

S.No.1

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
23-12-2022 AT 01:30 PM THROUGH VIDEO CONFERENCE

Company Petition IB/115/2022
u/s. 7 of IBC, 2016.

IN THE MATTER OF:

Bhagyanagar Investments and Trading Pvt Ltd

...Financial Creditor

Vs

EBC Bearings India Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SHRI. AJAY DAS MEHROTRA, HON'BLE MEMBER (TECHNICAL)**

ORDER

Order in CP IB No.115/7/HDB/2022 pronounced, recorded vide separate sheets.

In the result, Company Petition is admitted and the corporate debtor is put under CIRP as per the terms and conditions mentioned in the order.

SD
MEMBER (T)

SD
MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No. 115/7/HDB/2022

U/S 7 of IBC, 2016, r/w Rule 4 of I & B(AAA) Rules, 2016

Between

Bhagynagar Investments and Trading Private Limited
Having registered office at
Plot No.18, Nagarjuna Hills,
Punjagutta,Hyderabad,
Telangana-500008

...Operational Creditor

Versus

EBC Bearings India Limited
Having registered office at
IDA Bollaram, Jinnaram Mandal,
Hyderabad,
Telangana, 500016.

...Corporate Debtor

Date of order: 23.12.2022

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Ajai Das Mehrotra, Hon'ble Member (Technical)

Appearance:

For Applicant: Shri Mayur Mundra Advocate
For Respondent: Shri M.Pramod. Advocate

PER: BENCH

ORDER

1. This application is filed under Section 7 of Insolvency and Bankruptcy Code (hereinafter to be referred as “Code”), read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking admission of the application for initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent defaulted in the payment of alleged debt of Rs. 5,52,50,000/- (Rupees Five crores Fifty two lakhs Fifty thousand only).
2. The averments in brief of the Application are that;
 - (i) The Applicant, herein after referred to as the “Financial Creditor”, is registered under Company Act 1956 and having its registered office at Hyderabad. It is engaged in business of Investments and Trading.
 - (ii). The Respondent (herein after referred to as “Corporate Debtor”), is incorporated under the Companies Act, 1956 and is engaged in trading in steel and allied products.
 - (iii). The Financial Creditor provided loan to the Corporate Debtor as per the requirement of the Corporate Debtor for meeting its financial obligations. Both the parties have entered into an agreement dated 20.06.2019. As per the terms and conditions of

the said Loan agreement the Financial Creditor extended a loan of Rs.4,25,00,000/-(Four Crores Twenty Five Lakhs rupees only) to Corporate Debtor and the Corporate Debtor agreed to make repayment of the said amount in 10 equal quarterly instalments of Rs. 42,50,000/-(Forty Two lakhs Fifty Thousand) each.

- (iv). The Corporate Debtor failed to make repayment as per the Loan agreement. It is further submitted that 01.11.2021 is the date of default of said Loan Agreement and the default amount is Rs.5,52,50,000/-(Rupees Five Crores Fifty Two Lakhs Fifty thousand only) which includes principal amount of Rs.4,25,00,000/- and interest @ 12% from 01.08.2019 to 1.11.2021 amounting to Rs.1,27,50,000/- The Financial Creditor has placed on record the letters dated 25.11.2021, 24.12.2021 and 09.02.2022 where-under the Corporate Debtor has sought time for making payments. Despite granting sufficient opportunity when the Corporate Debtor failed to make payment, this company petition is filed seeking to initiate CIRP against the Corporate Debtor.
3. The Corporate Debtor filed Counter inter-alia, contending as under:-
- i. That there is no relation of Debtor and Creditor between the Financial Creditor and Corporate Debtor as the Financial Creditor did not lend any money to Corporate Debtor. Secondly, the instant application is filed violating several RBI guidelines and lacks proper authorisation.

