**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH - I**

Item 4 of Cause list dt 02.05.22

CP (IB) 299/MB/2020

U/S 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Speed-O-Controls Private Limited
C-16, NandJyotIndl Estate,
Andheri Kurla Rd.
Mumbai Maharashtra– 400072

.....Financial Creditor

Vs

Dar Media Private Limited
Office-B/417 Bonanza,
M. V. Road Sahar Plaza Complex
Andheri East Mumbai 400093

.....Corporate Debtor

Order Delivered on : 06.05.2022

Coram:

Hon’ble Member (Judicial)	:	Justice P. N. Deshmukh (Retd.)
Hon’ble Member (Technical)	:	Sh. Kapal Kumar Vohra

Appearances:

For the Financial Creditor	:	Mr. Amey Hadwale, Advocate a/w Ms. Geeta Lundwani, Advocate.
For the Respondent	:	Ms. Rashmi Shah, Advocate.

ORDER

Per:- Justice P.N. Deshmukh, Member (Judicial)

1. This Company Petition (hereinafter referred to as CP) is filed by Speed-O-Controls Private Limited, Financial Creditor (hereinafter referred to as the FC) u/s 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) against Dar Media Private Limited, the Corporate Debtor (hereinafter referred to as CD) for non-payment of outstanding dues by the CD.

2. The FC is a private limited company incorporated under the provisions of Companies Act, 1956 and is having registered office address as mentioned in the cause title. Vide order dated 29.09.16, a scheme amalgamation of Stromag Engineers Ltd with Speed-O-Controls Private Limited was sanctioned by the Bombay High Court, the same is annexed as Exhibit A to the Petition.

<u>Brief facts of Petitioner:</u>

3. It is the case of FC that the FC had advanced a sum of Rs.2,00,00,000/- (Rupees Two Crore Only) to the CD for a period of 90 days along with interest @ 18% p.a. till 90 days and 24% p.a. on delayed period. The said loan was disbursed by FC on 23.04.2015, to corroborate the same,

a copy of bank (letter stating that the amount of Rs. 2cr has been debited on 24.04.15 vide cheque no. dated 007358 for payment by RTGS in the name of beneficiary CD) certificate certifying disbursement of loan to CD is annexed as Exhibit E to the Petition.

4. The CD has given affidavit cum declaration dated 23.04.15 stating that it has borrowed an amount of Rs.2,00,00,000/- (Rupees Two Crore Only) from FC for a period of 90 days along with interest @ 18% p.a. till 90 days and 24% p.a. on delayed period. The affidavit cum declaration has been annexed as Exhibit F to the petition.

5. The CD has failed to re-pay the principal and accrued interest as on 23.07.2015 the same has been outstanding as reflected in the ledger accounts of the CD maintained in the books of the petitioner for the accounting year 2015-16, 2016-17, 2017-18, 2018-19, 2019-20. The copies of the ledger accounts are annexed and marked as Exhibit L to the petition. The petitioner states that the petition was filed on 15.01.2020, is within limitation as the last payment of Rs.30,00,000/- (Rupees Thirty Lakhs Only) was done by CD on 24.01.17.

6. The petitioner has asserted that the CD had made re-payment to the tune of Rs.70,30,000/- (Rupees Seventy Lakhs Thirty Thousand Only) during 2015-17. The said re-payment was adjusted towards the

principal and interest, pursuant to which an amount of Rs.4,32,21,758/- (Rupees Four Crore Thirty Two Lakhs Twenty One Thousand Seven Hundred and Fifty Eight) comprising of Rs.1,38,70,000/- (Rupees one crore thirty eight lakhs seventy thousand) towards principal and Rs.2,93,51,758/- (Rupees Two Crores Ninety Three Lakhs Fifty One Thousand Seven Hundred and Fifty Eight Thousand) towards interest component is still due and outstanding as on 31.12.19. The petitioner has annexed a copy of working calculation sheet showing computation of the amount in default in Exhibit N to the Petition.

