

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

COMPANY PETITION (IB) No. 834/MB/2020

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016.

In the matter of

Amluckie Investment Company Limited

[CIN: L15491WB1876PLC000341]

...Financial Creditor

v/s.

Skil Infrastructure Limited

[CIN: L36911MH1983PLC178299]

...Corporate Debtor

Order Delivered on: **01.02.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

CP (IB) No. 834/MB /2020

For the Financial Creditor:

Mr. Amir Arsiwala *a/w* Mr. Anuj
Jhaveri and Ms. Ritisha Choudhary
Ld. Counsel for the Petitioner

For the Corporate Debtor:

Mr. Nausher Kohli *a/w* Mr. Manutul
Bajpai and Mr. Manik Joshi, Ld.
Counsel for the Respondent.

ORDER

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) by **Amluckie Investment Company Limited** (“Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) in the matter of **Skil Infrastructure Limited**, the Corporate Debtor herein.

1.1 The present petition was filed on 20.02.2020 and the total default, per Part-IV of the present petition, amounts to INR 3,70,32,768/- (Indian Rupees three crores, seventy lakhs, thirty-two thousand, seven hundred and sixty-eight only). The Date of Default, as set out in Part-IV of the present petition by the Financial Creditor, is 14.10.2019.

Submissions of the Financial Creditor

2. The Financial Creditor submits that the Corporate Debtor was sanctioned a Loan to the extent of INR 2,00,00,000/- (Indian Rupees two-crores only) in two equal tranches of INR 1,00,00,000/- each *vide* two separate RTGs *dated* 05.04.2012 and 07.04.2012. In furtherance thereof, the Corporate Debtor issued two loan acknowledgement letters, two demand promissory notes as well as two receipts acknowledging the receipt of the said loan amount. It was further mutually agreed between the parties that the Corporate Debtor shall repay the said loan amount to the Financial Creditor herein, after a six-month period of 181 days and 179 days respectively *i.e.* on 03.10.2012 (hereinafter “date of repayment”).
3. The Financial Creditor submits that on the due date of repayment, the Corporate Debtor approached the Financial Creditor and expressed its inability to repay the loan amount, and accordingly; The Corporate Debtor issued series of loan extension letters and fresh demand promissory notes *dated* 12.10.2012,

13.12.2012, 28.02.2013, 16.03.2013, 30.07.2013, 03.09.2013, 02.12.2013, 01.03.2014 and 01.10.2014 which purportedly included the complete terms of understanding between both the parties. Further, to secure the amounts under the said loan transactions, the Corporate Debtor issued two post-dated cheques *dated* 03.10.2012, bearing nos. 09113 and 0116 drawn on State Bank of India amounting to INR 2,00,00,000/-.

4. The Financial Creditor submits that on account of no further extensions being granted subsequent to 01.10.2014, it issued a Legal Notice to the Corporate Debtor *dated* 25.09.2019, recalling the entire amount of INR 3,70,32,768/- (which admittedly includes the entire interest accrued thereupon). The Financial Creditor further submits that the Corporate Debtor continued to intermittently deposit the TDS amount(s) on interest payable to the former upto F.Y. 2017-18 on the said loan account, as is duly validated *via* the ledger account of the Corporate Debtor. The Financial Creditor thereby, by way of the aforementioned Legal Notice *dated* 25.09.2019, also called upon the Corporate Debtor “*..to provide current TDS deducted on interest of the said loan account.*”
5. The Financial Creditor therefore contends that in terms of loan-acknowledgement letters *dated* 05.04.2014 and 07.04.2014, read with loan-extension letters *dated* 12.10.2012, 13.12.2012, 28.02.2013, 16.03.2013, 30.07.2013, 03.09.2013, 02.12.2013, 01.03.2014 and 01.10.2014 respectively and the oral extension(s) sought by the Corporate Debtor from time to time, the amounts advanced by the Financial Creditor to the Corporate Debtor were in the form of a ‘loan’ and that, the latter is liable to pay interest to the Financial Creditor in lieu of utilizing the said loan amount.

