

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH-V

CP (IB) 355 (ND)/2020

IN THE MATTER OF:

INTEC CAPITAL LTD

HAVING ITS REGISTERED OFFICE AT:
708, MANJUSHA BUILDING
57, NEHRU PLACE, NEW DELHI-110019
Email Id: ibc@inteccapital.com

...FINANCIAL CREDITOR

VERSUS

MAC ROOF INDIA PRIVATE LIMITED

HAVING ITS REGISTERED OFFICE AT:
FLAT NO. 91, KHIZRABAD FRIENDS COLONY,
NEW DELHI-110025

....CORPORATE DEBTOR

Under Section 7 of IBC, 2016

Order Reserved on: 10.12.2021

Order delivered on: 31.01.2022

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

PRESENT:

For the Financial Creditor : Adv Sagar bansal, Adv Abhas Singh

For the Corporate Debtor :



ORDER**PER MR. AVINASH K. SRIVATAVA, MEMBER (TECHNICAL)**

1. The present application has been preferred by **INTEC CAPITAL LIMITED** (hereinafter referred to as “Financial Creditor”) against **M/s MAC ROOF INDIA PRIVATE LIMITED** (hereinafter referred to as “Corporate Debtor”) under Section 7 of the Insolvency & Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution process in respect of CD. Financial Creditor has prayed for initiation of Insolvency Proceedings against Corporate Debtor for the default payment of **Rs. 2,69,26,747/- (Rs Two crore Sixty Nine Lakh Twenty Six Thousand Seven Hundred and Forty Seven Only)**.
2. The Financial Creditor is a NBFC (Non Banking Financial Institution) having its Registered Office at **708, MANJUSHA BUILDING 57, NEHRU PLACE, NEW DELHI-110019** The Certificate of Registration is placed on record **Annexure-1**.
3. The Corporate Debtor is a company incorporated on 24.04.2012 under the Companies Act, 1956 having its registered office at **FLAT NO 91, KHIZRABAD, NEAR LIONS HOSPITAL, NEW FRIENDS COLONY, NEW DELHI 110025**. Authorized share capital of the Corporate Debtor is 5,00,000/- and Paid up Share Capital is Rs 4,85,000/- The Master Data from the website of the Ministry of Corporate Affairs in relation to the CD has been already placed on record **Annexure A-4**.
4. Brief Facts of the Application filed by Financial Creditor are as follows:
 - i. That in the year 2013 and 2014, the Corporate Debtor had made an application dated 16.10.2013 for availing finance facility of Rs 34,77,000/- and another application dated 20.03.2014 for availing Loan facility of Rs. 51,30,000/-.
 - ii. That the Financial Creditor has sanctioned both the applications and the Financial Creditor and Corporate Debtor



entered into two Loan Agreement i.e. **Loan Agreement No. LNNOI00113-140002859 dated 23.10.2013 (hereinafter referred as "Loan I")** for an amount of Rs. 34,77,000 (Rupees Thirty Four Lakh Seventy Seven Thousand Only/-) and **Loan Agreement No. LNNOI00113-140003547 dated 26.03.2014 (hereinafter referred as "Loan II")** for an amount of Rs. 51,30,000/-.

- iii. For **Loan I**, Corporate Debtor had deposited an amount of Rs. 10,43,000/- as Collateral Security and For **Loan II**, Corporate Debtor had deposited an amount of Rs. 15,39,000/- as Collateral Security payable at the end of tenure of repayment subject to payment of all dues and charges.
- iv. As per the terms and Conditions of **Loan I**, it has to be repaid in 60 Monthly EMIs of Rs 80,400/- @interest rate of 14.25% p.a. on reducing basis. First EMI to be paid from **16.11.2013 and Last EMI Due was on 16th September, 2018 and Last Payment Transaction was on 18th September 2017**. For the Last Payment Proof, Financial Creditor has annexed **Annexure A-12** as statement of account of **Loan I and Loan II**. Corporate Debtor duly handed over ECS/post dated cheques to the Financial Creditor for the repayment of loan. As far as the payments done by Corporate Debtor is concerned, Financial Creditor has segregated the payment in two halves i.e. **till the date of LRN and after the date of LRN**. For **Loan I, Corporate Debtor had paid Rs 13,46,081/- plus 80,400/-** . That the due amount pertaining to **Loan I remains Rs. 89,06,638/-** till 31.10.2019. The calculation of due amount is placed on record **Annexure A-5**.
- v. According to **Loan II terms' and Conditions, it has to be repaid in 60 EMI's of Rs. 1,20,536/- @ interest rate of 15% p.a. on reducing basis**. First EMI to be paid from **01.05.2014**




and Last EMI Due was on **1st March, 2019** and Last Payment Transaction was on **4th September 2017**. Financial Creditor has annexed **Annexure A-12** as statement of account of **Loan I and Loan II**. Corporate Debtor duly handed over ECS/post dated cheques to the Financial Creditor for the repayment of loan but the same has been bounced. For **Loan II, Corporate Debtor had paid** Rs 8,63,922/- till the date of LRN and Rs. 1,20,536/- after the date of LRN. That the due amount pertaining to **Loan II remains Rs. 1,80,20,109/-** till 31.10.2019 The calculation of due amount is placed on record **Annexure A-5**.

- vi.** It is submitted by the Financial Creditor that Corporate Debtor has defaulted in the Repayment Schedule. As far as **Loan I is concerned only 17.50 EMI were paid and For Loan II , Out of 60 installments, only 8 Installments have been paid.** Despite repeated requests and reminders, Corporate debtor had failed to heed towards the repayment schedule. As per the records which Financial Creditor has annexed in the petition, it has annexed the Cheque Bouncing charges starting from the date 16.12.2013 for Loan I and from 02.09.2014 for Loan II. Financial Creditor has also initiated the complaints under Sec 138 of negotiable Instrument Act against the dishonoured ECS/Post Dated Cheques. It is further submitted by the Financial Creditor that Clause 14 of the **Loan I** and Clause 15 of **Loan II**, states the remedies for the financial creditor in case of "Events of default" which includes the remedy of termination of Loan Agreement and enforce all or any of the securities furnished by Corporate Debtor.
- vii.** One of the remedy is recalling/termination of Agreement, hence Financial Creditor had sent two "Termination Cum Invocation of Arbitration" Notice dated **25.03.2015 (Annexure A-17)**. Arbitral

Tribunal passed an award in the favour of Financial Creditor on **02.11.2015**. **Against the Claimed Amount of Rs. 50,10,151/- for the Loan II, Arbitral Tribunal passed an award of Rs. 50,10,151 along with interest @ 12% SI wef 25.03.2015 till the realisation of the amount. Along with the award, orders as to the cost has also been passed by learned tribunal.** Another "Termination Cum Invocation of Arbitration" Notice dated **24.08.2015 (Annexure A-19)** was sent. Arbitral Tribunal passed an award in the favour of Financial Creditor on **23.10.2017**. **Against the Claimed Amount of Rs. 30,36,802/- for the Loan I, Arbitral Tribunal passed an award of Rs. 30,36,802 along with interest @ 12% SI wef 24.08.2015 till the realisation of the amount. Along with the award, orders as to the cost has also been passed by learned tribunal.** It is further submitted by the Financial Creditor that in spite of the Arbitral Award, Corporate Debtor fails to comply with it and Financial Creditor had initiated the Execution proceedings to enforce the same.

- viii.** Thereafter, Financial creditor has placed the audited Financial Statements (Balance Sheets, Profit and Loss Accounts) duly signed by the Corporate Debtor for the year 2016-2017 and for 2017-2018 wherein under the term "**Long Term Borrowings**" and **Under Note 3: Securities**, there is a mention of the Loan transaction on the name of INTEC CAPITAL which is a valid acknowledgement under Sec 18 of the Limitation Act, 1963. The Balance sheet for the Year 2017-2018 was signed on 05 Sept, 2018, from which the fresh Limitation Period shall start to be counted from. Below given are few extracts of the duly signed Balance Sheet (true typed copies):



| Med. Reel India Private Limited Plot No. 91, Khirabad, Near Lotus Hospital, New Friends Colony, Delhi BALANCE SHEET AS AT MARCH 31, 2017 | | | |
|--|----------|--|---|
| PARTICULARS | NOTE NO. | Figures as at the end of current reporting period 2016-17 | Figures as at the end of current reporting period 2015-16 |
| I. EQUITY AND LIABILITIES | | | |
| (1) Shareholder's Funds | | | |
| (A) Share Capital | 1 | 4,85,000 | 185,000.00 |
| (B) Reserves And Surplus | 2 | (5,828,113) | (1,750,977.00) |
| (C) Money Received Against Share Warrants | | | |
| Share application money pending allotment | | | |
| (2) Non-Current Liabilities | | | |
| (A) Long Term Borrowings | 3 | 76,98,594 | 1,144,424.00 |
| (B) Deferred Tax (Liability) Net | 4 | (606,475) | (488,751) |
| (C) Other Long Term Liabilities | | | |
| (D) Long Term Provisions | | | |
| (3) Current Liabilities | | | |
| (A) Short Term Borrowings | | | |
| (B) Trade Payables | 5 | 91,09,211 | 10,76,491.00 |
| (C) Other Current Liabilities | 6 | 74,06,165 | 7,07,125.00 |
| (D) Short Term Provisions | 7 | 6,635 | 15,888.00 |
| TOTAL | | 1,59,81,100 | 20,525,595.00 |
| II. ASSETS | | | |
| (1) Non-Current Assets | | | |
| (A) Fixed Assets | 8 | 44,66,178 | 6,76,005.00 |
| (B) Intangible Assets | | | |
| (C) Other Long Term Assets | | | |
| (D) Capital work in progress | | | |
| (E) Non-Current Investments | | | |
| (F) Deferred Tax Asset Net | | | |
| (G) Long Term Loans And Advances | 9 | 2,900,741 | 2,900,741.00 |
| (2) Current Assets | | | |
| (A) Inventories | 10 | 4,50,600 | 1,078,650.00 |
| (B) Trade Receivables | 11 | 37,53,926 | 7,211,812.00 |
| (C) Cash And Cash Equivalents | 12 | 7,27,551 | 495,364.00 |
| (D) Short Term Loans And Advances | 13 | 13,21,878 | 1,24,413.00 |
| (E) Other Current Assets | 14 | 25,11,847 | 2,46,161.00 |
| TOTAL | | 1,59,81,100 | 20,525,595.00 |
| Significant Accounting Policies | 15 | | |
| The Notes are an integral part of these financial statements. | | | |
| Approved by Audit our report of even date annexed for MCA & Associates Chartered Accountants FRN No. 022145X | | For and on behalf of Board of Directors | |
| Shambhu Kumar (Partner) M No. 510534 | Director | Director | |
| Place : Delhi Date : 30/03/2017 | |  | |

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Note: 2 Reserves And Surplus

| Sr No | Particulars | For the FY 2016-17 | For the FY 2015-16 |
|-------|---|--------------------|--------------------|
| | Surplus in the statement of profit and Loss | | |
| a | Balance as per last financial Statement | (15,750,977) | (2,562,550) |
| | Profit/Loss for the year | (1,077,134) | (3,088,427) |
| | Less - Appropriations | - | - |
| | Proposed Dividend | - | - |
| | Corporate Tax on Dividend | - | - |
| | Transfer to general Reserve | - | - |
| | Total | (1,828,111) | (5,650,977) |

Note: 3 Long Term Borrowings

| Sr No | Particulars | For the FY 2016-17 | For the FY 2015-16 |
|-------|--|--------------------|--------------------|
| | <u>Secured</u> | | |
| b | <u>Term Loan</u> | | |
| | HDFC Bank | 246,225 | 246,225 |
| | KICL Bank- SWIFT Car | 289,867 | 354,800 |
| | Indec Capital Limited | 7,027,637 | 7,112,579 |
| | Nature of Security | | |
| | Mortgage of Vehicle with Bank | | |
| | <u>Unsecured</u> | | |
| c | <u>Loan from Directors & Relatives</u> | | |
| | Loan Sharma | 135,075 | 135,075 |

✓

| Max Roofing & Private Limited Flat No. 21, Khirabad, Near L. and Hospital, New Friends Colony, Delhi BALANCE SHEET AS AT MARCH 31, 2018 | | | |
|---|------------|---|---|
| PARTICULARS | S.O.FI NO. | Figures as at the end of current reporting period 2017-18 | Figures as at the end of current reporting period 2018-17 |
| I. EQUITY AND LIABILITIES | | | |
| (1) Shareholder's Funds | | | |
| (A) Share Capital | 1 | 485,000 | 485,000 |
| (B) Reserves And Surplus | 2 | (7,030,772) | (5,825,111) |
| (C) Money Received Against Share Warrants | | | |
| Share application money pending allotment | | | |
| (2) Non-Current Liabilities | | | |
| (A) Long Term Borrowings | 3 | 7,098,598 | 7,098,598 |
| (B) Deferred Tax Liabilities (Net) | 4 | (530,477) | (601,475) |
| (C) Other Long Term Liabilities | | | |
| (D) Long Term Provisions | | | |
| (3) Current Liabilities | | | |
| (A) Short Term Borrowings | | | |
| (B) Trade Payables | 5 | 9,248,101 | 9,409,231 |
| (C) Other Current Liabilities | 6 | 5,197,006 | 5,806,168 |
| (D) Short Term Provisions | 7 | - | (6,652) |
| TOTAL | | 15,358,516 | 15,981,140 |
| II. ASSETS | | | |
| (1) Non-Current Assets | | | |
| (A) Fixed Assets | 8 | 3,275,627 | 4,406,158 |
| (B) Intangible Assets | | | |
| (C) Investments | | | |
| (D) Deferred Tax Asset (Net) | | | |
| (E) Long Term Loans And Advances | 9 | 1,800,741 | 2,960,741 |
| (2) Current Assets | | | |
| (A) Inventories | 10 | - | 490,650 |
| (B) Trade Receivables | 11 | 8,255,715 | 3,253,926 |
| (C) Cash And Cash Equivalents | 12 | 15,28,539 | 723,583 |
| (D) Short Term Loans And Advances | 13 | 1,273,327 | 1,372,515 |
| (E) Other Current Assets | 14 | 108,467 | 7,311,557 |
| TOTAL | | 15,358,516 | 15,381,140 |
| Significant Accounting Policies | 22 | | |
| The Notes are an integral part of these financial statements. | | | |
| AUDITOR'S REPORT As per our report of even date annexed For: MYSK & Associates Chartered Accountants FRS No. 0221488 | | For and on behalf of Board of Directors | |
| | Director | Director | |
| Shambhu Kumar (Partner) M No. 520012 | | | |
| Place : Delhi | | | |
| Date : 08/09/2018 | | | |

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Note 7: Reserve And Surplus

| Sr. No. | Particulars | For the FY 2017-18 | For the FY 2016-17 |
|---------|---|--------------------|--------------------|
| a | Surplus in the statement of profit and loss | | |
| | Balance as per last financial Statement | (6,878,111) | (5,750,875) |
| | Profit/Loss for the year | (572,661) | (1,077,194) |
| | Less: Appropriations | | |
| | Proposed Dividend | | |
| | Corporate Tax on Dividend | | |
| | Director's personal Reserve | | |
| | Total | (7,450,772) | (6,828,069) |

Note 8: Long Term Borrowings

| Sr. No. | Particulars | For the FY 2017-18 | For the FY 2016-17 |
|---------|--|--------------------|--------------------|
| | Secured | | |
| a | Term Loan | | |
| | HDFC Bank | 246,225 | 246,225 |
| | ICICI Bank - Short Term | 289,661 | 289,661 |
| | Boys Capital Limited | 7,027,637 | 7,027,637 |
| | Source of Security | | |
| b | Mortgage of Vehicle with Bank | | |
| | Unsecured | | |
| c | Loan from Directors & Relatives | | |
| | Laxmi Sharma | 133,075 | 133,075 |
| | Total | 7,495,548 | 7,495,548 |

