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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/14(CHE)/2022

*(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 **M/S. ARROWLINE ORGANIC PRODUCTS PRIVATE LIMITED***

SREI EQUIPMENT FINANCE LIMITED

(CIN: U70101WB2006PLC109898)

Rep by its Administrator,

Regd Office:

'Vishwakarma', 86C,
Topsia Road, Kolkata,
West Bengal – 700 046.

... Applicant / Financial Creditor

-Vs-

ARROWLINE ORGANIC PRODUCTS PRIVATE LIMITED

[CIN: U15122TN2015PTC099926]

Regd Office:

No. 101, Tower 8, Unitech, Uni World City,
Nellikuppam Road, Nallambakkam Kandigai,
Chengalpattu, Kancheepuram
Tamil Nadu – 600 127.

... Respondent / Corporate Debtor

Order Pronounced on 13th April, 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor: Anant Merathia, Advocate

For Corporate Debtor: Pawan Jhabakh, Advocate



ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by **SREI EQUIPMENT FINANCE LIMITED** (hereinafter referred to as 'Financial Creditor') on 06.05.2022 under 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 **ARROWLINE ORGANIC PRODUCTS PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (hereinafter referred to as 'IRP').

2. In Part - I of the Application, it is stated that the Applicant Company is a Financial Creditor which is undergoing CIRP before the Kolkata Bench of this Tribunal and is represented by the Administrator (Mr. Rajneesh Sharma) appointed in terms of IBBI (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019. The registered office address as per the Application is at 'Vishwakarma', 86C, Topsia Road, Kolkata, West Bengal – 700 046.



3. Part - II of the Application lays down the details of the Corporate Debtor. As per Part - II, the Corporate Debtor is a Private Limited Company incorporated under the Companies Act, 2013 on 06.04.2015 with CIN: U15122TN2015PTC099926. The registered office of the Corporate Debtor as per the 'MCA master data' is situated at No. 101, Tower 8, Unitech, Uni World City, Nellikuppam Road, Nallambakkam Kandigai, Chengalpattu, Kancheepuram Tamil Nadu - 600 127. The Authorised Share Capital of the Corporate Debtor and Paid-up Share Capital is Rs.24,00,00,000/- and Rs. 17,30,59,300/- respectively.

4. Part - III of the Application states that the Financial Creditor proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Tharuvai Ramachandran Ravichandran, Reg. No. IBBI/IPA-002/IP-N00241/2017-18/10692.

5. Part - IV of the Application, states that the Financial Creditor has advanced to the Corporate Debtor a sum of Rs.8,36,00,000/- (Rupees Eight Crore Thirty-Six Lakh only). The total debt amount is Rs. 11,41,87,052/- (Rupees Eleven Crore Forty-One Lakh Eighty-Seven Thousand and Fifty-Two only) which became due and payable by the Corporate Debtor as on the date of default, i.e. 24.09.2021.



6. Part - V of the Application enlists the documents, records and evidences of debt and default which are filed in support of the present Application.

7. It is stated that the Financial Creditor and the Corporate Debtor had commercial relations since the year 2016. On 04.12.2019, the Financial Creditor sanctioned a credit facility to an extent of Rs. 8,36,00,000/- to the Corporate Debtor and pursuant to the same, the 'Loan cum Hypothecation Agreement' dated 15.12.2019 was entered and executed by the parties. Copy of the said agreement is placed on record as Annexure I (5) from page nos. 85 - 110. It is stated that the disbursement was made in two tranches, i.e. Rs.50,00,000/- and Rs.7,86,00,000/- on 17.12.2019 and 19.12.2019 respectively.

