

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 186/KB/2023

*An application under Section 7 of the Insolvency and Bankruptcy Code, 2016, read
with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016.*

IN THE MATTER OF:

**TECHON COMMERCIAL PRIVATE LIMITED
(CIN: U52190WB2009PTC133582)**

... Applicant/ Financial Creditor.

Verses

**SUPER FORGINGS & STEELS LIMITED
(CIN: L27106WB1968PLC027324)**

... Respondent/ Corporate Debtor.

Date of Pronouncement: January 01, 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant: Ms. Urmila Chakraborty, Adv.

For the Respondent: Mr. Shaunak Mitra, Adv.

ORDER

Per: D. Arvind, Member (Technical)

1. This Court is congregated through hybrid mode.
2. Heard the Learned Counsels for both the parties.

Brief Facts:

3. The instant application is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, by **Techon Commercial Private Limited**, hereinafter referred to as “Applicant” or “Financial Creditor” against **Super Forgings & Steels Limited**, herein referred to as “Respondent” or “Corporate Debtor” seeking for the direction from this Adjudicating Authority to initiate Corporate

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Insolvency Resolution Process, for brevity “CIR Process” in respect of the Corporate Debtor herein.

4. The total amount of debt granted is Rs. 6,52,50,000/- and **the total amount claimed to be in default is Rs. 7,49,20,456/-**, in which Rs. 6,22,50,000/- is the principal default amount and Rs. 1,26,70,456/- is the interest amount calculated on the principal amount at the rate of 12% from the date of disbursement of loan till 10.08.2023. **The date of default is claimed as on 01.04.2023.**

Applicant's Submissions:

5. The Learned Counsel for the Applicant submits that the Corporate Debtor approached the Financial Creditor, through letter dated 30.04.2016, annexed at Page 39 as Annexure “G” to the Application, for an unsecured loan to the tune of Rs. 7 Crore to Rs. 8 Crore for its business. The Board of Directors of the Financial Creditor in its meeting dated 26.05.2016 approved the request of the Corporate Debtor and authorized Mr. Santosh Kumar Khaitan, the Director of the Financial Creditor to do all such acts necessary to give effect to the said transfer of loan to the Corporate Debtor. Copy of the Board Resolution dated 26.05.2016 is annexed at Page 40 as Annexure “H” to the Application.
6. The Learned Counsel for the Applicant further submits that pursuant to the Board Resolution dated 26.05.2016, an agreement was executed on 19.09.2016 between the Corporate Debtor and the Financial Creditor, annexed an Annexure “I” at Pages 41-49 to the Application, whereby the Financial Creditor advanced an amount of Rs. 25 Lakh to the Corporate Debtor and the maximum amount of loan to be transferred being Rs. 8 Crore on as and when required basis. It is agreed upon that the loan amount carried an interest component of 12% p.a. and the said loan was to be repaid within a period of 4 years from the date of receipt of entire amount of loan amount being sought by the Corporate Debtor with an outer limit of Rs. 8 Crore. Further, it was mutually agreed upon that the Financial Creditor at any event demand from the Corporate Debtor the outstanding amount which

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the Corporate Debtor shall oblige and make payments within 3 days from the date of demand.

7. Further, it is submitted that the execution of the agreement, the Financial Creditor started making payments to the Corporate Debtor as per its demand. The first of such loan facility was made available to the Corporate Debtor on 16.09.2016, amounting to Rs. 25 Lakh and the last of such loan facility on 18.01.2022 amounting to Rs. 5 Lakh.
8. It is further asserted that the Corporate Debtor, on request of the Applicant, made a payment of Rs. 26,07,118/- to the Financial Creditor on 01.10.2020. Further, it is asserted that the Respondent made some part payments including interest to the Applicant aggregating to Rs. 1,98,58,074/-. The last of such repayments was done by the Corporate Debtor on 11.01.2023, amounting to Rs. 3,69,524/-. The Copy of the Bank statement is annexed as Annexure “J (Colly)” at Page 50-87 to the Application.
9. It is claimed that after that, despite several request made by the Applicant creditor to the Corporate Debtor, for repayment of its outstanding debt, the Corporate Debtor did not take any reasonable attempt to repay. Being aggrieved by the conduct of the Corporate Debtor, a demand notice was issued on 02.01.2023, annexed at Page 95 as Annexure “L” to the Application, for repayment of its outstanding principal debt amounting to Rs. 6,22,50,000/-. Further subsequent to the said notice, the Financial Creditor issued another 3 notices on 13.02.2023, 09.03.2023 and 12.08.2023 to the Corporate Debtor, but all in vain. Hence, this application has been preferred by the Applicant.

