IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH-IV

CP (IB) No.164/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

Goldenarch Digital Solutions Pvt. Ltd.

[CIN: U52609MH2016PTC282315]

…Financial Creditor/Applicant

V/s.

Proficient Engineering Pvt. Ltd.

[CIN: U28920MH1996PTC096844]

...Corporate Debtor/Respondent

Order Dated: 09.02.2023

Coram:

Mr. Manoj Kumar Dubey Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Ms. Madhavi Nalluri i/b Yash Jariwala, Advocate.
For the Respondent(s)	:	Ms. Geeta Lundwani, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application being C.P. (IB) No. 164/MB/C-IV/2021 filed by Goldenarch Digital Solutions Pvt. Ltd., the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Proficient Engineering Pvt. Ltd., Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

The Brief Facts of the Case: -

2. The Financial Creditor and Corporate Debtor, though not related parties, have been associated with one another by having deep-rooted business synergies. Both Companies are involved in similar business of trading of electric appliances. The Promoters of the two companies, although not related parties, have been known to each other.

3. From time to time, the Corporate Debtor required funds to meet its business requirements. Upon the request of the Corporate Debtor, the Financial Creditor a total amount of Rs. 4,89,10,000.00 it under 5 different transfers. A chart depicting the aforesaid transfers is annexed as "Annexure 2". A copy of the statement of accounts of the Financial Creditor showing the disbursement of the aforesaid amounts is annexed as "Annexure 3".

4. The Financial Creditor is a supplier of raw materials which is used by the Corporate Debtor for its manufacturing activities. The Corporate Debtor had indicated that it was in dire need of working capital

without which its business activities of the Corporate Debtor suffered, it would have also caused a negative impact upon the Financial Creditor. Therefore, the Financial Creditor was persuaded to advance these sums of money to the Corporate Debtor upon the understanding that this would allow the two companies to do future business together for a substantial future gain. In such a manner, the Financial Creditor was persuaded to advance these sums to the Corporate Debtor under the garb of business prospects in the future and also due to the long-standing business relationship between the parties.

Debt amount:

Rs.4,89,10,000.00 (Rupees Four Crore Eighty-Nine Lakh Ten Thousand only) Rs.1,10,59,021.03 (Rupees One Crore Ten Lakhs Fifty-Nine Thousand Twenty One only) interest. This entire amount is now outstanding. Thus, the total amount due and payable is Rs.4,89,10,000.00 plus Rs.1,10,59,021.03 interest.

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) Rs.4,89,10,000.00 (Rupees Four Crore Eighty Nine Lakh Ten Thousand only) (only principle amount- Interest @ 9% should be added from day one of advances) Rs.1,10,59,021.03 (Rupees One Crore Ten Lakhs Fifty Nine Thousand Twenty One only).

Date of default:

The amounts advanced to the Corporate Debtor by the Financial Creditor were meant to be in the form of short-term loans. However, as the Corporate Debtor failed to repay these amounts, the Financial Creditor sent a demand notice dated 4th November, 2019 seeking repayment of the full amount within a period of 7 days. A copy of the said notice dated 4th November, 2019 is annexed as "Annexure 4".

5. The Corporate Debtor replied to the said notice vide its letter dated 13th November, 2019 while admitting its liability stated that as discussed with the management of the Financial creditor, the Corporate Debtor was not in a position to make the repayment due to severe cashflow crunch and financial stress and sought further time of one year to repay the said working capital loan. A copy of the said letter dated 13th November, 2019 is annexed as "Annexure 5".

6. Despite the aforesaid, the Corporate Debtor failed in making this payment. Thus, the date of default is 11th November, 2019 i.e. 8th day after date of receipt of demand notice.

<u>Reply of the Corporate Debtor</u>

7. Mr. Murukan Sivaramakrishnan, being the authorized signatory of the Corporate Debtor stated that he is fully aware of the facts and circumstances of the present case and capable of making the present affidavit in reply thereto. A copy of the Board Resolution dated 4th April, 2022 is being annexed hereto marked as 'Exhibit – A'.

