



**MEMO OF PARTIES**

**Stros-Sedlcanske Strojirny, A.S.**

Having Registered Office at

Strojirenska 791, 26401

Sedlcany Czech Republic

IC:26183595

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**Applicant/Financial Creditor**

**Versus**

**Stros Esquire Elevators &**

**Hoists Private Limited**

Having its registered office at

301, Shreeram 10,

Haribhakti Colony Ext.

Race Course

Vadodara 390 007

Gujarat State

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**Respondent/Corporate Debtor**

**Appearance:**

For the Applicant : Mr. Adarsh Malik, Advocate

For the Respondent : Mr. Vinodkumar Shah, PCS

## **ORDER**

1. The Present Application is filed on 31.08.2020 under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Guneet Chaudhary, on behalf of **Stros-Sedlcanske Strojirny, A.S.**(for brevity 'Applicant'), duly authorised vide Board Resolution dated 03.08.2020, with a prayer to initiate the Corporate Insolvency process against **Stros Esquire Elevators and Hoists Private Limited** (for brevity 'Corporate Debtor').
  
2. The applicant is a company registered under the Czech Republic Laws having its registered office at Strojirenska 791, 26401, Sedlcany Czech Republic, having identification No. IC:26183595.
  
3. The corporate debtor is a Private limited company, incorporated under the provisions of The Companies Act, 1956 on 01.12.2014, duly registered with Registrar of Companies, Ahmedabad with CIN: U29253GJ2014PTC081390 and having registered office at 301, Shreeram 10, Haribhakti Colony Ext., Race Course, Vadodara

390 007, Gujarat State. The Authorized share capital of the Respondent is Rs. 4,00,00,000/- and paid up share capital of the company is Rs. 3,86,93,280/-. The respondent company is engaged in the business of manufacturing industrial elevators.

4. It is submitted that the applicant had entered into a Loan Facility Agreement with the corporate debtor on 05.06.2017 for a sum of 1.3 Million USD Dollar. As per clause 2 of the said agreement, on receiving request from the corporate debtor from time to time, the applicant shall release such advance in US Dollars. As per clause 4 of the said Agreement the borrower (corporate debtor) has to pay interest on each advance at a rate equal to six months Libor (London Inter-Bank Offering Rate) + 3.00% or the maximum interest rate payable under applicable law, for that interest period. Original Loan Facility Agreement dated 05.06.2017 was executed for maximum credit limit of 2 million USD which was subsequently amended and the agreement was executed for maximum credit amount of USD 1.3 million without changing other terms and conditions of Original Loan Facility Agreement. During the period from 21.07.2017 to 05.11.2018 the loan amount was disbursed to the corporate debtor as per the

schedule attached to the agreement. The copies of agreement with schedule and separate chart of disbursement were annexed.

5. The applicant further submitted that the total amount of debt as on 21.01.2018 is 1.3 Million USD with 18% interest. On not receiving the payment as per the Amended Loan Facility Agreement, the applicant issued legal notice dated 25.01.2020 calling upon the corporate debtor to refund the whole amount i.e. 1.3 million USD along with interest @ 18% per annum within 21 days from the date of receipt of the notice. Thereafter, Managing Director of the applicant company had issued a letter calling upon the corporate debtor to send a plan as to how the corporate debtor plans to settle the account. On 02.05.2019, the applicant issued letter to Citi Bank NA, Baroda stating that no further funds under the Amended Loan Facility Agreement should be released. Subsequently, the applicant issued termination of the loan agreement with immediate effect. All above mentioned letters/ communications are annexed.

6. The respondent filed affidavit in reply inter alia stating that:
  - The application is defective as the person who has signed the application has no proper authority;

- The applicant has suppressed material facts. The corporate debtor is a Joint Venture company (JV) wherein the applicant is holding 79.41% share and the applicant has intentionally not placed the JV agreement dated 09.07.2014 which is still in force;
- The corporate debtor was incorporated on 01.12.2014 based on the JV agreement dated 09.07.2014. As per Clause 23 of JV Agreement, there is a provision of Arbitration in case of dispute. Clause 23 of JV Agreement reads as under:

**“23 Arbitration**

*23.1 Any and all disputes or controversies arising out of or in connection with the interpretation, performance or non-performance, or termination of this agreement, or relating to the management of the company, shall, to the extent possible, be settled in the first instance by prompt and good faith negotiations between Chairman of the respective partner who shall, in resolving the disputes, have primary regard to the interest of the company. The shareholders agree that if a dispute cannot be resolved by mutual consent the following resolution procedure shall be used to settle the matter.*

*23.2 Subject to provisions of Clause 23.1 above, if the dispute cannot be settled within sixty (60) days by mutual discussions, such dispute shall be finally settled by arbitration in accordance with the international arbitration rules of the Singapore International Arbitration Centre then in effect (SIAC Rules), which Rules are deemed to be incorporated by reference into this Clause.*

