

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD SPECIAL BENCH
COURT - 1

ITEM No.2
CP(IB) 177 of 2020

Order under Section 7 IBC

IN THE MATTER OF:

Teco Industries
V/s
Superdrawn Wire Industries Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..16/03/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

CP (IB) No. 177 of 2020

(An application under section 7 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process)

In the matter of:

Teco Industries

Partnership registration no. BA-90,449
Registered office at;
1st Floor, 101, Joshi Chamber, Ahmedabad Street,
Carnac Bunder, Masjid Bunder E,
Mumbai, Suburban, Maharashtra,
Pin- 400009

.....Financial Creditor

Versus

M/s Superdrawn Wire Industries Pvt. Ltd.

CIN No. U28112GJ2011PTC066943
Registered address at;
21, Kamal Co-operative Industries Estate,
Rakhial, Ahmedabad, Gujarat- 380023

Factory address;

Plot No. 1401, Kerala GIDC,
NH 8, Near SKF Bearings,
Bavla, Ahmedabad,
Gujarat- 380023


..... /Corporate Debtor

Order reserved on 16.02.2022

Order delivered on 16.03.2022

**Coram: Madan B. Gosavi, Member (Judicial)
Ajai Das Mehrotra , Member (Technical)**

Appearance:

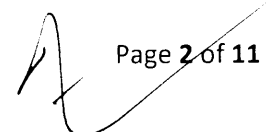


For the Applicant Sr. Advocate, Mr. Devang Nanavati

For the Respondent Ld. Advocate Mr. Mohit Gupta

[Order]
[Per Bench]

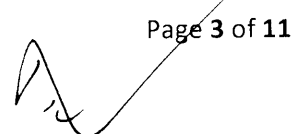
1. The instant petition is filed on 20.02.2020 by Mr. Amrish Shah, Authorized Person and partner of Teco Industries under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as a "IB Code") against the Corporate Debtor, M/s. Superdrawn Wire Industries Pvt. Ltd. for initiation of Corporate Insolvency Resolution Process for the default amount of Rs. 26,49,46,085/- including interest, and the date of default is 22.05.2018.
2. The Financial Creditor has stated that the Corporate Debtor approached the Financial Creditor and requested for financial assistance. On the request of Corporate Debtor an amount of Rs. 19,40,81,000/- was disbursed in the account of Corporate Debtor between March 2017 to May 2018 by the Financial Creditor. The said amount was given to the Corporate Debtor @ 14% per annum.
3. The Financial Creditor has submitted that till 07.12.2019 the Corporate Debtor was ready and willing to pay the outstanding amount. But, on 11.01.2020, when the Financial Creditor asked for repayment of the aforesaid amount, the Corporate Debtor flatly denied and alleged that the amount has been disbursed by the Financial Creditor for investment in the Corporate Debtor. The Corporate Debtor had also stated that as per the oral agreement, the Financial Creditor has failed to pay the further amount of agreed investment of Rs. 50,00,00,000/- (Rs. fifty crores), and that due to the renegeed promise of the Financial Creditor, the Corporate Debtor had sustained huge damages .
4. The Financial Creditor, in the compelling circumstances, issued a loan repayment notice on 07th December 2019 to the Corporate



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Debtor, and the Corporate Debtor replied to the said legal notice on 11.01.2020, wherein, the Corporate Debtor has stated that there is no liability upon the Corporate Debtor the repayment of the aforesaid amount as alleged claim amount was investment in the Corporate Debtor. The Financial Creditor failed to fulfill its promise whereby the Corporate Debtor sustained heavy loss and damage. The Corporate Debtor has also stated in the reply that one Civil Suit bearing No. 177 of 2018 has been filed before the Hon'ble City Civil Court at Ahmedabad to recover the amount of damages, which is still pending for adjudication.

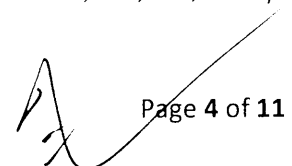
5. The respondent appeared before this Authority and filed reply on 15th September 2020 wherein the Corporate Debtor has denied all the averments made by the Financial Creditor in the petition. The Corporate Debtor has stated that the Financial Creditor has orally entered into an agreement to invest Rs. 50 crores in the Corporate Debtor's company to be a partner and the Corporate Debtor was liable to transfer the shares of 49 per cent of the Company. But, the Financial Creditor had breached the term of agreement and transferred amount of Rs. 19,40,81,000/- only, and also transferred Rs. 25 lakh through its sole proprietorship firm ALS South West Steel. The agreed shares were not transferred by the Corporate Debtor due to breach of the agreement.
6. The Corporate Debtor further submitted that due to reneged promise of the Financial Creditor, the Corporate Debtor sustained huge loss. One Civil Suit bearing No. 177/18 has already been filed before the Hon'ble City Court at Ahmedabad to recover the damages.
7. The Corporate Debtor further submitted that the Financial Creditor has failed to produce any document to substantiate its alleged outstanding claim. The Corporate Debtor also stated that the Financial Creditor is only relying upon the record of NeSL, the



