

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

CP (IB) No.970/MB-IV/2022

Under Section 7 of the IBC, 2016

In the matter of

METAMORPHOSIS TRADING LLP

...Financial Creditor

v/s.

SANKALP ENGINEERING &
SERVICES Pvt. Ltd.

[CIN: U29299PN2006PTC021948]

...Corporate Debtor

Order Delivered on: 19.12.2023

Coram:

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

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Mr. Pulkit Sharma a/w Mr. Aman
Kacheria, Mr. Siddharth Shankar i/b
Agarwal and Dhanuka Lega Ld.
Counsel.

For the Corporate Debtor:

Mr. Shyam Kapadia a/w Adv. Virgil
Braganza i/b JSA, Ld. Counsel.

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by METAMORPHOSIS TRADING LLP (“Financial Creditor”) through Interim Resolution Professional Mr. Jitendra Ramesh Palande, seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of SANKALP ENGINEERING & SERVICES PVT.LTD., the Corporate Debtor.

1.1 The petition is filed on 03.06.2022 and the total outstanding amount of debt claimed by the Applicant which is due and payable by the Corporate Debtor is of Rs. 5,10,00,000/- (Rupees Five Crore and Ten Lakhs Only). The date of default as Specified in Part IV of the petition is on 30.09.2021

Submissions of the Financial Creditor:

2. The Corporate Debtor approached M/s. Innoventive Industries Ltd. to lend monies to Corporate Debtor, wherein M/s. Innoventive Industries Ltd. was holding more than 50% of the shares. The amount was transferred in favour of the Corporate Debtor through different accounts of M/s. Innoventive Industries Ltd.

2.1 The reference is made to the email dated 24.05.2014 from the Director of the Corporate Debtor issued to M/s. Innoventive Industries Ltd. which shows the confirmation of the debt of sum of Rs. 5,58,96,597/- by the Corporate Debtor as on 31.03.2014.

- 2.2 The Letter dated 12.04.2017 was addressed by M/s. Innoventive Industries Ltd. to Corporate Debtor for the purpose of obtaining the confirmation of amounts owed to Innoventive Industries Ltd., in which the sum of Rs. 5,16,35,905/- was shown as receivable from the Corporate Debtor as on 31.12.2016. The Applicant has also stated that in the financial statements of Corporate Debtor as on March 2017, the statutory auditor of Corporate Debtor qualified and made adverse remarks in auditor's report for the period ended on 31.03.2017.
- 2.3 In the year 2016, Company Petition no. 1/2016 was filed against M/s. Innoventive Industries Ltd, which was admitted, and corporate insolvency resolution process commenced. In pursuance of which liquidation proceedings were initiated and one Mr. Dhinal Shah was appointed as the liquidator. A Process Memorandum dated 14.06.2021 was issued by the liquidator wherein the amount in default was verified by the liquidator of M/s. Innoventive Industries Ltd. in the Process Memorandum in which the name of the Corporate debtor was recorded and the same was published.
- 2.4 The Applicant then tendered a bid for the Assets/Receivables of M/s. Innoventive Industries Ltd. and on being the successful bidder, entered into a deed of assignment dated 21.07.2021 with M/s. Innoventive Industries Ltd., whereby the assets of M/s. Innoventive Industries Ltd. were transferred in favour of the Applicant. In the terms of deed of assignment, the said debt of Rs. 5,10,00,000/- has also been transferred in favour of Applicant.

2.5 In view of the failure on part of Corporate Debtor to make payments, the applicant through their advocate issued legal notice dated 16.09.2021 to call upon the Corporate Debtor for repayment of the said debt. The Corporate Debtor issued a letter vide email dated 30.09.2021 in response to the said legal notice.

3. An Affidavit in Rejoinder has been also filed by the Financial Creditor on 21.06.2023 to bring on record email dated 24.05.2014 addressed by the Corporate Debtor to Innoventive Industries Ltd. confirming the outstanding balance, a letter dated 02.05.2017 addressed by the Statutory Auditors of the Corporate Debtor to M/s. Innoventive Industries Ltd. giving particulars of outstanding balance of Rs. 2,26,38,045/- in favour of Innoventive Industries Ltd. and the Financial Statements of the Corporate Debtor for the Financial Year 2016-17, 2017-18, 2018-19, 2019-20 and 2020-2021.

Submissions of the Corporate Debtor:

4. The Corporate Debtor vide its Affidavit in reply dated 12.01.2023 stated that, the Applicant is not a Financial Creditor as the transaction which is the subject matter of the present petition is not of a Financial Debt.

4.1 The Applicant has failed to establish any financial contract which can be taken as proof of a financial debt between the Applicant and the Corporate Debtor. The Applicant has failed to produce any written agreement/contract between the parties which specify terms of repayment, agreed rate of interest and/or terms of default as there is no

written agreement which is recording the advance of any loan between the Corporate Debtor and M/s. Innoventive Industries Ltd.

