



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – II**

CP (IB)/613/MB/2024

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

EDUSKILL LEARNING PVT. LTD.,

Registered office: W-21 Green Park,
New Delhi- 110016.

CIN: U51909DL20003PTC119801

..... Applicant/ Financial Creditor

Versus

**SILVER – EAST INFRASTRUCTURE
PVT. LTD.**

Registered office: Shop No. G-48, The Zone Building, C.T.S. 655, 656, Chandavarkar Road, Borivali-West, Mumbai Maharashtra-400092.

.... Corporate Debtor

Order Delivered on :30/01/2025



Coram:

HON'BLE ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

HON'BLE K. R. SAJI KUMAR
MEMBER (JUDICIAL)

Appearances: Hybrid

For the Financial Creditor : Adv. Prakhar Tandon a/w Adv.
Sophia Hussain i/b Adv. Mily Ghoshal
For the Corporate Debtor : Adv. Avinash R. Khanolkar a/w Adv.
Surekha Yadav and Adv. Khushbu
Bhanushali

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. This Company Petition (Application) is filed by M/s. Eduskill Learning Private Limited, ("Financial Creditor") seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Silver-East Infrastructure Private Limited. ("Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Application was filed on 30.07.2024 claiming an amount of Rs.15,86,91,658/- (Fifteen Crore, Eighty-Six Lakh, Ninety-One




Thousand, Six Hundred and Fifty-Eight Rupees), out of which the principal outstanding is Rs. 6,81,00,000/-and interest on the principal outstanding is Rs. 9,05,91,658/-.

Contentions of Applicant

3. The details of the transactions leading to the filing of this Application as averred by the Financial Creditor are as follows:
 - a) In the year 2015, the Financial Creditor was interested in acquiring contiguous private land measuring a minimum of 18 acres in either Pen, Uran, or Panel Talukas of Raigadh district in the State of Maharashtra for the purposes of setting up an educational institute.
 - b) Since the Corporate Debtor is in the business of infrastructure development and familiar with the land acquisition process including obtaining all required statutory approvals, the Financial Creditor approached the Corporate Debtor for assistance in obtaining suitable land. It was agreed between the parties that the Corporate Debtor would acquire the required land, and for that, the Financial Creditor would pay an agreed amount to the Corporate Debtor as commission.



- c) The Corporate Debtor and Financial Creditor entered into a Memorandum of Understanding (MOU) on 18.08.2015 as per which the Corporate Debtor has to identify and acquire contiguous private land, enter into a memorandum of understanding with each prospective seller, facilitate execution of sale deed in favour of the Financial Creditor and ensure handing over of clear, vacant and peaceful possession of land within 36 months of the MOU.
- d) It was agreed in the MOU that the Financial Creditor shall pay an “Initial Advance Amount” of Rs.6,81,00,000/- to the Corporate Debtor within 15 days from the date of the MOU to commence the acquisition process. It was also agreed that the entire process of acquisition till handing over of the land to be completed within 36 months from the date of MOU and in case the Corporate Debtor fails to complete the same within 36 months, the Initial Advance Amount will be treated as an Inter Corporate Deposit and the Corporate Debtor would be liable to refund the entire amount along with the simple interest of 15% p.a. from the date of disbursement till the actual date of repayment.
- e) The Financial Creditor complied with its obligations under the MOU and disbursed the Initial Advance Amount of Rs.




6,81,00,000/- (Six Crore Eighty-One Lakhs Rupees) *vide* Cheque No. 31884 dated 21.08.2015.

- f) The Corporate Debtor in its letter dated 02.08.2018 stated that they were making good progress in acquiring the land and sought an extension of time till February 2020 for fulfilling its obligations with respect to the acquisition of land. Despite the said extension, the Corporate Debtor was unable to fulfil its obligation with respect to the acquisition of land. The Financial Creditor, therefore, by its letter dated 03.03.2020, called upon the Corporate Debtor to repay the Initial Advance Amount along with interest at 15% from the date of disbursement. However, more time was sought by the Corporate Debtor *vide* its letters dated 05.03.2020 and 25.08.2020 to complete its obligations. As per the representations made by the Corporate Debtor, the Financial Creditor granted time until 31.12.2020.
- g) Despite multiple extensions, the Corporate Debtor failed to discharge the obligations or repay the amount. The Corporate Debtor finally requested the Financial Creditor for an amicable full and final settlement of the Initial Advance Amount and to waive the interest.



