

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

**CP (IB) No. 223/MB-IV/2023**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Sheeba Rajan Through POA Sudhir  
Bhagwat**

...Financial Creditor

V/s

**Trans Tech Turnkey Private Limited**

[CIN: U29299PN2002PTC017079]

...Corporate Debtor/Respondent

Order Dated: 25.07.2023

*Coram:*

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Ms. Prachi Wazalwar a/w Mr.  
Nausher Kohli, Advocates.

For the Respondent(s) : Mr. Krishnakant Pandey.

***Per - Kishore Vemulapalli, Member Judicial***

1. This is an Application being C.P. (IB) No. 223/MB/C-IV/2023 filed on 18-01-2023 by Ms. Sheeba Rajan, the Financial Creditor Through POA

Holder, Mr. Sudhir Bhagwat, vide POA dated 10.12.2022, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Trans Tech Turnkey Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

1.1. The total amount of debt claimed in Part 4 of the Petition is Rs.1,50,00,000/-. The date of default in repayment of debt as mentioned in the Part 4 of the Petition is 01.04.2018.

1.2. The ledger account of the Financial Creditor in the books of Corporate Debtor is filed alongwith the Petition.

2. The Corporate Debtor had approached the Financial Creditor in the year 2014 for seeking financial assistance and in lieu of the same, the Financial Creditor provided an unsecured loan of Rs.11,00,00,000/- (Rupees Eleven Crore Only) which was disbursed in tranches i.e. Rs.10,00,00,000/- on 30.08.2014 and Rs.1,00,00,000/- on 20.12.2014 aggregating to a total of Rs.11,00,00,000/-.

2.1 As per the mutual understanding between the parties, the debt amount as granted by the Financial Creditor to the Corporate Debtor was to be repaid on or before the expiry of 2 years from the date when the loan amount was disbursed. Therefore, the said amount was to be repaid on or before 20.12.2016.

2.2 The Corporate Debtor has repaid an amount of Rs. 9,50,00,000/- (Rupees Nine Crore Fifty Lakh Only) in tranches. Last such payment of Rs. 50,00,000/- was received on 08.12.2016 by the Financial Creditor.

2.3 The Petitioner has been requesting the Corporate Debtor to make the payment of debt due, time and again, however, no payment has been

received by the Financial Creditor against the debt so due. The Corporate Debtor has continued to admit its liability by sharing the Ledger account of the Petitioner in the books of the Corporate Debtor and acknowledged the debt due. However, despite such acknowledgement received on 01.04.2018, the Corporate Debtor failed and neglected to make payment, thereby making it last date of default.

- 2.4 The Financial Creditor states that a Company Petition No. 33 of 2016 was preferred and filed against the Corporate Debtor by one M/s. Flaktwoods ACS (India) Private Limited, before the Hon'ble High Court of Judicature at Bombay under Section 271 of the Companies Act, 2013 for winding up of the Corporate Debtor and by virtue of order dated 19.04.2018, the Hon'ble High Court passed an order for winding up of the Corporate Debtor. The Financial Creditor submits that till date no developments have taken place in the liquidation process of the Corporate Debtor under the Companies Act, 2013.
- 2.5 The Financial Creditor understands that the Corporate Debtor is a valuable company; there are investors willing to invest in the company; that the Corporate Debtor will get a better value and will be able to maximize the value if it is sold as a going concern. The Petitioner further has come to know if a resolution is given considering the business of the Corporate Debtor, there are prospective Applicants /Company(s) who are interested in resolution of the Corporate Debtor. There is a chance that it will ensure maximisation of value of creditor and the majority of the creditors of the Corporate Debtor be paid off.
- 2.6 The Financial Creditor has relied upon the decision of the Hon'ble Apex Court in the matter of *A. Navinchandra Steels Pvt. Ltd. v. SREI Equipment Finance Ltd (Civil Appeal Nos. 4230-4234 of 2020)*, held that

*".....Section 7 is an independent proceeding, as has been held in catena of judgments of this Court, which has to be tried on its own merits. Any "suppression" of the winding up proceeding would, therefore, not be of any effect in deciding a Section 7 petition on the basis of the provisions contained in the IBC. Equally, it cannot be said that any subterfuge has been availed of for the same reason that Section 7 is an independent proceeding that stands by itself..... a discretionary jurisdiction under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 cannot prevail over the undoubted jurisdiction of the NCLT under the IBC once the parameters of Section 7 and other provisions of the IBC have been met."*

2.7 Therefore, the judgement as aforesaid makes it amply clear that an application for initiation of Corporate Insolvency Resolution Process ("CIRP") under Section 7 or 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC" or "Code") to be independent proceedings which shall remain unaffected by the winding-up proceedings filed by the same company. The Financial Creditor is seeking admission of the Corporate Debtor into CIRP proceedings to enable to find a resolution for the Corporate Debtor which will ensure maximisation of value for the Petitioner and other creditors

3. The Corporate Debtor has failed to file reply in the present petition.
4. We have carefully gone through the pleadings available on records and considered the arguments of both the sides.

4.1. We find that there exists a "financial debt" within the meaning of Sec. 5(8) of the Code, in repayment of which the corporate debtor has defaulted. The Corporate Debtor has admitted the

said debt in the ledger of the Financial Creditor maintained by it on 01.04.2018.

