



**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

(IB) No. 182(PB)/2023

In the matter of:

**M/s LVS Financial Services Private Limited ...Financial Creditor
Having Registered Office At:**

Shop -G-25, Ground Floor, Vardhman Market,
CSC, Ram Vihar, New Delhi, East Delhi-110092
Email: lvsfinancialservices@gmail.com

Versus

**M/s MGI Infra Private Limited
Having Registered Office At:**

Kh. No. 294/3, G/F, Chattarpur,
New Delhi-110030
Email: hitesh.jaju@mgiinfra.com

...Corporate Debtor

Order pronounced on: 09.08.2023

**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.**

CORAM:

**CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

Appearances :

For the Financial Creditor

: Mr. Dhruv Gupta Adv.

For the Corporate Debtor

: Mr. Parish Mishra, Adv.,
Adarsh Srivastava, Adv.



ORDER

1. This is an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Applicant/Financial Creditor (**M/s LVS Financial Services Private Limited**), a Non-Banking Finance Company registered with the Reserve Bank of India. Its **CIN No. U70200DL2011PTC226029**. The Applicant/Financial Creditor is seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **M/s MGI Infra Private Limited [CIN: U70200DL2011PTC226029]** (“Corporate Debtor”).
2. The Corporate Debtor was incorporated under the Companies Act, 1956 on **10.10.2011** having CIN: U70200DL2011PTC226029. Its registered office is at Kh. No. - 294/3, G/F, Chattarpur, New Delhi, South Delhi - South West Delhi, DL-110030. The Authorised Share capital of CD is Rs. 1,50,00,000/- and its paid-up share capital is Rs. 1,50,00,000/-.

BRIEF SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR THE FINANCIAL CREDITOR ARE AS FOLLOWS:

3. Applicant sanctioned various facilities to MGI Infra Private Limited (CD) on **01.06.2022**. Subsequent to the issue of the Sanction Letter dated 01.06.2022, the parties entered into a Loan Agreement dated 01.06.2022. The amount of Rs. 5,00,00,000/- was disbursed to the Corporate Debtor by the Applicant in the following manner:

S.No.	Date	Amount (Rs.)
1.	18.06.2022	50,00,000
2.	24.06.2022	1,00,00,000
3.	01.07.2022	1,00,00,000
4.	11.07.2022	50,00,000
5.	12.07.2022	50,00,000
6.	27.07.2022	35,00,000
7.	28.07.2022	65,00,000
8.	01.08.2022	37,00,000
9.	02.08.2022	8,00,000
	TOTAL	4,95,00,000

Applicant submitted that Rs. 5,00,000/- was deducted as the upfront processing fees by the Applicant, however, facilities granted were totaling to a sum of **Rs. 5 crores**. Copy of Sanction Letter and Loan agreement is annexed as **Annexure A-6** and **Annexure A-7** respectively. The Date of disbursement is from **18.06.2022 to 02.08.2022**.

4. Applicant is claiming Rs. **5,17,85,496/-** (Rupees Five Crores Seventeen Lacs Eighty-Five Thousand Four Hundred and Ninety Six only) calculated as on **10.01.2023**. Applicant in its application submitted that the default has occurred on **10.01.2023 i.e.** the date of declaration of NPA. Copy of the workings for Computation of default in a tabular form along with chain of events is annexed as **Annexure A-14**. Applicant has also annexed a copy of the report of the NeSL (which is deemed to be authenticated) recording the financial information and



default which is annexed as **Annexure A-15**. A copy of the statement of Accounts maintained by the Financial Creditor is annexed as **Annexure A-13**.

5. Applicant further submitted that the Corporate Debtor (CD) defaulted in payment of the outstanding dues pertaining to the repayment/ instalments due. The four cheques issued by the Corporate Debtor for an amount of **Rs. 13,66,324/ each**, got dishonoured upon presentation. A copy of the 4 Cheques and the respective bank statements highlighting bouncing of cheques is annexed as **Annexure A-9**. Applicant submitted that time and again it sent requests and reminders to the CD for repayment and the Corporate Debtor in its replies acknowledged its liability and sought for more time to clear the payments on the ground of facing financial difficulties.
6. The Applicant recalled the loan vide Loan recall cum invocation of Guarantee Notice dated **10.01.2023** . A copy of the Loan Recall cum Invocation of Guarantee Notice dated 10.01.2023 issued by the Applicant to the Corporate Debtor is annexed as **Annexure A-12**. It is submitted by the Applicant that the Corporate Debtor with intention to wriggle out of its assurances and with a view to cause unlawful gain to itself and unlawful loss to Financial Creditor are not paying and are just delaying the payment of the said admitted amount on one pretext or the other. There is clear acknowledgement by the Corporate Debtor Company of its default of more than Rs. 1,00,00,000/- giving jurisdiction to this Hon'ble Adjudicating Authority to entertain a Petition under Section 7 of the I&B Code.



