

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

CP (IB) No.1300/MB-IV/2022

Under Section 7 of the IBC, 2016

In the matter of

FINQUEST FINANCIAL SOLUTIONS
PRIVATE LIMITED

[CIN: U74140MH2004PTC146715]

...Financial Creditor

v/s.

TEXPLAST INDUSTRIES LIMITED

[CIN: L27100MH1970PLC014933]

...Corporate Debtor

Order Delivered on: 18.07.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Financial Creditor:

Mr. Avinash R. Khanolkar, Ld.
Counsel.

For the Corporate Debtor:

Mr. Abdullah Bharmal i/b Adv.
Mehul Thakker, Ld. Counsel.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by FINQUEST FINANCIAL SOLUTIONS PRIVATE LIMITED (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of TEXPLAST INDUSTRIES LIMITED, the Corporate Debtor.

1.1. The Company Petition is filed on 26/08/2022 claiming an amount of Rs.11,44,80,714/- including interest @ 21 % p.a. The date of default is stated as 19.07.2022 in the Part IV of Form 1.

2. The Financial Creditor Sanctioned the Loan of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lacs only) with the stipulated interest applicable on the same. The Financial Creditor and the Corporate Debtor entered into Loan Agreement dated 17.12.2012. The Directors of the Corporate Debtor also executed the Personal Guarantee in the favour of the Financial Creditor. The Corporate Debtor also signed the Promissory Note along with the Loan Agreement. The Corporate Debtor also pledged Equity Shares in the favour of the Financial Creditor pursuant to the said Loan Agreement.

2.1. The Corporate Debtor has deposited an amount of Rs. 7,87,500/- (Rupees Seven Lacs Eighty-Seven Thousand Five Hundred only) Rs. 3,93,750/- (Rupees Three Lacs Ninety-Three Thousand Seven Hundred Fifty only) and Rs. 1,42,00,000/- (Rupees One Crore Forty-Two Lacs only) as part payment from time to time.

2.2. The Corporate Debtor also issued Cheques in favour of the Financial Creditor towards the discharge of legal debts/liability, however, the

applicant has alleged that those cheques were issued with the dishonest and malafide intention of not honouring the contractual commitment and to cheat the Financial Creditor deliberately.

2.3. It is also stated that the Corporate Debtor has sold out all the Furniture & Fixtures from their business place and had also sold out two Properties. The Corporate Debtor in their MCA account has regularly uploaded Balance-sheet duly signed by their director since 2012 to 2021, which shows that the Corporate Debtor is in debt of the Financial Creditor. Accordingly, there is clear admission of the liability in their Financial Statements.

2.4. The Financial Creditor addressed a Demand Notice upon the Corporate debtor to pay the debt amounting to Rs. 11,44,80,714/- (Rupees Eleven Crores Forty-Four Lakhs Eighty Thousand Seven Hundred Fourteen only). The Corporate Debtor had tendered a reply/email dated 19.07.2022 in the response of the letter sent by the Financial Creditor and has admitted the liability.

3. The Corporate Debtor in its reply has stated that *“the Corporate Debtor is currently inactive and not doing any business since, 2014 when the Indian overseas Bank took over the possession of the Factory; the company is not active currently due to financial Crunches; the company has to suffer heavy losses of Rs. 30 Crores approx. during the F. Y. 2013 2014 and as loans were taken from NBFC and Banks their Outstanding went on increasing; the Corporate Debtor is not in a position to pay the debt”*.

Findings:

4. We heard both the parties and perused the material on record.

4.1. As per the material on record, this bench is of the considered view that, there is an admission of liability and default in payment thereof, on the part of the Corporate Debtor as stated in its reply. Further, existence of debt is

evidenced from the Financial Statements of the Corporate Debtor, placed on record. In other words, from the petition, pleadings and arguments extended by the Counsel of both the sides, it is abundantly clear that there exists a debt of Rs. 11,44,80,714/-, including interest @ 21 % p.a., and the same is in default by the Corporate Debtor.

4.2. In view of the above findings, it is clear that the Corporate Debtor owes the financial debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Accordingly, the present Petition deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

5. The Financial Creditor has proposed the name of Interim Resolution Professional Mr. Vishnu Kant Kabra, an Insolvency Professional.

ORDER

6. The Petition bearing CP (IB) No.1300/MB-IV/2022 filed by, FINQUEST FINANCIAL SOLUTIONS PRIVATE LIMITED (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of TEXPLAST INDUSTRIES LIMITED, the Corporate Debtor is **admitted.**

a) There shall be a moratorium under section 14 of the IBC, 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.

(c) Notwithstanding the above, during the period of moratorium, -

- (v) 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;
 - (vi) 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;
- (d) 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 or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints Mr. Vishnu Kant Kabra, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P02178/2021-2022/13747 and email- cavishnukabra@gmail.com . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. 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.
- (h) The Financial Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two 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).

- (i) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.
- (j) The Registry is directed to communicate this Order to the Operational 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.
- (k) 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. Further, the Registrar of Companies, Maharashtra, Mumbai, is directed to restore the name of the company u/s 252(1) of the Companies Act, 2013 so that the Corporate Debtor can be resolved in terms of the provisions of the Code pursuant to this Order.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

18.07.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)