- h) With a view to bringing about a speedy resolution, the Financial Creditor and the Corporate Debtor executed a Settlement Agreement on 05.01.2021, wherein it was agreed that a sum of Rs. 6 Crore would be paid as full and final settlement out of which Rs. 3 Crore was to be paid on or before 31.08.2021 and the remaining Rs. 3 Crore on or before 30.11.2021. It was decided that failure on the part of the Corporate Debtor to make payment of the Settlement Amount within the stipulated period under the Settlement Agreement would be considered to be the Corporate Debtor's Event of Default. The consequence of such default was that the Financial Creditor would be entitled to recover and the Corporate Debtor would be obligated to repay the entire Initial Advance Amount under the MOU along with interest thereon at 15% p.a. from the date of disbursement (i.e., 21.08.2015) of the same till the date of its actual payment.
- i) The Corporate Debtor failed to make payment of the first instalment of the Settlement amount by 31.08.2021. The Financial Creditor, therefore issued a notice to the Corporate Debtor on 03.09.2021, calling upon the Corporate Debtor to make payment of the entire Initial Advance Amount of Rs. 6,81,00,000/- along with



interest of Rs. 6,16,53,822/- thereon calculated at 15% p.a. from date of disbursement i.e., 21.08.2015 till 31.08.2021, by 18.09.2021.

The Corporate debtor again failed to make the payment and the Financial Creditor once again issued another letter on 21.09.2021 calling upon the Corporate Debtor to make payment of the outstanding financial debt.


- j) The Financial Creditor called upon the Corporate Debtor to confirm the outstanding Initial Advance Amount as of 31.03.2022. By a hand-written notation, the outstanding Initial Advance Amount of Rs.6,81,00,000/- was confirmed by the Corporate Debtor as due and payable as on 31.03.2022.
- k) The Financial Creditor further issued a Demand Notice calling upon the Corporate Debtor to make payment of the entire Initial Advance Amount of Rs. 6,81,00,000/- along with interest of Rs.9,05,91,658/- thereon calculated at 15% p.a. from date of disbursement i.e., 21.09. 2015 till 30.06.2024, by 18.07.2024. The Corporate Debtor still failed to make the payment. Hence, this Application.



Contentions of Respondent


4. The Respondent filed its Reply Affidavit raising the following contentions:

- a. The Application is not maintainable and is nothing but a proceeding for recovery of its amount. There are various decisions by the Hon'ble Supreme Court and Hon'ble NCLAT holding that the summary jurisdiction of this Tribunal cannot be invoked to seek specific performance of the terms of the inter-se agreement entered between the parties.
- b. The present Company Petition is barred by limitation. The Corporate Debtor sought multiple extensions for repayment of the Initial Advance Amount and the same were granted till 31.12.2020. The first date of default is therefore 01.01.2021. As per the provisions of Section 238 of the Code, the period of limitation to institute the Application ended on 31.12. 2023. However, the Application was filed sometime in July 2024. Therefore, it is barred by limitation.
- c. The board resolution annexed with the Application does not provide any specific authority for the signatory to initiate the



Insolvency Proceedings against the Respondent and hence the it is not maintainable and therefore deserves to be dismissed.

- d. The Application is preferred under Section 7 of the Code under the pretext that the Applicant is a financial creditor of the Corporate Debtor. However, the transaction entered into between the Applicant and the Corporate Debtor is of the nature of services.
- e. The MOU was entered into for providing services and the payment was made against the service that had to be provided by the Corporate Debtor. Even if it is claimed that the Respondent has failed to repay the advance received from the Applicant, the said claim falls under category of the operational debt and therefore, the Applicant falls under the definition of operational creditor as per the provisions of the Code.
- f. As per the definition of “financial debt” provided under the Section 5 (8) of the Code, the alleged debt does not qualify as financial debt. The alleged debt does not have any commercial effect of borrowing or meeting its working capital requirements. The transaction as entered between the parties is in the nature of services which the Respondent offered to the Applicant. Therefore, even if there is



default occurred qua the Respondent, it will not change the nature of the transaction.

- g. The Corporate Debtor had tried to fulfil its obligation under the MOU, however, the lands found by the Respondent were not acceptable to the Applicant.
- h. The documents provided by the Applicant are not stamped and registered as per provisions of the Maharashtra Stamp Act, 1958, and Section 17 of the Registration Act, 1908. Therefore, the documents cannot be relied upon by the Tribunal as a piece of evidence in respect of the alleged claim.
- i. The Respondent further submits that the intention of the Code is revival of the Companies and the Applicant should not approach the Tribunal for recovery of the amount. The Corporate Debtor is ready to pay the outstanding amounts to the Applicant, and as such, there is no need to initiate CIRP against the Respondent.

Analysis and Findings

- 5. We have heard the Counsel for the Applicant –Financial Creditor and the Respondent-Corporate Debtor. We have also gone through the pleadings and the records.



