

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

C.P.(IB) No. 966/MB/2020

Under Section 7 of Insolvency &
Bankruptcy Code, 2016

In the matter of

SREI Equipment Finance Ltd.

Financial Creditor

Vs.

HBS Auto and ANC SEZ Pvt. Ltd

CIN: U45201MH2007PTC174797

Corporate Debtor

Order delivered on: 02.01.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)
Appearances

Justice Shri V.G. Bisht
Hon'ble Member (Judicial)

For the Petitioner : Mr. Nausher Kohli, Advocate
For the Corporate Debtor : Mr. Ankit Lohia, Sr. Advocate

ORDER

Per: V.G. Bisht, Member (Judicial)

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1. This C.P. (IB)/MB/ 966/2020 is being filed on 21.09.2020 by M/s Srei Equipment Finance Limited (“Applicant” or “Financial Creditor”) under Section 7 of Insolvency & Bankruptcy Code, 2016 (“Code”) to initiate Corporate Insolvency Resolution Process (“CIRP”) in the matter of M/s HBS Auto and ANC SEZ Private Limited (“Corporate Debtor”).
2. Total outstanding financial debt as on 14.1.2020 is stated to be Rs. 58,38,09,754/-, out of which a sum of Rs. 16,24,39,272/- is stated to be in default as on 16.06.2020. The date of default is stated to be 15.12.2019 in Part IV of the Application.
3. The Corporate Debtor is in the business of "Real Estate Development", including but not limited to the development of the Special Economic Zones (hereinafter, "SEZ") and other infrastructure projects. In view of the said objects, the Corporate Debtor had undertaken development of the SEZ land situate at Panoli, Gujarat (hereinafter, "the Project")
 - 3.1. In order to raise funds and capital for the Project, the Corporate Debtor had approached the Financial Creditor for providing financial assistance, based on which the Financial Creditor had entered into Rupee Loan Agreements dated 19.7.2017 and 3.10.2019 and Rupee Loan Agreement dated 27.12.2019 with M/s. HBS City Pvt. Ltd.
4. It is stated that the Corporate Debtor availed credit facilities of Rs. 60,00,00,000/- under Contract No. 136471 and of Rs.

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6,00,00,000/- under Contract no. 180928 from the Financial Creditor vide Loan Agreements dated 19.7.2017 and 15.9.2019. These facilities were disbursed on 19.7.2017 and 15.9.2019 respectively.

4.1. These facilities are secured against the assets as mentioned in the deed of Hypothecation dated 17.7.2017 executed by the Corporate Debtor and entered in the Register of Charges with the Registrar of Companies. These facilities are further collaterally secured by way of mortgage of Commercial Land owned by the Corporate Debtor; pledge of shares of Corporate Debtor by its shareholders; Personal Guarantee of Sh. Sandeep Shah and Corporate Guarantee of M/s HBS Realtors Pvt. Ltd.

4.2. It is further stated that the Corporate Debtor has defaulted in making payment as per the terms set out in the loan agreements and is in default of Rs. 11,12,69,272/- under Contract No. 136741 and Rs. 5,11,70,000 under Contract No. 180928 as on 16.06.2020.

4.3. On account of the inability of the Corporate Debtor to repay the outstanding amounts with interest, to the Financial Creditor, the Financial Creditor issued a letter dated 27.1.2020, demanding payment of the overdue amounts. Through the Demand Notice, the Financial Creditor called upon the Corporate Debtor herein to pay an amount aggregating to Rs.6,74,69,128/- (Rupees Six Crore Seventy Four Lakhs Sixty Nine Thousand One Hundred and Twenty Eight only) together with further interest thereon together with costs, charges,

expenses and other monies failing which the Financial Creditor indicated that they would recall the entire loan and also initiate legal proceedings before appropriate courts in accordance with law.

4.4. The Financial Creditor has also placed on record the resolution in favour of signatory to the Petition along with the rejoinder.

