

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
CUTTACK BENCH  
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**TP No. 33/CTB/2019**

**-IN-**

**CP (IB) No. 94/KB/2018**

**CORAM: 1. Ms. Sucharitha R. (J)  
2. Shri Satya Ranjan Prasad (T)**

**In the matter of:**

An application for initiation of Corporate Insolvency Resolution Process 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;

**-And-**

**In the Matter of:**

**M/s Sangeeta Aviation Services Private Limited**, date of incorporation - 30<sup>th</sup> July, 2012, having its Registered Office at 5B-34, Akshay Mittal Ind. Estate, Saki Naka, Andheri (E), Mumbai – 400 059.

... .. **Applicant/Financial Creditor**

**-Versus-**

**In the Matter of:**

**M/s Air Odisha Aviation Private Limited**, date of incorporation – 25<sup>th</sup> January, 2011, having its Registered Office at Plot No. Mig – 99, Rajiv Nagar, P.O. – Aiginia, Bhubaneswar – 751 019.

... .. **Respondent/Corporate Debtor**

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**Counsels appeared for Petitioner (S):**

1. Dr. S.K. Jain
2. Patita Paban Bishwal

**Counsels appeared for Respondent (S):**

1. Shyam Sundar Sonthalia

**Date of pronouncement of Order: 27<sup>th</sup> day of September, 2019.**

**ORDER**

**Per Ms. Sucharitha R., Member (J):**

1. The applicant/Financial Creditor is **M/s Sangeeta Aviation Services Private Limited** registered under provision of the Companies Act, 1956 is represented herein by Mr. Varun Kakria duly appointed by Board of Director meeting held on 01.11.2017.
2. The respondent/Corporate Debtor is **M/s Air Odisha Aviation Private Limited** registered under provisions of the Companies Act, 1956 is represented herein by its Director Mr. Ashutosh Pani.

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3. This application is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 to start Corporate Insolvency Resolution Process of **M/s Air Odisha Aviation Private Limited** for alleged default in paying financial debt of Rs. 35,00,000/- (Thirty-Five Lakhs only).
4. The application was originally filed before National Company Law Tribunal, Kolkata Bench numbered as CP (IB) No. 94/KB/2018 after constitution of this Bench the same was transferred and renumbered as TP No. 33/CTB/2019.
5. The applicant states that they had granted loan to the tune of Rs. 35,00,000/- (Thirty-Five Lakh) to the Corporate Debtor. The Corporate Debtor had issued two Cheques of Rs. 25,00,000/- each, aggregating to Rs. 50,00,000/- to the petitioner towards repayment of the loan of Rs. 35,00,000/- along with interest accrued thereon. However, the said Cheques on presentation were returned with an endorsement "insufficient funds". The applicant had filed Criminal Complaint under Section 138 of the Negotiable Instrument Act, 1881 before the Court of Judicial Magistrate 1<sup>st</sup> Class, Bhubaneswar which is still pending.

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6. The respondent in its reply states that there was a proposed tripartite loan agreement between applicant, respondent and one more party under which the applicant agreed to make a payment of Rs. One Crore. Towards that understanding the applicant paid a sum of Rs. 35,00,000/- (Thirty-Five Lakhs only) to the respondent. However, the agreement was not executed. The applicant did not lend the balance amount of Rs. Sixty-Five Lakh, out of the agreed loan of Rs. One Crore. Due to such a failure of the applicant, the respondent was unable to do its business operations as expected and had incurred loss of revenue. Further states that there is no written agreement between parties. The respondent admits issuances of 2 Cheques to applicant towards repayment of the debt.

7. The applicant has established lending of 35,00,000/- to respondent, and the respondent has also acknowledged the same. It is also admitted issuance of two Cheques towards repayment of the debt. Admittedly, both the Cheques issued by Corporate Debtor were dishonoured.

8. Default been defined in Section 3 (12) of the IBC, 2016, whereas the debt has been defined as Section 3 (11) of the IBC, 2016. The Petitioner relies on the Judgment of the *Supreme Court in Civil Appeal Nos. 8337-8338 of 2017 in Innoventive Industries Ltd. Vs. ICICI Bank & Anr.* Para 30 of the said Judgment is reproduced below:

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*“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.”*

9. The Hon’ble NCLT, Mumbai Bench in its Order dated 25.02.2019 **of in the matter of Anchor Leasing Pvt. Ltd. Vs. Euro Ceramics Pvt. Ltd.**

The Para’s 17, 22, 23 and 24 of the said judgment is reproduced below:

*“17. On perusal of the arguments of both the sides and the documents and evidences placed on record, this Bench finds that although there is no express agreement to the loan arrangement as aforesaid or the payment of interest thereon, but*

