IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-198/MB/2023

Under Section 7 of the IBC, 2016

In the matter of
Safal Africa Ltd.
…Financial Creditor

v/s.

Safintra Roofing (India) Limited
…Corporate Debtor

Order Pronounced on: **23.06.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Petitioner: CS Prashant Thakre, Authorized Representative.

For the Respondent: Mr. Amit Mehta, Accounts Manager.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed on 01.02.2023 under Section 7 of the Insolvency & Bankruptcy Code, 2016 **(IBC)** by **Safal Africa Ltd.** (hereinafter called the *Financial Creditor*) - seeking to initiate Corporate Insolvency Resolution Process (CIRP) in the matter of **Safintra Roofing (India) Limited** (hereinafter called the *Corporate Debtor*), [CIN: U74900MH2008PLC185250] on the ground that the

Corporate Debtor defaulted in making repayment of the outstanding amount of ₹2,48,31,000/- on 01.04.2014.

1.1. The Financial Creditor is a company incorporated on 21.12.2007 in British Virgin Islands (abroad), engaged in the business of Coil Coating and Metal Roofing. Mr. Aashish Rajender Dilawari, an Indian inhabitant, having Passport No: Z5362319, residing at Plot No. 273, Street No. 12, Block No. 10/11, Jawahar Nagar, Goregaon (W), Mumbai – 400 104, has been appointed as authorised signatory of the Financial Creditor to act on behalf of the Financial Creditor.

1.2. The Corporate Debtor is a company incorporated on 30.07.2008 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its registered office is at 21, 1st Floor, Navyug Industrial Estate, MIDC Cross Road, J.B. Nagar, Andheri East, Mumbai, Maharashtra – 400 059. Therefore, this Bench has jurisdiction to deal with the present petition.

<u>Brief Facts of the Case:</u>

2. The Financial Creditor holds 57.14% shares of the Corporate Debtor. It has also given a sum of US$ 300,000.00, equivalent to Rs. 244, 71,000/- converted at Exchange rate as on 12.01.2023, to the Corporate Debtor on 01.07.2009 and the said loan was raised by the Corporate Debtor in accordance with the Regulations under Foreign Exchange Management Act (FEMA). A copy of letter dated 24.07.2009 and 27.07.2009 in relation to allotment of loan registration number for the said borrowing issued by RBI and communicated by authorised dealer i.e. UCO Bank is placed in the additional affidavit.

2.1. The Financial Creditor submits that the said loan was availed an unsecured from the Financial Creditor executing a Loan Agreement between the Corporate Debtor (Borrower) and the Financial Creditor (Lender) with the terms and conditions stipulated therein. As per the agreement, the repayment of loan instalments starts from 31.07.2012 and the last instalment of the loan amount with interest @ 6 month libor rate + 2% p.a. was payable on 30.04.2013. However, both parties entered into a supplementary loan agreement on 18.09.2012 with revised repayment schedule wherein the repayment of first instalment was on 01.07.2013 and the last payment was due on 01.04.2014.

2.2. The Financial Creditor has filed (i) the copy of loan agreement dated 01.07.2009, (ii) copy of supplementary loan agreement dated 18.09.2012, (iii) copy of ledger account statement confirmed by the Corporate Debtor, and (iv) computation of loan interest as on 31.12.2022.

2.3. The Financial Creditor has filed copy of financial statement of the Corporate Debtor for the financial year ended 30.03.2022 which reflects a sum of ₹2,19,44,580/- due and payable to the Financial Creditor as on 31.03.2022 as well as on 31.03.2021. The said financial statement also states that this loan from the shareholder was originally repayable on quarterly basis over the period from 1st July 2013 to 1st April 2014. The Company has since renegotiated the repayment terms, accordingly these loans are now repayable on quarterly basis over the period from 1st July 2017. The Financial Creditor has also enclosed with the Petition copy of balance confirmation obtained from the Corporate Debtor for the years from 2014-15 till 2021-22 as well as audited financial statement of the Corporate Debtor for the financial years 2009-10, 2013-14, 2014-15 and 2015-16. The balance as per these confirmations in agreement with the Financial Statement.

2.4. It has also placed on record MCA data of the other shareholder Octamec Engineering Ltd., which holds 42.86% shares of the Corporate Debtor, is under liquidation.

2.5. The Financial Creditor has also undertaken, pursuant to this Bench's direction in view of fact that the Financial Creditor is also a majority shareholder of the Corporate, that the necessary cooperation shall be extended by them; books of account, statutory record and Register maintained under Companies Act shall be provided to the RP/IRP; and all the required steps shall be taken and shall be complied with in order to effectively complete the CIRP/Liquidation process of the Corporate Debtor.

2.6. The Financial Creditor has explained that since the other shareholder holding 42.86% shares of the Corporate Debtor is under liquidation, the Corporate Debtor is not in a position to pass a special resolution to enable the Corporate Debtor to file an application under Section 10 of the Code.

<u>Reply of the Corporate Debtor</u>:

3. The Corporate Debtor filed its reply wherein it submits that the Corporate Debtor has taken loan in the form of ECB of US$ 3,00,000.00 from the Financial Creditor for running the business of the Corporate Debtor in India. However, could not repay the loan due to unfavourable business situation in the market and various other problems occurred in the business and the company is presently non-functional.

3.1. The Corporate Debtor further submits that one of its shareholders with 42.86% of the shares of the Company viz. Octamec Engineering Ltd., is undergoing liquidation, therefore, is unable to do its business.

3.2. The Corporate Debtor finally submits that it has no objection for admission of the Petition for CIRP of the Corporate Debtor. In the event of admission, the Corporate Debtor assures full cooperation to the IRP/RP appointed for the CIRP/Liquidation process.

<u>Findings:</u>

4. This Bench finds that there is no dispute that a financial debt of more than one crore rupees is due and payable to the Financial Creditor by the Corporate Debtor since 01.04.2014. This Application has been filed by the Financial Creditor who is also majority shareholder of the Corporate Debtor and it was explained to us that the Corporate Debtor is in default of its obligations and Section 10 Application cannot be filed by the Corporate Debtor in view of commencement of liquidation of the other shareholder.

4.1. On perusal of the Financial Statement of 31.03.2022 placed on record, this bench finds that Corporate Debtor has a negative net-worth and also not made any revenue from operations during the relevant year. Besides, the Corporate Debtor owns certain money to M/s First Leasing Co. Ltd. As secured debt. This bench finds that on these facts, the Corporate Debtor could not have moved either a section 10 Application or a section 59 Application for liquidation and consequent dissolution of its affairs. This bench does not find any prejudice caused to any stakeholder if the

Corporate Debtor is admitted into CIRP to initiate the process of its liquidation.

4.2. Therefore, the Petition made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one crore rupees stipulated under the Code. Therefore, the debt, due and default are established and therefore, this is a fit case for admission of the Petition to bring the Corporate Debtor into CIRP.

4.3. The Financial Creditor has proposed Mrs. Neha Punit Agrawal as Interim Resolution Professional (IRP) in the matter. Consent letter of Mrs. Neha Punit Agrawal in Form 2 is also attached to the Petition.

5. It is, accordingly, hereby ordered that this Application bearing No.: **CP(IB)-198/MB/2023** filed under Section 7 of I&B Code, 2016, presented by **Safal Africa Limited,** Financial Creditor/Applicant against **Safintra Roofing India Limited**, Corporate Debtor for initiating Corporate Insolvency Resolution Process (CIRP) is hereby **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench, as a result of moratorium, prohibits -

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 of 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 right 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 (SARFAESI Act);

d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the Corporate Insolvency Resolution Process (CIRP) shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints **Mrs. Neha Punit Agrawal**, a registered insolvency resolution professional having Registration Number IBBI/IPA-002/IPN01130/2021-2022/13728 as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/ Directions issued in this regard.

6. Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by designated Registrar is to be submitted immediately.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Kishore Vemilapalli
Member (Judicial)