(1)

IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH – I, CHENNAI

CP (IB)/27/CHE/2023

(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 ***Imperial Consultants And Securities Limited***

BEACON TRUSTEESHIP LIMITED,
A Company incorporated under the Companies
Act, 2013, having its registered office at
4C & D, Siddhivinayak Chambers,
Gandhi Nagar, Opp. MIG Club,
Bandra (East),
Mumbai – 400 051

... Applicant/Financial Creditor

-Vs-

IMPERIAL CONSULTANTS AND SECURITIES LIMITED
A company registered under the Companies Act, 1956
Having itsRegistered Office at
A S K Building, 1st Floor,
Room No.2, Old No.44, New No.57,
C P Ramaswamy Road, Abhiramapuram,
Chennai, Tamil Nadu – 600 018

...Respondent/Corporate Debtor

Order Pronounced on ***13th April, 2023***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor: Amir Ariswala, Advocate
For Corporate Debtor: Piyush Deshpande, Advocate

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by **BEACON TRUSTEESHIP LIMITED** (hereinafter referred to as 'Financial Creditor') on14.12.2022under Section 7 of the Insolvency and Bankruptcy

Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **IMPERIAL CONSULTANTS AND SECURITIES LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that this application has been filed by Beacon Trusteeship Limited (Viz., the Financial Creditor/ Applicant herein). The Financial Creditor is a Public Limited Company. The Affidavit verifying the Application is placed at page No 31-32 of the Application typeset and the same authorizes Ms. Anuja Parab, the Authorized signatory of the Applicant Financial Creditor.

3. Part II of the Application lays down the details of the Corporate Debtor from which it is seen that the Corporate Debtor is a Private Limited company incorporated under the Companies Act, 1956 on 31.03.1993 with CIN:U65993TN1993PTC024724. The registered office of the Corporate Debtor as per the Application is at A S K Building, 1st Floor, Room No.2, Old No.44, New No.57, C P Ramaswamy Road, Abhiramapuram, Chennai, Tamil Nadu – 600 018.

4. From Part-III of the Application, it is seen that the Financial

Creditor has proposed the name of one ***Mr. Vishal Ghisulal Jain*** with Registration No:IBBI/IPA-001/IP-P00419/2017-18/10742 (AFA valid till 02.01.2024) as the Interim Resolution Professional (IRP).

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of **Rs.246,88,00,000/-(Rupees Two Hundred Forty Six Crores and Eighty Eight Lakhs only)** as total Financial Debt due and payable by the Corporate Debtor as on 13.12.2022. Further, it can be seen from Part IV, that the date of default is 31.12.2021.

6. Part V of the Application describes the particulars of Financial Debt, documents, records and evidence of default. The list of documents in order to prove the existence of the Financial Debt is enumerated hereunder:-

a) Certificate of Incorporation of the Financial Creditor as "Annexure 1"
b) Copy of the Board Resolution dated 6th July 2022 as "Annexure 2"
c) Incorporation Certificate of the Corporate Debtor as "Annexure 3.
d) MCA Master data copy as "Annexure 4".
e) Form 2 – Consent form of the IRP as"Annexure 5".
f) Letter dated 13th October, 2020 as "Annexure 6".
g) Letter dated 28th October, 2020 as "Annexure 7".
h) Letter dated 31st October, 2020 as "Annexure 8".
i) Letter dated 2nd November, 2020 as "Annexure 9".
j) Letter dated 6th November, 2020 as "Annexure 10".
k) Letter dated 13th November, 2020 as "Annexure 11".
l) Debenture Trust Agreement dated 17th December,2020as "Annexure 12".
m) Debenture Trust Deed dated 16th February, 2021 as "Annexure 13".
n) Deed of Hypothecation dated 16th February, 2021 as "Annexure 14".
o) Debenture Certificate issued by the Corporate Debtor as "Annexure 15".
p) Audited Financial Statements of the Corporate Debtor for the Financial Year ended 31st March, 2021 as "Annexure 16".
q) Special Resolution dated 3rd January, 2022 as"Annexure 17".

r) Notice dated 4th January, 2022 as "Annexure 18".
s) Table of default amount and the interest as "Annexure 19".