6. There is no dispute between the parties regarding the facts that the Applicant advanced an amount of Rs.6,81,00,000/- to the Corporate Debtor to assist in acquiring a suitable contiguous private land measuring a minimum of 18 acres in Pen, Uran, Panvel Taluka of Raigadh District in the State of Maharashtra, pursuant to the MOU entered into between the parties on 18.08.2015. The Initial Advance Amount comprises Rs.6,75,00,000/- as a 25% advance of Rs.27 Crore for 18 acres of land, considering an average price @ 1.50 crore per acre; Rs.5,00,000/- as a 10% advance payment; and Rs.1,00,000/- for the advance reimbursement of out of pocket expenses. The MOU clearly states that, if the Respondent fails to acquire and hand over the land to the Applicant, the entire Initial Advance Amount of Rs.6,81,00,000/- shall be considered as an Inter-Corporate Deposit right from the date of disbursement of the same, which on demand shall be repayable by the Respondent along with simple interest of 15% per annum from the date of disbursement. The time stipulated in the MOU was 36 months which, on the request of the Respondent, was extended to 18.02.2020. Despite this extension, the Corporate Debtor failed to fulfil its obligations.
7. As a result, the Applicant, in its letter dated 03.03.2020 demanded return of the Initial Advance Amount along with interest at 15% per annum



from the date of disbursement. The time for return of the advance amount was extended several times and ultimately, a Settlement Agreement was entered into on 05.01.2021. According to the Settlement Agreement, Rs.3 Crore was to be paid on or before 31.08.2021, with the remaining Rs.3 Crore due on or before 30.11.2021. However, the Corporate Debtor has not fulfilled its obligation to return Rs.6 crores as outlined in the Settlement Agreement. Consequently, due to the failure to pay, the Applicant is claiming the entire amount along with interest at 15% from the date of advance, in accordance with the Settlement Agreement.

8. In the above backdrop, the primary contention of the Respondent is that the advance was made against the service that had to be provided by the Corporate Debtor and hence the claim falls under the category of operational debt and does not meet the definition of financial debt under the Code.
9. Before embarking upon the contention of the Respondent with respect to the nature of the present transaction, we may notice the definitions of 'financial debt' and 'operational debt' under the Code and the law laid down by the Courts. According to Section 5(7) of the Code, a person can be categorised as a financial creditor if a financial debt is owed to it.



Section 5(8) of the Code, stipulates that the essential ingredient of a financial debt is disbursal against the consideration for the time value of money. The Hon'ble Supreme Court in *Swiss Ribbons (P) Ltd. Vs. Union of India* [(2019) 4 SCC 17] elaborated on the distinctions between these debts as under:

“42. A perusal of the definition of “financial creditor” and “financial debt” makes it clear that a financial debt is a debt together with interest, if any, which is disbursed against the consideration from time value of money. It may further be money that is borrowed or raised in any of the manners prescribed in Section 5(8) or otherwise, as Section 5(8) is an inclusive definition. On the other hand, an “operational debt” would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.”

10. In *Pioneer Urban Land & Infrastructure Limited Vs. Union of India* [(2019) 8 SCC 416], the Hon'ble Supreme Court has interpreted the term disbursal. It held that *“The expression “disbursed” refers to money which has been paid against consideration for the “time value of money”. In short, the “disbursal” must be money and must be against consideration for the “time value of money”, meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money.”*



11. The report of the Insolvency Law Committee dated 26.03.2018 has discussed the interpretation of the term “time value of money” and stated:

“1.4. The current definition of “financial debt” under Section 5(8) of the Code uses the words “includes”, thus the kinds of financial debts illustrated are not exhaustive. The phrase “*disbursed against the consideration for the time value of money*” has been the subject of interpretation only in a handful of cases under the Code. *The words “time value” have been interpreted to mean compensation or the price paid for the length of time for which the money has been disbursed. This may be in the form of interest paid on the money, or factoring of a discount in the payment.*”

12. An operational creditor, as defined under Section 5(20) of the Code, refers to “any person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”. An operational debt, according to Section 5(21) of the Code is described as “a claim in respect of the provisions of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.