**BRIEF SUBMISSIONS ON BEHALF OF THE CORPORATE DEBTOR
ARE AS FOLLOWS:**

- 7.** CD submits that the present Application is filed with an oblique and ulterior motive to harass and arm twist the Respondent/CD. CD further avers that Applicant vide letter **01.06.2022**, sanctioned the loan amount to the tune of Rs. 5,00,00,000/- for a period of 48 months with compound interest at the rate of 14% per annum. Subsequently, the CD received total amount of Rs. 4,95,00,000/- in nine installments and the last instalment was disbursed on **02.08.2022**. CD further put forward that only the principal amount of **Rs. 5,00,00,000/-** has been admitted by the CD.
- 8.** CD submitted that unfortunately all the cheques got bounced on presentation due to insufficient funds and further mentioned that the CD was expecting some payments in the month of October, 2012 from its client and thus it issued the cheques in good faith and intention to clear the outstanding of the Applicant. CD further submits that it is in financial distress and not able to make payments on time. However, the CD is willing to pay the entire amount along with interest and thus it requires some time to generate funds in order to make payments.
- 9.** CD further averred that this Hon'ble Adjudicating Authority has no jurisdiction to entertain this Application as an alternative and effective remedy is already available. As per clause 19 of the Loan Agreement, in case of any conflict

between the parties or any dispute arises between the parties, the matter shall be referred to the Arbitration. Further, CD submitted that the scope and objective of the IBC is to bring resolution of an insolvent Debtor and not a recovery proceeding. CD is a going concern, viable entity and has great commercial prospects.

ANALYSIS AND FINDINGS

- 10.** We heard the learned Counsels appearing for the Financial Creditor and the Corporate Debtor and perused the record.
- 11.** On perusal of the record with NeSL, Loan Agreement, Bank Statements and the Letters exchanged between the parties, also the admission of the liability on part of the CD, it can be fairly ascertained that there is a debt payable by CD to Applicant. The date of default as alleged by the Applicant is **10.01.2023** which is also the date of NPA. NeSL record which is “DEEMED TO BE AUTHENTICATED” of Evidence of default has been placed on record vide an additional Affidavit by Applicant. The fact of the bouncing of cheques on presentation due to insufficiency of funds has also been admitted by the Corporate Debtor. Therefore the requirements of ‘Debt and Default’ envisaged under the code has been fulfilled.
- 12.** Few important arguments have been raised by the Corporate Debtor regarding its financial distress condition due to which it is unable to make timely payments. Corporate Debtor was waiting for the payment from its client in the month of



October, 2022. Corporate debtor is willing to make the payment but seeking some time for doing so. Corporate Debtor also advanced its argument that Loan Agreement Clause 18 contains the arbitral clause and thereby it excludes the jurisdiction of this Hon'ble Adjudicating Authority. We may like to cite relevant Section 238 of the Code i.e. Overriding operation of the Code.

Section 238 is extracted below:

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

- 13.** On perusal of the section, it is quite clear that the provisions of IBC, 2016 shall prevail notwithstanding any other law in force. On a lighter note, we may like to add here that in civil courts, it is the mandate of the courts to refer the parties to arbitration first if contract/agreements contains an arbitration clause. The only requirement there is the presence of Arbitration clause. But this scenario does not hold ground in the case of adjudication by this Adjudicating Authority. On the ground of equity and fair conscience, the Applicant may choose to invoke arbitration first rather than recalling the loan but one cannot ask the applicant to pursue the lighter remedy and not the harsh one.
- 14.** On perusal of the Loan Agreement, it is true that the loan Agreement Facility of Rs. 5,00,00,000/- was to be available for a period of 48 months i.e. four years from the date of disbursement of the first tranche of the loan. But it also

contains the below mentioned condition:

“Notwithstanding anything stated elsewhere in this Agreement, the continuation of the in shall be at the sole and absolute discretion of the Lender Company and the Borrower's Outstanding shall be payable by the Borrower to the Company on demand. The Company may at the time at its sole discretion and without assigning any reason call upon the Borrower to pay the Borrower's outstanding and thereupon the Borrower shall, within 48 hours of being so called upon, pay the whole of the Borrower's outstanding to the Company.

