21 @pg. 1380-1381 (Vol VII)]. Apart therefrom, under the Loan Agreement, the term Borrowers has been defined to mean both

Borrower and Co-Borrower collectively [91 Vol 1] and the obligation to repay was on both the Borrower and the Co-Borrower as per Cl. 2.10 [120 Vol 1]. Further, Article VIII Cl. 8.1.5 [156 Vol 1] makes it clear that in event of failure or inability of the Borrowers to pay their debts, the FC/Applicant can initiate proceedings against the Borrowers viz. Borrower and Co-Borrower. Even otherwise, the Loan Agreement was signed by the FC, the Borrower, and the Co-Borrower.

10. We have heard the Ld. Counsels for both parties and perused the documents placed on records, including the Written Submissions filed by both parties. It is observed that the Respondent has raised various defenses in support of its contentions.

11. It is contended by the Respondent that the loan under reference was not disbursed to it and therefore, it is not under obligation to repay the same. The Applicant has not controverted this fact, but at the same time, it has argued that the Respondent herein was the Co-Borrower in terms of the Loan Agreement dated 07.07.2018, which was signed by the FC, the Borrower, and the Co-Borrower. Hence, at this stage, we consider it appropriate to refer to the Common Loan Agreement dated 07.07.2018, the relevant extracts of which are reproduced overleaf:

COMMON LOAN AGREEMENT

This Common Loan Agreement is made and executed on this 07th day of July, 2018 at New Delhi (the "Agreement") by and between:

WORLDS WINDOW INFRASTRUCTURE & LOGISTICS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 with Corporate Identity Number - U74996DL2006PTC149207 and having its registered office at 75, Khirki Village Malviya Nagar New Delhi - 110017 (hereinafter referred to as the "Borrower", which expression, shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the **FIRST PART**;

AND

ALSTRONG ENTERPRISES INDIA PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 with Corporate Identity Number - U28910DL2011PTC225135 and having its registered office at 75, Khirki Village Malviya Nagar New Delhi - 110017 (hereinafter referred to as the "Co-Borrower", which expression, shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) of the **SECOND PART**;

AND

THE PERSONS SET FORTH IN SCHEDULE I HERETO (from whom the Borrower shall avail financial assistance as set forth in **Schedule IA** hereto), hereinafter individually referred to as "Lender" and collectively referred to as "Lenders", which expression shall, unless it be repugnant to the subject or context thereof, be deemed to mean and include all or any one or more of them as the context may require or admit, their respective successors and also any other banks or financial institutions or any other Persons to which the rights and/ or obligations of all or any one or more of the aforementioned Lenders are assigned, novated and/ or transferred) of the **THIRD PART**.

The expressions "Borrower" and "Co-Borrower" shall collectively be referred to as the "Borrowers". The expressions "Borrowers" and "Lenders" shall individually be referred to as a "Party" and collectively be referred to as the "Parties".

WHEREAS

- A. The Borrowers are in the business of development, construction and operations of inland container depots ("ICD").
- B. The Borrowers require funds for the Purpose (as defined hereinafter) and have jointly approached the Lenders for availing rupee term loans for an aggregate amount of Rs. 100,00,00,000/- (Rupees One Hundred Crore Only) (the "Loan Facility").
- C. Based on the representations and assurances of each of the Borrowers hereof, the Lenders have agreed to provide the Loan Facility to the Borrowers and the Borrowers have agreed to

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BORROWER	CO-BORROWER	SREI

XXXX XXXX XXXX XXXX XXXX XXXX

From the perusal of the above, it is clear that in terms of the common Loan Agreement dated 07.07.2018, the expression "Borrower" included both the "Borrower" as well as the "Co-Borrower" (i.e., the Respondent herein) and both of them to be collectively referred to as the "Borrowers". We further notice that the Loan Agreement has been signed by Borrower, Co-Borrower (i.e., the Respondent/AEIPL), and the Applicant/Financial Creditor (i.e., SREI).

12. Now, in order to find out the liability of the Respondent (i.e., Co-Borrower in terms of the Loan Agreement) in case of default, we refer to the “Article VIII – Events of Default and Consequences of Default” placed on record. The same is reproduced below:

ARTICLE VIII

EVENTS OF DEFAULT AND CONSEQUENCES OF DEFAULT

8.1 Events of Default

The following events and occurrences shall constitute an Event of Default for purposes of the Financing Documents:

8.1.1. Non-payment of Repayment Installment

Non- payment by the Borrower of any Repayment Installment on the Repayment Date or on such payment if by way of cheque, the dishonour of the cheque.

