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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/91(CHE)/2021

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **M/s. TAPSTIA Industrial Micro Estate Landmark
Auto Engineering Consortium Limited***

R. Kamala,
A6, 'Sankalppa',
No.10, Jayaram Street,
Thiruvanmiyur,
Chennai – 600 041

... .. *Financial Creditor*

-Vs-

**M/s. TAPSTIA Industrial Micro Estate Landmark Auto
Engineering Consortium Limited**
203, Time Sector, Park Road,
Ambattur Industrial Estate,
Chennai – 600 068

... .. *Corporate Debtor*

Order Pronounced on 17th November 2021

CORAM :

**SUCHARITHA R, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Financial Creditor : Duke Melvin Ebinesar, Advocate

*For Corporate Debtor : P.H. Arvinth Pandian, Senior Advocate
for Sreenik S. Jain, Advocate*

ORDER

Per: SUCHARITHA R, MEMBER (JUDICIAL)

Under adjudication, is an Application filed by Mrs. R. Kamala,
*(hereinafter referred as "**Financial Creditor**")* under Section 7 of

Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, namely, **M/s. TAPSTIA Industrial Micro Estate Landmark Auto Engineering Consortium Limited** (hereinafter referred as "**Corporate Debtor**").

2. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor had conveyed an immovable property to the Corporate Debtor and since the Corporate Debtor was short of Rs.3,90,00,000/- towards the sale consideration, it was agreed by the Financial Creditor to advance the said amount as loan to be repayable on or before 30.03.2017 with interest at the rate of 24% p.a. Further, it was submitted that a Demand Promissory Note in pursuance of the same was executed by the parties on 29.11.2016.

3. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor have neglected to make any payment, except for a sum of Rs.43,68,000/- towards interest and that it was submitted that the Corporate Debtor has neither paid the principal amount nor paid the remaining interest amount. Further, it was submitted that the Financial Creditor has served a notice to the Corporate Debtor on 28.07.2018 and thereby claimed a sum of Rs.5,20,02,679/- which is required to be paid by the Corporate Debtor including interest, however there was no reply from the

Corporate Debtor and hence the Financial Creditor originally filed an Application under Section 7 of IBC, 2016 which was numbered as IBA/86/2019.

4. The Learned Counsel for the Financial Creditor submitted that in the said proceedings, the Corporate Debtor offered to resolve the dispute amicable and requested the Financial Creditor to accept a settlement by foregoing a portion of the claim of the Financial Creditor. It was submitted that considering the time involved in the legal battle, the Financial Creditor came forward to accept the settlement and agreed to forego a portion of the claim of the Financial Creditor and in pursuance of the same, a 'Memorandum of Compromise' was entered into between the parties on 30.10.2019 and that a sum of Rs.39,00,000/- was paid by the Corporate Debtor to the Financial Creditor on the date of execution of the said document. Thereafter it is seen that by taking into record the said 'Memorandum of Compromise', this Tribunal vide its order dated 04.11.2019 passed in IBA/86/2019 has dismissed the said IBA/86/2019 as withdrawn with liberty given to the Applicant to approach this Tribunal afresh in case of non - adherence on the part of the Corporate Debtor with the terms and conditions of the memo of compromise.



5. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor has not paid the amount as per the 'Memorandum of Compromise' and hence due to the non adherence of the terms and conditions as per the 'Memorandum of Compromise', the Financial Creditor was constrained to file the present Application before this Tribunal seeking thereof to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

6. The Corporate Debtor has filed counter and the Learned Senior Counsel appearing on behalf of the Corporate Debtor *prima facie* contended that the present Application is not maintainable in view of Section 10A of IBC, 2016. It was submitted that the present Application has been filed on the basis of the debt owed by the Corporate Debtor to the Financial Creditor which falls within the period which has been newly inserted under Section 10A of IBC, 2016.

7. The Learned Senior Counsel for the Corporate Debtor submitted that the date of default in the present Application has to be crystallized as 30th April 2020 as per the 'Memorandum of Compromise' entered into between the parties and that only due to the outbreak of Covid-19 pandemic the Corporate Debtor was not in a position to repay the said outstanding amount, and hence the

'default' in pursuance of the same would squarely fall under Section 10A of IBC, 2016. In support of its contention, the Learned Senior Counsel for the Corporate Debtor pressed into service the decision of the Hon'ble Supreme Court in the matter of **Ramesh Kymal -Vs- Siemens Gamesa Renewable Power Pvt. Ltd.** (2021) 3 SCC 224, wherein it has been held that there is a statutory bar imposed for filing any Application under Section 7, 9 and 10 of IBC, 2016 for the defaults committed on or after 25.03.2020 for a period of six months. Under the said circumstances, the Learned Senior Counsel for the Corporate Debtor prayed for dismissal of the present Application.

