

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

**CP No. (IB) 904/ MB/ 2022**

Under Section 7 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 4  
of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority)  
Rules, 2016

*In the matter of*

**Rajdeep Distributors Private Limited**  
Having Registered Office at: 356/357,  
Shukrawar Peth, Shivaji Nagar, Pune-  
411 002

..... **Financial Creditor**

Vs.

**ETC- Energy Therapy Co. Pvt.  
Limited**

(CIN: U40300MH2010PTC201185)

Having its Registered Office at: 12-B,  
Ganga Vihar, Raheja Township, Malad  
East, Mumbai- 400 097

..... **Corporate Debtor**

**Order delivered on:- 03.02.2023**

***Coram:***

**Hon'ble Member (Judicial) : Justice P. N. Deshmukh (Retd.)**  
**Hon'ble Member (Technical) : Shri Shyam Babu Gautam**

***Appearances:***

**For the Financial Creditor : Mr. Yash Badkur, Advocate**  
**For the Corporate Debtor : Mr. Prakhar Tandon, Advocate**

## ORDER

*Per: Shyam Babu Gautam, Member Technical*

1. This Company Petition is filed by ***Rajdeep Distributors Private Limited*** (hereinafter called “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against ***ETC- Energy Therapy Co. Pvt. Limited*** (hereinafter called “Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment to the Financial Creditor. This Petition has been filed by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “the Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present Petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an **aggregate amount of Rs. 12,60,45,104/-** (Rupees Twelve Crores Sixty Lakhs Forty-Five Thousand One Hundred and Four only) including the outstanding **Principal amount of Rs. 9,40,61,587/-** (Rupees Nine Crores Forty Lakhs Sixty-One Thousand Five Hundred and Eighty-Seven Only) and **interest @18%** amounting to **Rs. 3,19,83,517/-** (Rupees Three Crores Nineteen Lakhs Eighty-Three Thousand Five Hundred and Seventeen Only) forming part of the Financial Debt.

3. The Corporate Debtor is engaged in the business of providing Turnkey Electrical Engineering Systems and allied activities. The Corporate Debtor had obtained unsecured loans from various parties for an aggregate amount of Rs. 9,40,61,587/- (hereinafter referred to as “the original loans”) payable as on 31<sup>st</sup> March 2020. As the Corporate Debtor was unable to make the payment by the said date, they approached the Financial Creditor seeking financial assistance to take over the original loans. The Financial Creditor agreed to take over the original loans after conducting the necessary due diligence.
4. Accordingly, both the parties entered into a **Loan Agreement dated 1<sup>st</sup> April 2020** whereby the Corporate Debtor assigned its original loans to the Financial Creditor (hereinafter called the “said loan”). It was agreed that the said loan would be repayable by the Corporate Debtor within a period of 6 months from the date of execution of the Agreement. Thereafter, the said loan was disbursed by the Financial Creditor and the outstanding amount fell due on **30<sup>th</sup> September 2020** as per the terms and conditions of the Agreement. However, the Corporate Debtor failed to repay the said loan and committed first default on 1<sup>st</sup> October 2020.
5. The Financial Creditor issued a **Notice dated 5<sup>th</sup> October 2020** to the Corporate Debtor calling upon them to repay the outstanding amount along with the interest due. The Corporate Debtor replied to the said Notice on 8<sup>th</sup> October 2020 and admitted the debt due and promised to pay the amounts after arranging funds for the same. Later, a series of communications

ensued between the parties where similar assurances were given by the Corporate Debtor yet the amount remained unpaid and the Corporate Debtor committed the final default on **20<sup>th</sup> November 2020**. The Financial Creditor issued a Final notice on 4<sup>th</sup> January 2022 to which the Corporate Debtor issued no reply. Hence, this Petition was filed on **20<sup>th</sup> July 2022**.

6. The Corporate Debtor filed a **Reply to this Petition on 18<sup>th</sup> November 2022** and admitted their obligation to repay the said debt in full. It is submitted that the Corporate Debtor was unable to arrange funds due to financial crisis and the Covid-19 pandemic and it is prayed that the present Petition be dismissed.

### **FINDINGS**

7. We have heard the submissions of the Counsel appearing for the Financial Creditor and the Corporate Debtor. Having perused the documents annexed to this Petition, it is evident that the Financial debt was disbursed according to the terms and conditions of the Loan Agreement and this fact is not disputed by the Corporate Debtor. The Corporate Debtor admits the default and their liability to repay the outstanding dues. However, it is observed that the date of default is recorded as **20<sup>th</sup> November 2020** by the Financial Creditor. This date of default is relevant in the context of Section 10A of the Code which is reproduced as follows:

***“Section 10A: Suspension of initiation of corporate insolvency resolution process.***

*10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified<sup>2</sup> in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

*Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”*

The said period was further extended up to 24<sup>th</sup> March 2021 vide Notifications issued by the Ministry of Corporate Affairs. Since the date of default in the instant Petition falls within such period, it indicates that this Petition not maintainable in the light of Section 10A of the Code.

8. In view of the above, we conclude that this Petition is barred under Section 10A of the Code and is liable to be dismissed.

Accordingly, this Petition is dismissed.

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

**Sd/-**

**SHYAM BABU GAUTAM**

**(MEMBER TECHNICAL)**

**Sd/-**

**JUSTICE P. N. DESHMUKH**

**(MEMBER JUDICIAL)**

Anusha  
03.02.2023