Hence, the present petition.

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Submissions of the Corporate Debtor

6. The Corporate Debtor herein submits that in accordance with the said arrangement, the Financial Creditor herein disbursed an amount of INR 2,00,00,000/- as a 'loan', and contends that the said disbursement was not a commercial lending transaction, but it was with the mutual understanding of converting the said loan into an investment within a tax-efficient framework at a later stage. The Corporate Debtor however contends that, pursuant to an oral understanding of remission of funds towards the aforesaid investment project and a purported commitment on the Financial Creditor's behalf to adjust the said loans, the Corporate Debtor's financial records have depicted the said amount as an 'advance' on account of no further extensions on repayment of loan being sought beyond 31.12.2014. The Corporate Debtor therefore contends, that since the last date of repayment of the said 'loan' was 31.12.2014 and that the cause of action/ event of default, if any, would have arisen on 01.01.2015; The debt therefore sought to be enforced by the Financial Creditor *via* the present petition is contended by the Corporate Debtor to be time-barred, under the law of limitation.

7. The Corporate Debtor, while disputing the veracity of an alleged 'financial debt' herewith, contends that the Financial Creditor's consistent absence of demand for payments of interest during the period of 2015 to 2019, non-utilization of available instruments for repayment(s), and the deviation from established lending practices contextualise the alleged shift in the nature of the financial arrangement. The Corporate Debtor further submits that when the initial 'loan' was re-classified as an 'advance towards investment', the financial obligation ceased to qualify as a 'financial debt' and that therefore, the Corporate Debtor's notion that the funds advanced forthwith constitute a 'financial debt' *per se* is legally untenable.

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Findings

8. Heard the Learned Counsel(s) for the Financial Creditor and the Corporate Debtor.

8.1. This Bench was pleased to Admit the captioned petition bearing C.P. (IB) No. 834/MB-IV/2020 *vide* Order *dated* 15.03.2021. The said Order of admission was however set aside by the Hon'ble NCLAT *vide* Order *dated* 05.04.2021 in Company Appeal AT (Ins) No. 280 of 2021, in light of the settlement reached between the concerned parties herein as recorded in the Settlement Agreement *dated* 23.03.2021 ("Settlement Agreement").

8.2. In consonance with the terms of the Settlement Agreement, the Corporate Debtor had commenced payment of the debt amount to the Financial Creditor and had paid a sum of INR 1.40 Crores but had subsequently defaulted again in payments to the Corporate Debtor with regards to the remaining amount of INR 3.20 Crores along-with the corresponding interest of 12% *p.a.* from the date of settlement till the payment of last instalment.

8.3. In light of the aforesaid, the Financial Creditor herein sought revival/restoration of the said petition *via* an Interlocutory Application bearing I.A. No. 2771 of 2023. This Bench was pleased to restore the captioned petition *vide* Order *dated* 25.08.2023 and the same is therefore in consideration herein presently.

8.4. We have further taken on record, the rejoinder filed by the Financial Creditor herein pursuant to I.A. No. 5612 of 2022 and the Additional Affidavit filed by the Corporate Debtor thereunder.

9. Upon perusal of all record files, we are of the considered view that:

9.1. The present petition bearing C.P. (IB) No. 834/MB-IV/2020, was filed on 20.02.2020. The nature of transaction involved herein in so far as 'financial debt' is concerned, emanates from disbursements *dated* 05.04.2012 and 07.04.2012 of INR 2 Crores, and is expressly validated to be in the nature of a 'loan' by way of loan-acknowledgement letters, demand promissory notes, receipts acknowledging the receipt of the said loan amount as against both the afore-stated dates in addition to the loan-extension letters *dated* 12.10.2012, 13.12.2012, 28.02.2013, 16.03.2013, 30.07.2013, 03.09.2013, 02.12.2013, 01.03.2014 and 01.10.2014. The Corporate Debtor's contention therefore, that the 'loan' was re-classified as an 'advance towards investment' and is to be treated as the same, is devoid of any merits whatsoever.