8. Heard the submissions made by the Learned Counsel for both the parties. The issue that is required to be adjudicated in the present case is that whether the application filed by the Financial Creditor under Section 7 of IBC, 2016 against the Corporate Debtor is hit by Section 10A of IBC, 2016. It is seen from the records that the Financial Creditor originally filed an Application under Section 7 of IBC, 2016 which was numbered as IBA/86/2019 and in the said Application accepting the Corporate Debtor by accepting the default in repayment of the loan amount had entered into a Memorandum of Compromise (MoU) with the Financial Creditor. The said MoU is captured herewith;



BEFORE THE HON'BLE NATIONAL COMPANY LAW
TRIBUNAL, AT CHENNAI BENCH

COMPANY PETITIONER (IB) No. 86 (MB) of 2019

IN THE MATTER OF

Mrs. R. Kamala
A6, 'Sankalpa',
No. 10, Jayaram Street,
Thiruvanmiyur, Chennai-600041

..... PETITIONER

-Versus-



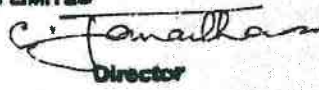

M/S TAPSTIA Industrial Micro Estate
Landmark Auto Engineering Consortia Ltd. (Timelac)
203, Time Sector, Park Road,
Ambattur Industrial Estate,
Chennai-600068

..... RESPONDENT

MEMORANDUM OF COMPROMISE

The above CP has been filed by the Applicant as a Financial Creditor against the Financial Debtor, under the provisions of the IB Code, since the Financial Debtor, did not honor the repayment commitment and other obligations undertaken by them while availing a loan of Rs.3,90,00,000/- (Rupees Three Crores and Ninety lakhs only) except a small portion as mentioned in the above application.

The Financial Debtor had filed its counter and the matter has become ripe for hearing and passing of orders relating to appointment of an Interim Resolution Professional. At this stage the Directors of the Financial Debtor have, with a view to put an end to the long drawn litigation, been advised by well

**For TAPSTIA INDUSTRIAL MICRO ESTATE
LANDMARK AUTO ENGINEERING
CONSORTIUM LIMITED**

**For TAPSTIA INDUSTRIAL MICRO ESTATE
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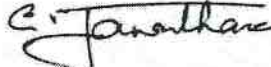

Director


wishers to resolve the issue by discussing the matter with the Financial Creditor in order to enable them to concentrate on the affairs of the company.

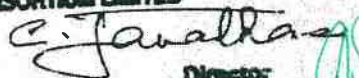
Considering the above advice to be prudent and in the interest of the Financial Debtor, the Directors of the Financial Debtor met the Financial Creditor and discussed about the settlement. They also explained the financial difficulties being undergone by the company and requested her to waive interest and arrive at a settlement to give a closure to the litigation. The Financial creditor had, after discussing the matter with her family, come forward to agree for a settlement.

The terms of the settlement agreed between the parties are as hereunder:

- a) The Financial Creditor agrees to receive a sum of Rs.1,95,00,000/- (Rupees One Crore and Ninety Five Lakhs only) as full and final settlement towards the outstanding loan amount payable to her.
- b) Rs.39,00,000/- (Rupees Thirty Nine Lakhs Only) out of the above sum of Rs.1.95 Crores is paid at the time of signing this memorandum of settlement by Demand draft bearing No.917349, dated 23.10.2019, drawn on Kotak Mahindra Bank, Anna Salai Branch
- c) The Balance sum of Rs.1,56,00,000/- (Rupees One Crore and Fifty Six Lakhs only) shall be paid on before 30th April 2020.
- d) Upon payment of the above sums the Financial Debtor stands fully discharged of financial obligations to the Financial creditor, which are subject matter of the above company petition and there would not be any outstanding

TAPSTIA INDUSTRIAL MICRO ESTATE
 LANDMARK AUTO ENGINEERING
 CONSORTIUM LIMITED

 Director

For TAPSTIA INDUSTRIAL MICRO ESTATE
 LANDMARK AUTO ENGINEERING
 CONSORTIUM LIMITED

 Director

claims or liabilities of whatsoever nature subsisting and payable by the Financial Debtor to the Financial creditor mutually.

e) Upon receipt of the agreed sum within the agreed period, the Financial Creditor shall withdraw the company petition being C.P.(IBC) No. 86/MB/2019 which is pending before the NCLT bench at Chennai and the Financial Debtor and its constituents, if any, will not file/initiate or continue any proceedings against the Financial creditor or any of family members and would give up and withdraw if they have initiated any proceedings before any forum/court/arbitrator, against the Financial Creditor or her any of her family members.

f) The Financial Debtor had passed appropriate board resolutions, in its duly conducted Board meeting which had sufficient quorum, authorizing its Director/s Mr.N.Subburam and Mr.Janarthanan to sign and execute this Memorandum of Compromise and also undertake to give separate letters mentioning about the payment of the agreed compromise amount through its investor Gemini Group and also agreeing to withdraw any proceedings if any, having been initiated by the Financial Debtor against the Financial Creditor or arrange/assuring for withdrawal of any proceedings if having been initiated by any of the constituents/members/associates/interested person/s of the Financial Debtor against the Financial Creditor.

g) In the event of failure on the part of the Financial debtor to honour any of the above obligations undertaken, the compromise shall stand terminated/revoked and the Financial Creditor will become entitled to claim the entire outstanding sum, with interest and cost, as mentioned in the above company petition by pursuing the same.

TAPSTIA INDUSTRIAL MICRO ESTATE
LANDMARK AUTO ENGINEERING
CONSORTIUM LIMITED

N. Subburam
Director

For TAPSTIA INDUSTRIAL MICRO ESTATE
LANDMARK AUTO ENGINEERING
CONSORTIUM LIMITED

J. Janarthanan
Director

P. Kamala

n) The Parties agree to place this Memorandum of compromise before the Hon'ble NCLT, Chennai Bench, with a prayer to record the same and defer/adjourn the petition to first week of May 2020, to report conclusion or continuance of the proceedings.

In witness whereof the parties above named and their respective counsels have signed this deed on this the 30th day of October 2019

R. Kamala

R. Kamala,

Tapstia Industrial Micro Estate Landmark Auto Engineering Consortium Ltd.,
For TAPSTIA INDUSTRIAL MICRO ESTATE
LANDMARK AUTO ENGINEERING
CONSORTIUM LIMITED

N. Suburaman
N. Suburaman, Director **Director**

For TAPSTIA INDUSTRIAL MICRO ESTATE
LANDMARK AUTO ENGINEERING
CONSORTIUM LIMITED

C. Janarthanan
C. Janarthanan, Director **Director**

Witnesses :

R. Guruprasath
1) R. GURUPRASATH & /O P. RENGANATHAN
C-1/95, GREEN TREE FLATS, BEHIND RAJINI GARDEN
KRISHNA NAGAR, KRAMBAKILAM - 603105.

M. Jagannathan
2) M. JAGANNATHAN
S/O R. MUNUSAMY,
NO. 2, PILLAIYARKOIL ST,
PARUTHI PATTU, AVADI, CH-71.

Counsel for Petitioner

Counsel for Respondent

For RANK ASSOCIATES

Rank Associates
Partner

Rank Associates

9. A perusal of the said MoU would posit the fact that the Financial Creditor has agreed to receive a sum of Rs.1,95,00,000/- as full and final settlement and that on the date of signing of the MoU the Corporate Debtor has paid a sum of Rs.39,00,000/- to the Financial Creditor. The balance sum of Rs.1,56,00,000/- was required to be paid by the Corporate Debtor on or before 30.04.2020. Thus, it was contended by the Learned Senior Counsel for the Corporate Debtor that the date of default is 30.04.2021 and hence sought to seek shelter under Section 10A of IBC, 2016.

10. At this juncture it is necessary to refer to Section 10A of IBC, 2016, which is extracted hereunder;

10A. Suspension of Initiation of corporate insolvency resolution process.

Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. - For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.

11. A perusal of Section 10A of IBC, 2016 would manifest the fact that if the Corporate Debtor has committed default on or after

25.03.2020 (upto a period of 6 months), then no Application ever be filed for initiation of CIRP against the Corporate Debtor for the said default occurring during the said period.

12. In the present case, it was emphatically argued by the Learned Senior Counsel for the Corporate Debtor that the 'default' based upon the MoU has arisen on 30.04.2020 and hence the present Application is barred by Section 10A of IBC, 2016. However, we are of the view that there is a fundamental fallacy in the arguments made by the Learned Senior Counsel for the Corporate Debtor. In the present case, the Corporate Debtor has accepted its default in IBA/86/2019 and thereby proposed to settle the matter with the Financial Creditor for a sum of Rs.1.95 Crore and in pursuance of the same, the parties hereto have entered into an MoU.

13. At this juncture, it is required to be noted that the said MoU as entered into between the parties cannot be give a fresh 'cause of action' for the purpose of arriving at 'default'. The MoU entered into between the parties was in pursuance of a default already been committed by the Corporate Debtor and hence just by entering into an MoU and thereby not repaying the amount as per the schedule, does not shift the 'date of default'. However, it is made clear that the present Application was filed by the Financial

Creditor based upon the liberty being granted by this Tribunal in IBA/86/2019 vide its order dated 04.11.2019. Thus, the defence as raised by the Learned Senior Counsel for the Corporate Debtor that the 'default' in the present case has arisen during the Covid – 19 period i.e. from 25.03.2020 till 25.03.2021 does not have any legal legs to stand.

14. In view of the discussions made *supra*, the 'debt' and 'default' on the part of the Corporate Debtor is proved and under the said circumstances this Tribunal is left with no other option than to initiate the Corporate Insolvency Resolution Process as against the Corporate Debtor.

15. The Financial Creditor has proposed the name of **MR. LINGUMGUNTA VENKATA SHYAM SUNDAR**, Reg. No. IBBI/IPA/-002/IP-N00262/2017-18/10775 (email id:- *shyam.ascendi@gmail.com*) as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 23.12.2021. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of

Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

16. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- 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;



d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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 or a similar grant or right during moratorium period;

17. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services

shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

18. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the



date of such approval or Liquidation Order, as the case may be.

19. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond