

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO:II

SPECIAL BENCH(Video Conference)

CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HELD ON 26.08.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.228/7/HDB/2020
NAME OF THE COMPANY	Cosmos Forgings Ltd
NAME OF THE PETITIONER(S)	Affluence Engineering and Enterprises Ltd
NAME OF THE RESPONDENT(S)	Cosmos Forgings Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):


Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

CP 228/7/HDB/2020 is listed for orders. Orders pronounced vide separate Order.


MEMBER (T)

Syamala


MEMBER(J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.228/7/HDB/2020
Under section 7 of the IB Code, 2016
Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
COSMOS FORGINGS LIMITED

Between:

M/s. Affluence Engineering and Enterprises Limited
Plot No.48, Nagarjuna Hills, Punjagutta,
Hyderabad, Telangana State
Represented by its Authorized Representative
Shri Krishnaiah Poshti, Director

...Financial Creditor

And

M/s. Cosmos Forgings Limited
Having its Regd. Office at Plot No.1A,
Survey No.308, S.V.C.I.E,
Jeedimetla, Hyderabad.

...Corporate Debtor

Date of Order: 26.08.2021

**Coram: Shri Madan B. Gosavi, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.**

Parties/Counsels present:

For the Financial Creditor: Mrs. Naveeni Jain, Advocate

For the Corporate Debtor: Mr. Sai Phanidhar, Advocate

Per: Bench

ORDER

1. Under consideration is a Company Application filed by M/s. Affluence Engineering and Limited (in short "*Financial Creditor*") under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for seeking the following relief:

- i. To initiate Corporate Insolvency Resolution Process (CIRP) in respect of COSMOS FORGINGS LIMITED under the Insolvency and Bankruptcy Code, 2016.
2. Brief facts of the case as submitted by the Financial Creditor are as follows:-
- a) The Financial Creditor was incorporated in the year 2000 under Companies Act, 1956 with the main objective of engineering and trading in steel and other allied products. The Corporate Debtor is a company incorporated in the year 1997 under Companies Act, 1956 with the objective of engineering and trading in steel.
 - b) Both the parties are into regular business of trading in steel and allied products. Both the parties used to sell and purchase the products from/to each other as per their requirement and receive and make payments of money as well.
 - c) Due to some financial stress, the Corporate Debtor failed to make the payments regularly and as on 11th Sep, 2017, there was an outstanding of Rs.20,32,65,257/- .
 - d) Looking into the financial stress being faced by the Corporate Debtor and to bring the Corporate Debtor into binding, the Financial Creditor has entered into a Loan agreement with the Corporate Debtor stipulating that the said amount will be repaid in 8 quarterly installments with interest at 12% per annum.
 - e) The Corporate Debtor failed to fulfill the obligations of the loan agreement and could not repay even a single installment.
 - f) That the Loan Agreement was entered on 10.12.2017, which came to be expired on 10.12.2019, the date from which the loan amount was defaulted. Therefore, the Financial Creditor made claim for an amount of Rs.26,15,38,243/- inclusive of principal amount of Rs. 20,32,65,257/- and interest amount of Rs. 5,82,73,086/- respectively.
 - g) Reiterating the above, learned counsel for the Financial Creditor prayed to admit the instant Application.
3. Learned counsel for the Corporate Debtor filed counter inter-alia as under:-
- a) The present company petition is liable to be dismissed as the Corporate Debtor is not liable to pay an amount of Rs.26,15,38,243/- to the Financial Creditor.







- b) That the Financial Creditor had supplied materials to the Corporate Debtor as part of the trading activity from time to time and as the Corporate Debtor was not able to make the payments, Corporate Debtor entered into a Loan Agreement dated 10.12.2017 with the Financial Creditor for an amount of Rs.20,32,65,257/-.
 - c) That the Corporate Debtor on various occasions vide letter dated 20.04.2018, 02.08.2018 and 18.11.2019 had requested time to the Financial Creditor to repay the debt amount as the Corporate Debtor is facing financial crunch. The Financial Creditor without acknowledging the requests of the Corporate Debtor has initiated the present Company Petition only to recover monies from Corporate Debtor which is against the object of the IB Code.
 - d) That even the global pandemic Covid-19 lockdown has affected the Corporate Debtor severely and only now as the lockdown is being lifted up in a phased manner, the Corporate Debtor is receiving contracts and will be able to cope up and repay its debts.
 - e) That any admission of the present Company Petition under the IB Code will have far reaching repercussions and will cause irreparable loss and hardship to the Corporate Debtor which is even against the object of the IB Code which is maximization of the value of assets of the Corporate Debtor.
 - f) Reiterating the above, the learned counsel for the Respondent prayed to dismiss the instant Application.
4. Learned counsel for the Financial Creditor filed rejoinder inter-alia reiterating the averments made in the Application, denying all the allegations made in the counter and further prayed to admit the instant Application for initiation of CIRP.
5. Heard and perused the record.
6. In the instant case, the Financial Debt got crystallized at Rs.20,32,65,237/- by virtue of loan agreement dated 10.12.2017 entered into between parties, which stipulated repayment of the amount in 8 quarterly installments of Rs. 2,54,08,157/- along with interest @12% p.a each starting from March, 2018 and up to December, 2019. However, the correspondence between the Applicant and the Corporate Debtor during the period from 20.04.2018 to 02.03.2020 clearly indicates that the Corporate Debtor defaulted in payment of all the

quarterly instalments as per the agreement. It is also observed that the Corporate Debtor nowhere in its counter has denied the existence of debt and default of the same. Further the Financial Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. This Adjudicating Authority is satisfied that the Financial Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. Therefore, this Adjudicating Authority is inclined to admit the instant Application.

7. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.

This Adjudicating Authority hereby appoint Mr. Swaminath Prabhu, bearing No. IBBI/IPA-001/IP-P01275/2018-2019/11948 to act as IRP, as proposed by Financial Creditor, who has filed his written consent. He is further directed to file his Authorization for Assignment within 3 days from date of Order.

8. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
9. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-
 - 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 or 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 rights 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.
 - e. 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, concessions, clearances or a similar grant or right during the moratorium period.
10. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any 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. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to 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.
11. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
12. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the






Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

13. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
14. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
15. The address details of the IRP are as follows:-

Mr. Mr. Swaminath Prabhu
IBBI/IPA-001/IP-P01275/2018-2019/11948
No.27/9, Nivedh Vikas,
Pankaja Mill Road, Puliyakulam,
Coimbatore, Tamil Nadu - 641045
Email ID: carpprabhu@gmail.com

16. Accordingly CP (IB) No.228/7/HDB/2020 is hereby admitted.


Dr. Binod Kumar Sinha
Member Technical


Madan B. Gosavi
Member Judicial