- 4.2. We are of the considered view that the Apex Court in the case of “*A Navinchandra Steels*” (*supra*) held that “*A conspectus of the aforesaid authorities would show that a petition either under Section 7 or Section 9 of the IBC is an independent proceeding which is unaffected by winding up proceedings that may be filed qua the same company. Given the object sought to be achieved by the IBC, it is clear that only where a company in winding up is near corporate death that no transfer of the winding up proceeding would then take place to the NCLT to be tried as a proceeding under the IBC. Short of an irresistible conclusion that corporate death is inevitable, every effort should be made to resuscitate the corporate debtor in the larger public interest, which includes not only the workmen of the corporate debtor, but also its creditors and the goods it produces in the larger interest of the economy of the country. It is, thus, not possible to accede to the argument on behalf of the Appellant that given Section 446 of the Companies Act, 1956 / Section 279 of the Companies Act, 2013, once a winding up petition is admitted, the winding up petition should trump any subsequent attempt at revival of the company through a Section 7 or Section 9 petition filed under the IBC. While it is true that Sections 391 to 393 of the Companies Act, 1956 may, in a given factual circumstance, be availed of to pull the company out of the red, Section 230(1) of the Companies Act, 2013 is instructive.*” Accordingly, the maintainability of the Section 7 application under the Code came to be upheld even if there has been an admission of a winding up petition under the Companies Act against the Corporate Debtor as is the case in the present case.

4.3. We find that there exists a debt and default of the said debt on the part of the Corporate Debtor, and such debt falls within the definition of "Financial Debt" u/s. 5(8) of the Insolvency and Bankruptcy Code, 2016. A financial debt is defined under Section 5(8) of the IBC to mean:

*"a debt alongwith interest, if any, which is disbursed against the consideration for time value of money and includes-*

- a) Money borrowed against payment of interest;*
- b) Any amount raised by acceptance under any acceptance credit facility or its de-materialized equivalent;*
- c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- e) Receivable sold or discounted other than any receivable sold on non-recourse basis;*
- f) Any amount raised under any other transaction, including, any forward sale or purchase agreement, having the commercial effect of borrowing;*
- g) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- h) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause"*

4.4. Though, the date of default is stated to be 01.04.2018 in the Part 4 of the Petition, however, it is stated in Part 4 that the last payment was received on 08.12.2016 as on when the Corporate Debtor had repaid a total amount of 9.5 crores. The said loan was to be repaid within 3 years as per averment in Part 4, accordingly, the amount became in default on 29.08.2017 in so far as Rs. 50,00,000 is concerned and on 19.12.2017, so far as Rs. 1,00,00,000 is concerned. The Corporate Debtor has acknowledged the debt vide a copy of account of the Financial Creditor for a period 01.04.2014 to 01.04.2018 enclosed with the petition. Accordingly, the limitation expires on 31.03.2021, however, the Applicant has placed on record one order dated 19.04.2018 passed by the Hon'ble Bombay High Court in Company Petition No. 33 of 2016 admitting the Corporate Debtor into winding up under the Companies Act. Accordingly, the proceedings could not have been taken up against the Corporate Debtor. However, upon coming across the decision in the case of A. Navinchandra (Supra), the Petitioner realised that the petition under Section 7 for revival of the Corporate Debtor shall have precedence over the winding up proceedings presently undergoing in the case of the Corporate Debtor. Besides it, the Hon'ble Supreme Court in its order in the matter of "Court on its motion" has allowed extended period of limitation. Further, the present Application seeks to revive the Corporate Debtor, the delay if any, may be condoned u/s 5 of the Limitation Act on the ground that winding up exercise was in process and the Applicant was under bonafide belief that in view of commencement of the said winding up, the Corporate Debtor could not be brought under IBC. In view of this, this Bench holds that the present Petition under section 7 filed by the

- Financial Creditor to initiate the CIRP is within the period of limitation.
- 4.5. On perusal of the documents submitted by the Applicant, it is clear that a 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 as the required threshold limit u/s 4 of the Code to file a petition u/s 7 of the Insolvency and Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount.
- 4.6. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 7(5)(a) of the Insolvency And Bankruptcy Code, 2016.
5. The Applicant has proposed the name of Mr. Neehal Mahamulal Pathan, a registered insolvency resolution professional having Registration Number - IBBI/IPA-001/IP-P-01561/2018-2019/12406 and Email Id- ca.neehal@gmail.com; and has submitted his consent letter dated 05.01.2023 u/s. 7 (3)(b) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

### **ORDER**

This Application being C.P. (IB) No. 223/NCLT/MB/C-IV/2023 filed under Section 7 of I&B Code, 2016, filed by Ms. Sheeba Rajan Through POA- Mr.Sudhir Bhagwat, Financial Creditor against Trans Tech Turnkey Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process 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.
  - e) 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.
- II. 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.

- III. 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.
- IV. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- V. That this Bench hereby appoints Mr. Neehal Mahamul Pathan, a registered insolvency resolution professional having Registration Number - IBBI/IPA-001/IP-P-01561/2018-2019/12406 and Email Id- ca.neehal@gmail.com 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.
- VI. The Financial Creditor shall deposit a sum of Rs.2,00,000/- (Rupees two lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- VII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- VIII. 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 WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar  
Member (Technical)  
/LRA-Akshata Shah/

Sd/-

Kishore Vemulapalli  
Member (Judicial)