



IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH – II, CHENNAI

CP(IB)/64/(CHE)/2023

(filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of Spica Metfab Solutions India Private Limited

FINISH FUND FOR INDUSTRIAL CORPORATION LIMITED

Porkkalankatu 22A,
001 80 Helsinki, Finland

... Applicant/ Financial Creditor

-Versus-

SPICA METFAB SOLUTIONS INDIA PRIVAT LIMITED

Plot No. C-30, SIPCOT Industrial Park,
Irungattukottai,
Sriperumpudur,
Kancheepuram – 602 105

... Respondent/ Corporate Debtor

Order Pronounced on 04th October 2023

CORAM

SHRI SANJIV JAIN, MEMBER (J)

SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (T)

*For Applicant: Mr. Raj Kumar Jhabakh, Ms. Preeti Mohan,
Ms. Pornima R S, Ms. Ragha Sudha,
Advocates
For J & M Legal*

*For Respondent: Ms. Sharada Vivek, Mr. S. Arun Kumar,
Mr. S. Vedhavel, Advocates*

ORDER

(Hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

1. Under Adjudication is CP(IB)/64/(CHE)/2023, filed by Finnish Fund for Industrial Cooperation Limited (hereinafter referred to



as 'Financial Creditor') under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Spica Metfab Solutions India Private Limited (hereinafter referred to as 'Corporate Debtor'. The prayer made is to admit the Application, to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution professional (IRP).

2. Part-I of the application sets out the details of the Financial Creditor. It is stated that the Financial Creditor is a Company based at Finland incorporated on 03.04.1980 with its identification number as 0356880-6. Part – II of the Application sets out the details of the Corporate Debtor. It is stated that the Corporate Debtor is a private Limited Company incorporated on 23.05.2008 under the provisions of Companies Act, 1956. In Part – III of the Application, the Applicant has proposed the name of one Mr. Arpit Kothari (Reg. No. IBBI/IPA-001/IP-P02140/2020-2021/13287) to appoint as the 'Interim Resolution professional'.
3. An Affidavit verifying the Application has been sworn in by Ms. Veera Maenpaa, in the capacity of authorized Representative of the Financial Creditor. The Board Resolution authorising Ms. Veera Maenpaa is also filed along with the typed set of application.

S. Venkatesh

S. Venkatesh



4. In Part – IV of the Application it is stated that a total sum of Euro 682,335.83 (Euro six hundred eighty-two thousand three hundred thirty-five and eight-three cents only) is due and payable by the Corporate Debtor. It is stated that the above referred sum includes the following,

<i>Sl.no.</i>	<i>Particulars</i>	<i>Amount (In EUR)</i>
1.	Principal Amount	5,40,000.00/-
2.	Interest Amount	1,19,082.23/-
3.	Default Interest Amount	19,530.21/-
4.	Other Fees & Expenses	3,723.39/-
Total		6,82,335.83/-

5. It is stated that the parties had entered into a loan agreement dated 19.02.2009. Under the said loan agreement, the Applicant had sanctioned a sum of Euro 1,500,000.00/- (Euro one million five hundred thousand only) in favour of the Corporate Debtor. It is stated that as per the terms of the loan agreement, the Corporate Debtor was required to repay the loan amount in 12 semi-annual instalments.
6. It is stated that upon multiple requests made by the Corporate Debtor various addendums to the loan agreement were executed rescheduling the timelines for repayment of the loan amount. One such 6th Addendum dated 21.05.2019 was executed between the parties which stipulated certain condition precedents (CP) to be met by the Corporate Debtor. However, the same was waived upon the request of the Corporate Debtor vide a waiver agreement dated 22.03.2021. Under the said waiver agreement,



the Condition Precedent (CP) was modified as to Condition Subsequent (CS) which was to be complied by the Corporate Debtor by 31.12.2021.

7. It is stated that the waiver agreement has a clause mentioning that any failure on the part of the Corporate Debtor to comply with the Condition Subsequent would amount to "Event of default" under the loan agreement.
8. It is stated that despite multiple reminders, the Corporate Debtor did not recognize the condition subsequent (CS) or the payment obligations and therefore under Clause 12 of the Loan Agreement, such non-compliance amounts to 'event of default'.
9. It is stated that the Applicant issued a demand notice on 03.05.2022 seeking repayment of Euro 6,79,812.44 by 10.05.2022. Thereafter, a letter of acknowledgment dated 10.05.2022 was issued by the Corporate Debtor with an unconditional undertaking to pay the outstanding due by 31.07.2022. It is further stated that when a letter dated 18.05.2022 was issued by the Applicant calling the outstanding dues to be paid by 31.07.2022, the Corporate Debtor vide its e-mail dated sought time till 15.09.2022. However, no payment was made by the Corporate Debtor till the date of filing of the instant application.
10. The Applicant has filed the following documents to show that there exists debt & default on the part of the Corporate Debtor:
 - a) *Loan Agreement dated 19.02.2009*
 - b) *1st Addendum to the Loan Agreement dated 05.04.2011*



