



**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV**

**Item No. 106
IB/304/ND/2023**

IN THE MATTER OF:

Intec Capital Limited	...	Applicant
Versus		
Delco Infrastructure Projects Limited	...	Respondent

Order under Section 7 of IBC, 2016.

Order pronounced on 19.10.2023

CORAM:

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :
For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

IB/304/ND/2023 stands dismissed.

Sd/-

**DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)**

Sd/-

**MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV
COMPANY PETITION NO. (IB) 304 OF 2023**

IN THE MATTER OF:

INTEC CAPITAL LTD.

...PETITIONER/FINANCIAL CREDITOR

VERSUS

DELCO INFRASTRUCTURE PROJECTS LIMITED

...RESPONDENT/CORPORATE DEBTOR

Order Delivered on: 19.10.2023

CORAM:

**SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)**

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Mr. PBA Srinivasan, Mr. V. Aravind, Ms. Srishti
Bansal, Mr. Sumit Swami, Advocates

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)

1. The instant petition is filed by M/s Intec Capital Ltd. (hereinafter referred as 'Applicant') bearing CIN: L74899DL1994PLC057410 registered office at at 708, Manjusha building 57, Nehru Place, New Delhi-110019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s Delco Infrastructure Projects Limited (Respondent Company), referred to as the Corporate Debtor.



2. The Respondent Company M/s Delco Infrastructure Projects Limited (CIN No. U45201DL1998PLC095562) is a company was incorporated on 16.08.1998 having its registered office situated at Flat 146 Ground Floor, Pocket-1, Phase-1 Sec 13, Dwarka, Neta Ji Subhash Appt. New Delhi-110075. Since the registered office of the respondent Corporate Debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of Respondent/Corporate Debtor under sub-section (1) of Section 60 of the Code.
3. The present petition was filed on 27.03.2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 7,60,78,877/- as on 31.12.2022.

Submissions of learned Counsel appearing for the Applicant/Petitioner

4. The case of the applicant precisely is that the Corporate Debtor i.e., M/s Delco Infrastructure Projects Limited had availed loan/financial facility of Rs. 46,28,000/- (Rupees Forty-Six Lakh Twenty-Eight Thousand Only) through its promoters/shareholders/directors/representatives.
5. That the Corporate Debtor executed Loan Agreement Account no. LNPIT02215-160006539 dated 29.02.2016, along with other transitional documents. Subsequent to execution of aforesaid agreements, the loan amount of Rs. 46,28,000/- (Rupees Forty-Six Lakh Twenty-Eight Thousand only) was disbursed to Delco Infrastructure Projects Ltd. vide Cheque no. 569391. As per the terms and conditions of the said agreement the loan was granted for a period of 48 months at an interest rate of 20% per annum on reducing basis. The Corporate Debtor was required to repay the said loan in forty eight monthly instalments of Rs. 1,40,832/- (Rupees One Lakh Forty Thousand Eight Hundred and Thirty-Two Only) which fell due on the 5th day of each calendar month starting from April, 2016. As per the terms



agreed to between the Parties, the Corporate Debtor opted for Automatic Clearing House (ACH) mandate for the repayment of loan.

6. That the Corporate Debtor had again approached to the applicant for fresh loan facility of Rs. 1,07,47,161/- (Rupees One Crore Seven Lakh Forty-Seven Thousand One Hundred and Sixty-One only) on 29.06.2016.
7. That the Corporate Debtor executed 2nd Loan Agreement Account no. LNPIT02216-170006908 dated 30.09.2016, along with other transitional documents, the loan amount of Rs. 1,07,47,161/- (Rupees One Crore Seven Lakh Forty-Seven Thousand One Hundred and Sixty-One only) was disbursed to Delco Infrastructure Projects Ltd. vide Cheque no. 037004 and 037006. That as per the terms and conditions of the Loan Agreement dated 29.09.2016 the loan was granted for a period of 48 months at an interest rate of 20 % per annum on reducing basis. The Corporate Debtor was required to repay the said loan in forty eight monthly instalments of Rs. 3,27,040/- (Rupees Three Lakh Twenty-Seven Thousand and Forty Only) which fell due on the 16th day of each calendar month starting from November, 2016. As per the terms agreed to between the Parties, the Corporate Debtor opted for PDCs for the repayment of loan.
8. Thereafter, the corporate debtor once again approached to the applicant through its promoters / shareholders / directors / representatives for availing loan/financial facility of Rs. 2,00,00,000/- (Rupees Two Crore only) and Intec Capital Limited accordingly issued Sanction Letter dated 28.11.2016.
9. That the Corporate Debtor executed Loan Agreement Account no. LNPIT03416-170006972 dated 29.11.2016, along with other transitional documents. Subsequent to execution of aforesaid agreements, the loan amount of Rs. 2,00,00,000/- (Rupees Two Crore only) was disbursed to Delco Infrastructure Projects Ltd. vide Cheque no. 37047. That as per the



