**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**MUMBAI BENCH-IV**

**CP (IB) No. 574/MB-IV/2022**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Ms. Dhanashree Bhatkal**

…Financial Creditor/Applicant

V/s

**Apex Business Services Private Limited**
[CIN: U74999MH2010PTC210539]

...Corporate Debtor/Respondent

**Order Dated: 17.02.2023**

*Coram:*

| | |
|---|---|
| Mr. Prabhat Kumar<br>Hon'ble Member (Technical) | Mr. Kishore Vemulapalli<br>Hon'ble Member (Judicial) |

*Appearances (via videoconferencing):*

| | | |
|---|---|---|
| For the Petitioner(s) | : | Mr. Prasad Sarvanker, Advocate. |
| For the Respondent(s) | : | None. |

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial)***

1. This is an application bearing C.P. (IB) No. 574/MB/C-IV/2022 filed by Dhanashree Bhatkal, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Apex Business Services Private Limited, Corporate Debtor.

2. The Application is filed by Ms. Dhanashree Bhatkal, one of the Ex-Directors of the Corporate Debtor, claiming total default of Rs.1,19,62,518/- (Rupees one crore nineteen lakh sixty-two thousand five hundred eighteen only) as on 30.07.2019 including interest at the rate of 12% p.a. in the event of failure to repay the amount recalled.

3. The Financial Creditor has also filed the Books of Accounts of the Corporate Debtor for the year ending 31st March 2020.

4. The Date of Default is not stated in Part-IV of the Petition; however, the Applicant has placed on record the Settlement Agreement dated 03.07.2019 whereby this amount was finally payable on or before 30.07.2019 and the Corporate Debtor failed to pay by the said date. The Petition is filed on 29.04.2022.

5. The case of the Financial Creditor is that the Financial Creditor is Ex-Director of the Corporate Debtor has provided financial assistant as and when required to the Corporate Debtor to meet the working capital requirement of the Corporate Debtor. Pursuant to this, the Financial Creditor and Corporate Debtor entered into Memorandum of Understanding (MoU) dated 01.04.2014 wherein the terms of financial arrangement between the parties has been duly recorded.

6. The arrangement between the Financial Creditor and Corporate Debtor was continued even after Financial Creditor resigned from the Directorship of the Corporate Debtor in the year 2017. In the year 2019, the Financial Creditor terminated the MoU by Termination Notice dated 01.06.2019 in accordance with Clause 11 of the MoU and demanded the outstanding loan amount as on the date of Termination.

7. Thereafter, upon request of the Corporate Debtor, the Financial Creditor and the Corporate Debtor entered into a Settlement Agreement dated 03.07.2019 wherein the Corporate Debtor agreed to clear the entire outstanding on or before 30.07.2019. Upon failure to adhere to the said Settlement Agreement, the Financial Creditor issued a final demand notice to Corporate Debtor to which the Corporate Debtor has not replied till date.

8. The Corporate Debtor has not filed reply in the matter after giving several opportunities in the matter.

*Findings/Observations:*

9. We have heard the arguments of the Learned Counsel for Operational Creditor.

10. After perusal of the material on record, this Bench is of considered view that the Financial Creditor has provided financial assistant as and when required to the Corporate Debtor to meet the working capital requirement of the Corporate Debtor. Pursuant to this, the Financial Creditor and Corporate Debtor entered into Memorandum of Understanding dated 01.04.2014 wherein the terms of financial arrangement between the parties has been duly recorded. The Corporate Debtor has not filed its reply after giving several opportunities in the matter. When the matter was listed for final hearing on 10.01.2023, the Corporate Debtor did not appear and filed reply in the matter.

11. Though the Financial Creditor has not stated the Date of Default in the Application but the same is determinable from the documents forming part of the Petition. It is observed that the Financial Creditor has filed a

Memorandum of Understanding dated 01.04.2014 between parties whereby the Financial Creditor was entitled to recall and demand of outstanding payment from the date this MoU. Further, the Financial Creditor has also filed the settlement agreement dated 03.07.2019 wherein it is averred that the Financial Creditor had terminated the MoU dated 01.04.2014 vide Notice dated 01.06.2019. As per this Agreement the outstanding loan amount was payable on or before 30.07.2019. Accordingly, the date of default is determined as 30.07.2019.

12. It observed from the material on records that vide order dated 11.05.2022 the Court Notice was ordered to the Corporate Debtor. On 04.07.2022 and 07.09.2022 the Corporate Debtor appeared in the matter but did not file reply in the matter. When the matter was listed on 29.11.2022 the Corporate Debtor sought time for filing reply hence this Bench granted two weeks time to the Corporate Debtor for filing reply in the matter. The matter was listed on 10.01.2023 the Corporate Debtor did not appear and also failed to file reply in the matter. Hence, on 10.01.2023 the matter finally heard and reserved for orders.

13. After perusal of the material on record, this Bench is of considered view that the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is complete and filed in the proper form.

14. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the

application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.

15. The Application is complete and has been filed under the proper form and default of the Corporate Debtor has been established.

16. The Applicant has proposed the name of Mr. Anil Kashi Drolia, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P-02327/2020-2021/13482] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code. The proposed IRP has given the consent along with the declaration that no disciplinary proceedings are pending against him.

**ORDER**

17. This Application being C.P. (IB) No. 574/NCLT/MB/C-IV/2022 filed by Dhanashree Bhatkal, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Apex Business Services Private Limited, Corporate Debtors is **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 this 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;

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 shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Anil Kashi Drolia, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P-02327/2020-2021/13482], as Interim Resolution Professional 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.

e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims.

f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

g) The 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 Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
Prabhat Kumar
Member (Technical)
17.02.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)