



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Petition No.: IB 237(PB)/2022**

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 )*

**IN THE MATTER OF:**

**M/s BSFC DISTRIBUTORS PRIVATE LIMITED**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s PILOT MINES & MINERALS PRIVATE LIMITED**

**...Respondent/Corporate Debtor**

**Pronounced on: 28.02.2023**

**CORAM:**

**SHRI RAMALINGAM SUDHAKAR**

**HON'BLE PRESIDENT**

**SHRI AVINASH K SRIVASTAVA**

**HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Akash Srivastava, Advocate.

For the Respondent : None.

**MEMO OF PARTIES**

**M/s BSFC DISTRIBUTORS PRIVATE LIMITED**

CIN: U51109MH2013PTC245727

Having its Registered Office at:

Unit No 21, 4<sup>th</sup> Floor, Air-Conditioned Market Bldg.,

Malviya Marg, Tardeo Main Road, Mumbai City,

Maharashtra-400034

**...Applicant/Financial Creditor**



## VERSUS

### **M/s PILOT MINES & MINERALS PRIVATE LIMITED**

CIN: U14200DL2010PTC202994

Having its registered office at:

13, Mini Market E-Block, East of Kailash,  
New Delhi – 110065.

#### **Also at:**

Corporate Office: 6 Kalandi Building,  
82 Lajpatrai Road, Opp. HDFC Bank,  
Vile Parle West, Mumbai,  
Maharashtra - 400056

**...Respondent/ Corporate Debtor**

#### **Also Corporate Debtor through:-**

##### **1. JIGNESH PATEL INDULAL**

**Address:** A-1101, Rustomjee Adarsh Regal,  
Adarsh Vihar Complex off. Marve Rd., Malad (W),  
Mumbai, Maharashtra – 400064.

**... Director**

##### **2. INDULAL BHUPATRAI PATEL**

**Address:** A-1101, Rustomjee Adarsh Regal,  
Adarsh Vihar Complex off. Marve Rd., Malad (W),  
Mumbai, Maharashtra – 400064.

**... Director**

## **ORDER**

*Per* - **CHIEF JUSTICE (R) RAMALINGAM SUDHAKAR, PRESIDENT**

1. This is a Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by BSFC Distributors Private Limited, (“**Petitioner**”) represented by Mr. Vishal Rajenbhai Jariwala, Director authorized *vide*



Board Resolution dated 25.10.2021, seeking to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Pilot Mines & Minerals Private Limited [CIN: U14200DL2010PTC202994] (“**Corporate Debtor**”).

2. The Corporate Debtor was incorporated on 20.05.2010, under the Companies Act, 1956 and the registered office address is 13, Mini Market E-Block, East of Kailash, New Delhi – 110065. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 28.03.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make payment of a sum of Rs. 1,82,57,108/- (Rupees One Crore Eighty-Two Lacs Fifty-Seven Thousand One Hundred and Eight only) as on 31.03.2021 (“**date of default**”).
4. ***Submission of learned Counsel appearing for the Financial Creditor:***

4.1 The Corporate Debtor is engaged in business of investment in shares, debentures and other securities.

4.2 The Corporate Debtor vide loan application dated 29.01.2021, approached the Financial Creditor through its Director, Mr. Jignesh Patel Indulal with a request for obtaining financial assistance amounting to INR 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) bearing interest rate of 20% per annum for a short span of time.



4.3 On 01.02.2021, the Financial Creditor, after considering the request of Corporate Debtor, gave in-principle approval for the sanction of unsecured loan amounting to Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) bearing interest rate of 20% per annum, to be repaid on or before 31.03.2021 along-with the interest accrued.

4.4 On 03.02.2021, the Financial Creditor and Corporate Debtor executed Inter Corporate Deposit Agreement, for availing loan facility ("Loan Facility") for an amount of Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) from the Financial Creditor. Further, a Demand Promissory Note dated 03.02.2021 was also drawn by Corporate Debtor in favour of Financial Creditor for payment of INR 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) along-with interest @ 20% per annum. A copy of the Inter Corporate Deposit Agreement dated 03.02.2021 and Demand Promissory Note dated 03.02.2021 is annexed to the petition as 'Annexure – 5(colly)'.