5. The Corporate Debtor filed an Interlocutory Application No. 1473/2022 seeking dismissal/rejection of the Company Petition No. CP (IB)/966(MB)2020 in view of the One Time Settlement agreement (“OTS”), as encapsulated in the letter dated 1st December 2021, addressed by the Financial Creditor to, inter-alia, the Corporate Debtor, which was accepted by it.

5.1. It is stated that during the pendency of the Petition, the Corporate Debtor had approached the Financial Creditor and for an amicable resolution and pursuant to discussions a OTS was arrived at as recorded in the letter dated 1.12.2021. The OTS contemplated payment of Rs. 55.60 Crores by the Corporate Debtor and its sister Concern HBS City in the following manner –

- a. Rs. 6.00 Cr.- paid upfront within 10 days from the date of this letter;
- b. Rs. 34.00 Cr. was to be paid on or before 31.3.2022
- c. Rs. 15.60 Cr. is to be paid on or before 31.3.2025.
- d. Failure in making payment due under Tranche 1 by 31.3.2022 was to result into revocation of the OTS.

5.2. Pursuant to the terms of the OTS, a sum of Rs. 6,00,00,000/- is stated to have been paid to the Financial Creditor on behalf of the Corporate Debtor, as per the agreed terms contained in the letter dated 1.12.2021, though slightly delayed.

5.3. It is the case of the Corporate Debtor that during the pendency of the Petition, the Corporate Debtor, as mentioned, was successful in identifying a purchaser/financer, who had agreed to take over the liability of the Corporate Debtor and satisfy all the claims and dues of the Financial Creditor. The bona-fides of the Corporate Debtor and third-party purchaser/financer can be ascertained from the payment of Rs. 6,00,00,000/- being made to the Financial Creditor, on behalf of the Corporate Debtor, in compliance with terms and conditions of the letter dated 1.12.2021.

5.4. By a letter dated 12.4.2022, the Corporate Debtor addressed the Financial Creditor and requested for further time, to pay the balance amount which was due as on 31.3.2022 and also indicated their readiness and willingness to pay the interest on the delayed payment. The Corporate Debtor are ready and willing to handover to the Financial Creditor, the up-to-date interest upto 31st March 2022 on or before 13th April 2022.

5.5. It is prayed by the Corporate Debtor that it is in discussions with the Financial Creditor to finalize the Settlement Agreement as postulated under the "Documentation" clause in the letter dated 1.12.2021 such discussions will, as far as the Corporate Debtor are concerned, will reach immediate fruition.

The Settlement Agreement would not only revisit timelines of payment but also extension of 120 days sought for by the Applicant for the Financial Creditor, towards payment of the 2nd Tranche of the OTS amount due on 31.3.2025.

5.6. It has further been submitted by the Corporate Debtor that the amount as mentioned in the above Petition, as payable by the Corporate Debtor to the Financial Creditor, is no more the crystallized amount and in view of the OTS arrived at, subsequent to the filing of the above Petition, the claim of the Financial Creditor under the above Petition is unsustainable and requires to be rejected, especially in the view of the parties to the above Petition having arrived at a fresh terms of Settlement.

5.7. The Corporate Debtor has further stated that it has been held by the Hon'ble Supreme Court of India in countless number of judgments that the object and the primary focus of the Insolvency and Bankruptcy Code, 2016 is to ensure revival and continuation of the Debtor Company by protecting them from its own management and from a corporate death of liquidation. The Insolvency and Bankruptcy Code, 2016 is thus a beneficial legislation which puts the Debtor Company back on its feet by not being a mere recovery legislation for the Creditors. It is prime objective of the Insolvency and Bankruptcy Code, 2016 to help the restructuring of the Debtor Companies by promoting settlement and/or refinance of the Claims due and payable. In consonance with the objectives of the Insolvency and Bankruptcy Code, 2016, the Corporate Debtor herein have endeavoured to take steps to refinance the entire loan facility

and, as mentioned in the paragraph hereinabove, has successfully achieved the same. Being aware of the aforementioned facts, the Financial Creditor has readily entered into an OTS, which has now admittedly restructured the entire claim of the Financial Creditor.

