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**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court-I)
KOLKATA**

CP(IB) No. 131/KB/2022

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:

Aryan Mining & Trading Corporation Private Limited, a company incorporated under the Companies Act, 1956 and being a company under the Companies Act, 2013, having CIN: U13100WB1936PTC008817 and it's Registered Office at 3A, 3rd Floor, Mukti World 9/3 B, Leela Roy Sarani, Kolkata- 700019, in the state of West Bengal

.....Financial Creditor

Versus

Progressive Meters Private Limited, a company constituted under the relevant provisions of the Companies Act, 1956, and being a company within the meaning of Companies Act, 2013, having CIN: U33111WB2013PTC197828 and having it's Registered Office at Flat No. 2C, 2nd Floor, Urvashi Apartments, 3 Hungerford Street, Kolkata- 700017, in the state of West Bengal

.... Corporate Debtor

Date of hearing: 02 September 2022

Date of pronouncing the order: 28 October 2022

Coram:

Shri Rohit Kapoor : Member (Judicial)
Shri Balraj Joshi : Member (Technical)

Appearances (via video conferencing/ physical):

For the Financial Creditor:

Mr. Avishek Das, Advocate
Mr. Aman Agarwal, Advocate
Mr. Siddhartha Das, Advocate

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Ms. Trinisha De, Advocate

For the Corporate Debtor:

Ms. Rashmi Bothra, Advocate

ORDER

Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.
2. This Company Petition under section 7(1) of the Insolvency and Bankruptcy Code, 2016 (*the Code*) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by Mr. Rajat Mitra on behalf of and authorised by **Aryan Mining & Trading Corporation Private Limited** (*hereinafter referred to as the Financial Creditor*), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Progressive Meters Private Limited** (*hereinafter referred to as the Corporate Debtor*).
3. The Corporate Debtor is a private company incorporated on 08.10.2013. The authorised share- capital of the company is ₹50,00,000/- and the paid-up share- capital of the company is ₹50,00,000/-.
4. The total amount claimed by the Financial Creditor is to ₹1,06,64,641.30/- as on 28.02.2022. The first installment of interest was due on 30.11.2021. the second installment of interest was due on 01.01.2022. The Corporate Debtor defaulted in the payment of both installments.
5. Part I of Form 5 of the instant petition mentions the particulars of the Applicant. Part II mentions the particulars of the Corporate Debtor. Part III mentions the particulars of the proposed Interim Resolution Professional (IRP). Part IV mentions the particulars of the Financial Debt. Part V mentions the documents, records and evidence of default.

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6. **Submissions on behalf of the Financial Creditor:**

- 6.1 The case of the Financial Creditor is that it provided loan facilities to the Corporate Debtor for an amount of ₹50,00,000/- vide a loan agreement dated 29.11.2018. The loan amount was disbursed to the Corporate Debtor vide RTGS on 29.11.2018.
- 6.2 As per the loan agreement, the tenure of the loan was 60 months wherein the Corporate Debtor was liable to pay interest @24% p.a. compounded quarterly on the facility for the period of the tenure.
- 6.3 It was stipulated in the Loan Agreement that the first interest payment shall be made immediately after 36 months from the date of disbursement of the facility. However, interest for the entire tenure shall be charged by the Financial Creditor. Hence, the first instalment of the facility was due for payment on 30th November, 2021 i.e. upon expiry of thirty-six months from the date of disbursement of the facility.
- 6.4 The interest on the loan facility was to be paid on a quarterly basis by the Corporate Debtor before 10th day of the month following the quarter. However, the Corporate Debtor failed to pay the overdue interest amount and defaulted in making payments in spite of repeated requests made by the Applicant.
- 6.5 As on 01.01.2022, the Corporate Debtor has acknowledged and shared the accounts confirmation for the outstanding amount till 30th November, 2021 amounting to ₹1,00,60,982.36/-.
- 6.6 The Corporate Debtor further defaulted in payment of the second instalment, thereby, the total amount of default stands at ₹1,06,64,641.30/- as on 28.02.2022.
- 6.7 A letter was sent to the Corporate Debtor on 15.03.2022 terminating the Loan Agreement and demanding repayment of loan amount along with the interest. On 16.03.2022 the Corporate Debtor replied to the said letter requesting extension of time for the payment of outstanding loan and interest amount.

- 6.8 It is evident from the above-mentioned facts and circumstances that the Corporate Debtor has committed default in the repayment of the debt owed to the Financial Creditor and the same has been acknowledged by the Corporate Debtor *vide* confirmation of accounts dated 01.01.2022 and further *vide* the Letter dated 16.03.2022.
- 6.9 In support of its claims, the Financial Creditor has relied on various documents, including:
- a. Master data of the Corporate Debtor, being Annexure "C";
 - b. Loan Agreement dated 29.11.2018, being Annexure "D";
 - c. Statement of accounts showing the outstanding amount payable by the Corporate Debtor, being Annexure "E";
 - d. Ledger account of the Corporate Debtor in the books of the Financial Creditor, being Annexure "F";
 - e. Bank statements of the Financial Creditor, being Annexure "G";
 - f. Account Confirmation dated 01.01.2022, acknowledged by the Corporate Debtor, being Annexure "H";
 - g. Letter dated 15.03.2022 terminating the loan agreement and demanding repayment of loan amount along with interest, being Annexure "I";
 - h. Letter dated 16.03.2022 received from the Corporate Debtor, requesting extension of time for payment of outstanding loan and interest amount, being Annexure "J";

7. **Submissions on behalf of the Corporate Debtor:**

- 7.1 The Corporate Debtor has submitted that its business has been severely impacted due to the lockdown owing to the Covid - 19 pandemic. The Corporate Debtor had all the intents of the paying and/or maintaining

financial discipline in terms of the loan agreement. However, the cash flow of the Corporate Debtor has been severely impacted due to various factors beyond the control of the Corporate Debtor, resulting in the Corporate Debtor's inability to repay the loan on time.

- 7.2 Further, the Financial Creditor has failed to take into consideration various circulars of Reserve Bank of India providing measure for the benefit and protection of the interest of companies like the Corporate Debtor.
- 7.3 Further the Ministry of Finance, Government of India *vide* OM dated 19.02.2022 had already stated that corona virus should be considered as a case of natural calamity and force majeure may be invoked and issued various communications to that effect. The Reserve Bank of India had also announced a moratorium in respect of all dues which was further extended from time to time signifying an acceptance of the lethal way the industries, the economy and life in general of people have been hit by the pandemic and thereby providing a relief to the companies / industries in relation to all the dues to be paid to all the lenders. Therefore, pursuant to the aforesaid circulars the Corporate Debtor had requested telephonically and otherwise to the Financial Creditor from granting some leeway or a moratorium in payment of the outstanding amount in question.
- 7.4 The Corporate Debtor has always kept the Financial Creditor aware of the financial difficulties being faced by them through their various correspondences, communications as well as personal meetings. However, rather than considering the aforementioned circumstances and difficulties faced by the Corporate Debtor, the Financial Creditor has invoked the present proceedings.
- 7.5 The Financial Creditor had advanced a loan to the Corporate Debtor by virtue of a loan agreement dated 29.11.2018. Although not specifically recorded in the loan agreement, it was agreed that the Financial Creditor would lend an aggregate sum of Rs. 2 Crores to the Corporate Debtor from time to time by entering into separate agreements of loan, as and when

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requested by the Corporate Debtor. However, after granting the initial loan under the loan agreement dated 29.11.2018, the Financial Creditor did not extend further loan to the Corporate Debtor by entering into fresh agreements. Due to said failure on the part of the Financial Creditor, the business of the Corporate Debtor suffered enormous losses. The initial sum of Rs. 50 Lacs which was invested by the Corporate Debtor in its business, also got blocked by reason of breach of commitment of the Corporate Debtor made to its clients.

- 7.6 The present application is premature inasmuch, the Corporate Debtor has sought for some time to pay the dues of the Financial Creditor. Further, there is no specific authorisation to prove that Mr. Rajat Mitra is entitled to initiate Corporate Insolvency Resolution Process as against the alleged Corporate Debtor. No resolution/power of attorney is brought on record to prove that the person authorising Mr. Rajat Mitra is entitled to give any valid authority.
- 7.7 The present application has been filed for the purpose of recovery of money by the Financial Creditor. The Financial Creditor, therefore, ought to have approached a competent Civil Court claiming recovery of its money upon payment of requisite Court Fees. The Financial Creditor, with a view to avoid and bypass the established procedure for recovery of money, has resorted to filing an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor with a view to coerce the Corporate Debtor into meeting its demand and/or for repayment of the sums received by the Corporate Debtor under the Loan Agreement.
- 7.8 Further, the Financial Creditor is barred by the principles of Bengal Money Lenders Act, 1940. The Financial Creditor has not disclosed whether the Financial Creditor has obtained any license under the statutory provisions of the Bengal Money Lenders Act, 1940. In absence of such license, the Financial Creditor cannot claim recovery of such money from the Corporate Debtor. Since the debt itself is not recoverable in the eye of law, the present

application is not maintainable and liable to be dismissed on such ground alone.

7.9 Furthermore, as per section 7A of the Insolvency and Bankruptcy Code, 2016 it is not mandatory for the Adjudicating Authority to admit application in each and every case where there is existence of a debt. The discretion conferred by 7(5)(a) of the Code enables a Tribunal to reject an application even if there is existence of debt for any reason that the Adjudicating Authority may deem fit for meeting the ends of justice and to achieve the overall objective of the Insolvency and Bankruptcy Code, 2016 which is revival of the company and value maximisation.

8. **Analysis and Findings:**

8.1 We have heard the Ld. Counsel on behalf of the Financial Creditor and the Ld. Counsel on behalf of the Corporate Debtor and perused the records.

8.2 The first contention of the Corporate Debtor is that the Financial Creditor was supposed to lend the Corporate Debtor an aggregate sum of ₹2 Crore and failed to fulfill its obligation after lending to the Corporate Debtor the initial sum of ₹50 Lakh. Due to such failure, the initial sum invested by the Corporate debtor also got blocked due to breach of commitment of the Financial creditor. On perusal of the record, however, it can be seen that the said contention of the Corporate Debtor is completely unsupported by any documents. The loan agreement on page 16 of the petition only mentions the sum of ₹50 Lakh, which the Corporate Debtor has also admitted to have been lent to it. As such, the Corporate Debtor's contention that the Financial Creditor is taking advantage of its own wrong does not stand on firm footing.

8.3 The Corporate Debtor has further asserted that Mr. Rajat Mitra, being the Applicant on behalf of the Financial Creditor is not authorized to file the instant petition. However, the Board Resolution on page 14 of the petition, specifically and sufficiently authorizes Mr. Rajat Mitra to initiate any legal proceedings including proceedings under section 7 of the Code. Therein, Mr. Rajat Mitra has also been authorized to engage as Advocate/ Solicitor/

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Consultant of the Financial Creditor. As such, the authorization given to the Applicant by the Board of Directors in the said case is sufficient to prove the Applicant's authority to file the instant petition.

8.4 The Corporate Debtor has also contended that the claims of the Financial Creditor are in conflict with the provisions of the Bengal Money Lenders Act, 1940 as the Financial Creditor has failed to disclose if has necessary license under the said legislation to act as a money lender.

8.5 Referring to section 2(13) of the Bengal Money Lenders Act, 1940, it is clear that the term "money-lender" means a person who carries on the business of money-lending in '[West Bengal] or who has a place of such business in s [West Bengal], and includes a pawnee as defined in section 172 of the Indian Contract Act. 1872.