The Borrower has delivered to the Company post-dated cheques for repayment of the loan, as described in Schedule under the signature of the Borrower. However, the Bctrower warrants and undertakes that the cheques will be honoured on first presentation, and in case of bouncing of these cheques due to any reason whatsoever, the Borrower shall be liable for any action under the Negotiable Instrument Act and/or under any other applicable law, Non-Presentation of any cheque or cheques due to any reasons what so ever would not affect the liability of the Borrower and the Guarantors to pay the dues to it and in case of bouncing of cheques, they shall be liable to criminal action under the Negotiable instrument Act and/or any other applicable Law.

5. The Guarantor/s have also delivered their post dated personal cheques in favour of the Company as collateral security with clear authorisation to the Company that in case Borrower, M/s MGI Infra Private Limited fails to make the repayment to the Company due to any reason whatsoever, the Company shall realise its dues, interest, late fees and/or expense incurred by them, by encashing their cheques. It is also understood that the Company is authorised to encash all the above cheque simultaneously or in any way feasible..”

In the facts of present case, four times the cheques were bounced on presentation and Applicant has every right to pursue legal remedy to enforce its rights.

- 15.** As a word of caution, we may like to add here that dynamics of Businesses in a country like ours, specifically in

conventional businesses which works on the credit line and market condition, effect of inflation, delay in the payments from the debtors can result in huge losses to the Corporate Debtors as well as to the key managerial personnel who are key faces behind running these companies. So, it is always advisable to go through the terms and conditions of any kind of contract/agreement which may prove detrimental to the interest of the Company. One should always do the proper risk assessment and should take note of all the important factors which can turn against the company in case of failures. Requirement of capital to run the business is the first and foremost requirement. Had there been any clause in the loan agreement regarding the suspension of right to recall loan before 48 months, we as an adjudicating authority could provide an opportunity to corporate debtor to run its business. But in absence of any such clause, This Adjudicating authority cannot go against the statute and powers given to it by the Legislature.

- 16.** BE THAT AS IT MAY, record of Information utility and on the basis of arguments advanced, we find that there is default of debt on the part of the CD and the application for initiating CIRP against the CD is within the period of limitation. Further, the name of IRP has been proposed by the Financial Creditor whose consent has been placed on record (**Annexure A-16**) stating that no disciplinary proceedings are pending against him. The application filed under section 7 of the Code, is otherwise complete and meets all other procedural requirements of the Code and Regulations made there under.



17. In light of the above facts and circumstances, it is hereby ordered as follows: -

- i.** The Application bearing (IB)-182(PB)/2023 filed by the applicant under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating CIRP against the Corporate debtor i.e. **M/s MGI Infra Private Limited** is hereby **ADMITTED**.
- ii.** As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** The Financial Creditor has proposed the name of **Mr. Sunil Kumar Agrawal**, registration number IBBI/IPA-002/IP-N00081/2017-18/10222, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration annexed as **Annexure-A-17 (page num 78 to 82)** of the paper book.
- iv.** **Mr. Sunil Kumar Agrawal**, Registration number IBBI/IPA-002/IP-N00081/2017-18/10222; Address: E-205, LGF, Greater Kailash-II, New Delhi-110048; Email id aggarwalsk21@yahoo.com Contact No. 09811347648 is appointed as the Interim Resolution Professional (“IRP”).
- v.** In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the

admission of this application under Section 7 of the Code. 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.

- vi.** During the CIRP period, the management of the CD shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the CD 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. There shall be no further opportunity given in this regard.
- vii.** The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** 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 CD.
- ix.** The FC shall deposit a sum of Rs 5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- x.** The Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today, and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update his website by updating the

status of the CD and specific mention regarding admission of this petition must be notified.

- 20.** The registry is further directed to send the copy of the order to the IBBI also for their record.
- 21.** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

-Sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

-Sd/-

**(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)**