13. In the case of *Global Credit Capital Limited Vs. Sach Marketing Pvt. Ltd*, the Hon'ble Supreme Court emphasized the importance of examining the real nature of the transaction to determine whether a debt arising from a written agreement for services qualifies as an operational debt or a financial debt. In the present case, we notice that the nature of the transaction envisaged under the MOU involves the provision of services – specifically, assisting with the acquisition of land and ensuring the return of the advance along with interest if the service is not provided. The MOU also states that, in the event of failure to provide the service, the initial advance amount of Rs. 6,81,00,000/- should be treated as an Inter Corporate Deposit, to be refunded along with simple interest of 15% per annum from the date of disbursement till the actual date of repayment. It is pertinent to note that the advance amount is not intended as a commission/fee for the services to be rendered by the Corporate Debtor, rather it is meant to fund the acquisition of land for the Applicant. Hence, the amount disbursed as advance cannot be considered as payment for services. Further, the advance paid by the Applicant is liable to be returned in case of failure to acquire the land, together with interest from the date of its advance till the date of payment. Given these conditions, it is clear that the criteria of disbursement and the time value of money are satisfied and thus, the



debt owed by the Corporate Debtor qualifies as financial debt within the meaning of Section 5(8) of the Code.

14. Having established that the debt owed by the Corporate Debtor to the Applicant qualifies as a financial debt, we may consider the next contention of the Respondent that the present Application is barred by limitation. As per the MOU dated 18.08.2015, the Corporate Debtor was required to facilitate the acquisition of property within 36 months of the MOU, i.e., on or before 17.08.2018. Pursuant to the request made by the Respondent in its letter dated 02.08.2018, the Applicant extended time till 31.12.2020. Subsequently, the parties entered into the Settlement Agreement on 05.01.2021, as per which, an amount of Rs. 3 Crore was to be paid on 31.08.2021, and a further amount of Rs.3 Core, on 30.11.2021. On account of the failure of the Respondent to adhere to the Settlement Agreement, the Applicant filed the Application on 24.08.2024. Thus, we notice that the present Application is filed within 3 years from of the due dates specified in the Settlement Agreement. Given the execution of a Settlement Agreement dated 05.01.2021, which outlines specific payment dates, we do not find any justification for calculating the period of limitation from an earlier date, as argued by the



Respondent. Having regard to the above, we have no hesitation to hold that the Application is filed well within the period of limitation.

15. So far as the contention of the Respondent that the signatory in the Application is not duly authorised to initiate insolvency process against the Respondent, it has been observed that the Board of Directors of the Applicant Company authorised Mr. Gyaneshwar Singh, the director in its board meeting held on 12.03.2024. This authorisation allows him to *“file, plead, appear for, prosecute defend any kind of suit, petition, legal proceeding before any judicial authority/forum in India including but not limited to small causes court, NCLT, NCLAT, High Court, Supreme Court, any Tribunal including appellate tribunal and in connection/relation thereto, do all other acts, deeds as may deem necessary and proper”*. Therefore, we see no merit in the Respondent’s argument that the person who signed the Application lacks the authority to initiate insolvency process against the Respondent.

16. No other points have been raised on behalf of the Corporate Debtor. On the basis of the discussions, it is evident that the Corporate Debtor has failed to return the advance amount, which is a financial debt, and, therefore, the existence of debt and default stands established. Further, the Application has been filed within the period of limitation. The




amount of debt exceeds the threshold limit of Rs.1 Core prescribed under Section 4 of the Code. Therefore, we find it to be a fit case for admission under Section 7 of the Code.

ORDER

The above Company Petition No. (IB) 613/(MB)/2024 is hereby admitted and initiation of the Corporate Insolvency Resolution Process (CIRP) is ordered against **Silver-East Infrastructure Pvt. Ltd.**

- a. This Bench hereby **appoints Mr. Amrish N. Gandhi**, an Insolvency Professional having Registration No: **IBBI/IPA-002/IP-N00670/2018-2019/12036 as the Interim Resolution Professional (IRP)** having his address at 504, Shivalik Abaise, Nr. Anand Nagar Bus Stand, Opp. Shell Petrol Pump, Anand Nagar Road, Satellite Ahmedabad 380015 Email id: **amrishgandhi72@gmail.com** to carry out the functions as mentioned under the Code.
- b. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- c. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- d. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- e. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of CIRP or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- f. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- g. During the CIRP period, the management the Corporate Debtor will vest in the IRP/RP, as the case may be. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP, in default of which coercive steps shall be taken.



- h. In exercise of the powers under Rule 11 of the NCLT Rules, we order the Financial Creditor to deposit an amount of **Rs.3,00,000/-** (Three Lakh Rupees) towards the **initial CIRP cost** on issuing public announcement, inviting claims, etc., to the IRP, if demanded by him, immediately upon communication of this Order. The amount so deposited shall be interim finance and paid back to the FC on priority upon the funds available with IRP/RP. The expenses incurred by the IRP out of this fund shall be subject to approval by the CoC.
- i. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

17. **Accordingly, this Application is admitted.**

18. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)