



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 511/ND/2023

(A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.)

IN THE MATTER OF:

M/s. Marlin Travels Private Limited
301-303 & 305-306, Plot no.11,
Bhanot Building R.B.C., DDA Complex,
Nangal Raya, New Delhi – 110046

...Applicant/Financial Creditor

Versus

M/s. ECA Engineering Private Limited
G-9 Harsh Bhawan
64-65 Nehru Place
New Delhi- 110019

...Respondent/Corporate Debtor

Order Delivered on: 09.07.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (J)

DR. SANJEEV RANJAN, HON'BLE MEMBER (T)

Appearances:

For the Applicant : Mr. Sohit Chaudhary, Adv.

For the Respondent : Mr. Ravi Kishore, Adv.

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity "the Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by **M/s. Marlin Travels Private Limited** (hereinafter referred to as 'Financial Creditor'),

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represented by Mr. Ranganathan Mani Naidu, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **M/s ECA Engineering Private Limited** (“Corporate Debtor”). The Financial Creditor was incorporated on 20.07.2001, having Identification No. U63040DL2001PTC111746.

2. The Corporate Debtor was incorporated on 17.03.1986, having CIN: U74899DL1986PTC023619 under the Companies Act, 1956. Its registered office is at G-9 Harsh Bhawan 64-65 Nehru Place New Delhi 110019. Therefore, this Bench has jurisdiction to deal with this petition. The Authorized Share Capital of the Corporate Debtor is INR 2,00,00,000 (Two Crores). The Paid-Up Capital of the Corporate Debtor is INR 1,94,55,000 (One Crores Ninety-four Lacs Fifty-five Thousand).
3. The present petition was filed on 02.05.2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of INR 2,01,43,239.00 which is inclusive of interest at the rate of 18% p.a (Rupees Two Crores One Lacs Forty-Three Thousand Two Hundred and Thirty-Nine) on 02.05.2021 (date of default). However, the Corporate Debtor stated that the default is continuing in nature.

Submissions of Learned Counsel appearing for the Applicant are as under:-

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
 - a) The present Section 7 Petition is filed by the Financial Creditor on 02.05.2023 claiming a financial debt of INR 2,01,43,239.00 (Rupees Two Crores One Lacs Forty-Three Thousand Two Hundred and Thirty-Nine) as on 02.05.2021.
 - b) In 2009, the Corporate Debtor, ECA Engineering Private Limited had sought financial assistance from the financial creditor in terms of loans for its working capital needs and requirements. Accordingly, a loan agreement dated 23.01.2009 was entered into between the financial creditor and the Corporate Debtor. Further, as per the demands of Corporate Debtor, the



Financial Creditor has remitted INR 60,00,000.00 on 05.02.2009 to the Corporate Debtor.

- c) The terms and conditions of loan agreement dated 23.01.2009 stipulated that the loan amount carries rate of interest at 18% which is compounded yearly on end of every financial year and the same was credited into the loan account and will payable at the end of the tenure of the loan along with the principal amount. Loan agreement also mentions that on the occurrence of default, the Corporate Debtor unconditionally agrees to additionally pay to the Financial Creditor, a penal interest over and above the agreed interest, at the rate of 1% Per Month.
- d) The Corporate Debtor had repaid a part payment of loan amount of Rs. 50,00,000/- (Rupees Fifty Lakhs only) in two tranches i.e., on 09.01.2010 for Rs.14,00,000/- (Rupees Fourteen Lakhs only) and dated 15.03.2010 for Rs.36,00,000/- (Rupees Thirty-Six Lakhs only) inclusive of interest and prepayment penalty for delay of two months of Rs.10,56,300/- (Rupees Ten Lakhs Fifty-Six Thousand and Thirty-Six hundred only).
- e) Both the Corporate Debtor and the Financial Creditor had entered into Memorandum of understanding cum Loan Amendment agreement dated 15.04.2010 wherein the Financial Creditor was agreed and extended the time period of repayment of Loan till 31.03.2017, the Corporate Debtor has to repay a sum amount of Rs.74,61,691/- (Rupees Seventy-Four Lakhs Sixty-One Thousand Six Hundred Ninety-One Only), on or before 31.03.2017.
- f) In 2017, the Corporate Debtor again requested the Financial Creditor to extend the Loan Facility for further 36 months, i.e., up to 02.05.2020. pursuant to that the Financial Creditor extended the loan facility for further 36 months with the same terms and conditions of the Loan agreement on 01.05.2017. however, the Corporate Debtor failed to make the payments.



- g) The Corporate Debtor further requested for extension of 12 months for the repayment in May 2020 on account of Covid-19 and the Financial Creditor again extended the time for repayment of loan by 1 year.
- h) Since then, the Corporate Debtor owed a total Financial Debt of INR1,44,66,564.33 to the Financial Creditor. Further as per the loan agreement, the Financial Creditor is also entitled to recover an interest, @18% per annum from the Corporate Debtor on such amount.
- i) On 03.04.2023, the Financial Creditor sent a letter to Corporate Debtor requesting for repayment, but the Corporate Debtor never turned up and never made any payments to the Applicant/ Financial Creditor.
- j) That the Corporate Debtor has admitted the debt as evident from Account statement signed and confirmed by the Corporate /debtor on various dates.
- k) That admission of debt is also evident as the Corporate Debtor has not raised any dispute with regard to the existence of debt, which is due and payable, thus the present petition is liable to be admitted on basis of that only.

Submissions on behalf of the Corporate Debtor are as under:

- 5. The details of the submissions made by the Corporate Debtor in their reply to the Section 7 petition are as follows:
 - a) That the Corporate Debtor contended that the present petition is not maintainable under Section 7 of the Code, as there is no default on part of the Respondent Company in terms of Section 3(12) of the Code, 2016. Further, there is no debt due and payable within the meaning of Section 3(11) of the Code, 2016. The Corporate debtor further submits that the present petition is also barred by the Article 137 of Limitation Act, 1963
 - b) The Corporate Debtor took financial assistance cum loan for INR 60,00,000 in the form of Inter Corporate deposit cum Loan from the Financial Creditor for working capital needs. Financial Creditor at its own risk, agreed to



advance a loan facility to the Corporate Debtor and executed the Loan Agreement dated 23.01.2009.

- c) The Corporate Debtor is slowly reviving its business and is trying to pay off all its debt to the creditors. The instant petition is an abuse of the process of the law. The financial creditor is trying to arm-twist the corporate debtor to extract its money by illegally using the provisions of the Insolvency and Bankruptcy Code, 2016. The corporate debtor has all the bona fide intent to repay its dues to the financial creditor within the earliest possible time span. The invocation of the corporate insolvency resolution process against the corporate debtor would be a harsh step and would lead to the corporate death of the company.
- d) The instant petition is against the objectives of Insolvency and Bankruptcy Code, 2016, as it goes against the objective of “resolution” before “liquidation.” Furthermore, the instant petition has been filed under the guise of Section 7 of the Code, whereas the intent of the Applicant/Financial Creditor is not the resolution of the Respondent Company but merely extortion for recovery. Thus, the present petition is not liable to be accepted and should be dismissed in terms of objectives of the Code.

Analysis and Findings

- 6. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and the written submissions presented by the parties. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
- 7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.



In the instant petition, the Corporate Debtor availed financial assistance from the Financial Creditor and entered into loan agreement on 23.01.2009. The total amount as declared outstanding and claimed by the Financial Creditor in Part IV is INR 2,01,43,239.00 (Rupees Two Crores One Lacs Forty-Three Thousand Two Hundred and Thirty-Nine) as on 02.05.2023. both the financial Creditor and the Corporate Debtor had entered into memorandum of understanding on 15.04.2010 thereby extending term of repayment till 31.03.2017. the Financial Creditor again extended the loan facility for another 36 months i.e., till 02.05.2020 at the request of Corporate Debtor. The loan facility was further extended for 12 months due to Covid-19. The Corporate Debtor committed default in repayment of the said loan amount of INR 1,44,66,564.33 on 02.05.2021. the Financial Creditor made numerous requests for repayments and also sent formal letter for repayment of outstanding dues on 03.04.2023 but the Corporate Debtor never made any payments.