7. The Financial Creditor is a SEBI registered Debenture Trustee offering technology enabled solutions.

8. It is submitted that Essar Steel Metal Trading Limited, the Debenture Holder had advanced a sum of Rs.200,00,00,000/- (Rupees Two Hundred Crores) as and by way of unsecured loan to the Corporate Debtor. The Corporate Debtor by way of a Memorandum of Arrangement of Receivables and Security dated 20.03.2020, agreed to create security in favour of the Debenture Holder in order to secure the repayment of the loan. It is in this manner that the said loan came to be secured.

9. The Debenture Holder vide its Letter dated 13.10.2020 recalled the said loan advanced to the Corporate Debtor and called upon the Corporate Debtor to plan repayment of the entire outstanding dues as soon as possible.

10. In response to the said recall notice issued by the Debenture Holder, the Corporate Debtor herein, issued a letter dated 28.10.2020, inter alia, stating that the Corporate Debtor would not be able to repay its outstanding dues in a short time, however, proposed conversion of the said loan into secured Non-convertible Redeemable Debentures in order to secure the repayment of the

principal sum of Rs.200,00,00,000/- (Rupees Two Hundred Crores Only) on certain terms and conditions.

11. Accordingly, the Debenture Holder referring to the said proposal of the Corporate Debtor addressed a letter dated 31.10.2020 giving a counter proposal to the Corporate Debtor for conversion of the said loan into secured Debentures accruing interest and to be redeemed before 31.12.2021.

12. The Corporate Debtor vide its Letter dated 02.11.2020 to the Debenture Holder, sought time to examine the viability of the proposal of the Debenture Holder.

13. After deliberation on the proposal of the Debenture Holder, the Corporate Debtor vide its Letter dated 06.11.2020, agreed in principle to the proposal of the Debenture Holder subject to minor modifications.

14. Upon the aforesaid understanding between the Debenture Holder and the Corporate Debtor, the Corporate Debtor approached the Financial Creditor herein to act as the Debenture Trustee for Secured Unlisted Non-Convertible Debentures aggregating upto Rs. 200 Crores. Accordingly, the Financial Creditor herein vide its Letter dated 13.11.2020 gave its consent

and confirmed its acceptance to act as a Debenture Trustee for the Debenture Holder.

15. Pursuant to the consent of the Financial Creditor to act as a Debenture Trustee, the Corporate Debtor herein, addressed a Letter dated 10.12.2020 to the Debenture Holder intimating that the Shareholders of the Corporate Debtor in the Extra-Ordinary General Meeting held on 07.12.2020, approved the conversion of the secure loan / payable of Rs.200 Crores into 12% Secured Unlisted Redeemable Non-Convertible Debentures having the face value of Rs. 100 each. The Corporate Debtor thereafter put on record the broad terms and conditions of the said Debentures, which are being reproduced hereunder for ready reference of this Tribunal:

"...

> i. The objective of the one of Secured NCDs is to convert the existing secured loan given by Essar Steel Metal Trading Limited into 12% Secured NCDs
>
> ii. Issue Size 200,00,00,000;
>
> iii. Face Value/Issue Price per Secured NCD – The Debentures shall be issued and allowed at par Le Rs. 100 each at 12% coupon rate;
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> iv. The debentures shall be secured, fully paid- up and non-convertible;
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> v. The debentures shall not carry any voting rights by themselves;
>
> vi. Each Secured NCDs of face value of Rs. 100/- each shall be redeemed at a price in terms as per agreement security i.e, all current assets, investments, receivables, book debts, both present and future, movable properties, immovable properties, other than those mortgaged in favour of Yes Bank Limited in the form or manner acceptable to Debenture Holder by way of hypothecation maintaining minimum security cover of 1 (One) time of the issue;

..."

16. On the above understanding between the Corporate Debtor and the Debenture Holder, a Debenture Trust Agreement dated 17.12.2020 came to be executed by and between the Financial Creditor and the Corporate Debtor, inter alia, appointing the Financial Creditor as the Debenture Trustee pursuant to the provisions of Section 71 (4) of the Companies Act, 2013, for the benefit of the Debenture Holder. The said Agreement also obligates the Corporate Debtor to execute a Debenture Trust Deed in terms of the Companies Act, 2013 and other applicable laws/regulations within the time as specified under the Act and also all other necessary documents as may be required under the Disclosure Document / Term Sheet.