8.1.2. Non-payment of Interest or Other Dues

Non-payment by the Borrower of Interest or any other monies payable by the Borrower under the Financing Documents on the Due Dates for such amounts, under the terms of this Agreement and/or the other Financing Documents or on payment if by way of cheque, the dishonour of the cheque.

8.1.3. Material Adverse Change or Potential Event of Default

There has occurred (or is likely to occur) a Material Adverse Change or Potential Event of Default.

8.1.4. Failure by the Obligors to observe or perform any obligation

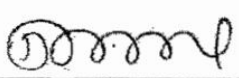
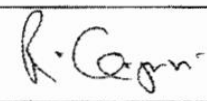

Failure by the Obligors to observe or perform any obligation or to comply with, any term or condition (whether, financial, performance or otherwise) contained in any Financing Document and/or any document relating to the Project, other than those specifically listed in this Clause 8.1.

8.1.5. Failure or inability of the Borrowers to pay their debts

Failure or inability of the Borrowers to pay their debts as they mature or institution of proceedings for taking the Borrowers into dissolution, liquidation, or appointment of receiver or liquidator for all or part of the Borrowers’ assets, either voluntarily or compulsorily.

8.1.6. Insurance

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BORROWER	CO-BORROWER	SREI

13. Thus, it is evident from para 8.1.5 of “Article VIII – Events of Default and Consequences of Default”, that in case of failure or inability of the Borrowers to pay their debts as they mature, the Applicant shall have the right to take the “Borrowers” into Liquidation, or Dissolution or Appointment of Receiver or Liquidator for all or part of the “Borrowers” assets, either voluntarily or compulsorily.

14. Thus, on a conjoint reading of the Common Loan Agreement signed by and between the Applicant and the Borrowers (which includes Co-Borrower/Respondent) and para 8.1.5 of “Article VIII – Events of Default and Consequences of Default”, it is clear that the “Borrowers” were jointly and severally liable towards the debt of the Applicant and the Applicant has right to recover the same from their assets in case of default.

15. Further, on perusal of the documents on record, we find that the Respondent has made a disclosure in the Notes to financial statements for the period ended 31st March 2019 that it was a co-borrower for the loan availed by M/s Worlds Window Infrastructure & Logistics Pvt. Ltd., which is its subsidiary company. The disclosure reads thus:

“(x) The company is the co-borrower for the loan of Rs. 100 Crores taken by Worlds Window Infrastructure and Logistics Private Limited a fellow subsidiary company and all the investments held by the holding company, are pledged with the lender SREI Infrastructure Finance Limited. The loan is also secured by way of second charge over entire current assets of Borrower and Co-borrower.”

The relevant extract of the Financial Statement 2018-19 is reproduced below:

ALSTRONG ENTERPRISES INDIA PRIVATE LIMITED Standalone Financial Statements for period 01/04/2018 to 31/03/2019

to write off/ adjustment (if any) after reconciliation.

(vii) Duty Drawback income includes Rs. 3.98 Lakh relating to earlier years. Further duty drawback income/receivable for earlier years is under reconciliation and the balance will be accounted for as and when finally reconciled.

(viii) As per sections 135 of the Companies act, 2013, the company was required to spend during the year Rs. 22.83 Lakhs (Previous year Rs. Nil) in CSR activities. However, the company could not spend the same as it was unable to identify a suitable CSR opportunity as per the adopted CSR policy.

(ix) There is a differential excise duty refund due from excise and customs department amounting to Rs. 5.85 Lacs (Previous year Rs. 5.85 Lacs), Rs. 2.07 Lacs (Previous year Rs. 2.07 Lacs) and Rs. 17.28 lacs (Previous year Rs. 253.01 Lacs) for the financial year 2013-14, 2014-15 and 2017-18 respectively in respect to unit I. As there are demands raised by the department, the above refunds are not being processed and the same will be accounted for as and when the same are accepted/crystallized.

(x) Advances to vendors include INR 527.83 Lac (previous year Rs. 275.06 Lac) recoverable on account of pending final approval and acceptance from the overseas and domestic vendors have become overdue. In the opinion of the management, these amounts are recoverable and hence no provision for impairment of financial asset has been made.

(xi) The company has discontinued production of wallpanel sheets and carrying related inventories of raw material, semi finished and finished goods aggregating to INR 399.37 Lac. Further the management is to identify other non moving/slow moving inventories. Pending identification of non saleable/non realizable inventory by the management, the same has been valued at cost.