- 4.2 The Applicant has failed to even make out the most basic case which is essential i.e. 'debt' and 'default'. The Corporate Debtor has neither any liability nor any obligation towards the Applicant with respect to any purported claim as alleged by the Applicant. Consequently, in the absence of existence of debt there is no question of default by the Corporate Debtor as a default is committed only when there is a debt due and payable by the Corporate Debtor.
- 4.3 Further, the Applicant has failed to prove the existence of debt let alone a financial debt being owed by the Corporate Debtor. There is no document produced by the Applicant on record in support of the alleged default. There are no letters or any kind of communication from M/s. Innoventive Industries Ltd or from the Resolution Professional/Liquidator of M/s. Innoventive Industries Ltd. calling upon the Corporate Debtors to repay any amounts in connection with the alleged Loan.
- 4.4 In the record of the Information utility, the debt start date is mentioned as 21.07.2021 which is contrary to what has been stated in the petition and in the legal notice by the Applicant. After the acknowledgements of the balance confirmations/financial statements, any action ought to have been taken by the Applicant within the limitation period however, the petition was filed by the Applicant beyond limitation period. The Applicant is using the present petition as a tool for recovery of its time barred debt.

4.5 Furthermore, the Corporate debtor has also responded to the legal notice issued by the Applicant, through a letter dated 26.10.2021, strongly denying the contents of the said legal notice.

Findings:

5. This bench has gone through the documents and pleadings available on record and considered the arguments.

5.1 As per the material on record, this bench finds that the Applicant is relying on the email dated 24.05.2014 from the Director of the Corporate Debtor issued to M/s. Innoventive Industries Ltd., which shows the confirmation of the debt of Rs. 5,58,96,597/- by the Corporate Debtor as on 31.03.2014. The Applicant also relies on the letter dated 12.04.2017 addressed by M/s. Innoventive Industries Ltd. to Corporate Debtor to obtain confirmation of amounts owed to Innoventive Industries Ltd. It is observed that there is no proof of service/delivery to the Corporate Debtor of the said letter dated 12.04.2017. Hence, this bench is of the view that reliance cannot be placed on the said letter dated 12.04.2017.

5.2 A perusal of the Financial statements of the Corporate Debtor submitted by the erstwhile Statutory Auditor for Financial Year 2016-2017 reveals the outstanding balance of 2,26,38,045/- as against Rs. 5,58,96,597/- which is claimed by the Applicant. However, in the Financial statements of Corporate debtor for the financial year 2017-2018, the balance is reflected as 'NIL'.

- 5.3 To get clarity regarding the Financial Statements of the Corporate Debtor for financial year 2016-2017 and 2017-2018, this bench vide order dated 26.06.2023, directed the Statutory Auditor for the Corporate Debtor to look into the audit working papers for the year 2016-17 and 2017-18. Vide order dated 16.10.2023, the Liquidator of Innoventive Industries Ltd. was directed to produce all financials of the company starting from Financial Year 2013-14 up to September 2021.
- 5.4 Shri Milind Mutha, authorised representative of AMB & Co., the Statutory Auditor, filed affidavit dated 25.09.2023. In his affidavit the auditor has stated that he audited the accounts for financial year 2016-17. However, w.e.f. 01.09.2017 he resigned from the post of statutory auditor of the Corporate Debtor. He further submitted that, *“During the course my of audit for the financial year ending on 31.03.2017, we as a Statutory Auditor had requested for the Balance confirmation letter from the Corporate Debtor. The request for the Balance Confirmation letter dated 02.05.2017, sought a confirmation that a sum of Rs. 2,26,38,045/- (Rupees Two Crore Twenty-Six Lakh Thirty-Eight Thousand and Forty-five) was owed to Innoventive Industries Limited from the Corporate Debtor as on 31.03.2017. As per the information available to me and basis the records maintained by AMB & Co., no response or Balance Confirmation was received from Innoventive Industries Limited”*.
- 5.5 The Statutory Auditor in his affidavit further stated that, *“Despite the efforts by us as a Statutory Auditor to confirm the outstanding debt in the balance sheet for the financial year 2016-2017, did not provide confirmation. Since as per the audited Financial Statements for the financial year 2016-17 and balance confirmation in respect of which was not provided by Innoventive Industries Limited, therefore a sum of Rs. 2,26,38,045/- (Rupees Two Crore Twenty-Six*

Lakh Thirty-Eight Thousand and Forty-Five) was shown towards Unsecured Borrowing from Corporate Debtor to Innoventive Industries Limited in the Financial Statements as on 31.03.2017, albeit with the following remarks were made by us as the Statutory Auditor in the Auditor's Report to the financial statements of the Corporate Debtor, "certain balances payable/receivable from its erstwhile holding company namely Innoventive Industries Ltd. In the absence of balance confirmation, we are not in a position to ascertain and comment on the correctness of the outstanding balances and resultant impact on the financial statements of the Company"