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Information Utility (IU) wherein the Financial Creditor has recorded the aforesaid outstanding amount. But the Corporate Debtor has never given any confirmation of debt to the Information Utility. Hence, the record of default can't be said as a confirmed report as per Regulation 21 of the IBBI (information utilities) Regulation 2017 (hereinafter referred to as "IU Regulations"). The Financial Creditor has failed to show the status of debt whether it is disputed, or to deemed to be authenticated or authenticated.

8. The Corporate Debtor further stated that alleged outstanding amount does not fall under the definition of financial debt. The financial debt can be consider only if it is disbursed against the time value for money. But the present alleged outstanding amount is not a financial debt as this was a part of investment in the corporate Debtor. The record of Information Utility wherein the interest rate @ 14 per annum is showing has never been approved by the Corporate Debtor.
9. We have heard the learned counsel of the Financial Creditor as well as the Corporate Debtor and perused the material on record It appears that the amount of Rs 19,40,81,000/- has been transferred to the Corporate Debtor, the same fact is also admitted by the Corporate Debtor in its reply.
10. The attempt by the Corporate Debtor that the said amount was towards investment fails, as no equity or other benefit was given by the Corporate Debtor to the applicant in exchange of amount received. The contents of the Corporate Debtor that the Financial Creditor has not produced any document on record to substantiate its claim does not sustain as the amount has already been disbursed to the Corporate Debtor. The record of information utility is clearly showing the default amount of Rs. 26,49,46,085/



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(Principal Rs. 19,40,81,000 and Interest 7,08,65,085-)and rate of interest 14% per annum.

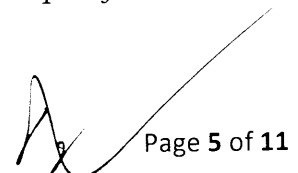
11. For filing and adjudication of application under section 7 of the IB Code requires the record of default recorded by Information Utility and such other record and evidence as default as may be prescribed. In the instant petition the Financial Creditor has submitted record of the Information Utility wherein the status of record is showing “deemed to be authenticated”. As per IU Regulations, if any information is sent by the Creditor to the Information Utility for recording the default, the Information Utility shall send the information of default to the debtor. The information utility shall send at least three times for confirmation of information of default in case the debtor does not respond. The record of information utility produced by the financial creditor is showing as “deemed” to be authenticated, “meaning thereby that three opportunities have already been given to the Corporate Debtor, but the Corporate Debtor did not respond to the same. Hence, the information utility recorded the information as deemed to be authenticated” means it is a valid authentication. For ready reference we produce Regulation 21 of IU Regulations as hereunder

[21. Information of default

(1) An information utility shall expeditiously undertake the process of authentication and verification of information of default as soon as it is received.

(2) 2) For the purpose of sub-regulation (1), the information utility shall

a) deliver the information of default to the debtor seeking confirmation of the same within the time specified in the Technical Standards.



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b) **remind the debtor at least three times for confirmation of information of default, in case the debtor does not respond, allow three days each time for the debtor to respond;**

c) deliver the information of default or the reminder, as the case may be, to the debtor either by hand, post or electronic means at the postal or e-mail address of the debtor-

(1) registered with the information utility by him, failing which,

(2) recorded with any other statutory repository as approved by the Board, failing which,

(3) submitted in Form C of the Schedule.

