

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



ITEM No.301
C.P.(IB)/181(AHM)2023

Proceedings under Section 7 IBC

IN THE MATTER OF:

Jaspat Investments & Consultancy Pvt Ltd
V/s
Fermos Engineering Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 08/09/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT-1)**

CP(IB) No. 181 of 2023

*[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 **Fermos Engineering Pvt. Ltd.***

Jaspat Investments & Consultancy Pvt. Ltd.

Having registered office address at:
2, Narayan Villa Panchsheel Society,
Near Usmanpura Under Bridge,
Ahmedabad - 380018

....Financial Creditors

VERSUS

Fermos Engineering Pvt. Ltd.

Having its Registered office at
20, Changodar Industrial Estate,
Sarkhej- Bavla Highway,
Village- Changodar,
Tal. Sanand, Dist. Ahmedabad – 382213

.... Corporate Debtor

Order pronounced on: .09.2023

Coram:

**SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

Appearance:

For the Applicant : Mr. Pratik Thakkar, Adv.
For the Respondent : Dr. Kamlesh Vaidankar, Adv.

**O R D E R
(Per: Bench)**

1. This is an application filed by Jaspat Investment & consultancy Pvt. Ltd. having office at 2, Narayan Villa Panchsheel Society, Near Usmanpura Under Bridge, Ahmedabad – 380013 against Fermos Engineering Pvt. Ltd.



with a prayer to admit the application, to initiate Corporate Insolvency Resolution Process, to appoint IRP, and to declare Moratorium.

2. The application is affirmed by one Mr. Saurabh Khandelwal, who is authorized by Board Resolution dated 09.02.2023.
3. On Perusal of Form-1, part 2 reveals that the corporate debtor namely Fermos Engineering Pvt. Ltd. was incorporated on 23.08.2010, under CIN No. U29100GJ2010PTC062075 having registered office at 20, Changodar Industrial Estate, Opp. Sarkhej- Bavla Highway, Changodar, Sanand, Ahmedabad – 382213.
4. Part 3 of the application reveals that the applicant has nominated Shri Bimal Ashok Desai, who is registered as Insolvency Professional having Registration No. IBBI/IPA-001/IP-8-2017-2018/11281.
5. Part 5 of the application reveals that the total sum of Rs. 1,10,00,000/- was disbursed by the Financial Creditor to the Respondent pursuant to the Loan agreement dated 15.12.2022 executed between the parties. It is states that, the applicant has disbursed the following amount.

| Sr. No. | Date of Disbursement | Amount |
|---------|----------------------|---------------|
| 1. | 15.12.2022 | 30,00,000/- |
| 2. | 16.12.2022 | 37,50,000/- |
| 3. | 17.12.2022 | 42,50,000/- |
| Total | | 1,10,00,000/- |

6. The applicant claims that the total default amount is Rs.1,12,75,000/-. It is stated that, the respondent had vide its letter dated 10.12.2022, requested the Financial Creditor to provide Inter-Corporate Loan of Rs.1,10,00,000/-. The Parties had thereafter entered into a loan agreement dated 15.12.2022 pursuant to which disbursements were made by the Applicant. The



Respondent had agreed to repay the entire amount along with the interest by 15.03.2023, and also issued the following cheques in favour of the applicant.

The details of various cheques are as under:-

- (i) Cheque No. 838445 dated 15.03.2023 for the sum of Rs. 1,10,00,000/-
- (ii) Cheque No. 838446 dated 15.12.2022 for the sum of Rs. 1,37,500/-
- (iii) Cheque No. 838447 dated 15.01.2023 for the sum of Rs. 1,37,500/-
- (iv) Cheque No. 838448 dated 15.03.2023 for the sum of Rs. 1,37,500/-

7. It is stated that, only one cheque bearing No. 838446 dated 15.12.2022 issued for interest for the sum of Rs.1,37,500/- was honored by the respondent. The other cheques issued by the Respondent toward the principal amount of Rs.1,10,00,000/- and the various interest return and were dishonored. The date of default as per the application is 15.03.2023, the Applicant has attached the following documents along with the application.

