IN NATIONAL COMPANY LAW TRIBUNAL
MUMBAI- BENCH- V

C.P. 1064/IB/MB/2023

[*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

Vichare Loginext Private Limited

Shop No. 007, 1st Floor, Raghuleela Mega Mall, Behind Poisar Bus Depot, Kandivali (West), Mumbai 400067, Maharashtra.

… Financial Creditor

Vs

Vichare Express & Logistics Private Limited

407-408, Kesar Plaza, A Wing, 4th Floor, Plot No. 239, RDP 6, Charkop Kandivali (W), Mumbai 400067 Maharashtra.

… Corporate Debtor

Pronounced: 12.03.2024

Coram:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SMT. MADHU SINHA, MEMBER (TECHNICAL)

Appearances: Hybrid

For Financial Creditor: Adv. Aniruth Purusothaman (PH)

For Corporate Debtor: Adv. Vidit Divya Kamat a/w Adv. Yash Jariwala (VC)

ORDER

1. Background

1.1 This Company Petition bearing C.P. 1064/IB/MB/2023 (Application) is filed under Section 7 of the Insolvency and Bankruptcy Code (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 (AA Rules) by **Vichare Loginext Private Limited,** the Financial Creditor (FC) for initiating Corporate Insolvency Resolution Process (CIRP) in respect of **Vichare Express & Logistics Private Limited,** the Corporate Debtor (CD) for a default of Rs. **2,14,43,463/-** (Principal amount of Rs. 1,92,25,000/- plus interest of Rs. 22,18,463/- charged at the rate of 1% p.m. as on 19.10.2023). The date of default as shown in Part IV of the Application is **29.06.2023**.

2. Contentions of FC

2.1 The CD approached the FC for a loan payable on demand as the CD was urgently in need of funds. The FC and the CD entered into a Loan Agreement dated 12.09.2022, the terms of which included executing an unsecured loan not exceeding Rs. 2,00,00,000/-.
2.2 The various dates and amounts of disbursement to the CD by the FC by way of RTGS/NEFT/IMPS are as follows:

Date of Disbursement	Amount (Rupees in Lakhs)
29.09.2022	25.00
21.10.22	75.00
09.11.2022	13.50
09.11.2022	00.50
14.11.2022	04.00
15.11.2022	02.50
16.11.2022	02.00

21.11.2022	02.00
24.11.2022	03.00
24.11.2022	54.00
24.11.2022	08.00
30.11.2022	02.75
Total	192.25

2.3 The FC sent letter dated 06.07.2023 calling upon the CD to return the loan amount of Rs. 1, 92,25,000/- being the principal amount along with interest @ 1% p.m. within 30 days from the date of notice. However, the CD neither repaid the principal amount nor interest as agreed. After passage of considerable time, the FC sent a letter dated 06.07.2023 to the CD calling upon it to return the loan with interest. However, in its reply dated 20.07.2023, the CD expressed its adverse financial situation and also continuing losses in repaying the said loan and sought time from the FC for repayment. The CD did not raise any dispute regarding the disbursal or outstanding amount due to be paid to the FC.

2.4 Thereafter, the FC sent First Reminder Notice of Intimation of Default of loan amount with interest on 07.08.2023 to the CD, requesting repayment within 2 weeks from the date of notice. In its reply dated 16.08.2023, the CD stated its adverse financial difficulty as a reason for not repaying the loan and sought time to repay.

2.5 Thereafter, a Second Reminder Notice of Intimation of Default in Repayment of Loan amount and interest thereon dated 22.08.2023 was sent by the FC to the CD requesting repayment of loan amount within 2 weeks of the date of the letter. In its Reply dated 29.08.2023, the CD once again stated its adverse financial situation and continuing losses as the reasons for not repaying the said loan and sought more time to repay the same.

2.6 Thereafter, Demand Notice of default in repayment of loan amount and interest dated 08.09.2023 was sent by the FC to the CD requesting repayment of loan amount within 3 weeks of the said notice. In its Reply dated 22.09.2023, the CD repeated adverse financial situation and its continuing losses as the reasons for not repaying the said loan and sought more time to repay the same.

