

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT III

12. C.P.(IB)-1204(MB)/2022

CORAM:SH. H. V. SUBBA RAO, MEMBER (J)

MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **09.02.2023**

NAME OF THE PARTIES: National Skill Development Corporation

V/s.

Astm Skills Private Limited

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Ms. Shalaka Garg, counsel for the Financial Creditor and Ms. Mehali Mehta I/b India law alliance, counsel for the Corporate Debtor are present through virtual hearing.

Heard both sides. The learned counsel appearing for the Financial Creditor invited the attention of this Bench to certain Paras of the reply filed by the Corporate Debtor in which the Corporate Debtor clearly accepted the “debt” and “default” in this case.

After perusing the above reply and other materials available before this Bench, this Bench feels that this is a clear case of admission of “debt and default” and the above Company Petition deserves to be admitted.

Accordingly, the above Company petition **is admitted and detail order would follow:**

Sd/-
MADHU SINHA
Member (Technical)
//Shubham//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P.(IB)-1204(MB)/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

National Skill Development Corporation

Having registered office at: 301, 3rd Floor West Wing
Worldmark 1, Asset 11, Aerocity New Delhi 110037 IN

.....Financial Creditor

Vs

ASTM Skills Private Limited

(CIN: U74920MH2008PTC180738)

Registered office at: 45, Chimbai Road, Behind St.
Andrews Church, Off Hill Road, Bandra (West), Mumbai,
Maharashtra-400050.

..... Corporate Debtor

Order on: 09.02.2023

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

For the Applicant: Mr. Sandeep Bajaj, Ms. Aakanksha Nehra,
Ms. Shalaka Garg, Advocates

For the Respondent: Ms. Mehali Mehta, Advocate

1. The above Company Petition is filed by **National Skill Development Corporation** hereinafter called as Financial Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against **ASTM Skills Private Limited** called as Corporate Debtor by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “Code” read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of total Financial Debt of Rs. 20,29,95,607/- (cumulative Principal amount: Rs. 13,79,87,782/-, Interest: Rs. 5,58,85,636/- and default interest: Rs. 91,22,189/-)

2. **BRIEF FACTS OF THE PETITIONER**

i. That the present application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) is being filed for seeking initiation of Corporate Insolvency Resolution Process against the ASTM Skills Private Limited (“**Corporate Debtor**”) due to the failure on the part of the Corporate Debtor in making the repayment of a cumulative amount of Rs. 20,29,95,607/- (Rupees Twenty Crore Twenty-Nine Lakh Ninety-Five Thousand Six Hundred and Seven Only) as on 31.03.2022 in terms of Loan Agreement dated 18.01.2012 read with Amendment Agreement dated 25.03.2013 (hereinafter referred to as “**Loan Agreement**”) comprising of:

- a. Cumulative principal amount of Rs. 13,79,87,782/- (Rupees Thirteen Crore Seventy-Nine Lakh Eighty-Seven Thousand Seven Hundred Eighty-Two Only), and
- b. Interest of Rs. 5,58,85,636/- (Rupees Five Crore Fifty-Eight Lakh Eighty-Five Thousand Six Hundred and Thirty-Six Only) (at the contractually agreed rate of 6% per annum)
- c. Default interest of Rs. 91,22,189/- (Rupees Ninety-One Lakh Twenty-Two Thousand One Hundred and Eighty-

Nine Only) (at the contractually agreed rate of 2% per annum).