23.3 *The number of arbitrators shall be three (3), of whom each of the disputing party shall appoint one arbitrator each and then the third arbitrator (Presiding Arbitrator) shall be appointed by the two arbitrators so appointed. Provided that if these two arbitrators are unable to agree on the nomination of the Presiding Arbitration within twenty (20) days of their appointment, the Umpire shall be appointed in accordance with the Rules.*

23.4 *Any arbitral award shall be final and binding on the parties, including the non-disputing party. The venue of the arbitration shall be Mumbai.*

23.5 *The language of the arbitration proceedings shall be in English. The parties hereby expressly agree that Part 1 of the Indian Arbitration and Conciliation Act 1996 shall not be applicable to any arbitration proceeding.*

23.6 *The provisions of this Clause 23 shall survive any termination of this agreement.*

23.7 *During the pendency of any arbitration, each shareholder shall continue to perform its obligations hereunder and no shareholder shall exercise any remedies hereunder arising by virtue of the matters in dispute.”*

7. The applicant filed written submissions reiterating the contentions raised in the application. In addition, the applicant has submitted that the corporate debtor had admitted the loan in its Notes forming the part of the Balance sheet as at 31.03.2019 annexed to the application. Moreover, Mr. Ing Ladislav Filip, Director of the applicant company, vide Board Resolution dated 03.08.2020, had authorised Mr. Guneet Chodhary, to appear, sign, verify, declare Company Petition under IB

Code, 2016. Copy of said Board Resolution is annexed. That the corporate debtor has not paid a single penny of interest to the applicant, till date and has also not complied with a single term of the agreement.

8. Pursuant to order dated 08.07.2022, the corporate debtor filed written submissions reiterating the contents of affidavit in reply. In addition, the corporate debtor has stated that the defects in the application is incurable and hence application is liable to be rejected. The persons appointed by the applicant as CEO and Director of the corporate debtor company are responsible for the present status of the corporate debtor.
  
9. As per Form 1, part IV, the corporate debtor is in default of total 1.3 Million USD as on 21.01.2018 as per the disbursement details annexed to the application. As per the computation annexed to the application, the first disbursement was released on 21.07.2017 and the last disbursement was released on 05.11.2018. Considering the last date of disbursement as date of default, the application filed on 31.08.2020 is within the period of limitation and not barred by law.

10. The registered office of the corporate debtor is situated in Vadodara District, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
  
11. Heard the submissions and perused the documents on record. On perusal of the records it is found that the corporate debtor has neither replied nor contested the debt as per legal notice dated 25.01.2020 by the applicant. In the balance sheet as at 31.03.2019, under the head “Notes forming the part of the balance sheet”, the corporate debtor has shown Rs. 9,03,61,824/- as unsecured loan from the applicant thereby acknowledging the debt. Similarly, under the head “Notes forming part of accounts”, the corporate debtor has acknowledged that during the year company has received ECB loan amount Rs. 4.75 crore (ROI at LIBOR + 3%) from the applicant for the purpose of expansion of existing facilities and acquiring capital goods as per the agreement between both the companies. The applicant has annexed to the application detailed chart relating to disbursement of loan and bank statement for the period from 21.07.2017 to 05.11.2018 and financial statement of the corporate debtor for the year 2018-19, establishing the debt payable by the corporate debtor. Though the Joint Venture Agreement (JV) may be still in existence, but, if the default of debt by

one JV partner to another is proved, there is no ban in admitting the application. The clause of Arbitration in JV Agreement also cannot be taken on defence to oppose the application under Section 7 since the default of financial debt is established by the admission of corporate debtor in its own records and documents.

12. The present application is complete in terms of Section 7 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. In light of the above facts and records the present application is admitted and CIRP is ordered to be initiated against corporate debtor.
  
13. The applicant has proposed the name of Ms. Poonam Basak as Insolvency Resolution Professional, who is hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-001/IP-P-01234/2018-19/11957 having office at 91, Springboard Business Hub Private Limited, Opp. Gate 2, SEEPZ, Andheri East, Mumbai 400 093, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution

Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

14. We direct the Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Ms. Poonam Basak to meet the expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.
  
15. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

16. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records and for taking steps for updating the Master Data in the MCA Portal. IBBI shall send compliance report to the Registrar, NCLT. Applicant is also directed to provide a copy of the complete paper book to the IRP. The certified copy of the order passed by the Tribunal shall be filed by the company in form INC 28 with the RoC.

**Sd/-**

**AJAI DAS MEHROTRA  
MEMBER (TECHNICAL)**

**Sd/-**

**DR. DEEPTI MUKESH  
MEMBER (JUDICIAL)**

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