

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

CP (IB) No. 1407/MB-IV/2020

Under **Section 7** of the I&B Code, 2016

In the matter of:

Forward Exports Private Limited

[CIN: U51909MH2004PTC146155]

...Financial Creditor/Applicant

V/s

Inesh Accerro Limited,

[CIN: U27100MH2013PLC242759]

...Corporate Debtor/Respondent

Order Dated: 25.07.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Intervenor/Applicant(s) : CS Vijay Tiwari, Ld. Authorised Representative.

For the Respondent(s) : None present.

Per: Kishore Vemulapalli, Member Judicial

1. This is an Application being C.P. (IB) No. 1407/MB/C-IV/2020 filed on 19-12-2020 by Mr. Rathindra Nath Majumder under section 7 of

Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of, Inesh Accerro Limited, the Corporate Debtor.

- 1.1. The Financial Creditor has filed Board Resolution dated 26.11.2020 in support of authorization in favour of Mr. Rathindra Nath Majumder, Director of the Financial Creditor authorising him to file the present company application on behalf of the Financial Creditor.
 - 1.2. The total amount claimed by the Financial Creditor in the Part 4 of the Company Petition is Rs.8,27,39,000/- alongwith interest @24% p.a. from 22.05.2018 till date of repayment of total debt. The Financial Creditor has not mentioned any date of default in the Part IV of the Application, however, on perusal of documents, we find that the date of default is 24.12.2019 i.e. the date when the loan was demanded in terms of Clause 2 of the loan agreement dated 22.05.2018.
2. The Financial Creditor is a Private Limited Company engaged in the business of Trader, dealer, distributor, exporter, importer of agricultural and commercial products. The Corporate Debtor is a Limited Company involved in the business of supply of steel and steel allied services.
 - 2.1 The Corporate debtor had approached the Financial Creditor in the month of May, 2018 and requested for financing the short term requirement of the Corporate Debtor. After having a long meeting with the Corporate Debtor, Financial Creditor agreed to provide a short-term unsecured loan of Rs.8,27,39,000/- (Rupees Eight Crores Twenty Seven Lakhs Thirty-Nine Thousand Only) in one or more tranches for the maximum period of 18 months to Corporate

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- Debtor. The said loan was repayable on demand of the lender or earlier at any time by the borrower.
- 2.2 Both the parties entered into a Loan Agreement dated 22.05.2018 and the Applicant had disbursed the said loan amount to the Corporate Debtor on 29.05.2018 through online transfer/ cheque.
- 2.3 The Financial Creditor asked the Corporate Debtor vide letter dated 24.12.2019 to repay the loan amount with interest at the earliest. Clause 4 of the loan agreement provides that the borrower shall pay the loan to the lender as and when demand is made by lender. This was replied by the Corporate Debtor vide its letter dated 02.01.2020 stating that they are arranging to make the repayment.
- 2.4 The Financial Creditor again sent a reminder letter dated 10.01.2020 for the repayment of due amount of Rs. 8,27,39,000/- (Rupees Eight Crores Twenty Seven Lakhs Thirty-Nine Thousand Only) plus interest @24% p.a. till the date of actual payment and the same replied by the respondent vide its letter dated 20.01.2020.
- 2.5 The Financial Creditor has not received any response thereafter. The Corporate Debtor has accepted the liability of payment towards the loan plus interest amount.
3. This matter was heard on 11.01.2021 and the Corporate Debtor was issued court notice intimating the next date of hearing. However, the court notice came to be issued by the registry pursuant to direction dated 23.11.2021 issued by this Bench. This Bench allowed substituted service by way of publication vide order dated 16.03.2022 and it was recorded therein that the Corporate Debtor shall be set exparte in case on non-appearance. On 05.09.2022, the Financial Creditor confirmed that the substituted service by way of publication has already been effected. On none of the occasions,

the Corporate Debtor appeared, and accordingly, was set ex-parte vide order dated 15.12.2022. Thereafter also, the Corporate Debtor didn't appear on 16.02.2023, 11.04.2023, 04.05.2023 and 22.06.2023 when this matter was Reserved for Orders. No reply has been received from the Corporate Debtor.

