IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

COURT – IV

7. **C.P.(IB)/1190(MB)/2021**

CORAM:

SHRI RAJESH SHARMA
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **09.06.2022**

NAME OF THE PARTIES: Shaikh Mohammad Tariq
Vs
Aegis Forging Limited

SECTION: 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

The Court is convened through Video Conference.

1. Mr. Sagar Naik i/b Adv. Dev Upadhyay, Ld. Counsel for the Financial Creditor present. None present for the Corporate Debtor.

2. This is a Petition filed under Section 7 of the IBC for initiation of CIRP by an individual viz. Mr. Shaikh Mohammad Tariq against the Corporate Debtor viz. Aegis Forging Ltd.

3. In Part-IV of the Petition, the Petitioner has submitted as under:

(a) In or about June 2013 the Financial Creditor entered into an agreement dated 22.06.2013 with the Corporate Debtor/Judgment Debtor wherein the Financial Creditor was requested to give personal guarantee to the Creditors/Investors of the Corporate Debtor for the funds taken by the Corporate Debtor to purchase land and building at Plot No. K4 and K5, MIDC, Waluj, Aurangabad – 451 136 also for renovating the said structure.

Contd……2

The Corporate Debtor has taken funds from his Creditors/Investors a total sum of Rs.33,50,000/- for which the Financial Creditor has given the personal guarantee. The Corporate Debtor assured the Financial Creditor that in failure of relieving the personal guarantee of the Financial Creditor, and the Corporate Debtor will give a cash security along with the interest as demanded by the Financial Creditor and accepted by the Corporate Debtor.

The said amount of cash security was of Rs. 60,00,000/- which the Corporate Debtor has failed to give to the Financial Creditor even after the Financial Creditor granting extension of time.

The Corporate Debtor neglects/fails in making the cash security payment and reliving the said guarantor from all the guarantees provided at the time of the Corporate Debtor taking funds from various Investors/Creditors.

The Sole Arbitrator has passed an award dated 11.11.2013 in Arbitration proceedings wherein the Corporate Debtor is directed to pay cash security of Rs.3,64,58,785/- with accrued interest as on 01.07.2013 @ of 21% per annum added by further simple interest @ 6% per annum from 01.07.2013.

The Financial Creditor issued two letters dated 27.08.2021 to the Corporate Debtor/Judgment Debtor demanding the said amount as per the arbitration award.

Therefore, a total claim amount of Rs.5,43,12,602/- (Five Crore Forty Three Lakhs Twelve Thousand Six Hundred and Two only).

(b) *As per the Award passed by the Sole Arbitrator dated 11.11.2013 an amount of Rs.3,64,58,785/- (Three Crores Sixty Four Lakhs Fifty Eight Thousand Seven Hundred and Eighty Five) with accrued interest as on 01.07.2013 added by further simple interest @6% per annum on the above amount from 01.07.2013 till final date of payment.*

Contd….3

Therefore, a total claim amount of Rs.5,43,12,602/- (Five Crore Forty Three Lakhs Twelve Thousand Six Hundred and Two only).

4. Counsel appearing for the Financial Creditor submits that against the alleged Arbitration Award dated 11.11.2013, no payment has been made by the Personal Guarantor to the Corporate Debtor as yet and the Personal Guarantor wants to claim the amount which has never been paid by him to anybody or to the Corporate Debtor. *Prima-facie* this case is not a case where any disbursement has been made in debt and any default has been made or any amount is outstanding against the Corporate Debtor.

5. From the facts of the case, this Bench did not find any merit to be considered for the Petitioner as a Financial Creditor under Section 7 of the IBC, 2016. Therefore, the Petition [C.P.(IB)/1190(MB)/2021] is **dismissed** as not maintainable under IBC.

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)

Sd/-
RAJESH SHARMA
Member (Technical)

09.06.2022 / pvs