

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

CP(IB)No. 643/MB/2023

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

In the matter of

Profectus Capital Private Limited

[CIN: U65999MH2017PTC295967]

Having its registered office at

B-17, Fourth Floor, Art Guild House,

Phoenix Market City, Kurla (West),

Mumbai-400070

**.....Applicant/
Financial Creditor**

Versus

Eagle Electronic (India) Private Limited

[CIN: 51505MH2011PTC218146]

House No.65, CTS No.142,

Dwarkanath Wavare Lane,

behind Chitramandir Theatre,

Main Road,Nashik, Maharashtra-422001

**.....Corporate Debtor/
Respondent**

Order Delivered on : 06.03.2024

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht, (Retd.)

Hon'ble Member (Technical) : Sh. Prabhat Kumar

Appearances:

For the Financial Creditor : Ms.Amruta Sawant, Advocate

For the Corporate Debtor : Mr. Vivek Punjabi, Advocate

ORDER

Per: Justice V.G. Bisht, (Retd.)

1. This Company Petition has been filed by **Profectus Capital Private Limited** ("**Financial Creditor**"), a non-banking finance company is seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **Eagle Electronic (India) Private Limited.** ("**Corporate Debtor**") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for having committed a default in repayment of outstanding debt of INR 1,73,39,578/- (Rupees One Crore Seventy three Lacs Thirty Nine Thousand Five Hundred and Seventy Eight Only) including accumulated interest as on **04.01.2023**, which is the date of default. The last payment was made on 18.08.2022 and the account was declared as a Non Performing Asset ("**NPA**") on 28.10.2022.

2. The Financial Creditor was incorporated on 09.06.2017, having CIN : U65999MH2017PTC295967 and the registered office is situated at B-17, Fourth Floor, Art Guild House, Phoenix Market City, Kurla (West) Mumbai-400070. The Authorized Share Capital of the Corporate Debtor is Rs.4,00,00,000/- (Rupees Four Crores Only) and the Paid- Up Capital of Rs.27,040,080 /-.

Submissions made by the Financial Creditor:

3. The Financial Creditor submits that the Loan Application forms dated 28.07.2020, 07.10.2020 and 01.07.2021 were duly signed by the

director/authorized signatory of the Corporate Debtor which has been placed on record at Exhibit D of the Petition.

4. The Financial Creditor submits that the Corporate Debtor through its Directors requested the Financial Creditor for granting a credit facility of Rs. 2,00,00,000/- (Rupees Two Crores Only) with additional ad-hoc extendable for Rs. 1,00,00,000/- (Rupees One Crore Only) in July 2020. The said facility was extended from time to time and for the final time the said credit facility was extended on 29.07.2021 for a sum of Rs. 4,00,00,000/- (Rupees Four Crores Only) with an additional ad-hoc limit extendable for another Rs. 1,00,00,000/- (Rupees One Crore Only).
5. The Financial Creditor has also placed on record the Sanction Letters dated 07.10.2020, 22.07.2021, 13.08.2021 and 29.09.2021 which contain all the terms and conditions of the Loan facility extended to the Corporate Debtor by the Financial Creditor.
6. The Deed of Personal Guarantee for a sum of Rs. 4,00,00,000/- (Rupees Four Crores Only) was also duly signed and executed by and between Financial Creditor and Directors of the Corporate Debtor. The Deed of Guarantee was executed on the following dates :
 - 28.07.2020
 - 09.10.2020
 - 17.08.2021
 - 29.09.2021
7. The Financial Creditor issued a recall notice on 12.09.2022, terminating and recalling the entire amount claimed to be in default of Rs. 1,61,58,178 /- (Rupees One Crore Sixty-One Lakhs Fifty-Eight Thousand One Hundred and Seventy-Eight Only) with interest at the rate of 24% till realization, within 7 days from the date of notice.