8.6 Further, "money-lending business" and "business of money-lending" under section 2(14) of the Code mean the business of advancing loans either solely or in conjunction with any other business.

8.7 Keeping in mind the above-mentioned definitions, we would like to rely on the decision of the Hon'ble Bombay High Court in the matter of **Mandubai Vitthoba Pawar vs The State Of Maharashtra & Ors¹**, wherein it was held that:

"11. The above discussion makes it clear that for it to be a business there has to be a continuous and systematic activity by application of labour or skill with a view of earning income when it could be called "business". In order to do business of money lending, it would be necessary for the State to point out multiple activities of money lending done by the petitioner. Merely referring to one isolated transaction claimed to be a loan transaction or money lending would not be enough to show that the petitioner was involved in "business of money lending" without licence. The FIR in the present matter read as a whole does not spell out that the petitioner was doing "business of money lending".

¹ 2015 SCC OnLine Bom 4935

This being so, on the basis of such FIR the prosecution cannot be maintained.”

- 8.8 It is clear from the aforementioned judgment that isolated lending transactions will not fall under the category of money-lending business. For a person to be categorized as money lender, multiple activities of money-lending must be undertaken by such person. In the instant matter, the Corporate Debtor, while contending that the Financial Creditor is not a license-holder under of the Bengal Money Lenders Act, 1940, has failed to prove that the Financial Creditor falls within the category of money lender and habitually carries of the business of money lending, so as to require the said license. As such, the contention of the Corporate Debtor is untenable.
- 8.9 Section 7 (5)(a) of the Code confers discretionary power on the Adjudicating Authority while deciding upon a petition under section 7 of the Code. After perusing the records before us, it is clear that a loan was given by the Financial Creditor to the Corporate Debtor and a financial debt to the tune of ₹1,06,64,641.30/- is due from the Corporate Debtor to the Financial Creditor. *Further, vide* letter dated 16.03.2022 (Page 27 of the petition), the Corporate Debtor has admitted the same and that it is unable to pay the agreed interest or any part of the same. As such the debt is admitted to be due and has been defaulted on.
- 8.10 Regarding the issue whether the claims of the Financial Creditor meet the minimum financial threshold under section 4 of the Code, we would like to refer to section 5(8) of the Code, according to which “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money.
- 8.11 As such, the interest to the tune of ₹56,64,641.30 can be claimed as a part of the financial debt and the cumulative sum of ₹1,06,64,641.30/-, which is above the minimum financial threshold under section 4 of the Code, is due and defaulted upon. Further, the date of default is 30.11.2021. The IRP has

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been nominated by the Financial Creditor. As such, the petition is complete in all respects.

8.12 In these circumstances, we admit this petition and order initiation of CIRP against the Corporate Debtor and we, therefore, pass the following orders:-

- i) The application bearing **CP (IB) No. 131/KB/2022** filed by **Aryan Mining and Trading Corpn Private Limited.** (Financial Creditor), under section 7 of the Code read with rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Progressive Meters Private Limited**, CIN: U33111WB2013PTC197828, the Corporate Debtor, is **admitted**.
- ii) There shall be a moratorium under section 14 of the IBC.
- iii) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- iv) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v) **Mr. Anup Kumar Singh**, registration number **IBBI/IPA-001/IP-P00153/2017-18/10322**, email: **anup_singh@stellarinsolvency.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the

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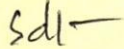
- RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- vi) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- vii) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii) The Financial Creditor shall initially deposit a sum of ₹3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). The fees of the IRP will be decided in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- ix) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- x) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West

In the National Company Law Tribunal,
Kolkata Bench (Court- I)

Aryan Mining an Trading Corporation Pvt. Ltd. vs. Progressive Meters Pvt. Ltd.
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Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

9. **CP (IB) No. 131/KB/2022** to come up on **30.11.2022** for filing the progress report.
10. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.



Balraj Joshi
Member (Technical)



Rohit Kapoor
Member (Judicial)

Signed on this, the 28th day of October, 2022

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