Respondent’s submissions per contra:

10. The Learned Counsel for the Respondent per contra submits that due to bad market and unavoidable circumstances during and after COVID-19 pandemic period, the financial health of the Corporate Debtor did not improve a bit and the

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Company was not able to obtain the financial gain, as was expected at the time of COVID.

11. It is further submitted that the Adjudicating authority may grant some time to the Respondent so that it can make payments to the Financial Creditor and avoid getting CIR Process initiated against it. It is further submitted that the same shall aid in safeguarding the employment of about 500 employees and workers associated with it and save the Corporate Debtor from the rigors of law and at the time loss of employment to its workmen and payment of statutory dues.

Analysis and Findings of us:

12. We have duly considered the arguments advanced by the Learned Counsels for the parties and perused the documents placed before us carefully.
13. It is evident from the **Board Resolution of the Financial Creditor dated 26.05.2016** that the unsecured loan as approved by the Financial Creditor is an Inter Corporate Deposit (ICD). The relevant paras are reproduced as under:

“Resolved that the Board has approved the proposal after discussion for Inter Corporate Deposit (ICD) by Super Forgings & Steels Ltd. of long term unsecured loan for Rs 7,00,00,000/- (Rupees Seven Crores Only) to Rs 8,00,00,000/- (Rupees Eight Crores Only) on negotiable terms and conditions on timely basis and grant the same as per requirement against their proposal request letter for the same dated 30/04/2016 (Copy of Accepted Proposal Letter Enclosed).

Resolved further that Shri Santosh Kumar Khaitan, one of the directors of the Company be and is hereby authorized to do all such acts and commissions to secure the Company on deployment of surplus or other funds to be invested by the Company for adequate and safe returns to augment the earnings of the Company.

Resolved further that Shri Santosh Kumar Khaitan, Director will take such decisions and actions for investments and also safeguards the same as permissible by law.

Resolved further that Shri Santosh Kumar Khaitan, Director is also authorized by the Board that in case of any default of the borrower, he may proceed to take such suitable legal. action as deemed fit under the existing laws of land’.”

14. It is further evident from para 3 of the **Loan Agreement dated 19.12.2016**, that:

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“3.1 At the request of the Borrower the Lender has agreement to advance to the Borrower a sum of Rs.25,00,000/- (Rupees Twenty five lakhs only) (hereinafter referred to as the said LOAN AMOUNT) which amount the Borrower both admit and acknowledge the amount of loan to be availed of such amount totaling to a maximum of Rs.8,00,00,000/- (Rupees Eight crores only). The first instalment of payment is acknowledged by the Memorandum of payment being a part of this Loan Agreement and this LOAN shall include also all payments made by the Lender on behalf of the Party to the Second Part.

3.2 The said Loan Amount has been contributed and advanced by Techon Commercial Pvt. Ltd.

3.3 The said loan amount will carry interest at the rate of 12% per annum or as agreed upon from time to time.”

15. We are of the view that an Inter-Corporate Deposits can be considered as financial debts within the ambit of Section 5(8) of the I&B Code, if the financial relationship the parties must be conclusively established and intention of the parties are considered and substantiated with evidence. To fortify our view, we would rely upon the decision passed by this Adjudicating Authority in ***Seaview Merchants Private Limited v. Ashish Vincom Private Limited*** reported in (2021) **ibclaw.in 276 NCLT** that:

“9. Albeit, it is well settled principle that the Inter-Corporate Deposits are financial debts but in a transaction of a deposit of money or a loan, a relationship between the parties must come into existence, mere transfer of money from one account to another would not constitute loan/deposits unless the intention of the parties are considered and substantiated with valid documents.”

(Emphasis Added)

16. Further, we are supported by the judgment passed by the Hon’ble NCLAT in ***Narendra Kumar Agarwal v. Monotrone Leasing Pvt. Ltd.*** in **Company Appeal (AT) (Insolvency) o. 549 of 2020** that

“11. In case the Inter-Corporate Deposit is made for a certain period, which was to be paid back with interest then such transaction will also fall in the definition of 'Financial Debt'. The interest is the product of instant

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transaction, which is undoubtedly the time value of money. Thus, such transaction of the inter-corporate deposit is fully covered by the definition of Financial debt as provided under Section 5(8) of the I&B Code....”

(Emphasis Added)

17. Further, the Learned Counsel for the Applicant submits the bank statements of the Financial Creditor evidencing the disbursement of loan amount to the Corporate Debtor, annexed at Pages 50-87 as Annexure “J” to the Application.
18. We are supported by the views of Hon’ble Apex Court to define “Financial Debt” and to initiate Corporate Insolvency Resolution process as under:

(a) Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416:

“any debt to be treated as financial debt, there must happen disbursement of money to the borrower for utilization by the borrower and that the disbursement must be against consideration for time value of money.”

(Emphasis added)

(b) Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Limited reported in (2020) 8 SCC 401:

“the essential condition of financial debt is disbursement against the consideration for time value of money.”

(Emphasis added)

(c) Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor'...”

(Emphasis added)

(d) Innoventive Industries Ltd. v. ICICI Bank reported in (2018) 1 SCC 407: MANU/SC/1063/2017 has laid down that:

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“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”

XXX XXX XXX XXX

“30. 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 in 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.”

(Emphasis added)

19. In this case at hand, the loan amount has been granted as an unsecured debt with an interest component at the rate of 12% and accordingly disbursed to the Corporate Debtor. Further, the Learned Counsel for the Respondent has admitted that the debt has become due and defaulted by the Corporate Debtor due to their adverse financial circumstances due to COVID – 19 pandemic.
20. In the light of the facts stated in the application bearing **Company Petition (IB) No. 186/KB/2023**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 7 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:
 - i. The Application filed by the **Techon Commercial Private Limited (Financial Creditor)**, under **Section 7** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency**

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(Corporate Debtor).**

- ii. As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - a) *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;*
 - b) *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its asset 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
 - d) *The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*
[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 license, permit, registration, quota, concession, clearances 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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]
- iv. 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.

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- v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Applicant has proposed the name of “**Mr. Rajiv Kumar Agarwal**”, **Address: 7, Grant Lane, Room No. 317, Kolkata 12, Email ID: rajiv@kvrassociates.in** having **Registration No. IBBI/IPA-001/IP-P00552/2017-2018/10982** as the “IRP”. We have perused that there is a written communication, annexed as **Annexure “D”** at **Page 31-34**, to this Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professional of Insolvency Professional Agency of Institute of Cost Accountants of India. In addition, further necessary disclosures have been made by **Mr. Rajiv Kumar Agarwal** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code. Hence, we appoint **Mr. Rajiv Kumar Agarwal** as the **Interim Resolution Professional (IRP)** of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.
- vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public

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announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned Police Authorities and/or the Officer-in-Charge of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the

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Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
 - xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
 - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 21.** Urgent certified copy of this order, if applied or, be supplied to the parties, subject to compliance with all requisite formalities.
- 22.** Post the matter on **06/ 02/ 2024** for filing the Periodical Progress Report by the IRP/RP.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Technical)

This Order is signed on 01th Day of January, 2024.

Bose, R. K. [LRA]