



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CP (IB) No. 21/CB/2022

In the Matter of:

An application under section 7 of Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

In the Matter of:

1. ISHAN TECHNICAL PLANT SERVICES PVT.LTD, having its Registered Office at: Room No. 77, Priyamvada Building, Jindal Colony, VPO Vasind, Tal Shahapur, District Thane – 421604 Maharashtra.

2. REAL TECHANICL SOLUTIONS PVT. LTD, having its Registered Office at: Room No. 74, Priyamvada Building, Jindal Colony, VPO Vasind, Tal Shahapur, District Thane – 421604 Maharashtra.

3. TALENTO TECHNICAL PLANT SERVICES PVT. LTD, having its Registered Office at: Room No. 74, Ground Floor, Priyamvada Building, Jindal Colony, VPO Vasind, Tal Shahapur, District Thane – 421604 Maharashtra

...Financial Creditor (s)

-Versus-

MOHIND LTD. (formerly known as Monnet Industries Ltd) having CIN No. L51103CT1982PLC009717, having its Registered Office at: Plot No 216, Sector-C, Urla Industrial Complex Raipur Chhattisgarh – 493221

...Corporate Debtor



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Appearances (through video conferencing)

For the Petitioner : M/s Satyajit Mohanty
D.P. Sahu. Advocates.
For the Respondent : Mrs. Pooja M. Saigal. Adv.

Order reserved on: 13.07.2022
Order Pronounced on:27.07.2022

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

ORDER

Per: P. Mohan Raj, Member (Judicial)

1.This application under section 7 of Insolvency and Bankruptcy Code 2016 with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules2016, has been jointly filed by the **Ishan Technical Plant Services Pvt. Ltd, Real Technical Solutions Pvt. Ltd, and Talento Technical Plant Services Pvt. Ltd.** through its authorised person Mr. Pradeep Kaushik, residing at Door No: L5/1, Vidyanager, Sandur Tuluk, Ballari district, Karnataka, Pincode: 583275 thereby seeking initiation of Corporate Insolvency Resolution Process (CIRP) in respect of **Mohind Ltd. (Formerly known as Monnet Industries Ltd.)** a company incorporated under the provisions of Companies Act 1956, and a company within the meaning of the Companies Act,2013 having CIN No. L51103CT1982PLC009717 and Registered Office at Plot No 216, Sector – C Urla



Industrial Complex Raipur Chhattisgarh – 493221 (**hereinafter referred to as “the Corporate debtor”**)

2. The brief contention of Petition are as follows: -

3. The Financial Creditor No. 1,2,3 was approached by the corporate debtor in the year 2018, seeking a business loan amounting to Rs. 40 Crores, Rs. 25 Crores, and Rs. 25 Crores, for business and general corporate purposes. The Financial Creditor No. 1,2,3 advanced Rs. 40 Crores, 25 Crores, 25 Crores to the Corporate Debtor at an interest rate of 10 % per annum, pursuant to an Inter Corporate Deposit Agreement (ICD Agreement) dated 29.08.2018 signed between the parties. These credit facilities were supposed to be repaid within a period of 365 days from the date of first disbursement by the Financial Creditors i.e., by 31.08.2019. The Corporate Debtor encountered certain difficulties in repaying the amounts due under these credit facilities and sought extension from the financial creditors to repay the amounts due. The Financial Creditors extended the terms of the ICD agreements dated 29.08.2018 by further signing separate Amendment Agreements dated 03.11.2020 with the corporate debtor. These Amendment Agreements extended the terms of the ICD Agreements signed between the Financial Creditors and the corporate debtor i.e by 31.12.2020. The corporate debtor has been unable to pay both the interest as well as the principal amounts due on these credit facilities. The extended terms of the ICD Agreement lapsed on 31.12.2020. The corporate debtor has thus defaulted on its obligations to discharge its debts to the financial creditors and is therefore liable to be subjected to the corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016.) The



financial Creditor No.1,2,3 have nominated Mr. Sanjay Kaul (IBBI Registration Number: IBBI/IPA-001/IP-P01588/2019-2020/12466) to be interim Resolution Professional for the purpose of the CIRP Process sought to be initiated by this Application. Hence this petition.

