

**NATIONAL COMPANY LAW TRIBUNAL,  
COURT-V, MUMBAI BENCH**

**C.P. No. 1189/IBC/MB/2021**

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules), 2016

*In the matter of*

**Intec Capital Limited**

Having Corporate office at:

708, Majusha Building, 57, Nehru Palace, New Delhi, South Delhi – 110 019

**.....Financial Creditor/Petitioner**

*Vs*

**M/s. Technokolla (India) Private Limited**

(CIN:U51109MH2009PTC198175)

Registered office at: 1/1, Unnat Nagar No. 1, Opp. M.G. Road, Goregaon (W), Mumbai – 400 042

**.....Corporate Debtor**

**Order Reserved on: 01.12.2022**

**Order Pronounced on: 16.12.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

**For the Petitioner:** Mr. Vidit Divya Kumat (Advocate).

**For the Corporate Debtor/ Respondent:** None Appeared.

*Per: Shri H.V. Subba Rao, Member (Judicial)*

### **Order**

1. The above Company Petition is filed by Intec Capital Limited, hereinafter called as “**Petitioner**” seeking to initiate of Corporate Insolvency Resolution Process (**CIRP**) against M/s. Technokolla (India) Private Limited hereinafter called as “**Corporate Debtor**” by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “Code” read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 4,17,43,890/-
  
2. The Financial Creditor annexed following documents which demonstrates the existence of Debt:
  - a. Loan Sanction Letter dated 29.12.2014
  - b. Loan Agreement dated 31.12.2014
  - c. Charge Form dated 07.01.2015
  - d. Notice of Loan Recall cum Arbitration dated 01.03.2016
  - e. Arbitration Award dated 22.07.2016
  - f. Record of Default available with Information utility
  - g. Loan Transaction details maintain by the Petitioner
  - h. Statement of dues maintained by the Petitioner

### **Facts of the Case**

3. The Petitioner submits that for the purpose of purchasing multiple machines, the Respondent approached to the Petitioner in order to obtain a loan of Rs. 99,76,188/- which was secured by way of Hypothecation. The Petitioner further submits that the said loan was sanctioned by the Petitioner vide letter dated 29.12.2014, the letter stated, the terms of sanction. The said letter was counter-signed by the Respondent.

4. The Petitioner submits that, a Loan Agreement dated 31.12.2014 was executed between the Petitioner and the Respondent, along with transaction documents for the loan amount i.e. Rs. 99,73,188/-. The Petitioner further submits that, for availing the loan facility from the Petitioner, a Charge was also registered with the registrar of companies, in Form-CHG-1 dated 31.12.2014, giving the Petitioner first and exclusive charge on the machinery financed.
5. The Petitioner submits that, after deduction of collateral money, processing fees and other charges, the loan amount was disbursed to the Respondent on 09.01.2015 and 13.01.2015. The loan amounts were payable within 5 years i.e. monthly instalments of Rs. 2,32,130/- for next 60 months.
6. The Petitioner submits that the Respondent thereafter began committing defaults towards the repayment schedule concerning the loan account, due to which legal proceedings were initiated against the Respondent and its guarantors. The Petitioner also made several requests and reminders to the Respondent to regularize the loan account, the Respondent failed to regularize the loan account.
7. The Petitioner submits that, due to the fact that the Respondent has failed to regularize the loan account, and the conduct of the Respondent, the Petitioner issued a notice of Loan Recall cum Arbitration dated 01.03.2016, upon the Respondent. Thereafter, Arbitration Proceeding bearing case no. SRCS/ICL/141 began between the Petitioner and Respondent before the Ld. Sole Arbitrator. The Ld. Sole Arbitrator, after considering the arguments between both the parties passed an Award in favour of the Petitioner dated 22.07.2016. The Petitioner further submits that, the Respondent failed to comply with the Arbitration Award dated 22.07.2016.

8. The Petitioner further submits that, the last transaction in respect of the Loan Account was made on 16.08.2019, wherein the Respondent forwarded Rs. 2,32,130/- vide a Cheque Instrument bearing number 119416. The Petitioner submits that the said cheque upon realizing came back as dishonoured.

### **Findings**

9. The Respondent has neither filed any reply to the above Company Petition nor appeared before this Tribunal, even after service of notice, for the appearance of the Corporate Debtor. Hence, the Corporate Debtor was set **ex-parte** by an order dated 04.04.2022, of this Bench.
10. Heard Mr. Vidit Divya Kumat the Ld. Counsel appearing for the Petitioner. The Ld. Counsel for the Financial Creditor has brought to our notice Part-IV of the Company Petition wherein the default amount was mentioned as Rs. 4,17,43,890/-. He further shed light upon, various documents viz. a Loan Sanction Letter dated 29.12.2014, Loan Agreement 31.12.2014, Charge Form dated 07.01.2015, Loan Recall cum Arbitration Notice dated 01.03.2016 and the Arbitration Award dated 22.07.2016 passed by the Ld. Arbitrator and Record of Default under NeSL dated 17.08.2021.
11. After hearing the Petitioner's arguments and upon perusing the material available on the record, it is established that, the Financial Creditor had advanced Rs. 99,73,188/- to the Corporate Debtor via Sanction Letter dated 29.12.2014. Thereafter the Loan Agreement was executed between the Financial Creditor and the Corporate Debtor dated 31.12.2014, wherein the Upon the failure of the Corporate Debtor to regularize amount the Financial Creditor sought to issue a Loan Recall cum Arbitration Notice dated 01.03.2016. Thereafter the Sole Arbitrator passed an Award dated 22.07.2016 in favour of the Financial Creditor. Thereafter, the Corporate Debtor again failed to

repay the amount. Thus, the Corporate Debtor has also failed to comply with the Award passed by the Ld. Sole Arbitrator.

12. It is noteworthy, that even though the Arbitration Award passed in the year 2016, thereafter. the Corporate Debtor has attempted to make payment towards the amount due under the Loan Agreement vide cheque number 119416. In this regard a fresh limitation ought to be considered and Hence, the present Petition is well within limitation.
13. On going through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced on record, it is clear that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the Insolvency & Bankruptcy Code, 2016.
14. Considering the above facts, we come to conclusion that the nature of Debt is a **“Financial Debt”** as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of **‘debt’** and **‘default’**, for admission of a petition under section 7 of the I&B Code, have been met in this case. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.
15. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves **‘Admission’** by passing the following:

**ORDER**

- a. The above Company Petition No. 1189 OF 2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Technokolla (India) Private Limited.**
  
- b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, **Mr. Sandeep Kumar Bhatt**, (IBBI/IPA-002/IP-N01064-C01/2017-2018/10298) having Email Id- [skbmica@gmail.com](mailto:skbmica@gmail.com), having contact number – 997106626 having Address – 83B, Pocket-IV, Mayur Vihar-I, Delhi- 110091, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.
  
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
  
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, C.P (IB) NO. 1189 OF 2021 is **admitted**.

1. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**Anuradha Sanjay Bhatia**  
**Member (Technical)**

**Sd/-**

**H.V. Subba Rao**  
**Member (Judicial)**