However the management is of the view that quantum of slow/non moving inventory will not be material and also will be realized at substantial value.

(i) The accounts receivables include INR 2792.96 lacs which are overdue. Management is expecting these amounts to be recovered and have been shown as considered good. In addition to above an aggregate amount of INR 691.94 lacs which are disputed or against which suits have been filed. Out of this INR 6.31 Lakhs is being considered as per management projection on recovery & therefore same has been considered as provision and accordingly provision has been made.

(xiii) The Bank has charged excess bank charges amounting INR 59.76 Lacs and have been shown under loans and advances. The company is following up the matter with the bank.

Addendum

Note to the Financial Statements for the period ended 31st march, 2019

In Note 10 of Standalone Financial Statements below point is added

(x) The Company is the co-borrower for the loan of Rs.100 Crores taken by Worlds Window Infrastructure and Logistics Private Limited a fellow subsidiary company and all the investments held by the holding company, are pledged with the lender SREI Infrastructure Finance Limited. The loan is also secured by way of second charge over entire current assets of Borrower and Co-borrower.

16. Further, we would like to refer to Section 43 of the Indian Contract Act of 1872, which reads thus:

“43. Any one of joint promisors may be compelled to perform. — *When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any [one or more] of such joint promisors to perform the whole of the promise.”*

Thus, as per Section 43 of the Indian Contract Act of 1872, the liability of a borrower and a co-borrower are one and the same and both are jointly and severally liable to pay the debts due.

In view of this position of law, we find no force in the contention of the Respondent that the Co-Borrower cannot be held liable for the debt of the borrower.

17. It is further contended by the Respondent that CIRP in respect of the same debt has already been initiated in respect of the main borrower company i.e., Worlds Window Infrastructure & Logistics Pvt. Ltd. by the NCLT, Principal Bench in CP(IB) No. 943/PB/2020. We find no provision under the IBC, which prohibits the initiation of CIRP in respect of two or more Corporate Debtors, which are liable for the same debt. Hence, we find no merit and reject this contention raised by the Respondent.

18. It is further contended by the Respondent that the Applicant has wrongly charged the interest and has claimed different amounts in its application. In our view, since the claim of the Applicant is well above

the minimum threshold limit of Rs. 1 Crore prescribed under Section 4 of IBC 2016, this Adjudicating Authority will not indulge itself in computing the quantum of debt.

19. Another defense raised by the Respondent is that the application is barred under Section 10A of IBC, 2016. In this regard, the Respondent has relied upon the email dated 28.05.2020, wherein the demand has been raised. Per contra, the Applicant has stated that the Respondent started defaulting in its payment obligations from 31.10.2019 onward and subsequent dates of default are 30.11.2019, 31.12.2019 and 31.01.2022, and so on. The Applicant has stated in Part IV Column 2 that as of 06.02.2020, the amount claimed to be in default was Rs. 14,75,64,891/-. Further, the Applicant has given the dates on which the default occurred and the corresponding amount claimed to be in default in Part IV of the application, which pertains to the period when Section 10A of IBC, 2016 was not applicable. The relevant extracts of Part IV are reproduced below:

Contract no.	Date on which default occurred	Amount claimed to be in default (In Rs.)	Days of Default
1155	31-10-2019	42,007,013	98
1155	31-10-2019	15,400,347	98
1155	30-11-2019	14,215,630	68
1155	31-12-2019	15,454,364	37
1155	31-01-2020	45,000,000	6
1155	31-01-2020	15,487,537	6
	Total	147,564,891	

Since there is a debt subsisting of more than Rs. 1 crore that was due and payable before the Section 10A period, therefore, the application cannot be considered barred by Section 10A of IBC, 2016 and the defense raised by the Respondent is devoid of merit.

20. The Respondent has also contended that its loan account was transferred to one SREI Equipment Finance Limited, hence, the application could only be preferred by that company. Per contra, the Applicant has stated in its rejoinder that though it was in the process of Assigning the loan account of the Respondent to M/s SREI Equipment Finance Limited, but the process could not be finalized and the loan account of the Respondent is with the Applicant Company only. For the sake of convenience, the response of the Applicant is reproduced below:

“It is denied that the Applicant had transferred its fund-based business division along with all its assets and liabilities to SREI Equipment Finance Limited (“SEFL”) vide Business Transfer Agreement dated 16.08.2019. It is submitted that while a business transfer agreement was executed between the Applicant and SEFL, it did not come into effect and was not acted upon as certain conditions under the business transfer agreement could not be complied with. The letter dated 1 October 2019 was issued in good faith by the Applicant, however, as the business transfer did not come into effect, the letter stands null and void. Therefore, the account of the Respondent remains with the Applicant.”

