

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI
CP (IB) No.1074/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:

ALP ACRES & LANDLINES PRIVATE LIMITED

[CIN: U45200MH2007PTC170290]

Registered Office: Unit No. 9, 605/ B, Chhaya

Apna Ghar, Lokhandwala Complex

Andheri (West)

Mumbai- 400053

Maharashtra.

...Financial Creditor

V/s

PAE LIMITED

[CIN: L99999MH1950PLC008152]

Registered Office: Level 1, Block A

Shivsagar Estate, Dr. Annie Besant Road

Worli, Mumbai-400018

Maharashtra.

...Corporate Debtor

Pronounced: 22.04.2024

CORAM:

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

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Financial Creditor : Adv. Amit Tungare

Corporate Debtor : Adv. Ashwini Chindarkar

ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

- 1.1 This is an Application bearing C.P. (IB) No.1074/MB/2023 filed by ALP Acres & Landlines Private Limited, the Financial Creditor, on 03.08.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of PAE Limited, the Corporate Debtor.
- 1.2 The Financial Creditor is involved in the business of building construction, civil engineering etc. The Corporate Debtor is engaged in the business of sale and service of lead storage batteries, power back-up system and automotive parts.
- 1.3 The Financial Creditor under Agreement dated 09.06.2016 extended Inter-Corporate Deposit (hereinafter referred to as “ICD”) of Rs.2.50 crores to the Corporate Debtor for a period of 270 days @ 14% per annum. The Corporate Debtor repaid some of the amount. However, it was unable to pay the rest of the amount. The Financial Creditor has claimed a total outstanding of Rs.1,69,95,432 /- (One Crore Sixty-Nine Lakhs Ninety-Five Thousand Four Hundred and Thirty-Two Rupees) as due and payable and in default as on 10.03.2023 by the Corporate Debtor excluding interest in Part-IV of the

Application. As the Corporate Debtor was unable to pay the dues of the Financial Creditor, the latter has preferred the present Application seeking initiation of CIRP in respect of the former under Section 7 of the Code.

2. AVERMENTS OF THE FINANCIAL CREDITOR

- 2.1 Based on representation made by the Corporate Debtor, the Financial Creditor extended ICD of Rs.2.50 crores to the Corporate Debtor for a period of 270 days carrying interest at the rate of 14% per annum.
- 2.2 Both the parties formalised this arrangement by executing an "Agreement for ICD" dated 09.06.2016 stipulating that the Corporate Debtor would utilise the ICD from 09.06.2016 to 09.03.2017.
- 2.3 Subsequently, when the ICD matured in March 2017, the Corporate Debtor requested the Financial Creditor to renew it for another year at the rate of 12% per annum. The Financial Creditor acceded to this request and renewed the ICD at the rate of 12% per annum annually.
- 2.4 The Corporate Debtor had repaid the amount of Rs. 2.50 crores to the Financial Creditor on 14.03.2022. The said amount received by Financial Creditor from the Corporate Debtor was apportioned towards interest and principal.
- 2.5 The Financial Creditor maintained the Corporate Debtor's ledger in its books of account and as on 31.03.2023, an amount of Rs.1,69,95,432/- remained outstanding and payable by the Corporate Debtor.
- 2.6 The Financial Creditor has placed on record copies of correspondences with the Corporate Debtor regarding requests for renewal of ICD from year to year and

granting time for payment of interest on ICD *vide* Additional Affidavit filed on 29.01.2024. As per the correspondence exchanged between the parties, the Corporate Debtor had acknowledged its liability to the Financial Creditor and never denied it. Further, *vide* letters dated 13.03.2023 and 16.05.2023, the Financial Creditor requested the Corporate Debtor to repay the outstanding amount. Similarly, the Corporate Debtor *vide* letter dated 20.03.2022 had requested the Financial Creditor to allow a period of one year for payment of the balance debt. Despite these requests, the Corporate Debtor failed to fulfill its obligation.

- 2.7 The Corporate Debtor has deposited TDS till 31.03.2022 against the interest payable to the Financial Creditor which in itself is the acknowledgement on the part of the Corporate Debtor admitting the debt payable to the Financial Creditor, as held by Hon'ble NCLAT in Company Appeal No.950 of 2022 in the case of ***Pradeep Tayal v. M/s Essbert Fashion Private Limited.***
- 2.8 As the Corporate Debtor defaulted in repayment of the debt owed to the Financial Creditor, it is submitted that the present Application may be admitted and CIRP initiated against the Corporate Debtor under Section 7 of the Code.

3. CONTENTIONS OF CORPORATE DEBTOR

- 3.1 The Corporate Debtor *vide* its Affidavit-in-Reply dated 19.12.2023 has submitted that its business suffered significantly due to the onset of the Covid-19 pandemic. During the tenure of the sanctioned loan, the Corporate Debtor was unable to source funds to repay the debt owed to the Financial Creditor.

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- 3.2 The Corporate Debtor is in the business of non-automotive industry such as industrial batteries and power solutions but has been unable to generate any income. The business sustained substantial losses from 2020 to 2022 due to the pandemic, hindering its ability to regain market status and goodwill to generate profits and pay off all its debts. Despite all efforts to repay the dues of the Financial Creditor, the Corporate Debtor has been unable to meet its commitments.
- 3.3 The Corporate Debtor is in default of repayment of financial debt owed to the Financial Creditor due to its inability to source funds and is making all efforts to revive its business. Therefore, it is prayed that the Corporate Debtor may be granted a reasonable time to clear its liability to the Financial Creditor.

