

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 170/MB-IV/2023

Under **Section 7** of the I&B Code, 2016

In the matter of:

Equiptrans Logistics Private Limited

[CIN: U60230GJ2015PTC082768]

...Financial Creditor/Applicant

V/s

Essar Services India Private Limited,

(now registered as **Acyuta Services Private Limited** as reflected on MCA website)

[CIN: U74999MH2011PTC217380]

...Corporate Debtor/Respondent

Order Dated: 16.05.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Kunal Kanungo i/b Mr. Dweep Joshi, Advocates.

For the Respondent(s) : Mr. Amir Arsiwala, Advocate.

Per: Kishore Vemulapalli, (Member Judicial)

1. This is an Application being C.P. (IB) No. 170/MB/C-IV/2021 filed on 13.02.2023 by Mr. Navneet Soni, authorized by Equiptrans Logistics

Private Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Essar Services India Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Financial Creditor submits that the Corporate Debtor had requested loan from the Financial Creditor to meet its working capital needs and upon requisition the Financial Creditor had sanctioned the total loan amounting upto Rs. 10,00,00,000/- and disbursed a total loan amounting to Rs. 7,45,00,000/- (Rupees Seven Crores Forty-Five Lakhs Only) at an interest rate of 15% p.a. The same was conveyed to the Corporate Debtor vide letter dated 19.03.2019.

2.1 The Financial Creditor submits that the Corporate Debtor is liable to pay Rs. 12,16,17,356 (Rupees Twelve Crores Sixteen Lakhs Seventeen Thousand Three Hundred Fifty-Six Only) (consisting of principal amount of Rs. 7,45,00,000/- (Rupees Seven Crores Forty-Five Lakhs Only) and an interest amount of Rs 5,16,17,356/- (Rupees Five Crores Sixteen Lakhs Seventeen Thousand Three Hundred Fifty Six Only) charged at rate of 17% p.a. (compounded annually) as on 19.01.2023. The date of default as per the letter of final extension granted by the Financial Creditor to the Corporate Debtor to repay the debt is 31.05.2022.

2.2 It is submitted that the Financial Creditor vide loan recall notice dated 01.10.2020 notified the Corporate Debtor to repay outstanding sum of Rs. 12,16,17,356/- together with interest accrued thereon within a period of 10 days to which the Corporate Debtor replied on 22.10.2020 seeking extension of time to granted to repay the said loan amount.

2.3 The Financial Creditor extended the time vide notice dated 02.11.2020 sent to the Corporate Debtor and thereafter again sent a

notice dated 15.04.2021 asking the Corporate Debtor to repay the loan. Again on 10.05.2021, the Corporate Debtor replied to the said notice with a request to further extend the time by levying a penal interest of 2%p.a. from 01.06.2021 till the date of repayment which was accepted by the Corporate Debtor vide its letter dated 03.06.2021.

- 2.4 The Financial Creditor sent a Legal notice dated 01.06.2022 in view of the final extension to repay the said loan within 15 days of the said notice and thereafter a last reminder was sent vide letter dated 15.06.2022.
- 2.5 The Financial Creditor submits that the debt is duly accepted by the Corporate Debtor alongwith interest @15%p.a. as on 01.05.2022 in its letter dated 01.05.2022 annexed to the petition acknowledged in the Balance Sheet of the Corporate Debtor without any qualifications, whatsoever. However, the said balance sheet is not annexed to the petition. The Financial Creditor has also annexed the ledger account of the Corporate Debtor from 01.04.2018 to 31.03.2021 evidencing disbursements of the principal amount to the Corporate Debtor's bank account.
3. The Corporate Debtor has not filed any reply to the present petition. However, on 17.04.2023, the Counsel for the Corporate Debtor appeared and in argument, relied upon the decision of the Hon'ble Apex Court in the matter of Vidarbha industries, but did not submit the relevant extract from the said judgement and hence there is no document submitted by the Corporate Debtor on record. Further, in the same hearing, this Bench asked the counsel for the Corporate Debtor if they have annexed the financial statements, to which he candidly replied that the company does not have any business as of now and most of its customers have been admitted into CIRP.

4. We have carefully gone through the pleadings available on records and considered the arguments of both the sides.

4.1. On verification of documents, we found that the Corporate Debtor's name has been changed to Acyuta Services Private Limited and its registered office address has also been changed as reflected on the website of MCA. The Directors of the said company have also replaced with 2 new Directors. This substantial fact has not been brought on record by either of the parties and hence, this Court is uncertain as to the date from which the change in the name and registered office of the company came into effect.

4.2. In the present case, the Corporate Debtor has admitted its liability vide letter dated 01.05.2022 and the petition is filed within limitation period as prescribed u/s 18 of Limitation Act.

4.3. We therefore find that there exists a "financial debt" within the meaning of Sec. 5(8) of the Code and the default in repayment of such debt thereof.

4.4. 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 and there is default by the Corporate Debtor in payment of debt amount. We do not have any other objection on record against the application filed for initiation of CIRP against the Corporate Debtor.

4.5. In view of the above, we find that the present petition is fit for admission under Section 7 of the Code for initiation of CIRP against the Corporate Debtor.

5. The Applicant has proposed the name of Ms. Prajakta Avil Menezes, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01349/2018-19/12016], Email-prajakta@prmlegal.in 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. 170/NCLT/MB/C-IV/2023 filed under Section 7 of I&B Code, 2016, filed by Equiptrans Logistics Private Limited, Financial Creditor/ Applicant against Acyuta Services Private Limited (formerly registered by the name of Essar Services India 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 Ms. Prajakta Avil Menezes, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01349/2018-19/12016], Email-prajakta@prmlegal.in 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.

- e) 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) 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/-

Prabhat Kumar
Member (Technical)
/LRA-Akshata/

Sd/-

Kishore Vemulapalli
Member (Judicial)