Financial Creditor has relied upon an judgment of **Asset Reconstruction Compnay (India) Limited Vs Bishal Jaiswal and Anr. wherein it has been held that Balance Sheet is indeed an acknowledgement of debt u/s 18 of Limitation Act, 1963.**

5. We have perused the averments, documents produced and the contentions raised by the Financial Creditor and we are of the considered opinion that:

- The Corporate Debtor did not appear before us and has not submitted his defence. The relevant point to be considered is that even the Arbitration proceedings proceeded *ex-parte* against respondents. As per the Interim Order dated 15.09.2021 and Order dated 11.10.2021, the Corporate Debtor is proceeded **ex-parte**.
- The Financial Creditor has properly placed the Loan Agreements, Sanction Letters, Disbursement Details, Loan Recall Notice, Last Payment details, Statement of Dues to establish the default and the

Balance sheets for the corporate debtor which acts a proper acknowledgment within the meaning of Section 18 of the Limitation Act, 1963.

- Once there is a proper Acknowledgment of the Debt in writing, a fresh limitation period starting from the date of acknowledgment begins i.e. **05.09.2018 (Balance sheet for the year 2017-18), 30.09.2017(Balance sheet for the Year 2016-2017)**. The petition is filed on **18.11.2019** which is under 3 years of the Limitation period from the last acknowledgment received.
 - Again, dates with respect to EMI Bounced and Last paid EMI dates are concerned, Bank Statements are annexed **Annexure A-12** which shows that for the **Loan I, Last Transaction is 18th Sept 2017 and For the Loan II , last transaction is 4th Sept, 2017**. Even if we count the limitation period starting from the last transaction, then also Financial Creditor is very well within the limitation period of 3 years.
 - That there exists a default and evidence of default has already been placed by the financial Creditor. According to Sec 7(5) if the Adjudicating Authority is satisfied that *a default has occurred and the Application is complete in accordance to Sec 7(2) and 7(3), then Adjudicating Authority may admit such Application.*
6. Thus, we are of the opinion that Application is complete in all respects and there is a failure on the part of Corporate Debtor to make the timely payments of the Loan and follow the repayment Schedule. The Financial Creditor had made several attempts to recover the due amount and served legal notice on the Corporate Debtor but Corporate debtor had never responded to those. Even after passing of the Arbitral Award in favour of the Financial Creditor, Corporate debtor failed to comply with it. Thus it is a fit

case to admit CIRP against Corporate Debtor and the application is within the limitation Period.

7. Accordingly, this petition is **ADMITTED**. A moratorium in terms of Section 14 of the IBC, 2016 shall come into effect prohibiting:-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Securitisation 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.

Further:

(e) the supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

The provisions of (a), (b), (c) & (d) shall not apply to:

- i) such transactions as may be notified by the Central Government in consultation with any financial sector regulator or any other authority,
- ii). a surety, in a contract of guarantee to a corporate debtor.



(f) 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 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.

8. The Financial Creditor has proposed the name of **Mr. Sanjay Chopra** having **Email: casanjaychopra@outlook.com** and **Registration No.: IBBI/IP-P01568/2018-2019/12427**

duly empanelled with the IBBI as the Insolvency Resolution Professional ("hereinafter referred to as IRP"). Written Communication/consent from proposed IRP in accordance to the Rules under the IBC, 2016 has also been annexed (**Written Submissions page 5**). Therefore, he is appointed as IRP in this matter and directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.

9. The Financial Creditor is directed to deposit a sum of Rs. 1 lakh to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the Committee of Creditors, to the Financial Creditor to be recovered as CIRP costs.

10. Copy of the order be sent to both the parties as well as to the IRP.


31/1/2022
AVINASH K. SRIVASTAVA
Member (T)


ABNI RANJAN KUMAR SINHA
Member (J)