- c) 2nd Addendum to the Loan Agreement dated 25.11.2013
- d) 3rd Addendum to the Loan Agreement dated 06.08.2014
- e) 4th Addendum to the Loan Agreement dated 27.11.2014
- f) 5th Addendum to the Loan Agreement dated 07.12.2015
- g) 6th Addendum to the Loan Agreement dated 21.05.2019
- h) Waiver request letter issued by the Corporate Debtor to the Financial Creditor dated 21.05.2019
- i) Waiver Agreement dated 11.03.2021
- j) Notice calling the Corporate Debtor to repay the loan amount dated 03.05.2022
- k) Reply by the Corporate Debtor dated 10.05.2022 seeking extension of time till July 2022 to repay the loan
- l) Letter by the Financial Creditor to the Corporate Debtor calling upon the payment to be made before 31.07.2022
- m) Email by the Corporate Debtor seeking time till 15.09.2022 for repayment of the amount due and payable
- n) Record of Default dated 28.12.2022

11. In the instant case, the Financial Creditor was directed to bring on record a copy of the latest Record of default dated 30.05.2023, the same was filed before this Adjudicating Authority vide Dy. No. 2508/20.06.2023 showing “Deemed to be Authenticated”

12. The Corporate Debtor vide its reply dated 18.7.2023 stated that the Corporate Debtor by way of a loan agreement had drawn a sum of EUR 1,200,000 which was to be repaid in 12 semi -annual instalments. It is also stated that the Applicant is charging exorbitant interest rates and does not waive off the interest for the period during covid19 pandemic. The Corporate Debtor has tabulated the payments made by the Corporate Debtor so far on multiple dates and the balance amount to be paid. The table as extracted from the reply is as under,



disbursed by the Financial Creditor to the Corporate Debtor. The amount borrowed was to be settled in 12 semi -annual instalments. However, the same was not honoured by the Corporate Debtor. Thereafter numerous addendums to the loan agreement were entered into between the parties for the purpose of repayment. It is seen that out of the total EUR 1,200,000 the principal amount borrowed, the Corporate Debtor has paid EUR 6,60,000 on multiple tranches and dates. A principal sum of EUR 5,40,000 is due and payable by the Corporate Debtor to the Financial Creditor, which is undisputed. The said undisputed principal as per the table as extracted above produced by the Corporate Debtor shows that the amount in default is more than Rs.1.0 crore which is the minimum statutory threshold. Not moving further, Form D (RoD) issued by the NeSL shows the status of the debt as “Deemed to be Authenticated” as on 28.12.2022, which is as per section 21 of IBBI (IU) Regulations, 2017. The RoD issued by NeSL is as below,

Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated /Disputed/Deemed to be authenticated)	Authentication completed on
(1)	06-12-2022 14:39:10	*DEEMED TO BE AUTHENTICATED Colour Code :YELLOW	28-12-2022 19:39:19

16. At this juncture it is relevant to place reliance upon the Judgement passed by the Hon'ble Supreme Court of India in the matter of *Innovative Industries Limited v. ICICI Bank* reported in ((2018) 1 SCC 407), wherein, it is held that once there is a



default, the application should be admitted. The relevant portion is reproduced below:

“On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

17. In view of the facts stated *supra*, it is clear that the ‘financial debt’ is proved by the Financial Creditor, admitted by the Corporate Debtor and the ‘default’ having been committed by the Corporate Debtor. This Tribunal therefore admits the instant application and order initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

18. 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;

19. However, during the pendency of the 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 the moratorium period.

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A handwritten signature in green ink, appearing to be 'Sankar', located at the bottom right of the page.



(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.

20. The duration of a 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 the



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.

21. The Financial Creditor has proposed the name of **Mr. Arpit Kothari**, having *Reg. No. IBBI/IPA-001/IP-P-02140/2020-2021/13287; Email ID: ak@nirmalandarpit.com* as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 24.11.2023 and has no remarks against him.
22. **Mr. Arpit Kothari**, is appointed as the IRP. He 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 a claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
23. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15, 17, and 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.



24. 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.

25. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come into 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 a 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.

26. Accordingly, the present petition stands **admitted**.



- Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)



- Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)