terms and conditions of the said agreement was granted for a period of 84 months at an interest rate of 18 % per annum on reducing basis. The Corporate Debtor was required to repay the said loan in eighty-four monthly instalments of Rs. 4,20,357/- (Rupees Four Lakh Twenty-Thousand Three Hundred and Fifty-Seven Only) which fell due on the 5th day of each calendar month starting from January, 2017. As per the terms agreed to between the Parties, the Corporate Debtor opted for ACH mandate for the repayment of loan.

10. That subsequent to the disbursement of the loan facilities by the Financial Creditor, the Corporate Debtor failed to maintain adequate amount in the bank account as the result of which the cheques/ACH Mandates were dishonored by the banker and the payments were not made to the Applicant as per repayment schedule.
11. That by not making the payments as per the agreed repayment schedule, the Corporate Debtor wrongfully withheld the legitimate monies owed to the Financial Creditor, thereby causing wrongful gain to itself and wrongful loss to the Applicant. The aforementioned acts of the Corporate Debtor constituted 'events of defaults' as defined under Clause 10 of the respective Loan Agreements and under Clause 11 of the Loan agreement are the Consequence of Default and Rights available to the Applicant which inter-alia provided for demand of immediate repayment of loan dues. Accordingly, the Applicant was compelled to terminate the Loan Agreement of the Corporate Debtor by sending the Notices of Recall of Loan Agreements on 01.10.2019.
12. That for default of aforementioned outstanding amounts, the applicant also initiated arbitration proceedings against the Corporate Debtor/Promoter/Director before Ld. Sole Arbitrator, Sh. S.S. Yadav and same has been decided in favour of M/s Intec Capital Limited vide Award dated 03.11.2020 & 04.11.2020.



13. That since the Corporate Debtor didn't adhere to the repayment plan and became commercially insolvent; the Financial Creditor was constrained to file an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before this Hon'ble Adjudicating Authority which was filed on 28.12.2019 and same was registered on 04.02.2020 for the default amount of Rs. 3, 25, 82,107/- That the said application got listed as CP (IB)/444(ND)/2020 which was admitted and CIRP was initiated vide order dated 20.06.2022 and Mr. Harish Taneja was appointed to act as an IRP (Insolvency Resolution Professional).

14. That during the pendency of the aforesaid CIRP the Corporate Debtor approached the Financial Creditor for the settlement of its dues under all three Loan Account No. LNPIT02215-160006539, LNPIT02216-170006908 & LNPIT03416-170006972 for an amount of Rs. 3,85,56,087/- (Three Crores Eighty-Five Lakhs Fifty-Six Thousand Eighty-Seven Only) Accordingly after agreeing to settlement agreement for an amount of Rs. 3,85,06,087/- (Three Crore Eighty-Five Lakhs Six Thousand Eighty-Seven Only) the terms and conditions, a Settlement Agreement dated 25.06.2022 was executed between the Financial Creditor and by erstwhile Directors and Personal Guarantors vide which an express promise to pay the Financial Debt due under the Loan Accounts was made.

15. That it is pertinent to mention that after executing the Settlement Agreement an application vide IA No. 2090/ND/2022 was filed by erstwhile IRP for withdrawal of CP (IB) No-444/ (ND)/2020 and the same was allowed by the order dated 06.07.2022 passed by Hon'ble NCLT New Delhi Bench-IV.

16. That even after agreeing to the terms and conditions of the aforementioned Settlement Agreement dated 25.06.2022, the erstwhile Directors of the Corporate Debtor committed default in the payment of the settlement amount and abused the process of law.