5.8. It is emphasised that no loss, harm or prejudice would be caused to the Financial Creditor if the present application is allowed. However grave harm and irreparable loss would be caused to the Applicant if the reliefs, as prayed hereunder, are not granted.

6. Heard learned Counsel. Perused the material available on record.

6.1. We find that the Financial Creditor vide letter dated 27.5.2022 communicated to the Corporate Debtor and HBS City Private Limited that

“Kindly note during the course of your meeting with our Senior Management on May 04, 2022, it was categorically agreed that you shall be providing a revised payment plan for the defaulted OTS amount by May 07, 2020 and shall clear the dues within May 31, 2022.

However, you failed to submit the same within the stipulated timelines and it is only after SEFL expressed its intent to terminate the OTS, vide letter dated 16.5.2022, that a revised payment plan has been shared. Kindly note, the submitted proposal is not acceptable as the same is not in accordance with the Discussion.

In view of the above, please note that SEFL is moving ahead with the termination of OTS, pursuant to which all original terms of the loans extended to HBS group will be reinstated”.

- 6.2. During the Course of hearing on 7.9.2023, the Corporate Debtor sought two weeks time to settle the matter with the Financial Creditor stating that it is making serious attempts and the same was allowed by fixing the next hearing on 27.09.2023. However, Respondent's counsel was preoccupied on that date and could not appear even after the matter was kept back so that matter was adjourned to 26.10.2023, on which date both the Counsel were heard and the matter was reserved for Orders. It is clear from their submissions that the parties have not arrived at any settlement. It is trite law that this Tribunal cannot mandate the Financial Creditor to arrive at the settlement, which is mainly the contention of the Applicant. Accordingly, we do not find any substance in prayers made in IA 1473/2022, hence, we are of considered view that IA 1473/2022 deserve to be dismissed and disposed of accordingly.
- 6.3. In view of the aforesaid, we find that there exists a financial debt of more than Rs. 1.00 Crores, which is in default. There is clear admission of liability and default on the part of the Corporate Debtor. The Application has been filed within limitation period and is complete in all respect. Accordingly, we have no hesitation to hold that C.P. (IB)/MB/ 966/2020 deserves to be admitted and the CIRP be initiated in the matter of Corporate Debtor.
7. Accordingly, we dismiss IA 1473/2022 and allow C.P. (IB)/MB/ 966/2020 with consequential orders passed hereinbelow.

- a. The Petition bearing **CP (IB) 966/MB/2020** filed by, SREI Equipment Finance Ltd., the Financial Creditor, under section 7 of the IBC read with rule 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against, HBS Auto and ANC SEZ Pvt. Ltd the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under section 14 of the IBC, regarding the following:
 - (i) 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;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

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- c. Notwithstanding the above, during the period of moratorium:-
- i) 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) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- d. 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 IB Code.
- e. Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f. Mr. Avinash Ambikaprasad Shukla having registration no. IBBI/IPA/003/IP-ICAI-N-00243/2019-2020/12839, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. He shall be paid a consolidated remuneration of Rs. 1,50,000/- (Rupees only) for the period from the commencement of CIRP till the Constitution of CoC as fee, in addition to the expenses incurred in relation to CIRP process. The fee payable to IRP or, as the case may be, the RP

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shall be compliant with such Regulations, Circulars and Directions issued/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 IBC.

- g. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or the RP in terms of section 17 of the IBC. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- h. The Operational Creditor shall deposit a sum of Rs.3,00,000/- 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). The Operational Creditor shall be liable to bear all expenses of CIRP, incurred till constitution of CoC, to the extent such expenses are not ratified by CoC.
- i. The Registry is 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.
- j. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to

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the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)