9. On the perusal of the documents as placed before us such as Loan Agreement dated 23.01.2009 and Copy of Bank Account Statements, it is established that there was disbursal of loan amount by the Financial Creditor in favor of Corporate Debtor. Further, the Corporate Debtor has requested for extension of loan tenure which was granted by the Financial Creditor thrice on 15.04.2010, 01.05.2017 and in May, 2020. Furthermore, on the basis of Bank Account Statement of Financial Creditor and the signed Confirmation of Account Statement issued by Corporate Debtor, it is concluded that the Corporate Debtor owes debt worth INR 1,70,70,545.19/- (Rupees One Crores Seventy Lacs Seventy Thousand Five Hundred and Forty-Five and Nineteen Paise) as on 31.03.2022 to the Financial Creditor. Further, the Corporate Debtor has nowhere denied the existence of the debt in its averments. Therefore, one essential ingredient with respect to Section 7, that there has been a “debt”, stands substantiated.
10. Further, the Corporate Debtor has failed to repay the amount as undertaken, thereby committing default with respect to loan agreement and subsequent amendment agreement. Furthermore, as per the record of default as maintained by the Information Utility NeSL, it is concluded that there exists a debt worth



more than Rs. 1 Crore by the Corporate Debtor towards the Financial Creditor and the said Corporate Debtor has defaulted in the repayment of the said debt. Therefore, another major essential ingredient of Section 7 i.e., “default” with respect to the debt stand substantiated.

11. Additionally, the Corporate Debtor contended that the present application is barred from limitation in terms of Article 137 of the Limitation Act, 1963. On perusal of records placed before us, the parent loan agreement dated 23.01.2009 was supplemented by amendment agreement/memorandum of understanding thereby extending tenure of loan agreement. The latest extension was granted by the Financial Creditor in May, 2020 which was also not honored by the Corporate Debtor. The Financial Creditor had placed before us a signed confirmation of account statements issued by the Corporate Debtor to the Financial Creditor which clearly elucidates that the Corporate Debtor has duly acknowledged and admitted the debt owed to the Financial Creditor. Thus, the fresh limitation period starts from such acknowledgement in terms of Section 18 of Limitation Act, 1963. Therefore, the contention of the Corporate Debtor that the petition is barred from limitation appears to be moon shine. Hence, the said defense does not hold any ground.
12. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. “*Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.*”

Section 5(7) of IBC defines Financial Creditor: “*Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.*”



Section 5(8) of IBC defines Financial Debt. “*Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*

- (a) *Money borrowed against the payment of interest;*
- (b) *Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) *Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) *The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as maybe prescribed;*
- (e) *Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) *Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) *Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) *Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) *The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”*

13. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petitioner established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 02.05.2023, and even admittedly the debt owed to the Financial Creditor is an amount of INR 2,01,43,239.00/- which meets the threshold of Rs. One Crore.

14. The Hon’ble Supreme Court in the matter of **Innovative Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407**, held as follows:

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“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

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.”

Further, the Hon’ble Supreme Court in **Suresh Kumar Reddy v. Canara Bank** in **Civil Appeal No. 7121 of 2022** categorically laid down that the view taken in Innovative Industries still holds good, which lays down that the Adjudicating Authority has only to ascertain the existence of ‘debt’ and ‘default’ for admission of an application under Section 7 of the Code.

15. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/511(ND) 2023** filed by M/s. Marlin Travels Private Limited, the Financial Creditor, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s ECA Engineering Private Limited, the Corporate Debtor, stands **admitted**.
16. That the petitioner in Part-III of the petition has proposed the name of **Mr. Sudhanshu Gupta**, as Interim Resolution Professional, having Registration Number IBBI/IPA-002/IPNO0216/2017-18/10668 and E-mail ID sg_1973@rediffmail.com, is hereby appointed as an Interim Resolution



Professional (IRP) for corporate debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that the IRP has a valid AFA.

17. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:


- 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 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 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 corporate debtor.*
- e. The IB Code 2016 also prohibits Suspension or termination of any 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, 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, concessions, clearances or a similar grant or right during the moratorium period.*

18. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018



which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

19. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
20. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Sudhanshu Gupta to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
21. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
22. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.



3. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

24. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

25. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./511 (ND)/2023 stands admitted.**

26. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)