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*there are acknowledgements of the Corporate Debtor, not once but many a times, which reveal that the Financial Creditor and the Corporate Debtor shared a creditor-debtor relationship. Further, the statement of accounts produced on record prove the disbursement of the loan amount of Rs. 5,00,00,000/- and the Corporate Debtor has even paid interest for the same till 02.07.2011. This argument of the Financial Creditor was convincing enough that the loan has been granted for a consideration for the time value of money. The Code nowhere prescribes the compulsory existence of an express agreement to prove the loan and its disbursement, but defined in Section 5 (8) the conditions under which a transaction be treated as a 'Financial Debt'. Therefore, this contention of the Corporate Debtor is hereby rejected.*

*22. Furthermore, Section 7 petition does not leave any scope for the Corporate Debtor to raise a dispute unlike in Section 9. As long as there is a 'debt' and a 'default' has occurred, I am consciously*

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*inclined to admit the petition after the landmark judgment of the Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd, & Ors. Vs. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]. The defences raised by the Corporate Debtor, in my view, hold no water. All the more, the acknowledgements of the Corporate Debtor to the debt, be it statement of accounts, the statement of confirmation of accounts duly signed by the Corporate Debtor, or the reply to this petition, the Corporate Debtor has time and again acknowledged the outstanding dues payable to the Financial Creditor. It is a well-known principle of law that, quote 'Admissions are the best proof of the facts admitted. Admissions in pleadings or judicial admissions, made by the parties during the hearing of the case are fully binding on the party that makes them and constitute a waiver of proof unquote. Hence, in the present case, by admitting the liability in affidavit in reply to the petition, the Corporate Debtor is estopped to prove the non-existence of debt by raising any kind 'dispute' or defence as the same is all cliché for deciding the fate of present*

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*proceedings. The Petitioner's claim of existence of debt and default has been corroborated with ample evidence and is enough to hold a view in its favour.*

*23. On-going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.*

*24. Considering the above facts, I come to conclusion the nature of Debt is a "Financial Debt" as defined under Section 5(8) of the Code. It has also been established that admittedly there is a "Default" as defined under Section 3 (12) of the Code on the part of the Debtor."*

10. The Petitioner also relies on the Order dated 13.11.2018 of *Hon'ble NCLAT, New Delhi in Company Appeal (AT) (Insolvency) No.: 623 of 2018 in the matter of Sudhi Sachdev Vs. APPL Industries Ltd.* The Hon'ble NCLAT in Para 6 of the said judgment has held that the pendency

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of the case under Section 138/441 of the Negotiable Instruments Act, 1881 actually amount to admission of debt and not an existence of dispute. Para 6 of the said Judgement is reproduced below:

*“6. In the present case, it is not in dispute that there is a debt payable to the Operational Creditor and default on the part of the Corporate Debtor. The pendency of the case under Section 138/441 of the Negotiable Instrument Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a Court of Law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute.”*

11. The Financial Creditor suggested name of **Shri Manoj Jain** as IRP residence of 11, Friend’s Union Premises Co-Operative Society Ltd., 2<sup>nd</sup> Floor, 227, P.D’mello Road, Mumbai – 400 001 having **Registration No: IBBI/IPA-001/IP-P00535/2017-18/10960** and **Email Id. manojj2102@gmail.com**. There is nothing on record to show that any disciplinary proceeding is pending against proposed IRP.

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12. The application is in Order. The debt and default have been established.
13. In view of the above this application is admitted by following Order.

### ORDER

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor **M/s Air Odisha Aviation Private Limited** is hereby admitted.
- ii) We declare a moratorium and public announcement in accordance with Sections 13 and 15 of the Insolvency & Bankruptcy Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in Clause (b) of sub-Section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code,

2016 prohibits the following:

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- a) 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;
- b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor 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 Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- v) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) The provisions of sub-Section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any Financial Sector Regulator.

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- vii) The Order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.
- viii) 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.
- ix) Necessary public announcement as per Section 15 of the Insolvency & Bankruptcy Code, 2016 may be made.
- x) **Shri Manoj Jain** residence of 11, Friend's Union Premises Co-Operative Society Ltd., 2<sup>nd</sup> Floor, 227, P.D'mello Road, Mumbai – 400 001 having **Registration No.: IBBI/IPA-001/IP-P00535/2017-18/10960** and **Email Id. manojj2102@gmail.com** is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a Resolution Plan.
- xi) The Resolution Professional should convene a meeting of the Committee of Creditors and submit the Resolution passed by the

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Committee of Creditors and shall identify the prospective Resolution Applicant within **105 days** from the insolvency commencement date. The Interim Resolution Professional is directed to produce **Form - 2** and written communication within **one week** from the date of the receipt of the Order.

- xii) Registry is hereby directed under Section 7 (7) of the Insolvency & Bankruptcy Code, 2016 to communicate the Order to the Financial Creditor, the Corporate Debtor and to the IRP by Speed Post as well as through e-mail.

Interim Resolution Professional to file **1<sup>st</sup> Progress Report** on **04.11.2019**.

List the matter on **04.11.2019**.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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**Shri Satya Ranjan Prasad**  
Member (T)

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**Ms. Sucharitha R.**  
Member (J)

*Signed on this, the 27<sup>th</sup> day of September, 2019.*

**Santosh\_P.S.**