4.5 That on 04.02.2021, the loan amounting to Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakh Only) was disbursed by the Financial Creditor vide cheque no. 424090 dated 04.02.2021 drawn on IndusInd Bank Limited, Fort Branch, Mumbai. A copy of the cheque dated 04.02.2021 along-with transaction receipt evidencing disbursement of loan to the Corporate Debtor is annexed to the petition as 'Annexure – 6(colly)'



4.6 That as per the terms and conditions of the said Loan Facility, the principal amount along-with the interest @ 20% per annum amounting to Rs. 1,54,60,274/- (Rupees One Crore Fifty-Four Lakhs Sixty Thousand Two Hundred and Seventy-Four Only) was to be repaid on or before 31.03.2021.

4.7 The Financial Creditor vide letter dated 15.03.2021, intimated the Corporate Debtor about the maturity of the Loan Facility, repayable on or before 31.03.2021 and called upon the Corporate Debtor to repay the entire outstanding of Rs. 1,54,60,274/- (Rupees One Crore Fifty-Four Lakhs Sixty Thousand Two Hundred and Seventy-Four Only) on or before the maturity / due date i.e., 31st March 2021

4.8 On 19.04.2021, the Financial Creditor issued a demand notice to call upon the Corporate Debtor for repayment of entire outstanding loan amounting to INR 1,54,60,274/- (Rupees One Crore Fifty-Four Lakhs Sixty Thousand Two Hundred and Seventy-Four only) within 7 (Seven) days. However, the Corporate Debtor failed to repay the outstanding loan amount within 7 (Seven) days.

4.9 The Corporate Debtor vide letter dated 27.04.2021 admitted the default of non-repayment of outstanding loan amount, which was due and payable on 31.03.2021. Further, the Corporate Debtor also sought time till 31.05.2021 for repayment of the entire outstanding loan amounting to 1,54,60,274/- (Rupees One Crore Fifty-Four Lakhs Sixty Thousand



Two Hundred and Seventy-Four only) on or before 31.05.2021. However, the Corporate Debtor breached and dishonoured the commitment and affirmations made to Financial Creditor in respect of repayment of loan and did not repay the amount on or before 31.05.2021.

4.10 It is submitted that the Corporate Debtor has time and again sought extension for payment of outstanding loan amount and considering the business relation between Financial Creditor and Corporate Debtor, the Financial Creditor has given multiple opportunities to the Corporate Debtor for repayment of the outstanding loan amount. However, no such commitment has been honoured by the Corporate Debtor and the said loan amount is still outstanding.

4.11 The Financial Creditor vide demand notice dated 01.11.2021 issued final intimation to the Corporate Debtor for repayment of outstanding loan as on 31.10.2021 amounting to Rs. 1,72,41,215/- (Rupees Seventy-Two Lakhs Forty-One Thousand Two Hundred and Fifteen only) on immediate basis. However, till date no amount has been repaid by the Corporate Debtor to the Financial Creditor in lieu of the unsecured loan facility provided.

4.12 As on 31.01.2022, the Corporate Debtor is liable to pay to the Financial Creditor a total sum of INR 1,82,57,108/- (Rupees One Crore Eighty-Two Lakh Fifty-Seven Thousand One Hundred and Eight only) (ie.,



Principal amount of Rs. 1,50,00,000 alongwith interest amounting to Rs. 32,57,108/-).