7. The amount of debt had been confirmed by the CD on 01.04.2018 as Rs.1,38,70,000/- (Rupees One Crore Thirty-Eight Lakhs Seventy Thousand) (Pg 95 of Petition). The petitioner has annexed a copy of confirmation of accounts received from CD for the period of 01.04.18 to 31.03.19 as Exhibit O to the Petition.

8. The FC has vide letter dated 04.03.2016 recalled entire loan amount with interest, the same has been annexed as Exhibit I to the Petition (Pg 85).

9. The petitioner states that the CD has given numerous assurances for repayment of loan, yet the CD defaulted in re-payment of the said loan.

Therefore, the petitioner again issued demand notice dated 23.11.2019, however neither any response was received nor the loan was repaid by the CD, the same has been annexed as Exhibit Q to the Petition.

Submissions of CD are as follows:

10. By order dated 19.04.2021, the Corporate Debtor was granted time to file reply, if any. Thereafter, the matter was listed on board on many occasions, however, no reply is placed on record. Ld. Counsel for the Corporate Debtor, on instructions made the statement that they have no objection, if the petition is admitted and did not dispute the last transaction, the copy of which was placed on record.

11. Ld. Counsel for the Corporate Debtor also admits the default.

12. We have heard the submissions of the Counsel appearing for the FC and Counsel appearing for the CD.

13. Ongoing through the facts and submissions of FC and upon considering the same, it is concluded that the FC has advanced a loan of Rs.2 Crores to the CD and there has been default in payment of Debt on the part of the CD.

14. Upon perusal of records, this Bench is of considered opinion that there is no dispute regarding the fact that CD owes money to FC.

15. Considering the above facts, we come to the conclusion that the nature of Debt is a 'Financial Debt' as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case.

16. We also consider the facts of the case in the light of the order passed by Hon'ble Supreme Court in Swiss Ribbons Pvt. Ltd. And Ors. Vs. Union Of India and Ors. [Writ Petition (Civil) No. 99 of 2018] upheld the constitutional validity of IBC, the position is very clear that unlike Section 9, there is no scope of raising a 'dispute' as far as Section 7 petition is concerned. As soon as a 'debt' and 'default' is proved, the adjudicating authority is bound to admit the petition.

17. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding amount from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves **'Admission'**.

18. The FC has proposed the name of Mr. Paresh Chandulal Mehta as the Interim Resolution Professional (IRP). The IRP has submitted his consent vide FORM 2.

19. The application made by the FC is complete in all respects as required by law. It clearly shows that the CD is in default of a debt due and payable and the default is in excess of minimum amount stipulated under Section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In the view of this, the above Company Petition is liable to be admitted.

20. It is accordingly hereby ordered as follows:

    a. **The above Company Petition No. (IB) -299 (MB)/2020 is hereby admitted** and initiation of CIRP is ordered against Dar Media Private Limited.
    b. This Bench hereby appoints Mr. Paresh Chandulal Mehta, Registration No: IBBI/IPA-003/IP-N00099/2017-18/11008 as the Interim Resolution Professional having address at 13 b, Nirmal Society, Pandurang Wadi, Dombivali east, Dist Thane MH- 421201 email: - pareshmehta5959@gmail.com to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The FC shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. 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, the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the CD.

e. The supply of essential goods or services to the CD shall not be terminated or suspended or interrupted during moratorium period.

f. 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. 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. 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 CD will vest in the IRP/RP. The IRP shall perform all his functions contemplated, inter-alia, by Sections 17, 18 and 21 of the Code and conduct proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations and shall file reports before the Adjudicating Authority. It is further made clear that all the personnel connected with the CD, its promoters or any other persons associated with the Management of the CD are under legal obligation as per Section 19 of the Code to extend every assistance and cooperation to the IRP as may be required by him in managing the day-to-day affairs of the CD. The IRP shall be under duty to protect and preserve the value of the property of the CD as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

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

Sd/-	**Sd/-**
KAPAL KUMAR VOHRA **MEMBER (TECHNICAL)**	**JUSTICE P. N. DESHMUKH** **MEMBER (JUDICIAL)**

06.05.2022

Divya