- 5.6 Based on the abovementioned submissions this bench vide order dated 16.10.2023 ordered notice to the current Statutory Auditors of the Corporate Debtor to produce the audited accounts starting from 2013-14 along with all supporting documents.
- 5.7 Pursuant to this order, Mr. Saumil Shaparia, Chartered Accountant of the Corporate Debtor filed affidavit dated 28.11.2023 enclosing financials of the Corporate Debtor from 2015-16 as directed. On being questioned about the entry regarding amount due to Innoventive Industries appearing in the balance sheet as on 31.03.2017 and missing from the balance sheet as on 31.01.2018, the Ld. Counsel for the Auditor drew the attention of this Bench to page no. 89 of his affidavit which contained the ledger of Innoventive industries in the books of the Corporate Debtor. A perusal of the ledger account shows an opening balance of Rs. 2,26,38,045/- as on 01.04.2017. However, the said amount has been written back through journal entry on the very same day leaving a nil balance. Thereby explaining the absence of this entry in the balance sheet for the year ending on 31.03.2018.

5.8 The Liquidator of Innoventive Industries Ltd. filed their written submissions stating that the Deed of Assignment dated 21.07.2021 makes it clear that the receivables were assigned to Metamorphosis Trading LLP on an 'as is where is basis', 'as what is basis', 'whatever there is basis' and no representation or warranty was provided to Metamorphosis Trading LLP with respect to the Receivables including its amount, outstanding balances or recoverability. Further, as per the Deed of Assignment, Metamorphosis Trading LLP confirmed that it has satisfied itself with respect to recoverability and outstanding balances of Receivables and the assignment was at its own risk and liability. He further stated that, as per the Balance sheet of Innoventive, the sum owed by Sankalp to Innoventive was Rs. 5.16 Crores until 2016-17. The Liquidator further stated that Sankalp was a related party till 19.12.2016 and therefore, for the Financial Year upto 2016-17 the receivables from Sankalp were being disclosed separately. Since Sankalp ceased to be a related party after 20.12.2016, the receivables from Sankalp do not appear separately in the Financials of Innoventive Industries Ltd. He further stated that the receivables from Sankalp would have been included under the overall trade receivables in the Balance sheet of financial year 2017-18 onwards.

5.9 This bench observes that the financial creditor in support of his claim of debt and default is mainly relying on a confirmation letter of the Corporate Debtor dated 24.05.2014 and the Financial Statements of the Corporate Debtor dated for the year ending on 31.03.2017 which records an amount different from what is claimed by the Financial Creditor. This Bench also notes that, no documents have been placed on record by the

Financial Creditor to prove the existence of any financial contract between the Applicant and the Corporate Debtor. There is no document on record to specify the nature of transactions or terms of repayment, rate of interest and/or terms of default.

5.10 This Bench notes that the as per the Auditors affidavit dated 25.09.2023, the auditor has stated that he showed the amount as payable to Innoventive Industries because in the absence of balance confirmation by Innoventive Industries they were not in position to ascertain the position of the outstanding amount (this was also stated by them in the auditor's report which is a part of the Financial Statements of the Corporate Debtor). This bench also takes note of the fact that the said amount was written off through a journal entry in the Corporate Debtor's book on 01.04.2017 and that no amount is shown as payable by the Corporate Debtor to Innoventive Industries as on 31.03.2018. Therefore, in view of the Financial Statements of the year ending on 31.03.2018 showing otherwise, confirmation of loan by the Corporate Debtor in the year 2014 has no bearing. The Bench also takes note of the written submissions of the Liquidator of Innoventive Industries Ltd. stating that receivables from Sankalp are not shown in the Financials for the year 2017-18 as they would have been included under the general head in the Financials. However, in the absence of schedules to the balance sheet of Innoventive for Financial year 2017-18 it is not feasible for the bench to cross verify this statement.

5.11 While adjudicating upon an application for admission into Resolution Process filed by a Financial Creditor, it is mandated to ascertain the existence of the debt, and any default in payment of such debt. In the

facts and circumstances stated supra, it is clear that the Applicant is unable to show the existence of Financial debts and default of the amount claimed in the petition.

6. Considering the facts placed before us, this bench is of the view that, the Corporate Insolvency resolution process cannot be initiated against Sankalp Engineering & Services Pvt. Ltd., the Corporate Debtor. Since, the debt and default does not exist, this bench is of the view, that the present case deserves to be dismissed.

ORDER

7. The petition bearing CP(IB) 970/MB-IV/2022 filed by Metamorphosis Trading LLP (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Sankalp Engineering & Services Pvt. Ltd., the Corporate Debtor is **Rejected**.

8. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The rights of the petitioner before any other judicial forums shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)