IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI

CP(IB)/278/CHE/2021 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of ***M/s. Anu Engitech Private Limited***
(CIN - U28112TN2011PTC080250)

Mr. Murali S
11/22, Gummidipoondi Balakrishnapuram,
New Gummidipoondi,
Paleswarankandigai,
Tiruvallur – 601 201

... Financial Creditor

-Vs-

M/s. *Anu Engitech Private* Limited
Reg. Off:-
No. 50, Habibullah Road, T. Nagar,
Chennai – 600 017

...Corporate Debtor

Order Pronounced on 3rd February 2022

CORAM

Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : V. Venkata Sivakumar, Advocate
For Corporate Debtor : No Representation

ORDER

***Per:* JUSTICE (RETD.) S. RAMATHILAGAM, MEMBER (JUDICIAL)**

Under Adjudication is an application which has been filed under Section 7 of the Insolvency & Bankruptcy Code 2016 ("hereinafter referred to as IBC, 2016") r/w Rule 4 of the

Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by an individual named one **Mr. Murali S.** (Hereinafter referred to as **'Financial Creditor'**) against **M/s. *Anu Engitech Private* Limited** (U28112TN2011PTC080250) (hereinafter referred to as **'Corporate Debtor').** The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is an individual with PAN AMNPM1676P. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number U28112TN2011PTC080250 and with registered office at No. 50, Habibullah Road, T. Nagar, Chennai – 600 017. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. China Masthan Talakayala, Registration Number: IBBI/IPA-001/IP-P02154/2020/13280 as the Interim Resolution Professional.

3. Part IV of the application signifies the amount of debt to the tune of Rs.1,08,10,877/- since the date of default 28.09.2018. Part V of the application describes the particulars of Financial Debt, documents, records and evidence of default as described below:

a) Loan Agreement dated, 29.06.2011

b) Shareholders Agreement dated, 13.06.2016
c) Ledger Account of the Corporate Debtor in the books of the Petitioner
d) Bank Statement of the Petitioner
e) Letters sent by Corporate Debtor and Financial Creditor.

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor approached the Financial Creditor during its desperate need of working capital, upon which a loan agreement dated 29.06.2011 was entered into between the parties as per which a sum of Rs. 16,00,000/- was lent to the Corporate Debtor. The same was also repaid with interest. It is further submitted that again on 13.06.2016 another loan agreement was entered into between the parties for a sum of Rs. 55,00,000/- subject to interest and penal interest as per the clauses of the agreement entered.

5. The Learned Counsel for the Financial Creditor submitted that letters of communication were taking place between the parties during September 2017, September 2018, November 2020 and April 2021. It is further submitted that the respondent having agreed to pay a consolidated amount including principal, interest and penal interest have executed few demand notices along with a Cheque and has requested to present the cheque same intimation.

6. The Learned Counsel for the Financial Creditor submitted that vide letter dated 22.04.2021 the Financial creditor was brought to

the notice of the demise of the Managing Director of the Corporate Debtor who was one M. H. Krishnamoorthy. It is further submitted that post the demise of the Managing Director of the Corporate Debtor the company was taken over by Mr. H. Nagarajan, who is the brother of the deceased. Subsequent to which, several attempts were made for the retrieval of the loan amount which went in vain. Thus out of no other option the applicant has preferred the present application.

7. In relation to the Corporate Debtor, it is seen that there is no vakalath, however, on perusal of the process file it is found that when the matter came up before this bench on 07.01.2022 representation for the respondent has been marked, and that till date no Vakalath and Counter nor a memo has been filed by the Corporate Debtor to represent their side. In such circumstances, the matter was heard in the absence of the Corporate Debtor.

8. Heard the Counsel for the Financial Creditor and perused the documents placed on record. As per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial Debt is owed and includes a person to whom such debt has been legally assigned or transferred to; thereby the applicant herein is a Financial Creditor. It is manifest and seen from the Loan Agreement dated 13.06.2016 annexed along with the application in page number 18 that money

had been lent by the Financial Creditor herein in accordance with the loan agreement dated 13.06.2016 which would have the commercial effect of borrowing on the part of the Corporate Debtor. Thereby, on verification of the documents annexed it is clear that the amount disbursed is a debt on the part of the Corporate Debtor.

9. Thus, it is evident that there exists a 'debt' between the parties and the said debt qualifies to be a 'financial debt' as defined under 5(8)(c) of IBC, 2016 and also the Corporate Debtor has defaulted in repayment of the said 'financial debt' which is due and payable to the Financial Creditor. From the letter dated 05.09.2017 and the subsequent letters addressed to the Financial Creditor by the Corporate Debtor placed between pg. nos. 35-39 along with the application shows that there exists default on the part of the Corporate Debtor. Under the said circumstances, in view of absence of any objections by 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.

10. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant – Financial Creditor is required to be **Admitted** under Section 7 (5) of the IBC, 2016

11. The Financial Creditor has proposed the name of one Mr. China Masthan Talakayala, Registration Number: IBBI/IPA-001/IP-P02154/2020/13280 as the Interim Resolution Professional. However, on verification no valid AFA is found. Thus this Tribunal hereby appoints **MR. SANJEEVI C**, having Registration Number **(IBBI/IPA-003/IP-N000108/2017-2018/11215) Email ID-sanjeevicra@yahoo.co.in** as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. 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 Code and file his report within 20 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

12. 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.

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;

13. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 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.

14. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

14 (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.

15. Based on the above terms, the Petition stands **Admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the above named Respondent by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named also be furnished with copy of this order 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.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

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