8. Counsel for the Corporate Debtor submitted that the working relationship between the Financial Creditor was that the Corporate Debtor always had a long-standing business relationship with the Financial Creditor and accordingly, from time to time, the Corporate Debtor used to avail short term capital loan from the Financial Creditor.

9. The Corporate Debtor stated that the Corporate Debtor was undergoing financial crisis which further deteriorated with the advent of the Covid-19 pandemic. The Financial Creditor is well aware that the business activities of the Corporate Debtor have taken a hit since the advent of the Covid-19 pandemic and is facing severe financial difficulties. She further submitted that the business of the Corporate Debtor has come to a complete standstill since then due to market conditions. However, the Corporate Debtor is making every attempt to revive its business operations despite the unfavourable market conditions.

10. The Corporate Debtor have tried to resolve the issues with the present Financial Creditor which is evident from the Letter dated 13th November, 2019, annexed as Annexure-5 to the captioned Petition. However, the consistent losses and day to day losses has broken the backbone of the Corporate Debtor very seriously not only the present Corporate Debtor has suffered but there are various other Creditors to whom the payments are due.

11. The Financial Creditor is well aware that the Corporate Debtor is mostly deriving its income by supplying goods to various Companies themselves have entered into the insolvency resolution process under the provisions of the IBC as a result of which the business activities of the Corporate Debtor have also taken a hit. It is for this reason that the Respondent Company has been facing severe financial difficulties.

12. The Corporate Debtor further submitted that Financial Creditor despite the knowledge of the circumstances the Corporate Debtor fell into has unfairly filed the present petition against the Corporate

Debtor seeking payment of the entire outstanding. It is noteworthy that the Corporate Debtor had assured the Financial Creditor and had informed of every intention to clear the outstanding dues by somehow recovering from its debtors or by selling some assets so that the Financial Creditor's liability could be cleared, but the Financial Creditor did not pay any heed to it. In fact, during meetings between the director of the Financial creditor and the Corporate Debtor, it was even assured that the Corporate Debtor would not only pay back the entire amount outstanding, but would also pay interest, however, this would only be done after the activities of the Corporate Debtor commence and Corporate Debtor is profitable again.

13. The Corporate Debtor informed that the present petition ought not to be entertained as the Financial Creditor has been well aware of the financial distress the Corporate Debtor has been facing since the past many years. While it is true that the Corporate Debtor has admitted its liability in the past, the fact remains that the first default committed by the Corporate Debtor was more than three years prior to the date of the filing of the present petition. Therefore, this Tribunal ought not to permit the Corporate Debtor to bring up this issue at such a belated stage.

14. The Corporate Debtor availed a short-term loan from the Financial Creditor, it is also of an admitted fact that the Corporate Debtor has tried its best to make payments. However, the situation worsened due to the ongoing Covid-19 pandemic and the Corporate Debtor had to suffer irretrievable losses.

Findings:

15. We have heard the submissions made by the counsel on both the sides and perused the records.

16. We have prudently gone through the pleadings available on record and observed that:

    a. It is clear from the records that the Corporate Debtor in its reply has acknowledged the debt which was due and payable to the Financial Creditor.

17. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is hereby admitted.

18. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established and the application deserves to be admitted.

19. The Applicant has proposed the name of Ms. Jovita Reema Mathias, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00337/2017-18/10941] as Interim Resolution Professional, to carry out the functions as mentioned

under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 164/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by Goldenarch Digital Solutions Pvt. Ltd., Financial Creditor/ Applicant against Proficient Engineering Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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 possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints of Ms. Jovita Reema Mathias, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00337/2017-18/10941] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VII. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing Public Notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

SD/-	**SD/-**
MANOJ KUMAR DUBEY **MEMBER (TECHNICAL)**	**KISHORE VEMULAPALLI** **MEMBER (JUDICIAL)**

09.02.2023