8. It is stated that the contractual terms of the 'Loan cum Hypothecation Agreement' set forth monthly instalments along with interest by the Corporate Debtor. Due to the non payment of instalments, the Financial Creditor, was constrained to issue the demand notice dated 16.09.2021 recalling a total sum of Rs. 5,11,17,711/-. The said notice is placed on record as Annexure I (10) from page nos. 145 - 146. Thereafter, the present application came to be filed before this Tribunal recalling the entire dues from the Corporate Debtor. The bifurcation of the debt claimed under the present application is reproduced as below:



Overdue Amount	Rs. 397,79,148
Principal Outstanding	Rs. 629,56,845
Overdue Charges	Rs. 114,45,089
Other Charges	Rs. 5,970
Total	Rs. 11,41,87,052

9. The Financial Creditor has stated that an amount to the tune of Rs. 1,07,48,400/- (Rupees One Crore Seven Lakh Forty-Eight Thousand and Four Hundred only) out of the of the total unpaid instalment amounts due as on 16.09.2021, falls outside the scope of the period under Section 10A of the Code. i.e., 25.03.2020 – 31.03.2021. To substantiate the same, the Financial Creditor has formulated a table in the application for the purpose of satisfying the default falling outside the 10A period. The Financial Creditor also furnished the statement of account as on 19.08.2021 for the specific contract no. i.e. 182990. The said table is reproduced below:

Contact No.	Amount Claimed to be in Default (In Rs.)	Date on which default occurred	Days of Default
182990	26,87,100	15.04.2021	126
182990	26,87,100	15.05.2021	96
182990	26,87,100	15.06.2021	65
182990	26,87,100	15.07.2021	35
Total	1,07,48,400		

10. On getting notice of the present application, the Corporate Debtor filed its reply vide SR 3787 dated 22.06.2022 before this



Tribunal. The contention of the Corporate Debtor is two-fold, the first one being that the Corporate Debtor had discharged the borrowing on 19.12.2019 itself, i.e., on the same date of the disbursement of the second tranche of the principal borrowing and as a consequence, the default pertaining to the 'Loan cum Hypothecation Agreement' dated 15.12.2019 therefore stood discharged by the Corporate Debtor. The other contention was that the default under the present application fall within the period stipulated under Section 10A of the Code.

11. The Financial Creditor, with the leave of this Tribunal, has filed its rejoinder vide SR 4810 dated 01.08.2022 wherein the objection of the Corporate Debtor as to its discharge of its liability is vehemently disputed. The Financial Creditor, by referring to the to the charge of Rs. 8,60,00,000/- which is reflecting against the Corporate Debtor on the 'MCA Masterdata', submitted that the said contention is contrary to facts and record. The Financial Creditor has formulated a table to stating that the disbursement alleged to have been made by the Corporate Debtor on 19.12.2019 does not pertain to the loan facility for consideration under the present application. The said table is extracted from the rejoinder as under:

DETAILS OF MONIES BORROWED BY M/s. ARROWLINE ORGANIC PRODUCTS (P) LTD AND AMOUNTS REPAID ON 19.12.2019:

Loan Transaction Number	Amount of Loan Borrowed from Applicant at the time of disbursement	Amount of monies repaid only on 19.12.2019
117763	10000000.00	55636.08
119232	10000000.00	332276.06
119971	10000000.00	198041.77
121819	10000000.00	784042.47
123389	10000000.00	938883.54
176122	30300000.00	31137637.16
Total	80300000.00	33446517.08
Amount of money transferred by Corporate Debtor to the Financial Creditor on 19.12.2019 was INR 3,34,56,350/-		
182990 (W.r.t which Section 7 Application IBA / 14 / 2022 has been filed)	8,36,00,000/-	

12. We have heard the submissions for both the parties and have perused the pleadings and documents on record. The undisputed fact remains that the borrowing emerged out of the 'Loan cum Hypothecation Agreement' dated 15.12.2019 and the disbursement of the facility were made in two tranches, i.e. Rs.50,00,000/- and Rs.7,86,00,000/- on 17.12.2019 and 19.12.2019 respectively.

13. The contention of the Corporate Debtor that the discharge of its liability with respect to the said facility holds no water since the Financial Creditor has sufficiently clarified that the repayment made by the Corporate Debtor on 19.12.2019 pertains to other earlier loan accounts of the Corporate Debtor and not the loan account in question in the present application. The contention of the Corporate Debtor that the debt was discharged on the very



same date it was disbursed from the Financial Creditor does not hold good. The objection in light of the applicability of the period covered under Section 10A of the Code is clearly distinguished by the Financial Creditor at para 9 *supra*. Therefore, the Financial Creditor for the purpose of satisfying the threshold contemplated under Section 4 has clearly made out a case.