- ii. That National Skill Development Corporation (hereinafter referred to as “the Financial Creditor”) is a non-profit company, incorporated under the provision of Companies Act, 1956 and continuing to function under the provision of Companies Act, 2013. The Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956 and is continuing as on date under the Companies Act, 2013 having its registered office at “301, 3rd Floor, West Wing, World Mark 1, Asset 11, Aerocity, New Delhi-110037”.
- iii. The Government of India through Ministry of Skill Development & Entrepreneurship (MSDE) holds 49% of the share capital of the claimant, while the private sector has the balance 51% of the share capital. The Claimant is established as public private partnership with the object of developing unskilled and semi-skilled labour force into productive and skilled labour and to establish, manage, run and support institutes and polytechnics for achieving this objective. The primary function of the Claimant is to utilize and manage funds transferred to it by National Skill Development Fund (‘NSDF’) administered by Ministry of Skill Development & Entrepreneurship into various Skill Development projects for achieving its objectives.
- iv. That the Financial Creditor had disbursed the following sums to the Corporate Debtor as per the terms of the Loan Agreement:

Sr. No.	Date	Amount (In INR)
1.	22.03.2012	9,00,00,000/-
2.	02.12.2013	3,00,00,000/-
	Total	12,00,00,000/-

- v. That the Corporate Debtor had delayed in making repayment of the dues under the Loan Agreement. Numerous restructuring proposals were submitted by the Corporate Debtor from time to time; however, the same were not viable. Hence, the Financial Creditor issued a notice dated 14.07.2017 whereby it:
 - a. terminated the Loan Agreement dated 18.01.2012 (as amended on 25.03.2013) and Facility Agreements;
 - b. sought the immediate payment of entire outstanding loan amount along with the outstanding interest (including default interest) within 7 days from the receipt of Notice dated 14.07.2017; and
 - c. invoked the Corporate Guarantee given by the Zicom Electronic Security Systems Limited.
 - vi. That therefore, the Financial Creditor issued a loan recall notice dated 26.10.2021 whereby it called upon the Corporate Debtor to repay within a period of 7 days the entire due for a sum of Rs. 19,69,90,534/- (Rupees Nineteen Crore Sixty-Nine Lakhs Ninety Thousand Five Hundred and Thirty-Four Only) as on 30.09.2021. However, no payments were received by the Financial Creditor from the Corporate Debtor.
 - vii. That hence the present application is being filed by the Financial Creditor seeking commencement of Corporate Insolvency Resolution Process of the Corporate Debtor due to default in repayment of the financial debt.
3. The learned counsel appearing for the Financial Creditor invited the attention of this Bench to certain Paras of the reply filed by the Corporate Debtor in which the Corporate Debtor clearly accepted the “debt” and “default” in Para-10 of the reply which is as under:

Para-10: *I say that the Corporate Debtor pursuant to the loan agreement has paid an amount of Rs. 26,70,667/- (Rupees Twenty-Six Lakh Seventy Thousand Six Hundred and Sixty-Seven Only) to the Financial Creditor on 04th October 2017. Further Rs. 11,70,667/- (Rupees Eleven Lakh Seventy Thousand Six Hundred and Sixty-Seven Only) was paid to the Financial Creditor and thereafter an amount of Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) was paid to the Financial Creditor in three instalments in year 2019. It is pertinent to note that the Financial Creditor have failed to acknowledge the payments made by the Corporate Debtor in the present petition. I say that the company was facing financial stress on account of the economic fallout due to the pandemic. The Covid-19 majorly impacted the small business and new business venture and drastically hampered the financial performance of the Company. Thereafter the Corporate Debtor was not in the position to pay the loan amount, However, if the Corporate Debtor would have received the remaining loan amount of Rs. 3,00,00,000/- (Rupees Three Crore Only) then it would have achieved its proposed target and would not have mounted losses over the years.*

4. Since there is a clear admission of 'debt' and 'default' in the reply filed by the Corporate Debtor, the reply has no much relevance. However, it was taken on record.
5. For the aforesaid reasons, this Bench is of the considered opinion that this is a case of admitted 'debt' and 'default' by the Corporate Debtor and there is nothing to be adjudicated and there are no valid grounds to reject the above Company Petition.
6. Accordingly, the above Company Petition is admitted by passing the following order:

ORDER

- a. The above Company Petition No. (IB) 1204(MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against ASTM Skills Private Limited.
- b. This Bench hereby appoints Mr. Prashant Jain (ipprashantjain@gmail.com) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01368/2018-2019/12131 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- d. That this 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. 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.

- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement 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, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)
//Shubham//

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)