17. The Corporate Debtor, in compliance with its obligations under the Debenture Trust Agreement, executed with the Financial Creditor, a Debenture Trust Deed dated 16th February, 2021. The relevant terms of the said Deed are being reproduced hereunder for ready reference of this Tribunal:

> **DEFINITIONS**
>
> "Repay shall include "Redemption and vice versa and repaid repayable, repayment, redeemed, redeemable and redemption shall be construed accordingly"
>
> "Secure Obligations" shall mean all obligation at any time due, owing or incurred by the Company to the Debenture

Trustee and the Debenture Holders in respect of the Debentures and shall include:

i. The obligation to redeem the Debentures in terms hereof including payment of coupon/interest. default interest, penal interest, any outstanding remuneration of the Debenture Trustee and all fees, costs, charges and expenses payable to the Debenture Trustee/Debenture Holders and other monies payable by the Company in respect of the Debentures under the Transaction Documents;

ii. Any and all sums advanced by the Debenture Trustee in order to preserve the security created / to be created by the Issuer in relation to the Documents;

iii. In the event of any proceedings for the collection and/or enforcement of the obligations of the Company in respect of the Debentures, after an Event of Default shall have occurred, the expenses of retaking, holding, preparing for sale, selling or otherwise disposing of or realizing the Securities or any part thereof, of the Company, or of any exercise of the Debenture Trustee of its right under the relevant Transaction Documents, together with legal fees and court costs

... "

18. It is pertinent to note that Clause 2.1 of the said Debenture Trust Deed appointed the Financial Creditor herein as the Debenture Trustee and authorises the Financial Creditor to take whatever action as shall be required to be taken by the Trustee by

the terms and provisions of the Transaction Documents, and subject to the terms and provisions of the said Deed or any other Transaction Documents, to exercise its rights and perform its duties and obligations under each of the Transaction Documents. The said clause also mandated the Financial Creditor herein to seek written instructions from the Debenture Holder(s), by way of Special Resolution before initiating any action or exercising any right or performing any duty under this Deed or any Transaction Documents.

19. The Corporate Debtor under Clause 5.3 of the said Debenture Trust Deed covenants with the Debenture Trustee that it shall pay to the Debenture Holder, as the case may be, the Principal Amount of the Debentures together with Coupon and/or redemption premium, if any, on the due date as mentioned in the Financial Covenant and Conditions and shall also pay interest on the Debentures in accordance with the Financial Covenants and Conditions. The Financial Creditor therefore submits that it is in the said manner that the Corporate Debtor has not only admitted its liability of repayment of debt due to the Debenture Holder but also admitted to payment of interest etc.

20. Further, Clause 8.3 of the said Debenture Trust Deed stipulates to occurrence of events that shall constitute as an "Event

of Default" and includes default occurred in the redemption of Debentures, as and when the same shall have become due and payable as an Event of Default.

21. Clause (iii) of the FIRST SCHEDULE to the Debenture Trust Deed provides that the Corporate Debtor agrees and undertakes to redeem the Debentures on 31.12.2021 or as per the Prepayment Plan and in case of prepayment date of Redemption shall be construed accordingly.

22. In addition to the aforesaid Debenture Trust Agreement and the Debenture Trust Deed, the Corporate Debtor herein also executed a Deed of Hypothecation dated 16.02.2021 in favour of the Financial Creditor herein, inter alia, creating charge by way of floating exclusive charge on all current assets, investments, receivables, book debts, both present and future, movable properties, other than those charged/in favour of Yes Bank Limited in the form or manner acceptable to the Debenture Holder.

23. The Corporate Debtor also issued Debenture Certificate to the Debenture Holder herein specifying the issue of 12% Secured, Unlisted, Redeemable, Non-Convertible Debentures of Rs.100/- each.