4. ANALYSIS AND FINDINGS

- 4.1 Upon perusal of all the documents and pleadings and hearing both the Ld. Counsel for the Financial Creditor and the Corporate Debtor, our findings in the matter are as under:-
- 4.2 It is noticed from the record that the Corporate Debtor executed an Agreement for ICD with the Financial Creditor on 09.06.2016 for obtaining an ICD of Rs.2.50 Crores with interest @14% per annum for a period of 270 days from 09.06.2016 to 09.03.2017. Subsequently, on 02.03.2017, the Corporate Debtor requested for renewal of the ICD for a period of one year from 10.03.2017 to 10.03.2018 which was approved by the Financial Creditor on 19.04.2017 with a reduced interest rate of 12% per annum. Subsequently, the term of the ICD was extended

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- annually on another four occasions by the Financial Creditor upon the Corporate Debtor's requests *vide* letters dated 08.03.2018, 06.03.2019, 09.03.2020 and 12.03.2021. The last renewal of the ICD was granted for the period from 10.03.2021 to 09.03.2022.
- 4.3 It is observed from the record that the Corporate Debtor repaid the amount of Rs.2.50 crores to the Financial Creditor on 14.03.2022 which was adjusted against the accrued interest and principal. No further payments were made to the Financial Creditor thereafter. However, it is a matter of record that the Corporate Debtor has always admitted and acknowledged the liability towards the Financial Creditor for the outstanding debt. It is observed that the Corporate Debtor *vide* letter dated 20.03.2022 requested the Financial Creditor to grant a period of one year for payment of the balance amount of financial debt. It is noticed that an amount of Rs.1,60,95,432/- was still outstanding from the Corporate Debtor in the books of account of the Financial Creditor as on 31.03.2023. It appears that considering the above request made by the Corporate Debtor *vide* letter dated 20.03.2022, the Financial Creditor has specified the date of default as 10.03.2023 in Part-IV of the Application.
- 4.4 It is pertinent to mention that the Corporate Debtor in its Affidavit-in-Reply has categorically and unequivocally admitted that "*the Corporate Debtor is in default of making the said payment to the Financial Creditor due to its inability to source funds*". This brings up the question whether 'inability to pay' debt can be pleaded as a valid defence by the Corporate Debtor before the Adjudicating Authority in an Application seeking admission to CIRP under Section 7 of the Code. In this

connection, it is well-settled that inability to pay debt has no relevance for admitting or rejecting an application for initiation of CIRP under the Code. What has to be seen is not the inability to pay debt but the occurrence of a default. The judgment of the Hon'ble Apex Court in ***Swiss Ribbons Pvt. Ltd. Vs. Union of India (2019) 4 SCC 17*** makes it clear that rather than the "inability to pay debts", it is the "determination of default" that is relevant for allowing or disallowing an application filed under Sections 7, 9 or 10 of the Code.

- 4.5 Thus, we hold that inability to pay debt cannot be treated as a valid defence in proceedings under Section 7 of the Code. With the enactment of the Code, legislative policy has moved away from the concept of 'inability to pay' to 'determination of default' and one of the policy reasons for this shift was that the cause of default is not relevant. The said shift enables an applicant to prove by documentary evidence that there was an obligation to pay the debt and that the debtor has failed to fulfil its repayment obligations.
- 4.6 The Hon'ble Supreme Court in the case of ***Innoventive Industries Ltd. v. ICICI Bank [(2018) 1 SCC 407]*** laid down the guiding principles to admit or reject an application filed under Section 7 of the Code. In order to admit an application, the Adjudicating Authority is to be satisfied that a default in respect of a financial debt has occurred. The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete. In the instant case, there is no dispute that the money advanced by the Financial Creditor by way of interest-bearing ICD was a financial debt within the meaning of Section 5(8) of the Code and that such debt was due and payable by the

Corporate Debtor which has admittedly committed a default in repayment thereof. It is a case of unequivocal acknowledgment of debt and default in payment of such debt. There is nothing to show that the debt due and payable by the Corporate Debtor is interdicted by any other law. There is no allegation or objection that the present Application is incomplete in any respect. The Financial Creditor has proposed the name of CA Karthik Natarajan having Registration Number IBBI/IPA-001/IP-P-02454/2022-2023/14226 and e-mail ID umakhe@gmail.com and valid Authorisation for Assignment till 29.11.2024 to act as IRP. On accessing the IBBI website, it is observed that no disciplinary proceedings is pending against him. In light of the above, it is concluded that all the requirements of Section 7(5)(a) of the Code are satisfied and the present case is fit for admission.

ORDER

In view of the aforesaid findings, this Application bearing C.P.(IB) No.1074/MB/2023 filed under Section 7 of the Code by APL Acres & Landlines Private Limited, the Financial Creditor, for initiating CIRP in respect of PAE Limited, the Corporate Debtor is **admitted**.

We further declare moratorium under Section 14 of the Code with consequential directions as follows:

- I. We prohibit-
- 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 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 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 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 Code or passes an order for the liquidation of the Corporate Debtor 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 Code, the Rules and Regulations made thereunder.

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- V. That this Bench hereby appoints **Mr.Karthik Natarajan, a registered Insolvency Professional having Registration Number IBBI/IPA-001/IP-P-02454/2022-2023/14226 and e-mail ID umakhe@gmail.com** and valid Authorisation for Assignment as the IRP to carry out the functions under the Code. 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 Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of the Code. 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/RP 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 Financial Creditor 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 Financial Creditor 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 Corporate Debtor.

- IX. A copy shall also be forwarded to the Insolvency and Bankruptcy Board of India for record and dissemination on their website.
- X. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by way of e-mail and WhatsApp.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**SANJIV DUTT
MEMBER (TECHNICAL)**

Sd/-

**K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

Deepa /JNK