

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. III)
Company Petition No. IB-78/ND/2021**

(Under Section 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:

LH ASIAN TRADE FINANCE FUND LIMITED

...Applicant/Financial Creditor

VERSUS

M/S WORLDS WINDOW TRADING PRIVATE LIMITED

...Respondent/Corporate Debtor

Pronounced on:07.01.2022

CORAM:

SHRI BACHU VENKAT BALARAM DAS

SHRI NARENDER KUMAR BHOLA

HON'BLE MEMBER (JUDICIAL)

HON'BLE MEMBER (TECHNICAL)

For the Applicant: Mr Majid Afsar Siddiqi, advocate

For the Respondent:

ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. The present application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by LH Asian Trade Finance Fund Limited (for brevity 'Applicant') with a prayer to

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initiate the Corporate Insolvency process against M/S Worlds Window Trading Private Limited (for brevity 'Corporate Debtor').

2. The Financial Creditor submits that pursuant to a facility agreement dated 8.09.2015, EFA Dynamic Trade Finance Fund Limited (EFA DY) provided a revolving trade finance facility to Everest Metals FZE (Borrower), a company incorporated and existing under the laws of the United Arab Emirates for an amount of USD 5,000,000/-. The borrower is a wholly owned subsidiary of the respondent, M/S Worlds Window Trading Private Limited, a company incorporated under the laws of India.
3. The Financial Creditor submits that on 10.10.2016, the Facility Agreement was novated by EFA DY in favour of the Financial Creditor as Amended Facility Agreement-1. On the same date, the respondent and the Financial Creditor executed a deed of guarantee whereby the respondent provided a corporate guarantee for securing obligations of the borrower. On 14.12.2017, the amended Facility Agreement -1 was further amended to include certain sub-limits in respect of the amounts thereunder (Amended Facility Agreement -2). The maturity date of the Amended Facility Agreement-2 was 24.03.2018. The Financial Creditor further submits that between the period 12.04.2018 to 31.07.2018, various partial repayments were received from the borrower in respect of the amounts owed under the Facility Documents.
4. The Financial Creditor issued a notice on 8.03.2019 and on 12.02.2020 to the borrower and to the respondent for repayment of the amounts due, but no repayments have been made by the respondent and by the borrower. The Financial

Creditor further submits that an e-mail dated 11.06.2019 was sent by Mr. DP Garg, director of the borrower, acknowledging the liability as stated below:

"This is with reference to your telecom with Mr. Piyoosh Goyal regarding our outstanding amount. We are disinvesting one of our manufacturing unit and the same in advance stage. We will pay off the outstanding immediately on receipt of sale proceeds."

5. The Respondent/Corporate Debtor has filed its reply by asserting that the respondent has nothing to do with the transactions to which the alleged claims relate to are entered between the Financial Creditor and the borrower. Further, the Facility Agreement dated 10.10.2016 has lost its applicability on 24.03.2018 and can't be made applicable upon the respondent.
6. The Respondent further contended that the date of default is 31.07.20218 up to 31.10.2020 and that by the virtue of I & B, Code (Second Amendment) Act, 2020 which insert Section 10A which states that no application for initiation of CIRP of the Corporate Debtor shall be filed for the default falling under period of 25.03.2020 to 25.03.2021.
7. The Financial Creditor has filed its written submissions and has controverted the averments made by the respondent in the reply and has asserted that the guarantee is in the nature of continuing guarantee, which continues in force unless specifically revoked in writing. The respondent/guarantor has never revoked the guarantee not has it pleaded any revocation in its reply. The Financial Creditor asserted that the corporate debtor was a guarantor and the corporate debtor never denied that it was the guarantor and instead made commitments regarding repayment on 28.06.2020

& 21.07.2020. Thus, the corporate debtor conduct shows that it accepted its status as guarantor of the loan disbursed on 07.02.2018 and has disputed the same for the first time only in the reply to the application. The Financial Creditor further asserts that the date of default is 31.07.2018, before which the borrower was making the payments from time to time and under the renewed facility dated 14.12.2017, the repayment date was within 120 days from drawdown i.e., June 2018. Therefore, the bar under Section 10 A, IBC is not applicable in the present case.

8. Heard both the sides and perused the documents on record, it is beyond doubt that the default has occurred with respect to the payment of the financial debt due to the Applicant. We have also gone through the case laws relied upon by the financial creditor. It manifests that the deed of guarantee was executed into between the financial creditor and the respondent, wherein the respondent has failed in clearing the payment to the financial creditor. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to the application. Therefore, the arguments made by the applicant seems to be more convincing.
9. The date of default is occurred from 31.07.2018 and the application is filed on 13.01.2021 and hence the debt is not time barred and the application is filed within the period of limitation.
10. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
11. The present application is complete and the Financial Creditor has established the default in payment of the operational debt beyond doubt, hence is entitled to claim.
The present application is admitted.



12. The Financial Creditor has named the Insolvency Resolution Professional, to be appointed by the order of Tribunal, as Mr. Alok Kumar Murarka, with registration number IBBI/IPA-001/IP-01934/2019-20/13006 (email –murarkalok@gmail.com) as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.
13. We direct the operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely, Mr. Alok Kumar Murarka to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days for the date of receipt of this order by the operational Creditor. The amount, however, shall be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the operational Creditor.
14. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) and following shall remain prohibited during the moratorium:



- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

15. A copy of this order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



(BACHU VENKÁT BALARAM DAS)
MEMBER (Judicial)



(NARENDER KUMAR BHOLA)
MEMBER (Technical)