4. This Bench had vide order dated 15.12.2022 directed the Financial Creditor to file the financial statements for the last 3 financial years but the Financial Creditor failed to comply with the said direction thereafter on 16.02.2023 and 11.04.2023 and on 04.05.2023, the Financial Creditor submitted that they are taking steps to retrieve the xerox copies of the impounded financial statements from GST Department but hasn't submitted the same till date. The Financial Creditor has only submitted the financial statements for the year 2018-2019.
5. We have carefully gone through the pleadings available on records and considered the arguments of the parties.

5.1 After perusal of the documents on record and arguments advanced by both the parties, this Bench is of the considered view that there is no dispute as regards the existence of the debt and the Financial Creditor has annexed the ledger statement for the period of 01.04.2018 to 30.03.2019 to the present petition in which the outstanding amount is reflected. The said amount is also reflected in the Audited Financial Statement of the Financial creditor under Annexure 7.

5.2 This Bench finds that Clause 2 and 5 of the Loan Agreement dated 22.05.2018 entered into and signed by both the parties clearly states that "the loan shall be payable on demand of the lender as and when

the lender is in the need of money”. The Financial Creditor first demanded the repayment of loan alongwith agreed interest vide letter dated 24.12.2019, which is the date of default in the present petition.

5.3 On perusal of the Corporate Debtor’s letter in reply dated 02.01.2020 to the Financial Creditor’s demand letter for repayment of the outstanding debt, the Corporate Debtor has clearly acknowledged the debt amount claimed by the Financial Creditor in this petition and requested for some time from the Financial Creditor to arrange the amount due by them.

5.4 We find that there exists a debt and default of the said debt on the part of the Corporate Debtor, and such debt falls within the definition of “Financial Debt” u/s. 5(8) of the Insolvency and Bankruptcy Code, 2016. A financial debt is defined under Section 5(8) of the IBC to mean *"a debt alongwith interest, if any, which is disbursed against the consideration for time value of money and includes-*

- a) Money borrowed against payment of interest;*
- b) Any amount raised by acceptance under any acceptance credit facility or its de-materialized equivalent;*
- c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- e) Receivable sold or discounted other than any receivable sold on non-recourse basis;*
- f) Any amount raised under any other transaction, including, any forward sale or purchase agreement, having the commercial effect of borrowing;*

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- g) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- h) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause"*

- 5.5 This Bench is of considered view that the present Petition meets the requirement of section 7 of the Code to initiate the CIRP in the matter of the Corporate Debtor.
6. On perusal of the documents submitted by the Applicant, it is clear that an financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant as the required threshold limit to file a petition u/s 4 of the Insolvency and Bankruptcy Code, 2016 and there is default by the Corporate Debtor in payment of debt amount. The application is complete and has been filed under the proper form. In view of the above, we find that the present case is fit for admission under section 7(5)(a) of the Insolvency And Bankruptcy Code, 2016.
7. The Applicant has proposed the name of Ms. Neelima Anil Bhate, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01122/2018-2019/11900] and Email Id.- neelima_bhate@yahoo.com; and has submitted her consent letter dated 11.12.2020 u/s. 7 (3)(b) of the Insolvency And Bankruptcy Code, 2016 to carry out the functions as mentioned under Insolvency and Bankruptcy Code, 2016.

ORDER

8. This Application being **C.P. (IB) No. 1407/NCLT/MB/C-IV/2020** filed under Section 7 of I&B Code, 2016, by Mr. Rathindra Nath Majumder on behalf of the Financial Creditor under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Inesh Accerro Limited, the Corporate Debtor, is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- a) 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;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any Financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench hereby appoints Ms. Neelima Anil Bhate, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01122/2018-2019/11900] and Email Id.- neelima_bhate@yahoo.com; as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

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- VII. The Financial Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees two 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).
- VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
//LRA-Akshata Shah//

Sd/-

Kishore Vemulapalli
Member (Judicial)