

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH [SPECIAL] COURT NO. II
KOLKATA**

Company Petition (IB) No. 26/KB/2023

*An Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read
with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rule, 2016.*

IN THE MATTER OF:

**SREI EQUIPMENT FINANCE LIMITED (CIN: U70101WB2006PLC109898),
through its Administrator, Mr. Rajneesh Sharma**

... Applicant/ Financial Creditor.

Verses

**VERUTHA DEVELOPERS PRIVATE LIMITED
(CIN: U70200WB2018PTC228606)**

... Respondent/ Corporate Debtor.

Date of Pronouncement: December 20 , 2023.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI. BALRAJ JOSHI, HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Applicant: Ms. Ramya Hariharan, Adv. and Ms. Asmita Rakhecha, Adv.

ORDER

Per: Balraj Joshi, Member (Technical)

1. This Court is congregated through hybrid mode.
2. Heard the Ld. Counsel for the Applicant.
3. This instant application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code", by SREI Equipment Financial Limited, hereinafter referred to as "Applicant"/ "Financial Creditor" against Varutha Developers Private Limited, hereinafter referred to as "Respondent"/ "Corporate Debtor" seeking the direction to initiate Corporate Insolvency Resolution Process, for brevity "CIR Process" in respect of the Corporate Debtor.
4. The Corporate Debtor is a private limited company having total authorized share capital Rs. One Lakh and paid-up share capital of Rs. Ten Thousand, incorporated on October 10, 2018.

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5. The total amount claimed to be in default with respect to the Loan Agreement as on December 31, 2022 is **Rs. 439,10,51,260/-**. The date of default is claimed as on **December 31, 2022**.

Applicant's Submission:

6. The Ld. Counsel for the Applicant submits that SREI Equipment Finance Limited ("Financial Creditor") executed a "Loan Agreement" dated July 26, 2019 being contract no. 187667 with Varutha Developers Private Limited ("Corporate Debtor") whereby a loan facility of Rs. 300,00,00,000/- (Rupees three hundred crores) was sanctioned to the Corporate Debtor. The said Loan Agreement was subsequently amended by an "Amendatory and Supplementary Rupee Loan Agreement" dated June 27, 2020.
7. Further it is submitted that in terms of the Clause 2.10.1 and Schedule IA to the Loan Agreement as amended by the Amended Loan Agreement, the said loan facility was repayable by the Corporate Debtor to the Financial Creditor on October 31, 2021, hereinafter referred to as the Repayment Date.
8. Further, it is submitted that as per the Clause 8 of Article VIII (Event of Default and Consequence of Default) of the Loan Agreement, in the event the Corporate Debtor fails to pay any sum due and payable under the Loan Agreement on the Repayment Date, the same would constitute an event of default under the Loan Agreement read along with the Amended Loan Agreement.
9. It is claimed that the Corporate Debtor has failed to repay the amounts due and payable under the Loan Agreement read along with the Amended Loan Agreement on the Repayment Date and in view of the same, the Financial Creditor issued a demand notice dated June 27, 2022, demanding repayment of the overdue sums, no later than 7 (seven) days from the date of delivery of the notice.
10. The Ld. Counsel for the applicant submits that vide order dated October 08, 2021, this Adjudicating Authority had put the Financial Creditor into insolvency and the Administrator appointed by the RBI came across circumstances necessitating filing

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of the application under Section 66 of the Code against the Corporate Debtor in respect of the said loan facility of Rs. 300 Crore.

11. It is contended that Section 7 and Section 66 of the Code do not contradict each other. The scope and purpose of the said provisions are not crossover provisions. According, the Code does not preclude the filing of an application under Section 66 of the Code. The object of Section 7 is resolution of corporate insolvency and the object of the Section 66 of the Code is to seek contribution to the assets of the Corporate Debtor from persons found to have carried on the business of the Corporate Debtor with an intention to defraud creditors or for any fraudulent purpose. Since Section 66 does not in any manner impede or contradict the purpose of resolution corporate insolvency, it cannot be contended that the filing of an application under Section 66 of the Code prohibits filing of an application under Section 7 of the Code.
12. It is claimed the overdue instalment is of Rs. 381,98,43,721/- and overdue charges is of Rs. 57,12,07,539/-, totalling to the amount of Rs. 439,10,51,260/-.
13. The Ld. Counsel for the Applicant has relied upon the following documents to substantiate its claim as under:
 - a) Copy of the Loan Agreement dated July 26, 2019 executed by the Financial Creditor and the Corporate Debtor annexed at Pages 39-130 as Annexure "A".
 - b) Copy of the Amendatory and Supplementary Rupee Loan Agreement dated June 27, 2020 executed by the Financial Creditor and Corporate Debtor annexed at Pages 131-135 as Annexure "B".
 - c) Copy of the CIBIL Report dated June 28, 2022 annexed at pages 163-168 as Annexure "F".
 - d) Copy of the Statement of Accounts pertaining to the Loan Agreement annexed at pages 169-170 as Annexure "G".
14. The Ld. Counsel for the Applicant proposed the name of **Mr. Anil Kumar Mittal**, Address at **5/99, Sector 2, Rajendra Nagar, Sahibabad, Ghaziabad 201005**, email: mittalanil.ubi@gmail.com, Registration No. **IBBI/IPA-002/IP-**

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N00742/2018-19/12263 for the appointment of Interim Resolution Professional, for brevity “IRP”.

Analysis and Findings:

- 15.** Vide an Order dated May 18, 2023, the Corporate Debtor was set *ex-parte* as since February 2023, despite repeated opportunities granted to the Respondent, he chose not to be represented and/or pursue the case at hand and therefore on July 14, 2023, the matter was reserved for order and on which date also the Corporate Debtor failed to appear.
- 16.** It is evident that from Loan Agreement dated July 26, 2019 (Clause 2 and 3), that the Corporate Debtor approached the Financial Creditor herein for availing Rupee Loan for an aggregated amount of Rs. 300 Crore and based on the representations and assurance of the Corporate Debtor, the Financial Creditor has agreed to provide the Loan Facility to the Corporate Debtor on the terms and subject to the conditions contained the Agreement.
- 17.** Further it is evident from Clause 2.10.1 (a) of the Agreement that the Loan Facility shall be repaid in bullet at the end of 9 months from the Initial Disbursement Date. It is further noted that that the said Clause as amended by clause 4.2.1 (page 133 of the Application) and clause 4.4 (Page 134 of the application) of the Amendatory and Supplementary Loan Agreement stipulates that the Loan facility was required to be repaid in bullet by the Corporate Debtor to the Financial Creditor on October 31, 2021.
- 18.** Further, it is evident from the CIBIL Report of the Corporate Debtor at pages 163-168 as Annexure “F” to the Application that the Corporate Debtor has availed Credit Facility Details – as Borrower (relevant page at 166 of the application) from the Financial Creditor of Rs. 300 Crore. Hence, the CIBIL Report clearly exhibits the existence of Debt by the Corporate Debtor. Also the MCA master data on charges also shows a charge by SREI for Rs. 300 Crores against the Corporate Debtor.
- 19.** We are of the view that to initiate CIR Process in respect of the Corporate Debtor, the Adjudicating Authority requires to check the existence of debt and default of the

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Corporate Debtor. We are fortified in our views by the judgment passed by the Hon'ble Apex Court in *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* reported in (2021) 6 SCC 436: MANU/SC/0231/2021 (para 14) that:

“14. ... in order to trigger an application, there should be in existence four factors: (i) there should be a 'debt' (ii) 'default' should have occurred (iii) debt should be due to 'financial creditor' and (iv) such default which has occurred should be by a 'corporate debtor ...”

(Emphasis Added)

20. Moreover, the Hon'ble Apex Court in the case of *Innoventive Industries Ltd. v. ICICI Bank* reported in (2018) 1 SCC 407: MANU/SC/1063/2017 laid down that

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. ...”

“28. ... the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, ...”

xxx xxx xxx xxx

“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.”

(Emphasis added)

21. Since the existence of debt has been borne out from the agreement as also the registration of the Charges with MCA, and also that the debt has not been paid back in the stipulated time i.e. by October 31, 2021., therefore a default has occurred. In the light of the facts stated in this application bearing **Company Petition (IB) No. 26/KB/2023**, and the documents placed on record and the discussion hereinabove, we **ALLOW** the application filed under **Section 7 of I&B Code**, and accordingly,

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we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by **SREI Equipment Finance Limited**, through its Administrator (**Financial Creditors**), under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **Varutha Developers Private Limited (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 7, moratorium as envisaged under the provisions of Section 14(1) of the I&B Code, shall follow in relation to the Respondent (Corporate Debtor) as per clauses (a) to (d) of Section 14(1) of the I&B Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the I&B Code shall come into force.
- iii.** Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - 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 possession of the Corporate Debtor.*

[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 license, permit, registration, quota, concession, clearances 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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

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- iv. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v. The provisions of sub-section (1) of Section 14 of the I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Applicant has proposed the name of **Mr. Anil Kumar Mittal**, Address at **5/99, Sector 2, Rajendra Nagar, Sahibabad, Ghaziabad 201005**, email: mittalanil.ubi@gmail.com, Registration No. **IBBI/IPA-002/IP-N00742/2018-19/12263**, as the “IRP”. We have perused that there is a written communication in Form 2, annexed at **Pages 36-38A**, to this Application as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or ICSI Institute of Insolvency Professionals. In addition, further necessary disclosures have been made by **Mr. Anil Kumar Mittal** as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the I&B Code. Hence, we appoint “**Mr. Anil Kumar Mittal**” as the **Interim Resolution Professional (IRP)** of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions 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 I&B Code.
- vii. In pursuance of Section 13 (2) of the I&B Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the I&B Code and **call for the**

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submission of claims under Section 15 of the I&B Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- viii. During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- ix. The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi. The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii. In terms of sections 7(5) and 7(7) of the I&B Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution

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Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.

- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for necessary action.
- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 22.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 23.** Post this Company Petition on **29/01/2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 20th Day of November, 2023.

Bose, R. K. [LRA]