8. The Petitioner has relied on the following documents in support of its contention:

- Promissory Note and Letter Of Continuity of Demand Promissory Note dated 27.07.2020, 10.10.2020 and 29.09.2021
- CIBIL report dated 04.01.2023
- Record Of Financial Information describing the default of the Corporate Debtor maintained with National E-Governance Services Limited
- Statement of Account of the Loan Account No. FTIFDCOR001087 as on 04.01.2023

Submissions made by the Corporate Debtor:

9. The Corporate Debtor submits that the Company had been effectively carrying out its business till the crisis of Covid-19 Pandemic. The Company of the Respondent suffered liquidity crisis post Pandemic. Despite the same, it continued with its effective business till very recent times.

10. The Corporate Debtor contends that their business of sale and purchase of mobile phones was based upon credit and therefore, the Corporate Debtor used to borrow money from creditors. The Corporate Debtor, in due course of business, had given Bank Guarantees to Oppo and Reliance Jio for carrying out business with them. The said Bank Guarantees act as security provided to the manufactures by the distributors in addition to the amount paid by them for each transaction. Additionally, these Bank Guarantees also acted as a foundation for providing further credit facility to the Corporate Debtor from its secured creditors.

11. The Corporate Debtor states that the existing Bank Guarantee in favour of Oppo Mobiles India Pvt Ltd was renewed on 07.09.2022. The former Distributorship Agreement between the Corporate Debtor and Oppo

Mobiles India Pvt Ltd. was in existence till 31.08.2022 and therefore the Corporate Debtor had shared the draft Agreement for the renewal with Oppo Mobiles India Pvt. Ltd. However, Oppo mobile India Pvt Ltd had sent a notice to the present Respondent vide e-mail dated 12.09.2022 by which it declared that it does not wish to renew the Distributorship Agreement with the Corporate Debtor.

12. The Corporate Debtor submits that they are currently in discussions with few investors who have shown interest in buying the shareholding of the Corporate Debtor which would make it easier for the Corporate Debtor to run the affairs and management in a proper manner and the Corporate Debtor would be in a better position to make payments towards the outstanding loan amount to the Petitioner.

Findings

13. Heard learned counsel and perused the material on record.
14. We find that the Corporate Debtor has defaulted on several terms as stipulated in the Loan Agreement and has also failed to repay the outstanding amount due. The Petitioner issued a Demand Notice dated 12.09.2022 and recalled the entire loan amount being an aggregate sum of INR 1,61,58,178 /- (Rupees One Crore Sixty-One Lakhs Fifty-Eight Thousand One Hundred and Seventy Eight Only).
15. The Corporate Debtor itself acknowledges the impact of the financial crisis, which has rendered it unable to settle its outstanding debt with the Financial Creditor. The Corporate Debtor contends that its business operations were robust until the onset of the COVID-19 Pandemic. Despite encountering a liquidity crisis in the aftermath of the pandemic, the company persevered in maintaining its operational effectiveness until very recently.

16. From perusal of the record and the documents relied upon by the Applicant it stands proved that there has been a financial debt in respect of which default has been committed by the Corporate Debtor and further that the Application has been filed within the period of limitation. Therefore, the Application u/s 7 of the Code, deserves to be admitted. It is ordered accordingly in the following terms:

ORDER

- a. The petition bearing CP (IB) 643/MB/C-I/2023 filed by **Profectus Capital Private Limited**, the Financial Creditors, under Section 7 of the Code read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **Eagle Electronic (India) Private Limited.**, the Corporate Debtor, is admitted.
- b. This Bench hereby **appoints Ms.Kanak Jani, Registration No: IBBI/IPA-001/IP-P01757/2019-2020/12685 as the Interim Resolution Professional** having **email:- kanakjani.associates@gmail.com** , to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. There shall be a moratorium under section 14 of the IBC, in regard to 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.
- d. 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. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- e. 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 Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- f. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. The Financial Creditor shall deposit an amount of **Rs. Three 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.
- h. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. 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.

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

Sd/-

SH. PRABHAT KUMAR
Member (Technical)

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)