9.2. With regards to the aspect of Limitation, it is pertinent to contextualise the payments advanced under the Settlement Agreement *dated* 23.03.2021, as mentioned in Para (8.2) hereof. Clause {4} of the said Settlement Agreement reads as hereunder:

"4. That the Corporate Debtor and the Personal Guarantor hereby agree to pay to the Financial Creditor an amount of Rs. 4,40,00,000/- (Rupees Four Crore Forty Lakhs Rupees Only) in instalments as per the schedule mentioned herein below along with interest @ 12% per annum."

In terms of the said Settlement Agreement, the Corporate Debtor made ten payments from 13.04.2021 to 29.12.2021, totalling to an amount of INR 1,40,00,000/- and thereupon, defaulted on the payment schedule in terms of the said Settlement Agreement *w.e.f.* 31.10.2021 as against the instalment due on the said date. The Hon'ble NCLAT *vide* Order *dated* 05.04.2021, allowed for withdrawal of the said application pursuant to the Admission Order passed by this Tribunal, solely on the basis of the purported "*..settlement reached between the parties on 23rd March, 2021 and taking into consideration the fact that public announcement is yet to be made and*

Committee of Creditors is yet to be constituted". We find that the afore-stated payment(s) amounting to INR 1,40,00,000/- advanced by the Corporate Debtor, across ten tranches from 13.04.2021 to 29.12.2021, clearly constitutes an acknowledgement of liability on part of the Corporate Debtor herein and thus, the period under limitation stands extended.

- 9.3. We also consider the facts of the case in the light of the position adopted by the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]* upholding the Constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.
- 9.4. Upon perusal of records, this Bench is of the considered opinion that the present petition is complete in all aspects, as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount stipulated *u/s.* 4(1) of the IBC, 2016. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition.
- 9.5. We further note that this Bench *vide* the earlier Admission Order *dated* 15.03.2021 had appointed Mr. Shashi Agarwal, having Registration No.: IBBI/IPA-001/IP-P00470/2017-18/10813 as the Interim Resolution Professional. However, we find that the registration of the said IRP has been cancelled by Insolvency and Bankruptcy Board of India *w.e.f.* 11.06.2022. This Bench therefore finds it fit to issue a fresh appointment of Interim Resolution Professional, in terms as set out subsequent hereinafter.

ORDER

10. It is accordingly hereby ordered as follows:

- a. The petition bearing C.P.(IB) 834/MB/2020 filed by *Amluckie Investment Company Limited* seeking initiation of Corporate Insolvency Resolution Process in the matter of *Skil Infrastructure Limited* under Section 7 of the Insolvency and Bankruptcy Code, 2016, is hereby **Admitted**.
- b. We are hereby directing the suspended Board of Directors to cooperate with the RP/IRP for smooth functioning of CIRP Procedure, by providing necessary documents/ information as required by the RP/ IRP.
- c. There shall be a moratorium under section 14 of the IBC, 2016, 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.

- d. Notwithstanding the above, during the period of moratorium:
- i. 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;
 - ii. 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;
- e. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority 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.
- f. 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.
- g. **Mr. Purusottam Behera**, Registration No: IBBI/IPA-002/IP-N00940/2019-2020/12993, having address at Headway Resolution and Insolvency Services Pvt Ltd, 708, Raheja Centre, 7th Floor, Nariman Point, Mumbai, Maharashtra-400021 [E-mail: purusosbbj@yahoo.com, Mob: 7718851633], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

- h.** 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.
- i.** The Financial Creditor shall deposit a sum of **Rs. 5,00,000/-** (Rupees five-lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- j.** The Registry is directed to communicate this Order to the Financial 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.** IRP is directed to send a copy of this Order 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.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

01.02.2024

Aditya Kalia

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
