

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

I.A. No. 96 (MB) 2024

IN

C.P. (IB) No. 707/MB/2023

Under Section 7 of the Insolvency and Bankruptcy Code, 2016, *r/w* Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of

I.A. No. 96 (MB) 2024

NDT Technologies Pvt. Ltd.

...Applicant

v/s.

Romi Surendra Madhani & Anr.

...Respondent(s)

IN

In the matter of:

C.P. (IB) No. 707/MB/2023

Romi Surendra Madhani

...Financial Creditor

v/s.

NDT Technologies Pvt. Ltd.

...Corporate Debtor

Order Delivered on: **22.03.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

I.A. No. 96 (MB) 2024 IN C.P. (IB) No. 707/MB/2023

For the Applicant: Ms. Dimple Vora *i/b* Markand Gandhi & Co., Ld. Counsel for the Petitioner in C.P. and for the Respondent No. 1 in I.A.

For the Respondent: Mr. Nirav Shroff *a/w* Ms. Dimple Asrani, Ld. Counsel for the Respondent in C.P.

ORDER

1. The captioned petition has been filed by **Mr. Romi Surendra Madhani** (“Petitioner / Financial Creditor”) *u/s.* 7 of the Insolvency and Bankruptcy Code, 2016, *r/w* Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016., seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) in the matter of **M/s. NDT Technologies Pvt. Ltd.**, the Corporate Debtor herein.

1.1. The captioned petition has been filed on 27.06.2023 and the total default, per Part-IV of the same, amounts to INR 11,18,20,550.41/- (Indian Rupees Eleven crores, eighteen lakhs, twenty thousand, five hundred fifty and Paise forty-one only) as on 20.06.2023. The Date of Default, as set out in Part-IV of the present petition by the Financial Creditor, is 13.07.2022.

2. The matter-at-hand emanates from *circa* January 2019 whereby, pursuant to invitation of tenders pertaining to a sewer project, the Ahmedabad Municipal Corporation (“AMC”) issued Work Order No. 57 of 4352 *dated* 27.11.2019 to one M/s. N.K. Shah Infraprojects, wherein the Petitioner *viz.* Financial Creditor

herein is admittedly a partner-designate. Pursuant to the said work-order, the execution of the works was admittedly sub-contracted to the Corporate Debtor.

Submissions of the Financial Creditor

3. The Financial Creditor submits that it transferred monies in several tranches to the Corporate Debtor towards executing the said works on request of the latter between January 2021 to April 2021. The said amounts were repayable @ 15% p.a. on demand. In furtherance whereof, the Financial Creditor contends that the Corporate Debtor had admittedly paid the requisite TDS on the interest component of the said loan for A.Y. 2021-22, and places due reliance on the latter's Confirmation of Accounts *dated* 01.04.2021 for the same.
4. The Financial Creditor contends that *vide* Letter *dated* 28.06.2022, the Corporate Debtor sought to adjust the amount allegedly owed by M/s. N.K. Shah Infraprojects to it with the amount payable by the Corporate Debtor to the Financial Creditor. The Financial Creditor disputes this averment and places reliance on its Letter *dated* 04.07.2022 as against the Corporate Debtor's afore-stated averment, whereby it called upon the Corporate Debtor *via* the same to pay an amount of INR 8,38,79,883, along-with interest thereupon within 07 days. On account of inaction by the Corporate Debtor on the same, the Financial Creditor has filed the present petition.

Submissions of the Corporate Debtor

5. The Corporate Debtor at the very outset has disputed the veracity of the factual matrix relied upon by the Financial Creditor hereto. Per the purported terms and conditions of the MoU relied upon by the Corporate Debtor *dated* 28.12.2019; M/s. N.K. Shah was required to procure funds and invest the same for purposes of executing the said works. An escrow/ joint bank account was required to be maintained, in which the aforesaid funds would be deposited, and

no amounts whatsoever could be expended by the Respondent herein except with the prior authorization of the Petitioner. On the entire Project being completed, the parties were required to settle the accounts and divide profits equally.

6. The Corporate Debtor submits that it carried out work(s) between December 2019 to April/May 2022 and raised invoices as against the same which were purportedly pre-approved by the Petitioner amounting to INR 20,94,37,627/-. It further submits that in the wake of COVID-19, the Petitioner herein received a letter from AMC and accordingly, the settlement of invoices stood deferred. Pursuant to purported obligations under the said MoU, the Petitioner herein proposed to infuse the monies required to be invested *qua* M/s. N.K. Shah Infra and a separate account statement came to be maintained by the Corporate Debtor herein.
7. The Corporate Debtor further submits that in *circa* March 2022, the Petitioner stopped performing its payment obligations under the MoU despite the resumption of payment(s) by AMC. Due to the same, the Corporate Debtor ceased performance of works and thereafter set out the outstanding dues for work completed *vide* Letter *dated* 28.06.2022. The Corporate Debtor contends that in response to the same, the Petitioner has raised a demand of INR 8,43,79,000/- *vide* Letter *dated* 04.07.2022.

Findings

8. Heard the Learned Counsel(s) for the Financial Creditor and the Corporate Debtor.
9. Upon perusal of all records, we are of the considered view that:

- 9.1. The Corporate Debtor herein has placed principal reliance upon the MoU *dated* 28.12.2019, and the terms and conditions contained thereto. A plain perusal of the record reveals that the MoU relied upon by the Corporate Debtor is patently unexecuted to begin with and is merely a draft outline of the same. The said MoU is thus bad in law and cannot be relied upon.
- 9.2. We therefore have to ascertain other materials on the record to prove the existence of ‘debt’, if any, owed by the Corporate Debtor. As is evidenced from Corporate Debtor’s Confirmation of Accounts *dated* 01.04.2021, the financial dealings *qua* the Financial Creditor are duly reflected therein along-with the interest component, and the same has been confirmed by the Corporate Debtor. This clearly constitutes a ‘financial debt’ in terms of Section 5(8) of IBC, 2016.
- 9.3. Furthermore, the Financial Creditor called upon the Corporate Debtor to repay the amount due along-with the interest due thereupon @15% p.a. *vide* Letter *dated* 04.07.2021, and additionally relies upon the Information Utility Record *dated* 13.07.2022 which has been clearly acknowledged by the Corporate Debtor. It is trite in law that IBC, 2016, only requires this Tribunal to ascertain, and record satisfaction in a summary adjudication, as to the existence of ‘debt’ and occurrence of ‘default’ before admitting the Petition. We note that the outstanding amount exceeds the threshold specified in Section 4 of IBC, 2016. The captioned Petition has also been filed within the period of limitation and therefore, deserves to be admitted under Section 7 of IBC, 2016. Ordered accordingly.

I.A. No. 96 of 2024

10. Having dealt with the captioned petition hereto, we further delve into the Interlocutory Application bearing I.A. No. 96 of 2024 filed *u/s.* 8 of the

Arbitration and Conciliation Act, 1996, whereby the Applicant (who happens to be the Corporate Debtor in the captioned petition) has sought reference of this Tribunal to refer the parties to Arbitration. We are of the considered view that this Tribunal has absolutely no jurisdiction to consider the captioned I.A., and the same suffers from want of maintainability. Be that as it may, we refer to the position adopted by the Hon'ble Supreme Court of India in *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* [Arbitration Petition (Civil) No. 48/2019] as extracted hereinbelow:

“27. Therefore, to sum up the procedure, it is clarified that in any proceeding which is pending before the Adjudicating Authority under Section 7 of IB Code, if such petition is admitted upon the Adjudicating Authority recording the satisfaction with regard to the default and the debt being due from the corporate debtor, any application under Section 8 of the Act, 1996 made thereafter will not be maintainable. In a situation where the petition under Section 7 of IB Code is yet to be admitted and, in such proceedings, if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority is duty bound to first decide the application under Section 7 of the IB Code by recording a satisfaction with regard to there being default or not, even if the application under Section 8 of Act, 1996 is kept along for consideration. In such event, the natural consequence of the consideration made therein on Section 7 of IB Code application would befall on the application under Section 8 of the Act, 1996.”

{emphasis ours}

In light of the afore-stated, the captioned I.A. is not maintainable and thus deserves to be dismissed. Ordered accordingly.

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ORDER

11. The captioned petition bearing C.P. (IB) No. 707/MB/2023 is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. NDT Technologies Pvt. Ltd. Resultantly, the Interlocutory Application bearing I.A. No. 96 of 2024 stands **Dismissed**.
12. This Bench hereby appoints **Mr. Dhanshyam Kantilal Patel**, Insolvency Professional bearing Registration No: IBBI/IPA-001/IP-P01373/2018-2019/12155 [E-mail: dpatel@ckpatel.com], as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
13. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the Resolution Professional in terms of section 17 of the IBC, 2016. 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 within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
14. The Financial Creditor shall deposit a sum of **INR 5,00,000/-** (Rupees Five-lakh only) 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. The amount so deposited shall be interim finance and paid back to the applicant 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).
15. There shall be a moratorium under section 14 of the IBC, 2016 in regard to the following:

- (i)* 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;
 - (ii)* Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii)* 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 (SARFAESI) Act, 2002;
 - (iv)* The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- 16.** Notwithstanding the above, during the period of moratorium:
- (i)* 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;
 - (ii)* That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- 17.** The 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 sub-section (1) of section 31 of the IBC, 2016 or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016 as the case may be.
- 18.** The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

19. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within **seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
22.03.2024
Aditya Kalia

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