- ii. That as per section 4 of the Banker Book Evidence Act, the Financial Creditor has to file a certified copy of the entry/document to prove the default of the Corporate Debtor which the Financial Creditor failed to comply.
- iii. That the Financial Creditor has failed to file a record of default from the Information Utility as per the provisions of IBC. The Corporate Debtor alleged that the present application is filed to harass, arm-twist the Corporate Debtor and to abuse the mechanism envisaged under the code. Thus submitting, prayed the Tribunal to dismiss the application.
4. In the view of contest as afore-stated, the point that arises for our consideration is,
Whether a financial debt as claimed by the Financial Creditor exists, if so, whether the Corporate Debtor had defaulted in payment of the same?
5. We have heard the Learned Counsel for the Financial Creditor Shri Mayur Mundra and Learned Counsel for the Corporate Debtor, Shri M.Pramod, perused the records and case laws.
6. At the outset it may be stated that the present application is filed on the basis of loan agreement dated 20.06.2019 claimed to have been executed by the Corporate Debtor in favour of the Financial Creditor where-under the Financial Creditor has claimed that it has lent a sum of Rs. 4,25,00,000/- to the Corporate Debtor to meet its business needs, and the said amount is repayable in 10 equal instalments of Rs. 42,50,000/- each. In support of the said claim

the Financial Creditor filed the original loan agreement dated 20.06.2019.

7. The Corporate Debtor in its counter neither denied its execution nor availing loan of a sum of Rs. 4,25,00,000/- from the Financial Creditor. In fact the Corporate Debtor vide its letter dated 25.11.2021 categorically admitted that it had availed loan of Rs. 4,25,00,000/- under the loan agreement from the financial creditor, however sought time to pay the amount citing financial difficulties. Similar letters were also addressed to the Financial Creditor on 24.12.2021 and 09.02.2022 respectively. However, the Corporate Debtor failed to discharge the debt. Thus, the financial debt as well as its default as pleaded in the application stands clearly admitted and established.
8. Here the contention of the Corporate Debtor that as the Financial Creditor failed to file the record of utility from the Information Utility, the present application is not maintainable is unacceptable, in as much as sub-clause 3 (a) of Section 7 of IBC, 2016, specifically states that the Financial Creditor shall file the default recorded with information utility or other such evidence of the default along with the application. Thus, it is not mandatory for the Financial Creditor to file record of default recorded in Information Utility and the Financial Creditor can as well place “such other record” by which the default can be ascertained. In so far as the case on hand is concerned, the default is not only explicitly clear from the fact that no record of repayment of the

loan amount has been filed by the Corporate Debtor but also from the undisputed letters dated 25.11.2021, 24.12.2021 and 09.02.2022, from the Corporate Debtor.

9. Thus, the debt and default remain admitted by the Corporate Debtor, the claim as made meets the threshold limit, besides not barred by limitation. Hence, the present application is liable to be admitted.
10. Accordingly, we hereby admit the application under Section 7 of IBC, 2016, declare moratorium for the purposes referred to in Section 14 of the Code, with effective from the date of this order with the following directions: -
 - (A) The Corporate Debtor, *EBC Bearing India Limited* is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.
 - (B) The 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the

- recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- (C) 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.
- (D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.
- (E) 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.
- (F) That the order of moratorium shall have effect from the date 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, whichever is earlier.
- (G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as

prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

- (H) Accordingly, this Tribunal appoints Ms. Mummaneni Vazra Laxmi having registration no. IBBI/IPA-001/IP-IP-P00919/2017-2018/11526, G-2, ENCEE Residency, Nagarjuna Nagar Colony, Yellareddy Guda-500073, E-Mail: emailtolak@gmail.com as IRP. The aforesaid IRP has no disciplinary proceedings pending against her. Proposed IRP filed Form-B issued by the Institute of Insolvency Professional. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with and further registry is directed to inform the order of admission of CIRP against the corporate debtor to the concerned parties.
- (I) The IRP shall perform all is functions as contemplated, inter-alia, by Sections 17,18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation, under Section 19 of IBC, 2016 to extending every assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate

application to the Adjudicating Authority with a prayer for passing an appropriate order.

- (J) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016. The Financial Creditor is directed to pay an advance of Rs. 1,00,000/- (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per rules.
- (K) Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.
- (L) Accordingly, this application is admitted.

SD/-

(Ajai Das Mehrotra)
Member (Technical)

SD/-

(Dr.Venkata Ramakrishna Badarinath Nandula)
Member (Judicial)