14. Apart from the above, on a question posed by this bench as to the treatment of the said amount in the books of the Corporate Debtor, learned Counsel for the Corporate Debtor has fairly submitted that figures appearing in the below extracted 'Notes to Borrowings' from the Financial Statement of the Corporate Debtor as on 31.03.2021 & 31.03.2020, pertains to the loan facility which is under consideration in the present application.

Classification of borrowings [Table]

..(1)

Unless otherwise specified, all monetary values are in INR

Classification based on time period [Axis]	Long-term [Member]			
	Borrowings [Member]		Other loans and advances [Member]	
	Unsecured borrowings [Member]		Unsecured borrowings [Member]	
Classification of borrowings [Axis]	31/03/2021	31/03/2020	31/03/2021	31/03/2020
Subclassification of borrowings [Axis]				
Borrowings notes [Abstract]				
Details of borrowings [Abstract]				
Details of borrowings [LineItems]				
Borrowings	9,98,41,295	8,60,70,082	9,98,41,295	8,60,70,082
Details on defaults on borrowings [Abstract]				
Outstanding amount of continuing default principal	0	0	0	0
Outstanding amount of continuing default interest	0	0	0	0

A perusal of the above would indicate that amount of Rs.9,98,41,295/- which is stated to be entered with respect to the loan facility under consideration by this Tribunal. Thus, in view of



the ratio of the Hon'ble Supreme Court in the matter of ***Asset Reconstruction Company (India) Limited -Vs- Bishal Jaiswal & Anr. (Civil Appeal No. 323 of 2021)*** wherein it was categorically held that the entries made in the balance sheet would amount to acknowledgment of debt, the present case is also a clear instance of an admitted debt. That apart, contrary to the stand taken by the Corporate Debtor, perusal of the table reproduced at *para* 11 supra would indicate that no payments were made against the Loan Account No. 182990 on 19.12.2019.

15. Thus, owing to the above facts and circumstances of the present case, we are satisfied that it is a clear case of an admitted debt by the Corporate Debtor and that the existence of the same is not disputed. The Financial Creditor has made out a *prima facie* case proving debt and default warranting intervention of this Tribunal. Thus, this Tribunal deems it a fit to admit the Corporate Debtor into the CIR Process contemplated under the Code.

16. As a consequence of above discussion in light of facts of the present case, the Application is 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;

- 17. 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.
18. 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.

19. The Financial Creditor has proposed the name of one **Mr. Tharuvai Ramachandran Ravichandran** (Email ID: **ttravichandran@yahoo.com**), Reg. No. **[IBBI/IPA-002/IP-N00241/2017-18/10692]** as the Interim Resolution Professional (IRP) who, has also filed their consent in 'Form - 2' and also upon verification from the IBBI website, it is seen that the said insolvency professional hold valid Authorization for Assignment till 06.12.2023.

20. **Mr. Tharuvai Ramachandran Ravichandran** is appointed as the IRP who 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. The Financial



Creditor is directed to remit a sum of **Rs. 2,00,000/- (Rupees Two Lakh Only)** to and in favour of the IRP for meeting out the initial expenses in relation to the CIR Process of the Corporate Debtor. The said amount shall be adjusted and ratified on account of the Financial Creditor.

21. 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. 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.

22. 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 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.

23. 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. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order 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.

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24. Pending consideration of the main application filed by the Financial Creditor, the Corporate Debtor has preferred to the present interlocutory application under Section 65 of the Code seeking this Tribunal to impose penalty on the Financial Creditor and to consequently dismiss the application preferred by the Financial Creditor. However, the Financial Creditor has proved its case and Corporate Debtor is admitted into CIR Process. Thus, **IA(IBC)/35(CHE)/2023** stands **dismissed** and disposed of.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)

V.Shreekumar