17. That as mentioned in the settlement agreement dated 25.06.2022, it is clearly mentioned if any default would arise in the payments of agreed settlement amount the settlement agreement would become null and void and shall no longer remain in force and any amount paid by the Corporate Debtor in pursuance of the Settlement Agreement would be adjusted against the entire outstanding amount payable as per the terms of the Original Loan Agreement.
18. That, the total outstanding debt in the said account, after adjustment, stands at Rs. 7,60,78,8771- (Rupees Seven Crore Sixty Lakhs Seventy-Eight Thousand Eight Hundred Seventy-Seven Only) as on 31.12.2022 in terms of Loan Agreements, which is due & payable by Corporate Debtor. The details of outstanding debt which are under default as follows: -

SNO.	LOAN ACCOUNT	AMOUNT (INR)
1.	LNPITO2215-160006539	2,434,888
2.	LNPITO2216-170006908	24,905,210
3.	LNPITO3416-170006972	48,738,779

19. That it is evident that the Corporate Debtor has committed default in the repayment of the Loan disbursed by the Financial Creditor and further amicable settlement was arrived between the parties and in view of the repeated failure of the Corporate Debtor to pay its Financial Debt, it is evident that it has become commercially insolvent requiring resolution of its insolvency, thus the Financial Creditor has filed the present Application/ Petition under section 7 of the Insolvency and Bankruptcy Code, 2016, before this Hon'ble Adjudicating Authority.
20. That the applicant filed an additional affidavit dated 06th June, 2023 in order to clarify that the present application is not based upon the breach of settlement Agreement dated 25.06.2022. The applicant is placing on record



the withdrawal application i.e., I.A./3090/ND/2022 which was allowed by this Adjudicating Authority vide order dated 06.07.2022. Further, the applicant submitted that the as per the covenant of the settlement agreement dated 25.06.2022, in the event of any default/non-adherence/non-payment within the extended time, the settlement shall stand cancelled, thereby renewing the terms of original Loan Agreement executed between the Corporate Debtor and the Applicant and the applicant/financial creditor shall have the right to revive all the cases against the Corporate Debtor, however, endeavors shall be made by the parties to the settlement agreement to resolve the issue amicably in case of breach/cancellation of the settlement agreement, and the said withdrawal application.

21. We have heard the Learned Counsel for the Applicant, and further perused the averments made in the application and affidavits filed by the Applicant. This Adjudicating Authority had heard the Ld. Counsel for the Applicant at length on 21.08.2023 and now proceeds to pass an order on the maintainability of the application filed under section 7 of IBC, 2016.

22. Adverting to the Factual Matrix of the present case, the applicant had initially filed a Company Application i.e. C.P.(I.B)/444/2020 case titled Intec Capital Limited v. Delco Infrastructure Projects Limited under Section 7 of the Code, 2016 seeking initiation of CIRP against M/s. Delco Infrastructure Limited ('Corporate Debtor'). Subsequently, the said application was admitted by this Adjudicating Authority vide order dated 20.06.2022 and Mr. Harish Taneja was appointed as Interim Resolution Professional ('IRP') of the Corporate Debtor. The IRP had filed an application i.e., IA/3090/ND/2022 under Section 12A of the Code, 2016 seeking withdrawal of the CIRP proceedings against the Corporate Debtor in view of the Settlement Agreement dated 25.06.2022 entered into between the directors/promoters of the Corporate Debtor and the Financial Creditor. The said application was allowed vide Adjudicating Authority's order dated



06.07.2022 and the Corporate Insolvency Resolution Process was withdrawn against the Corporate Debtor. The Financial Creditor had filed the present Company Application i.e., C.P.(IB)/304/2023 under Section 7 of the Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on the ground of revival of the financial debt on account of breach of Settlement Agreements dated 25.06.2022.

23. Admittedly, the Applicant had entered into three settlement agreement(s) dated 25.06.2022 in respect to the Loan Agreement/Account No. LNPIT02215-160006539, LNPIT02216-170006908, LNPIT03416 – 170006972, covenants of which are identical, after the admission of the CIRP against the Corporate Debtor vide this Adjudicating Authority's order dated 20.06.2022 wherein the Applicant i.e., M/s. Intec Capital Limited being the first party to the said settlement agreement(s) and the five (5) Directors/promoters of the Corporate Debtor being the second party to - sixth party to the settlement agreement(s).