24. The Corporate Debtor in its Audited Financial Statements as on Financial year ended 31.03.2021 under the head of 'Long Term Borrowings' has admitted of having received an amount of Rs.200,00,00,000/- (Rupees Two Hundred Crores) carrying interest at the rate of 12%, having been secured by way of 12% Secured, Redeemable, Non-Convertible Debentures in favour of Essar Steel Metal Trading Limited (Debenture Holder) as and by way of a loan. The same is the acknowledgement in writing of the amount of Rs.200,00,00,000/- (Rupees Two Hundred Crores Only) carrying interest at the rate of 12% received by the Corporate Debtor from the Debenture Holder.

25. The Financial Creditor states that despite the Corporate Debtor being obligated to redeem the said Debentures by 31.12.2021, the Corporate Debtor failed to do so and accordingly, failed to repay the debt due and payable to the Financial Creditor/Debenture Holder. Accordingly, the Debenture Holders vide their Special Resolution dated 03.02.2022, in accordance with Clause 2.1 of the Debenture Trust Deed, gave written instructions to the Financial Creditor herein to call upon the Corporate Debtor to redeem the Debentures and to recall the said loan failing which the Financial Creditor was instructed to take appropriate steps and to initiate such action as may be necessary in order to safeguard

the interests of the Debenture Holder. A copy of such special resolution is placed as Annexure 17 to the present Application.

26. In compliance to the said Special Resolution dated 03.02.2022, the Financial Creditor herein immediately issued a Redemption/Recall Notice to the Corporate Debtor herein on 04.01.2022, calling upon the Corporate Debtor to redeem the said Debentures and to repay the amount of loan secured alongwith interest, failing which, the Financial Creditor herein shall be constrained to initiate appropriate proceedings against the Corporate Debtor herein, which shall be completely at the costs and consequences of the Corporate Debtor.

REPLY FILED BY THE RESPONDENT:

27. The Corporate Debtor has filed the reply under ***SR No. 1206 dated 17.3.2023***. The Respondent admits that the Applicant is the Debenture Trustee and that a Debenture Trust Agreement was executed on 17.12.2020. Respondent stated that they were undergoing financial crisis which further deteriorated with the advent of COVID-19 pandemic and that the business activities of the Corporate Debtor have suffered. Corporate Debtor further stateed under para 4 of the reply that on account of inability of the Corporate Debtor to repay the said loan, an arrangement was reached between the Corporate Debtor and the Debenture Holder,

wherein the Debenture Holder agreed to convert the said loan into secured Non-convertible Redeemable Debentures for securing the repayment of the principal sum of Rs. 200 Crores accruing interest at the rate of 12%. Corporate debtor further admitted that it is unable to repay the Debentures under para 5 of the reply. The sum and substance of the reply by the corporate debtor is that they admit the loan/issue of debentures, admit the default and for which they state that it is due to financial crisis.

28. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record. This Tribunal after comprehensively hearing the said matter is of the view that, the existence of a 'debt' and 'default' has been proven beyond reasonable doubt by the Financial Creditor based upon the documents presented before the Tribunal.

29. It is seen from the record that the application was filed on 14.12.2022. Record of default with information utility was filed by the Applicant herein under ***SR 1365 dated 27/3/2023***. In view of the admission of default by the Corporate Debtor and considering that the record of default with information utility is placed on record and the default is more than Rs. 1 Crore, this Tribunal is forced to admit the Corporate Debtor to CIRP.

30. Further, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited,** (2018) 1 SCC (Civ) 356, has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC,2016 as under :

> 28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that 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, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.
>
> 30. On the other hand, as we have seen, <u>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</u>

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.

31. In view of the facts stated *supra* and the 'financial debt' which is proved by the Financial Creditor and the 'default' committed 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. This Application is accordingly admitted in terms of Section 7 of the code.

32. 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;

33. However during the pendency of moratorium period in terms of Section 14(2) 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.

34. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(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.

35. The Financial Creditor has proposed the name of **MR. VISHAL GHISULAL JAIN** with Registration No: *IBBI/IPA-001/IP-P00419/2017-2018/10742*(AFA valid till 02.01.2024) with *e-mail id:vishal.resolvegroup.co.in* as the Interim Resolution Professional (IRP) who has also filed his consent in Form -2.

36. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

37. 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 IBC, 2016 and file his report within 30 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

38. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

39. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

40. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records and to the Interim Resolution Professional above named 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-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)