In view of the aforesaid clarification given by the Applicant, we find no merit in the argument advanced by the Respondent and therefore, would like to proceed ahead in the matter.

21. The Applicant has also annexed the “Record of Financial Information – Form C” maintained with NeSL, in respect of the default committed by the Respondent, the relevant part of which is reproduced below:

NeSL NATIONAL E-GOVERNANCE SERVICES LIMITED
India's First Information Utility राष्ट्रीय ई-गवर्नेंस सर्विसेज लिमिटेड

Record of Financial Information - Form C

Unique Debt Identifier: AAACS1425L_1155
 Submission ID: 1
 Submitted by Srei Infrastructure Finance Limited
 Information as on 28/07/2020

Submitter Information			
Name	Srei Infrastructure Finance Limited	UIN (PAN)	AAACS1425L
Relationship	creditor	Comm. Address PIN	700046
DOI / DOB	29/03/1985	Telephone No.	0xxxxxxxxx2
Billing / Comm. Address	Vishwakarma, 86C Topsia Road (S), Kolkata	Email ID	*****@srei.com

Other Party Details			
Debtor			
Name	Alstrong Enterprises India Private limited	Relationship	debtor
Party Type	Indian Entity	Regd. / Permanent Address	75, Khirki Village Malviya Nagar New Delhi
Regd. Address PIN	110017	Billing / Comm. Address	75, Khirki Village Malviya Nagar New Delhi
Comm. Address PIN	110017	Legal Constitution	Public limited Company limited by shares
PAN / Other ID	AAJCA8713J	Mobile No.	9810130658
Email ID	piyoosh@worldswindow.cc		

Co-Obligant			
Name	Worlds Window Infrastructure & Logistics Private Limited	Relationship	co-obligant
Party Type	Indian Entity	Regd. / Permanent Address	75, Khirki Village Malviya Nagar New Delhi
Regd. Address PIN	110017	Billing / Comm. Address	75, Khirki Village Malviya Nagar New Delhi
Comm. Address PIN	110017	Legal Constitution	Public limited Company limited by shares
PAN / Other ID	AAACW6405E	Mobile No.	9810130658
Email ID	piyoosh@worldswindow.cc		

Debt Information			
Type of debt	financial	Debt Reference No.	1155
Debt Start Date	24/07/2018	Debt Currency	INR
Sanction Currency	INR	Sub Type - Debt	credit facility

Funded Type	Funded	Sanctioned Amount	1000000000
Facility Name	Term Loan	Total Outstanding Amount	1141316630
Amount Overdue	262891968.00	Account Closed Flag	no

Default Details			
Date Of Default	31/03/2019	Default Amount	262891968.00
Total Outstanding Amount	1141316630		

From the “Record of Financial Information – Form C” of NeSL and other documents placed on record, it is evident that the Respondent/AEIPL has committed default in payment of the Financial Debt owed to the Applicant/Financial Creditor.

22. In the given facts and circumstances, the present Application being complete and the Applicant/Financial Creditor having established the default in payment of the Financial Debt of being above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) The institution of suits or continuation of pending suits or proceedings against the Respondent including the 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.”

23. As proposed by the Applicant, this Bench appoints Mr. Manish Agarwal as IRP having IBBI Registration IBBI/IPA-002/IP-N00223/2017-2018/10904 (Email: vrregisteredvaluer@gmail.com) subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that:

“Mr. Manish Agarwal (Email: vrregisteredvaluer@gmail.com) as IRP having IBBI Registration IBBI/IPA-002/IP-N00223/2017-2018/10904 is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

24. The Applicant is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Applicant.

25. We are aware that on a separate application of the present Applicant, for the same debt, the main borrower namely, M/s Worlds Window Infrastructure & Logistics Pvt. Ltd. (“WWILPL”) has already been undergoing the CIR process. We, therefore, consider it appropriate

to make it clear that any realisation made by the Applicant Company through the CIR process of M/s Worlds Window Infrastructure & Logistics Pvt. Ltd. would correspondingly / to that extent reduce the claim of the Applicant in respect of the Corporate Debtor/Co-Borrower herein. The IRP is, therefore, directed to keep a close watch over the CIR/Resolution process of the WWILPL and act accordingly.

26. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Applicant/Financial Creditor, the Respondent, and the IRP mentioned above. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer of this Tribunal immediately to the IBBI for their records.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (J)