24. From the facts pleaded in the affidavit and the documents relied on by the Applicant, the sum and substance of the Applicant's contention is that the Settlement Agreement dated 25.06.2023 clearly defined, if any default would arise in the payments of agreed settlement amount the settlement agreement would become null and void and shall no longer remain in force and any amount paid by the Corporate Debtor in pursuance of the Settlement Agreement would be adjusted against the entire outstanding amount payable as per the terms of the Original Loan Agreement.

25. On a perusal of all three settlement agreements dated 25.06.2022, we observe that clause 10 of the said agreements, specifically provides that, “the Parties (Second Party-Sixth Party) agree that within 2 days of withdrawal of CIRP against the Borrower, the said Parties, being Promoters as well as the Directors of the Borrower Company, shall execute a fresh Settlement Agreement, with the Borrower Company as a party to the



Settlement Agreement, the terms of which will in line with the terms of the present Settlement Agreement. It has been further agreed by the Parties that before execution of the fresh Settlement Agreement, the Sixth Party shall execute a fresh Deed of Guarantee.”

26. The Applicants have not placed on record, the settlement agreement wherein the Borrower Company i.e., M/s. Delco Infrastructure Projects Limited is a party to the settlement agreement. This Adjudicating Authority is of the considered view that the Corporate Debtor is not privy to the settlement agreement dated 25.06.2022, therefore, the terms of the said settlement agreement(s) cannot be deemed to be ipso facto binding on the Corporate Debtor.
27. It is pertinent to note clause 8 of the said settlement agreement(s), wherein it is stated that, “ It is agreed by the parties that all the cases pending against Second Party to Sixth Party (and their legal heirs), if any as on the date of signing of the present settlement agreement filed by the First Party, shall be kept in abeyance, subject to the payment being made as per the agreed schedule. The parties agree that in case there is default in repayment of the settlement amount, the First Party shall revive all cases and the First Party shall not be responsible if any adverse order is passed by the concerned court(s).”
28. On a wholesome reading of the settlement agreement(s) dated 25.06.2022, more precisely, on a combined reading of Clause 8 and Clause 10 of the settlement agreement(s), it is seen that the Applicant is keen in settling the matter with the Directors of the Corporate Debtor with the motive of recovery of money and not for any resolution of the Corporate Debtor. The Applicant having agreed to settle the Financial Debt with the Directors/Promoters of the Corporate Debtor (second – sixth party to the agreement) and to keep the proceedings against director(s) in abeyance, cannot at this juncture, seek revival of CIRP proceedings against the



Corporate Debtor on the ground that the Directors of the Corporate Debtor had failed to comply with the settlement agreement dated 25.06.2022.

29. The corporate Debtor is not a party to the said settlement agreement and the applicant cannot rely upon the said agreement and seek for the present prayer to initiate Corporate Insolvency Process. The consent terms in Clause 10 of the settlement agreement, as extracted above, clearly provides that the Applicant had to enter into a separate settlement agreement with the Corporate Debtor, which has not been done, therefore, unless the Applicant gets a settlement agreement entered into with the Corporate Debtor, they are not entitled to approach this Adjudicating Authority to file an application under Section 7 of the Code, 2016 for initiation of CIRP as the corporate debtor is not a party to the settlement agreement dated 25.06.2022. Therefore, the submission of the Applicant that breach of the terms of settlement agreement, give rise to the right to revive the proceedings against the Corporate Debtor cannot be accepted by this Adjudicating Authority.
30. We reiterate that IBC is not a recovery mechanism. In the present case, the Applicant agreed to settle the matter with the Directors of the Corporate Debtor and did not get a settlement agreement with the Corporate Debtor as per the terms of that settlement agreement, hence the Applicant is not entitled to seek initiation of CIRP against the Corporate Debtor.
31. Resultantly, this Adjudicating Authority dismisses the present Company Application i.e., **C.P.(IB)/403/2023 filed under Section 7 of the Code, 2016 stands dismissed. No orders as to costs.**
32. However the Applicant is at liberty to proceed against the Respondent before Competent forum for recovery of its dues.

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**