- (i) The request letter dated 10.12.2022 for Inter Corporate Loan of Rs. 1,10,00,000/- by the Respondent to the Financial Creditor.
- (ii) The loan agreement dated 15.12.2022 executed between the parties.
- (iii) The Covering letter issued by the Respondent to the Financial Creditor at the time of the issuance of the cheques.

8. It is stated that the applicant has written e-mail dated 28.04.2023, demanding payment of the principal amount and the interest amount. The same was replied by the respondent, vide e-mail dated 13.05.2023. In the said communication, the corporate debtor has written as under:-

Respected sir,

You are well aware about our present financial condition. We have suffered huge set back in our business. It would be impossible for us to repay the loan amount to you within your timeline as informed to you by us in our personal meeting. We are thankful to you that extended us financial help during our bad times and we are fully committed to repay the full amount with interest. Because of our present



situation, we request you to please wait and not to file any case. We promise to complete the full payment of principal amount within two year and we will also make payment of interest in our year after that.

Thank & Regards

Ishwar Manat

Fermos Engineering Pvt Ltd

9. The applicant has attached the copy of a bank statement of the financial creditor which is attached from page no. 56 to 64 of the application to prove that the disbursement was made by the financial creditor to the account of the corporate debtor.

10. The applicant has placed before us the record of default with National E-Governance Services Limited (NESL) which is dated 10.05.2023. On perusal of the same reveals the default amount is Rs.1,16,36983.00 and “DEEMED TO BE AUTHENTICATED”

11. The reply has been filed under diary no. D3251 dated 28.08.2023. In the reply, the respondent does not raise objections so as to disbursement of loan amount, the loan agreement, execution of demand promissory note. The respondent has pleaded that, due to Covid-19 and global recession, the respondent has faced some financial issues and, hence, the respondent approached for a short-term loan which he could not repay. Under para 6 on page no. 3 of the reply the respondent has written, as under:-

“the respondent has urged the petitioner to consider its request to repay in two years’ time and further the Respondent also agreed to make payment of interest in one year after that. This email communications shows nothing but the bonafides on the part of the Respondent”.

12. Heard, both sides it is not in dispute that the loan was sanctioned and disbursed by the applicant to the respondent company and that documents were executed by the respondent company, including the demand promissory note. From the averments made in the reply, it is clear that the



corporate debtor has admitted its liability toward the amounts borrowed. The default has been established by the applicant herein and in support thereof, a record of default with information utility is placed on record from which it is clear to us that the amount in default is more than Rs. 1 Crore. It is seen that the Applicant has mentioned the date of default in Form-1 as 15.03.2023, whereon the NESL record of default states the same as 15.01.2023. A perusal of the Loan Agreement at 15.12.2022, more para 18 at clause 3 reveals that the loan was to be repaid as or before 15.03.2023. Be that as it may, we go by the application and accordingly the date of default is treated as 15.03.2023.

13. Further, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is



entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

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” i.e. 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.

15. In view of the facts as stated *supra* and also in view of the ‘financial debt’ which is proved by the Financial Creditor and the ‘default’ being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

15. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **Jaspatt Investments & Consultancy Pvt. Ltd** is **admitted** in Corporate Insolvency Resolution Process under section 7 of the Code.



- (ii) As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;
- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
 - c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.
 - e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any



other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, during the pendency of moratorium period in terms of Section 14(2) to 14(3) as extracted hereunder;
 - (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
 - (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.



- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.
- (v). The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;
- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

- (vi). As proposed by the Financial Creditor, we appoint **Mr. Bimal Ashok Desai**, with Registration No: IBBI/IPA-001/IP-P00748/2017-18/11281 (AFA valid till 13.12.2022) as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2. Applicant shall pay IRP a sum of **Rs.2.00**



Lakhs within seven days of this order to meet the initial expenses of CIRP.

- (vii). The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (viii). The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.
- (ix). The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC,



2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

- (x). The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (xi). Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records and to the Interim Resolution Professional above named forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.
- (xiii). The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.



16. Accordingly, this Application **CP(IB)/181/AHM/2023** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

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SAMEER KAKAR
MEMBER (TECHNICAL)

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SHAMMI KHAN
MEMBER (JUDICIAL)