

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP(IB)/1183/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

M/s. Synergy wood and Glass Private Limited

[CIN: U20219MH2010PTC204013]

...Financial Creditor

v/s.

M/s. Eurowood Lumber Private Limited

[CIN: U20200MH2003PTC142028]

...Corporate Debtor

Order Delivered on 07.03.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Ms. Surekha Yadav a/w Mr. Avinash
Khanolkar i/b Fair Law Associates &
Ms.Sneha Gupta, Ld. Counsel.

For the Corporate Debtor:

Ms.Kajal Chaurasia, Ld. Counsel .

ORDER

This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) M/s. Synergy wood and Glass Private Limited (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Eurowood Lumber Private Limited., the Corporate Debtor by invoking the provisions of Section 7 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 24,21,71,608/- (Rupees Twenty-Four Crores Twenty-One Lakhs Seventy-One Thousand Six Hundred Eight Only) plus Rs. 23,29,40,430/- being interest calculated @ 12 % on quarterly basis upto 31.03.2014 and late fee @ Rs.1 % /- per thousand per day on quarterly cumulative basis from 01.04.2014 as on August 2023. The date of default as specified in Part IV of the petition is 30.04.2022.

Submissions of the Financial Creditor

1. M/s.Eurowood Lumber Private Limited i.e. the Corporate Debtor was in business loss, therefore upon the request of Corporate Debtor M/s. Synergy wood and Glass Private Limited i.e. the Financial Creditor had provided loan facilities to the extent of Rs. 1,00,00,000/- which was to be repaid within a period of one year from the date of receipt i.e. on or before 31.03.2014 (as per the terms and condition laid down in the Loan Agreement) dated 20.04.2013. As per the Loan Terms Corporate Debtor also provided Promissory Noted Dated 20.04.2013.

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2. The Financial Creditor had recalled the loan amount on various occasions the same are reproduced below along with response received from Corporate Debtor:

Sr. No	Recalled Loan Amount by Financial Creditor through Letters Dated	Reply by the Corporate Debtor to the said recall Letters
1	07.10.2014 repayment of Rs. 12,50,000 amount pending as on 30.09.2014 was Rs. 1,18,04,569/- including interest @ 12 % p.a.	01.12.2014 -Seeking Extension Of Time To Repay the Loan -willing to to handover the documents of the land - a Supplemental Agreement dated 15.04.2016 was agreed between the parties to extend the loan tenure by further 2 years i.e. Upto 31.03.2016.
2	20.08.2018 Outstanding amount to the tune of Rs. 4,11,79,107/-	10.10.2018 Due to Financial Crunch and non availability of the Working Capital Funds the Corporate Debtor sought time to repay the loan.
3	17.11.2018	10.12.2018 Due to Financial Crunch and non availability of the Working Capital Funds the Corporate Debtor sought time to repay the loan.
4	17.04.2019 Part Payment of Rs 18.50 lakhs	30.04.2019 Stating that an amount of Rs.25 lakhs will be paid by the Corporate Debtor on or before 30.06.2019 and requesting repayment schedule for the balance amount.
5	04.04.2022 demand to an outstanding amount of Rs. 14,98,90,997/- as on 31.03.2022	The CD failed to respond the said demand raised by the FC.

<i>and requested the Corporate Debtor to make arrangement of the same on or before 30.04.2022 failing to which the Financial Creditor shall be constrained to file appropriate legal proceedings.</i>	
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Submissions of the Corporate Debtor

- a) The Financial Creditor had promised to pay a fresh financial facility of Rs. 2 Crores after the said purchase agreement dated 20.04.2013.
- b) The Corporate Debtor states that the amount borrowed by the FC was to stop SARFAESI action against the company from the Cosmos Cooperative Bank Limited.
- c) The Corporate Debtor further submits that he had issued 4 post dated cheques.
- d) The Corporate Debtor had repaid an amount of Rs.18,50,000/- which itself shows bonafide to clear the outstanding.

Findings

3. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

3.1. The Corporate Debtor has admitted that the Financial Creditor had promised to pay a fresh Financial facility of Rs. 2 Crores. and that the Corporate Debtor had issued 4 post dated cheques for the principal amount. These facts are not corroborated by any documentary evidence. Moreover, this has no bearing on the Financial Debt owed and the default committed

by the Corporate Debtor. The submissions made by the Corporate Debtor are devoid of merits.

3.2. This bench notes that the Financial Creditor regularly demanded/recalled the loan facilities through various letters stated *supra* to the which the Corporate Debtor replied by admitting its liability and seeking time for repayment; On 30.04.2019, the Corporate Debtor offered an amount of Rs. 25,00,000 on or before 30.06.2019 and requested for repayment schedule; Further, the Corporate Debtor has made a total repayment of Rs. 18,50,000/- over the years which is reflected in the Statement of Confirmation of accounts dated 01.04.2021 to 31.03.2022 duly confirmed by the Corporate Debtor. Therefore, this bench is of the considered view that the Corporate Debtor has not disputed the loan facility which was provided by the Financial Creditor and this itself shows that debt is established and there is an admission of liability on part of the Corporate Debtor.

4. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency Process be initiated in the matter of the Corporate Debtor. The petition is complete in all aspects. Since, the debt and default exist, and the present petition is filed within limitation therefore this Bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

6. The Petition bearing CP (IB) No.1183/MB-IV/2023 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) M/s. Synergy wood and Glass Private Limited (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Eurowood Lumber Private Limited., the Corporate Debtor is **Admitted**.
- a) 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.

- (c) Notwithstanding the above, during the period of moratorium, -
- (v) 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;
 - (vi) That 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 Tribunal 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 IBC, as the case may be.
- (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) The bench hereby appoints **Mr. Pramod Dattaram Rasam**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P00722/2017-2018/11259** and email- **pdrasam@gmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP

shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (g) 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 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 Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (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) A copy of this Order be sent 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/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
07.03.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)