2.7 It is submitted by the LD. Counsel for the FC that the CD has caused continuous acts of defaults of debt owed to the FC, even though the same is duly accepted and acknowledged in the confirmation of accounts of the CD without any qualifications whatsoever. Thus, it is a crystal-clear case of existence of financial debt and default by the CD, and hence the present Application for initiating CIRP in respect of the CD is to be allowed.

3. Contentions of CD

3.1 It is the case of the CD that its income drastically reduced to Rs. 9.71 Crore in the financial year 2020-2021 from Rs. 36.42 Crore in the preceding financial year due to COVID-19 pandemic. Furthermore, from 21.03.2020 to 31.08.2020, the revenue of the CD was NIL, but it had expenditure like rent, electricity, etc.

3.2 According to the Ld. Counsel for the CD, since the CD was in urgent need of funds, it entered into the Loan Agreement dated 12.09.2022 with the FC. In its four Reply Letters dated 20.07.2023; 16.08.2023; 29.08.2023; and 22.09.2023, the CD has accepted its liability but has only asked for time for repayment due to its financial difficulty.

3.4 The Ld. Counsel for the CD further submitted that the accumulated losses of the CD were Rs. 6.57 crores, for the period ended 31.03.2022. The continuing losses have led to its adverse financial situation wherein it was unable to pay on time even the salaries of its employees and other statutory dues. He further submitted that due to lack of funds because of lockdown during pandemic, the CD was struggling to run its daily operations and that hundreds of its employees and their families depend on the CD for their lives and livelihood.

3.5 It was further submitted that the CD fully intends to pay outstanding amounts to the FC. However, the CD would require some time to make the repayment. Initiation of CIRP would bring about grave and irreparable harm, loss and injury to the CD, and therefore, the CD requests dismissal of the present Application.

4. Analysis and Findings

4.1 We have heard both the Ld. Counsel for the FC and the CD and have considered all the records.

4.2 The Board of Directors of the CD resolved on 02.09.2022 to borrow certain sum of monies not exceeding ten crores from the FC for business purposes. The Board of Directors of the FC on 05.09.2022 resolved to give a loan of Rs. 2,50,00,000/- to the CD. Consequently, the loan agreement dated 12.09.2022 was executed between the FC and the CD for an unsecured loan not exceeding Rs. 2,00,00,000/- in one or more tranches to the CD for a period of 9 months at the rate of 1% interest per month till the entire repayment. However, the CD failed to repay the said loan and defaulted in payment of principal as well as interest amount.

4.3 The CD in the present case has, from the very beginning, accepted and acknowledged its liability towards the FC. This fact can be established from the Reply Letters dated 20.07.2023; 16.08.2023; 29.08.2023; and 22.09.2023 sent by the CD to the FC. Even in its Affidavit-in-Reply, the CD has not denied the debt and liability but has only pointed out financial difficulties and business losses and requested for time for repayment of the financial debt.

4.4 This Application has been filed well within the limitation period. Considering the admission of debt, liability and default by the CD, there is no need to analyse any question of fact or law for arriving at a decision in the matter and we feel that this Application is only to be admitted.

ORDER

In the result, the Application being CP (IB**) 1064/IB/MB/2023** filed under Section 7 of the IBC for initiating CIRP in the case of Vichare Express and Logistics Private Limited, the CD is hereby **admitted.** We further declare moratorium under Section 14 of the IBC, with consequential directions, as follows:

I. We prohibit-

a) the institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation 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 CD.

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

III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under section 31(1) of the IBC or passes an order for the liquidation of the CD under section 33 thereof, as the case may be.

IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.

V. That this Bench hereby appoints **Mr. Vishal Ghisulal Jain**, Insolvency Professional, Registration No: **IBBI/IPA-001/IP-P00419/2017-2018/10742**, having email **vishal@resolvegroup.co.in** as the Interim Resolution Professional (IRP) to carry out the functions as mentioned under the IBC, the fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.

VI. During the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Sections 17 and 25 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

VII. In exercise of the powers under Rule 11 of the NCLT Rules, 2016, we order the FC to deposit a sum of Rs.5,00,000/- (Five Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, 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 CD.

IX. The Registry is directed to immediately communicate this Order to the FC, the CD and the IRP by way of e-mail and WhatsApp, not later than two days from the date of this Order.

X. A copy of the Order may also be sent to the IBBI for records.

XI. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

XII. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-	Sd/-
MADHU SINHA	**K. R. SAJI KUMAR**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

//VLM//