



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT V**

**C.P. No. 1486/IBC/MB/2020**

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**Nineicon Private Limited**

(CIN: U72501MH2018PTC311909)

Registered office at: Plot No B 5, 4th Floor,  
Sambhav IT Park MIDC Wagle Estate THANE,  
Maharashtra, 400604 India.

**.....Petitioner/Financial Creditor**

*Vs*

**Eccol Gaming Solutions Private Limited**

(CIN: U92412MH2001PTC133254)

Registered office at: 2<sup>nd</sup> Tower, 4<sup>th</sup> Floor,  
International Infotech Park, Vashi Railway  
Station, Navi Mumbai, Thane-400703.

**.....Corporate Debtor**

**Order Pronounced On: 05.08.2022**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri. Satya Ranjan Prasad, Member (Technical)

**For the Petitioner:** Adv. Abhishek Adke

**For the Respondent:** Mr. Mahadev Batwalkar



*Per: H.V. Subba Rao, Member (Judicial)*

**ORDER**

1. The above Company Petition is filed by *Nineicon Private Limited* hereinafter called as **Financial Creditor/Petitioner** seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against *Ecool Gaming Solutions Private Limited* hereinafter called as Corporate Debtor by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “**Code**” read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of **Rs. 2,00,00,000/-**.
2. The brief facts of the Petition are as follows:  
The Petitioner submits that the Petitioner and the Corporate Debtor entered into an agreement vide Loan agreement dated 16.07.2019. The Corporate Debtor borrowed money from the Petitioner. As per the Loan Agreement the Petitioner has disbursed sum of Rs. 2,00,00,000/- to the Corporate Debtor.
3. On 07.10.2019, 11.11.2019 and 06.12.2019 respectively, the Petitioner has sent Emails to the Corporate Debtor, calling upon the Corporate Debtor to remit back the Loan amount.
4. Despite several requests made by the Petitioner, the Corporate Debtor has failed to clear its dues. Thus, on account of non-payment of outstanding dues, on 23.12.2019, the Petitioner issued notice on the Corporate Debtor demanding repayment of Rs. 2,00,00,000/- in full.
5. The Petitioner has enclosed the Balance Sheet as on 12.06.2020, which states that the Corporate Debtor has acknowledged receiving Rs. 2,00,00,000/- from the Petitioner.



6. The Petitioner enclosed the certificate under Bankers Books Evidence Act, 1891.
7. The Counsel for the Petitioner submitted that the petition was served on the Corporate Debtor and proof of service was filed to that effect. Subsequently, the counsel for the Petitioner intimated the date of hearing to the Corporate Debtor and filed affidavit of service to that effect.
8. The Corporate Debtor did not choose to file any reply contesting above Company Petition despite taking so many adjournments and did not comply with the order of this Bench by filing reply as directed. Therefore, the Corporate Debtor's right to file reply was forfeited and the matter is ordered to be listed today for hearing the arguments of the Financial Creditor.
9. Heard the submissions of the Learned Counsel appearing for the Financial Creditor. Counsel appearing for the Financial Creditor brought the attention of this Bench to the Loan Agreement dated 16.07.2019 under which the Financial Creditor has disbursed the amount to the Corporate Debtor. He has also pointed out to the Letter dated 16.07.2019 wherein both the parties came to an understanding that no interest is payable under the amount advanced to the Corporate Debtor. He has invited the attention of this Bench to the various Emails addressed requesting the Corporate Debtor to pay their outstanding amount. He has also invited the attention of this Bench to the Demand Notice dated 23.12.2019 issued to the Corporate Debtor calling upon him to pay the amount.
10. In response to the query raised by this Bench as to whether an interest free advance falls within the definition of Financial Debt. The Learned Counsel appearing for the Financial Creditor relied upon the ruling of the Apex Court reported in "**Orator Marketing Private Limited V. Samtex Desinz Private**



**Limited (Civil Appeal No. 2231 of 2021) (2021 SCC OnLine SC 513)**” whereunder the Hon’ble Supreme Court in Para 31 held as follows:

*“At the cost of repetition, it is reiterated that the trigger for initiation of the Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of the IBC is the occurrence of a default by the Corporate Debtor. ‘Default’ means non-payment of debt in whole or part when the debt has become due and payable and debt means a liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt. The definition of ‘debt’ is also expansive and the same includes inter alia financial debt. The definition of “Financial Debt” in Section 5(8) of IBC does not expressly exclude an interest free loan. ‘Financial Debt’ would have to be construed to include interest free loans advanced to finance the business operations of a Corporate Body”.*

11. After hearing the submissions and upon perusing the material available on record, this Bench is of the opinion that the above company petition satisfies all the legal requirements for admission and this Bench did not find any reason to reject the same.
12. Accordingly, the above Petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) 1486 (MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Ecool Gaming Solutions Private Limited.
- b. This Bench hereby appoints **Mr. Mahesh Sureka** Insolvency Professional, Registration No: IBBI/IPA-001/IP-



P00413/2017-2018/10736 residing at 173 Udyog Bhavan Sonawala Road, Goregaon East Mumbai, City, Maharashtra, 400063, Email id: [mahesh@mrsureka.com](mailto:mahesh@mrsureka.com) as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by COC.
- d. 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 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; the recovery of any property by an owner or lessor where such property is occupied by or in the 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 moratorium period.
- f. 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.

- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. 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.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

**k. Accordingly, this Petition is admitted.**

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

**Sd/-**

**SATYA RANJAN PRASAD  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**