(3) On completion of the process under sub-regulation (2), the information utility shall record the status of authentication of information of default as indicated in the Table below:-

Sr. No.	Response of the Debtor	Status of Authentication	Colour of the Status
(1)	(2)	(3)	(4)
1	Debtor confirms the information of default	Authenticated	Green
2	Debtor disputes the information of default	Disputed	Red
3	Debtor does not respond even after three reminders	Deemd to be Authenticated	Yellow

(4) After recording the status of information of default under sub-regulation (3), the information utility shall communicate the status of authentication in physical or electronic form of the relevant

colour, as indicated in column (4) of the Table thereof, to the registered users who are---

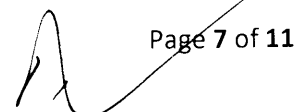
- a. Creditors of the debtor who has defaulted;*
- b. Parties and sureties, if any, to the debt in respect of which the information of default has been received.]*

12. The Hon'ble Supreme Court in the matter of *Innventaive Industries Ltd. Vs. ICICI Bank anr. (2018) 1 SCC 407* has held that the Adjudicating Authority has merely to see the record of the Information Utility or other evidence produced by the Financial Creditor to satisfy itself that default has occurred. For ready reference, we reproduce the relevant Para of the said judgment as under:-

"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" ie. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the Adjudicating Authority that the Adjudicating Authority may reject an application and not otherwise."

The Hon'ble Adjudicating Authority Mumbai Bench has taken a view in the matter of *Anchor Leasing Pvt. Ltd. Vs. Euro Seramix Ltd., CP No. 66 of 2018* that agreement is not required if the debt is acknowledged by the Corporate Debtor. For ready reference we produce the relevant Para of the said judgment hereunder:-

17. On perusal of the arguments of both the sides and the documents and evidences placed on record, this Bench finds that although there is no express agreement to the loan arrangement as aforesaid or the payment of interest thereon, but there are

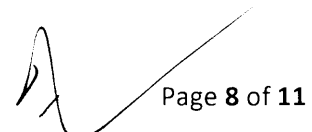


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acknowledgements of the Corporate Debtor, not once but many a times, which reveal that the Financial creditor and the Corporate Debtor shared a creditor-debtor relationship. Further, the statement of accounts produced on record prove the disbursement of the loan amount of Rs. 5,00,00,000/- and the Corporate Debtor has even paid interest for the same till 02.07.2011. This argument of the Financial creditor was convincing enough that the loan has been granted for a consideration for the time value of money. The Code nowhere prescribes the compulsory existence of an express agreement to prove the loan and its disbursement, but defined in Section 5(8) the condition under which a transaction be treated as a 'Financial Debt'. Therefore, this contention of the Corporate Debtor is hereby rejected.

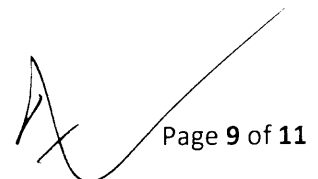
13. In view of the said judgment and provisions of section 7 of the IB Code the record of Information Utility clearly authenticates, that the amount of Rs.26,49,46,085/ has been disbursed to the Corporate Debtor at the interest of 14%, which has been duly authenticated by the Information Utility as per the provisions of IU Regulations. Moreover, the outstanding amount has also been acknowledged by the Corporate Debtor. Moreover, no material produced by the Corporate Debtor on record was not able to substantiate the averment that the outstanding amount was disbursed towards investment in the Corporate Debtor.
14. We are of the considered view that the amount disbursed to the Corporate Debtor is a financial debt under Section 5(8) of the IB Code. The present application is otherwise defect-free and well within the limitation for initiation period. Hence we admit the present petition with the following directions:-

ORDER



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- I. The Corporate Debtor M/s. Superdrawn Wire Industries Pvt. Ltd is admitted into the Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
- II. We appoint Mr. Dilipkumar Natvarlal Jagad 803/804, Ashok Heights, Opp. Saraswati Apartment, Old Nagardas X Road, Gundavali, Andheri - East, Mumbai 400069, Maharashtra. Email: dilipjagad@hotmail.com, Phone: +91 9821142587, Registration No. IBBI/IPA-001/IP-P00233/2017-2018/10462 under section 13(1) (c) of the IB Code as IRP as proposed by the Financial Creditor.
- III. The Moratorium under Section 14 of the Code shall come to effect from the date of this order till the completion of 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.
- IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any Court of law and further prohibits Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing any of Corporate Debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such



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property is occupied by or in the possession of the Corporate Debtor.

- V. Further, litigation or application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.
- VI. The supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended, or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.
- VII. The IRP so appointed shall make a Public announcement of the Corporate Insolvency Resolution Process (CIRP) immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.
- VIII. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with the IRP, do not assist or co-operate, the IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.


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- IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- X. We direct the Financial Creditor / Applicant to pay the IRP a sum of **Rs. 1,00,000/- (Rs. One lakh)** as fees & expenses till the COC decides about his fees/expenses.
- XI. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after pronouncement of the order.
- XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

15. Accordingly, CP(IB) No. 177 of 2020 stands allow^{ed} and admitted.



(Ajai Das Mehrotra)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)