

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

C.P. (IB) 811/MB/2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Epoch Merchantile Pvt. Ltd.

Having its address at 1, Old Court House
Corner, Kolkata (West Bengal)- 700001.

..... Petitioner/ Financial Creditor

Versus

M/s Vikshit Engineering Ltd.

Having its address at Room No. 1-2,
Kapadia Chambers, 51, Bharuch Streets
Masjid Bunder (East),
Mumbai City (MH)- 400009

..... Respondent/Corporate Debtor

Order Delivered on :- 08.12.2023

Coram:

**Mr. Anil Raj Chellan
Member (Technical)**

**Mr. Kuldip Kumar Kareer
Member (Judicial)**

Appearances:

For the Financial Creditor : Adv. Amey Hadwale

For the Corporate Debtor : Adv. Navin Arora

ORDER

Per: -Mr. Kuldip Kumar Kareer, Member (Judicial)

1. The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **Epoch Merchantile Pvt. Ltd.** (hereinafter called as "Financial Creditor") praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Vikshit Engineering Ltd** (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Financial Debt of Rs. 1,19,90,000/- (Rupees One Crore Nineteen Lakhs Ninety Thousand Only) which is calculated to be Rs. 1,10,00,000/- (Principal Amount + Rs. 9, 90,000/- (Interest Amount) as on 31.03.2023.

The submissions of the Financial Creditor are as follows:

2. The Petitioner/Financial Creditor is a Non-Banking Finance Company (NBFC) incorporated under the provisions of companies Act, 1956 having its registered office at 1, Old Court House Corner, Kolkata West Bengal — 700001.

3. The Respondent/Corporate debtor is a public limited Company incorporated under the provisions of Companies act, 1956 having its registered office at Room No 1-2, Kapadia Chambers, 51 Bharuch Street, Masjid Bunder (E), Mumbai City, Maharashtra 400009.
4. Pursuant to the request made by the Corporate Debtor, the Financial Creditor has agreed to grant Credit facility/Loan of an aggregate amount of Rs. 1,10,00,000/- (Rupees One Crore Ten Lakhs Only) repayable on the terms and conditions as explicitly stated in the agreement for loan dated 29th September 2021. The said loan Agreement, interalia, stipulated the terms on which the said loan was to be repaid by the corporate debtor and its rate of interest.
5. The said loan of amount totalling to Rs 1,10,00,000/- was disbursed to the Respondent/Corporate debtor. Further, the credit facility together with interest, all fees, commitment charges, costs, charges, expenses and other monies whatsoever stipulated in or payable under the Agreement dated 29th September 2021 and the other Transaction documents were secured by Primary/Collateral Security as specified in Schedule III of the Agreement.
6. Further, the credit facility together with interest, all fees, commitment charges, costs, charges, expenses and other monies whatsoever stipulated in or payable under the Agreement dated 29th September 2021 and the other Transaction documents were secured by Primary /Collateral Security as specified in Schedule III of the Agreement.
7. However, the Corporate Debtor failed to repay the said loan as well interest within stipulated time. As a result, the Financial Creditor vide its letter dated 20th February 2023 recalled the entire loan along with the applicable interest.

8. The Corporate Debtor failed to pay the agreed principal and have only paid the last interest of an amount of Rs 2,47,500/- (Due for the period 1.1.22 to 31.3.22) on 17th September 2022. The principal along with the interest due have been continuously adding and standing outstanding as reflected in the ledger accounts of the Corporate Debtor maintained in the Books of the Applicant for the period I-sep-2021 to 31-Mar-2023.
9. Further it is pertinent to mention that the last payment towards interest for an amount of Rs. 2,47,500/- (Due for the period 1.1.22 to 31.3.22) was made on 17th September 2022, thereafter not even a single penny has been paid by the Corporate Debtor.
10. The said payments have been adjusted towards the outstanding principal and interest, pursuant to which an amount of Rs. 1,19,90,000/- comprising of Rs. 1,10,00,000/- towards principal and Rs 9,90,000/- in lieu of interest component is still due and outstanding.
11. Thereafter the Corporate debtor vide letter dated 25th February 2023 replied to the recall notice and expressed its inability to pay the entire amount. The Corporate debtor further requested for time and promised to repay the said loan within a period of six months along with an interest of 9%.
12. Based on the documents placed on record, it can be sufficiently proved that the Corporate Debtor has failed in making the payment of the said loan, further it can be constructed that the Corporate Debtor has gone commercially insolvent to discharge its liability. Moreover, there exist a clear case of debt and default and hence the instant petition is filed before the Adjudicating Authority for initiating Corporate Insolvency Resolution

Process u/s 7 of Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor.

Reply filed on behalf of the Corporate Debtor

13. The Corporate Debtor submits that the working relationship between the Financial Creditor was that 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.
14. The Corporate Debtor was undergoing a 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. The Corporate Debtor further submits 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.
15. The Financial Creditor despite the knowledge of the circumstances of the Corporate Debtor 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.

Analysis and Findings:

16. We have heard the Counsel for the parties and gone through the record.
17. During the course of arguments, it has been contended by the Counsel for the Petitioner that the factum of existence of financial debt and its default committed by the Corporate Debtor stands proved on record. In this regard, the Counsel for the Financial Creditor has referred to agreement of business loan dated 29.09.2021 whereby a lone of Rs 1,10,00,000/- was advanced to the Corporate Debtor. As per the repayment schedule annexed with the agreement, the loan was re-payable within a period of 84 months though there was a mortarium for principal repayment for the initial six months. The rate of interest was 9% per annum and the interest was payable on the last date of every month. In case of default, the Corporate Debtor was liable to pay default interest @ 3% per annum on the amount of the default. According to the Counsel for the Financial Creditor, the Corporate Debtor did not pay any interest after 17.09.2022 and thus committed default. Therefore, the Petition deserves to be admitted.
18. On the other hand, the Counsel for the Corporate Debtor has argued that due to the Covid-19 Pandemic, the assets of the Corporate Debtor were not working at all due to which the Corporate Debtor could not adhere to the repayment schedule set out in the loan agreement dated 29.09.2021.
19. Having weighed the contentions raised by the Counsel for the parties and after going through the record, we are of the considered view that it has been established on record that the Corporate Debtor availed a loan of Rs. 1.10 crore from the Financial Creditor with an agreement dated 29.09.2021. It has

further been established that the Corporate Debtor fail to re-pay the principal as well as interest in accordance with the terms and conditions set out in the loan agreement and, therefore, committed default. In the reply filed by the Corporate Debtor, no substantive defence has been raised It has only been pleaded that the Corporate Debtor was facing a financial crisis which further deteriorated with the advent of Covid-19 pandemic. From whatever has been set out in the reply, it is evident that the Corporate Debtor is not able to sustain itself financially and it requires resolution.

20. As a result of brief discussion, we hold that the petitioner has been able to prove the existence of financial debt and its default having been committed by the Corporate Debtor and further that the Petition is filed within the period of limitation. Therefore, the Petition deserved to be admitted and it is ordered accordingly in following terms:-

ORDER

- a. **The above Company Petition No. (IB) 811 (MB)/2023 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Vikshit Engineering Ltd.**

- b. **This Bench hereby appoints Mr. Dinesh Kumar Deora , Registration No: IBBI/IPA-002/IPN00958/2020-21/13041 as the Interim Resolution Professional having his address at B-202, ABT Apartment, Rani Sati Marg, Malad (East), Near Navjivan School, Mumbai Suburban,**

Maharashtra- 400097 ; Email:- dinesh.deora@yahoo.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of **Rs. 3,00,000/-** (Rupees Three Lakhs Only) towards the **initial CIRP cost** by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; 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. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

21. **Accordingly, this Petition is admitted.**

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

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)