**5. The Financial Creditor has placed the following documents on record:**

- a. Copy of the Inter Corporate Agreement Deposit dated 03<sup>rd</sup> February, 2021 and Demand Promissory Note dated 03.02.2021 – Annexure – 5(colly)
  - b. Copy of Cheque No. 424090 dated 04.02.2021 drawn on IndusInd Bank Limited along-with transaction receipt evidencing disbursement of loan to Corporate Debtor – Annexure – 6(colly)
  - c. Copy of bank statement of Financial Creditor maintained by IndusInd Bank Limited along-with the statement of account of Corporate Debtor maintained by Financial Creditor – Annexure – 10 (colly)
6. The Financial Creditor has proposed the name of Mr. Kunwarpreet Singh, registration number IBBI/IPA-002/IP-N01150/2021-2022/13788 as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration. The written communication of IRP is annexed as Annexure – 14 (colly).



**7. Corporate Debtor filed its reply on 19.04.2022. The averments made in the reply are as follows:**

- 7.1 Admittedly, it is a fact on record that the Respondent vide an Application dated 29.01.2021 approached the Petitioner/Applicant for availing an unsecured loan for 2 (Two) Months, i.e. from 01.02.2021 to 31.03.2021, amounting to Rs. 1,50,00,000/- (One Crore Fifty Lakhs Only) at the interest of 20% per annum.
- 7.2 The said application was approved by the Petitioner/Applicant and accordingly an "Inter Corporate Deposit Agreement" was executed and signed on 03.02.2021 between the said parties in the present matter, a copy of the same has already been filed by the Petitioner.
- 7.3 The said loan amount was disbursed in the favour of the Corporate Debtor vide Cheque No. 424090 dated 04.02.2021, drawn on Indusland Bank Limited, Fort Branch, Mumbai.
- 7.4 It is evident and a matter of fact on record that the said loan amount was to be paid on or before 31 of March, 2021, however, due to inconsistencies in the Cash Flow, the Respondent was helpless and further was unable to pay the said loan amount.
- 7.5 It is further submitted that the Corporate Debtor is willing to settle the said payment pending towards the Financial Creditor and is working out constantly to settle the same.



7.6 Further it is submitted that the Respondent is a Solvent Company and thereby, this Tribunal may consider the same and grant time in regard to settling the said Debt pending against the Respondent. A True Copy of the Balance Sheet of the Respondent Company dated 31.03.2021 is marked and annexed to the reply as 'Annexure R-2'.

7.7 In the interest of justice the Corporate Debtor seeks time to settle the said dispute and accordingly file the Settlement Agreement before this Tribunal if the matter is settled.

### ***Analysis and Findings***

8. We have heard the learned Counsel for Financial Creditor. Further, on perusal of the records, it is clear that the facts and figures of this case are not in dispute.

9. As the nature of the loan extended by the Financial Creditor in the present case is that of a 'Inter Corporate Loan', it attracts Section 186, 179 & 117 of the Companies Act, 2013. Accordingly, this Adjudicating Authority *vide* a clarification order dated 19.09.2022 issued a direction to the Financial Creditor to answer certain questions. The relevant part of the order dated 19.09.2022 passed by this Adjudicating Authority is extracted below:

*1) This petition is filed under section 7 of Insolvency & Bankruptcy Code, 2016, the nature of financial debt being in the form of Inter Corporate Deposit. This attracts section 186, 179 & 117 of*



Companies Act, 2013. Kindly provide a **certified true copy of the Board Resolution** passed at the meeting of the Board duly complying with Section 179 (e) & (f) and Secretarial Standard-1.

Reference:

**179. Powers of Board**

(3) The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely: —

(e) to invest the funds of the company;

(f) to grant loans or give guarantee or provide security in respect of loans

2) Kindly Provide duly audited **Financial Statements** accompanied by notes to accounts of the Company for the financial years 2020-21 & 2021-2022 so as to ensure compliance of section 186 (2).

Reference:

**186. Loan and investment by company.**

(2) No company shall directly or indirectly —

(a) give any loan to any person or other body corporate;

(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and

(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent of its free reserves and securities premium account, whichever is more.

3) In case the Company has extended the loan exceeding the limits as stated in Section 186(2), kindly provide a **certified true copy of**



**Special Resolution** passed at the meeting of shareholders of the company.

- 4) Further, as per section 117 (1) read with sub section(3)(a), kindly provide a copy of the MCA form **MGT-14**, which should be filed within 30 days of passing a special resolution, if applicable.

Reference:

**117. Resolutions and Agreements to be Filed**

(1) A copy of every resolution or any agreement, in respect of matters specified in sub-section (3) together with the explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed, shall be filed with the Registrar within thirty days of the passing or making thereof in such manner and with such fees as may be prescribed

(3) The provisions of this section shall apply to—

(a) special resolutions; ”

10. Abiding by the order dated 19.09.2022, the Financial Creditor filed an affidavit dated 24.09.2022 and placed the following documents on record:

- a. Copy of the Audited Financial Statements of the Financial Creditor for the financial year 2020-2021. (Annexure-A2)
- b. Certified Copy of the Board Resolution passed in the meeting of Board of Directors of the Financial Creditor dated 26.12.2020. (Annexure – A3)



- c. Certified copy of the Special Resolution passed in the EGM of shareholders of the Financial Creditor dated 27.01.2021. (Annexure – A4)
- d. Copy of E-Form MGT-14 alongwith the special resolution together with the explanatory statement. (Annexure – A5 Colly).
11. On perusal of the records, we find that the loan extended in the nature of Inter Corporate Loan by the Financial Creditor to the Corporate Debtor is in compliance with the provisions of the Companies Act.
12. The Corporate Debtor admits the debt and default and the same can be established from paragraphs 6 to 9 of the reply filed by the Corporate Debtor.
13. The Corporate Debtor has also taken a plea of commercial solvency of the Corporate Debtor which, in our view, is not of relevant consideration as an application filed U/s 7 of IBC, 2016 can be admitted once there is a debt which is due and payable and there is a default in repayment thereof and these conditions are satisfied in the present case as upon default committed by the Corporate Debtor the right of the Financial Creditor is triggered to proceed against the Corporate Debtor.
14. We observe that the loan application of the Corporate Debtor is dated 29.01.2021 where as the Board Resolution passed by the Board of the Financial Creditor is dated 26.12.2020 and the Special Resolution



passed at the EGM of the shareholders of the Financial Creditor is dated 27.01.2021. There is no whisper as to how the Financial Creditor anticipated a future loan application by the Corporate Debtor and passed the required resolutions in advance. It is also seen that the MCA form MGT-14, a copy of which was sought by this Adjudicating Authority vide clarification order *supra*, was filed by the Corporate Debtor on 19.09.2022 with a late fee of Rs. 3600/- (Rupees Three Thousand Six Hundred only). Pertinently, 19.09.2022 also happens to be the day on which clarification order was passed by this Adjudicating Authority.

15. Be that as it may, the present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code.

**ORDER:**

16. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

a. The application bearing **CP (IB) No. 237(PB)/2022** filed by **BSFC Distributors Private Limited**, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP



against ***Pilot Mines & Minerals Private Limited***, the Corporate Debtor, is ***admitted***.

- b. There shall be a moratorium in terms of section 14 of the IBC.
- c. 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.
- d. 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.
- e. Mr. **Kunwarpreet Singh**, registration number IBBI/IPA-002/IP-N01150/2021-2022/13788, email: ***singhkunwar2012@gmail.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 for 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 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.

- f. 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 Code. 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. There shall be no further opportunities in this regard.
- g. The IRP is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. The Financial Creditor shall deposit a sum of **Rs 2,00,000/- (Rupees Two Lakhs 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).



- j. In terms of section 7(7) of the Code, the Registry of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, NCR, New Delhi, by all available means for updating the Master Data of the Corporate Debtor. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.
17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-  
**(RAMALINGAM SUDHAKAR)**  
**PRESIDENT**

Sd/-  
**(AVINASH K SRIVASTAVA)**  
**MEMBER, TECHNICAL**