4. The brief contention of Reply are as follows: -

5. At the outset it is submitted that the contents of the petition if not specifically admitted be deemed to have been denied and specifically traversed. It is stated that it is also necessary to inform that the Company's estimation and projections about its business ventures for purpose of which the ICDs were availed from the Petitioners did not materialize favourably and consequent where to the Respondent has been unable to service its immediate liabilities. The corporate debtor is not disputing its liability towards petitioners but is seeking some additional time to devise an acceptable settlement proposal to be able to service the debt of the petitioners. The insolvency Petition filed by the Petitioners is pre-mature and has been filed in haste as the respondent is ready and willing to negotiate with petitioners for an amicable resolution. The respondent however, dispute and denies that the amounts were agreed to be repaid with 10 % interest as alleged or at all. The economic slowdown is burdening on a generic recession the world over and the Respondent has not been immune to it. The Banks and Financial institutions have also granted respite to their constituents' borrowers under RBI direction and loan moratorium has been extended to businesses. In the Circumstance the petitioners ought to have acceded to the request of the respondent and should grant a moratorium till March, 2023 to enable the respondent to submit a re-scheduled



payment plan. The company into insolvency is not conducive to the interest of the company or the interest of the petitioners. It is submitted that respondent is not disputing the debt but is only seeking time for repayment as there is no “default” at present and none has been stated by the petitioner in the petition. It is therefore submitted that the present petitioner is premature and is liable to be dismissed on this ground matter.

Point for determination is:

Whether the petition is maintainable in view of proviso to Section 10A of IBC 2016?

6. The three financial creditors disbursed loan of Rs.40 crores, Rs.25 crores & Rs. 25 crores respectively to the corporate debtor on 31.08.2018 in pursuance of three separate Inter Corporate Deposit Agreements dated 29.08.2018. As per clause 2.2 of the said agreements the borrower/corporate debtor shall repay the amount within 365 days from the date of disbursement of loan. The respondent/corporate debtor failed to repay the amount as per the said condition and subsequently three amendment agreements were executed between the financial creditors and corporate debtor on 03.11.20220 by which the financial creditors agreed to extend the period of repayment of loan availed by the corporate debtor under Inter Corporate Deposit Agreement till 31.12.2020.

7. The corporate debtor not repaid the loan amount even after the date fixed under the amendment agreements i.e., 31.12.2020, then the financial creditors jointly filed this application on 30.03.2022. There is no dispute among the parties



in respect of facts of the case is concern. In the petition part IV, the default date is not specifically mentioned, but in para 6 of the convenience note submitted by the petitioners the default date is mentioned as 31.08.2019. On the petitioners' side taken the expiry date of 365 days from the disbursement of loan as mentioned in the original agreement dated 28.08.2018 as default date, ignoring the repayment period was extended till 31.12.2020 by amendment agreement dated 03.11.2020. Once the date of repayment is extended by amendment agreement the petitioners cannot fall back upon the original agreements. In respect of period of repayment, the time line fixed in original agreements dated 28.08.2018 was validly amended by amendment agreements dated 03.11.2020, so the repayment period mentioned in the amendment agreements alone shall stand valid.

8. As per the amendment agreements the corporate debtor was granted time to repay the loan amount till 31.12.2020. The corporate debtor failed to repay the loan amount on or before the said date 31.12.2020, then he had committed default in repayment of loan on 01.01.2021. Section 10A of IBC 2016 suspended Initiation of Insolvency Resolution Process under sections 7,9, & 10 for any default arising on or after 25.03.2020 for a period of six months, subsequently by Notifications S.O.3265(E) dated 24.09.2020 time extended till 25.12.2020 and by Notification S.O.4636(E) dated 22.12.2020 further time extended till 25.03.2021. As per proviso to Section 10A of IBC 2016 no applications shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the default occurring during the period from 25.03.2020 to 25.03.2021. In this case default



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occurred on 01.01.2021 hence this petition is not maintainable in view of proviso to section 10A of IBC 2016, thus this point is answered.

In the result petition is **DISMISSED**.

9. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

10. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2022.07.27 17:00:22 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2022.07.27 17:07:46 +05'30'

P. Mohan Raj.
Member (Judicial)

Signed on this 27th of July, 2022

Supriya. P.s