

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH, (COURT – I) CHENNAI**

IBA/1277/2019

*(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*

Along with

IA/1152/2020 in IBA/1277/2019

*(filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 read
with Rule 11 of NCLT Rules, 2016)*

Along with

IA/170/CHE/2021 in IBA/1277/2019

(filed under Rule 32 and Rule 11 of NCLT Rules, 2016)

In the matter of **M/s. Wayne Burt Aerospace Private Limited**

M/s. Sundaram BNP Paribas Home Finance Limited

Reg. Office at 21, Patullos Road,
Chennai – 600 002.

... Financial Creditor

-Vs-

M/s. Wayne Burt Aerospace Private Limited,

Reg. Office at No.6A, Developed Plot,
Ekkaduthangal,
Chennai – 600 032.

... Corporate Debtor

Order pronounced on 24th March 2021

CORAM :

**R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor
For Corporate Debtor*

*: S. Sathiyarayanan, Advocate
: Ganesh V. Arnala, Advocate*

ORDER

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

1. Under consideration is an Application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") by one **M/s. Sundaram BNP Paribas Home Finance Limited** (hereinafter referred to as "**Financial Creditor**") against **M/s. Wayne Burt Aerospace Private Limited** (hereinafter referred to as "**Corporate Debtor**") seeking for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

2. From Part-I of the Application, it is evident that the Financial Creditor is a Limited Company incorporated on 02.07.1999 and having CIN: U65922TN1999PLC042759. From Part-II of the Application, it is evident that the Corporate Debtor is a Private Limited Company which was incorporated on 24.12.2009 and having CIN: U11100TN2009PTC074041 with the Nominal Share Capital of Rs.20,00,00,000/- and Paid-up Share Capital of Rs.17,83,70,000/-.

3. From Part-III of the Application, it is seen that the Financial Creditor has proposed one **Mr. A. Mohan Kumar** (Reg. No. IBBI/IPA-002/IP-N00377/2017-2018/11120) as the Interim Resolution Professional (IRP) and the written communication of the

said IRP obtained in Form-2 is placed at page No.61 of the typed set filed along with the Application. Part-IV of the Application discloses the total amount of debt from which it is evident that the Financial Creditor has claimed a sum of Rs.3,85,63,843/- as against the Corporate Debtor and that the account of the Corporate Debtor was classified as Non – Performing Asset (NPA) on 31.07.2018.

4. Part – V of the Application contains the list of documents filed by the Financial Creditor in order to prove the existence of Financial Debt, which are as follows;

- i) Loan Agreement dated 17.06.2016.
- ii) Demand Promissory Note dated 17.06.2016
- iii) Letter of Guarantee executed by Mr. TGS Mahesh
- iv) Memorandum Confirming Deposit of Title Deeds executed by TGS Mahesh for Loan Account No. TSA20170012 vide Doc. No.1097 of 2016
- iv) Notice issued by the Financial Creditor under Section 13(2) of the SARFAESI Act, 2002 dated 01.08.2018.
- vi) Statement of Accounts

5. It is submitted by the Learned Counsel for the Financial Creditor that the Financial Creditor and the Corporate Debtor entered into a Loan Agreement dated 17.06.2016, wherein the Financial

Creditor sanctioned a sum of Rs.4,00,00,000/- (Rupees Four Crores Only) to the Corporate Debtor and as per the Loan Agreement, the Corporate Debtor is obliged to pay a sum of Rs.6,45,340/- (Rupees Six Lakhs Forty Five Thousand Three hundred and Forty Only) per month for a period of 120 months and the rate of interest was fixed at 15% p.a.

6. In pursuance of the same, the Financial Creditor has executed a Deed of Guarantee wherein one Mr. TGS Mahesh stood as a Guarantor to the loan disbursed by the Financial Creditor. Further, the Corporate Debtor has also executed a Memorandum of Deposit of Title Deeds in favour of the Corporate Debtor which document has been registered in the Sub - Registrar office, Kodaikanal, as Document No.1097 of 2016. The Learned Counsel for the Financial Creditor also pointed out to the Promissory Note executed by the Corporate Debtor for a sum of Rs.4 Crore on 17.06.2016 which is annexed along with the typed set filed with the Petition.

7. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor has failed to repay its dues and as such the account of the Corporate Debtor has been declared as NPA by the Financial Creditor on 31.07.2018 and pursuant thereto, the Financial Creditor has issued Demand Notice under Section 13(2) of the

SARFAESI Act, 2016 to the Corporate Debtor on 01.08.2018, however, it is submitted that the Corporate Debtor has failed to make payment which is due to the Financial Creditor. Thus, it was submitted that the Corporate Debtor has committed 'default' in repayment of dues to the Financial Creditor and as such prayed for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

8. In relation to the Corporate Debtor, it is seen that Reply has been filed and it was submitted by the Learned Counsel for the Corporate Debtor has stated that the Corporate Debtor had encountered financial crisis on account of general recession and global slowdown in business and also due to lack of strategic investments in Aerospace industry. It was further submitted by the Learned Counsel for the Corporate Debtor that they had approached the Financial Creditor with several proposal to restructure the loan and they have been negotiating with the Financial Creditor for settlement of loan, however the same never fructified. It was submitted that the Corporate Debtor has been regular in paying the EMIs' till the end of March 2018. Thereafter, due to certain setback to its business and some recession in the cash flow, the Corporate Debtor could not service its EMI dues to the Financial Creditor as a

result of which the Financial Creditor declared the accounts of the Corporate Debtor as NPA and also slapped with a Demand Notice under Section 13(2) of SARFAESI Act, 2002 on 01.08.2018 recalling to pay an amount of Rs.3,87,12,901/-.

9. The Learned Counsel for the Corporate Debtor further submitted that they are in talks with the Financial Creditor for accepting the One Time Settlement as proposed by the Corporate Debtor and sought for some time to settle the matter with the Financial Creditor.

10. It is to be noted here that after hearing the submissions made by both the parties, the matters were reserved for orders on 22.10.2020 and thereafter the Corporate Debtor filed IA/1152/IB/2020 before this Tribunal on 22.10.2020 itself seeking relief to direct the Financial Creditor to accept the One - Time settlement proposal dated 21.10.2020 by accepting the token payment of Rs.30,00,000/-. Subsequently, it is seen that the Corporate Debtor has filed another IA/170/CHE/2021 before this Tribunal on 28.01.2021 seeking thereof to reopen the matter and take the One - Time Settlement letter issued by the Corporate Debtor and to pass suitable orders.

11. When the aforesaid IA's came up for hearing before this Tribunal on 09.03.2021, it was represented by the Learned Counsel for the Financial Creditor that the OTS proposal as given by the Corporate Debtor is not acceptable to the Financial Creditor and as such they are willing to proceed with the matter. Thus, in view of the same, nothing survives in IA/1152/2020 and I A/170/CHE/2021 and accordingly, the same stands **closed**.

12. In relation to IBA/1277/2019, from the IA's filed by the Corporate Debtor seeking for OTS proposal with the Financial Creditor, it is evident that the 'debt' and 'default' on the part of the Corporate Debtor is proved and the Corporate Debtor is also unable to repay its dues to the Financial Creditor. It has also been consistently held by the Hon'ble Supreme Court both in **Innoventive Industries Ltd. -Vs- ICICI Bank and another (2018) 1 SCC 407** as well as **Mobilox Innovations Pvt. Ltd. -Vs- Kirusa Software Pvt. Ltd. (2018) 1 SCC 353** after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default is in excess of Rs.1,00,000/- (now increased to Rs.1 Crore),

this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and its default.

13. It is also seen that the present Application has been filed before this Tribunal on 10.10.2019 and as such the Notification issued by the Central Government in this regard by increasing threshold limit from Rs.1 Lakh to Rs.1 Crore would not apply to the facts and circumstances of the present case, as the amount claimed to be in default is already more than Rs.1 Crore.

14. It is also noted that the Central government by way of an amendment inserted in Section 10A of I&B Code, 2016 wherein the default in respect of the dues arising from the period 25.03.2020 till 25.09.2020, (*now extended upto 25.03.2021*) has been excluded and as such in the present case from Part-IV of the Application it is seen that the default has occurred much prior to 25.03.2020 and hence Section 10A of I&B Code, 2016 also would not come to the aid of the Corporate Debtor.



15. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Applicant – Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

16. The Financial Creditor has proposed the name of **A. Mohan Kumar** having Registration Number *IBBI/IPA-002/IP-N00377/2017-2018/11120* as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. 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 Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

17. As a consequence of the Application being 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;



18. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) 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.

19. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:



- (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.

20. 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 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.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond