

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

CP (IB) No. 1303/MB-V/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

**Fabtech Technologies International
Limited**

[CIN: U24230MH1995PLC094603]

...Financial Creditor/Applicant

V/s

Buildmighty Techno Private Limited

[CIN: U45203MH2010PTC204045]

...Corporate Debtor/Respondent

Order Dated: 10.07.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances:

For the Petitioner(s) : Ms. Simran Kasat, Advocate.

For the Respondent(s) : Mr. Amjad Adam Arbani, Director.

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 1303/MB-V/2022 filed by **Fabtech Technologies International Limited**, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter "**Code**") seeking initiation of Corporate Insolvency Resolution Process (hereinafter "**CIRP**") against

Buildmighty Techno Private Limited, Corporate Debtor, for claiming total outstanding of Rs.5,96,33,275/- (Rupees five crore ninety-six lakh thirty-three thousand two hundred seventy-five only) along with the interest calculated till 11.05.2022.

2. The date of default is not mentioned in Part-IV of the Petition. The Petition is filed on 12.05.2022.
3. The case of the Financial Creditor is that:
 - 3.1. The Corporate Debtor approached the Financial Creditor for availing financial assistance for its business requirements. Based on the mutual agreeable terms, the Financial Creditor provided financial assistance to the Corporate Debtor at several intervals since calendar year 2012 which were duly accepted and acknowledged by the Corporate Debtor.
 - 3.2. Upon the request of the Corporate Debtor, the Financial Creditor during the F.Y. 2012-13 to F.Y. 2020-21, transferred certain amounts to the Corporate Debtor at several intervals spanning until F.Y. 2018-19. Hence, on account of non-repayment on the part of the Corporate Debtor, the Financial Creditor filed this present Petition under Section 7 of the Code.
 - 3.3. The Financial Creditor filed the NeSL Report dated 11.05.2022 wherein the amount of Rs.5,96,33,275/- is shown to be outstanding. The Financial Creditor also filed the Bank Statement for a period from 01.09.2019 to 30.09.2019 and from 01.04.2020 to 07.04.2020. The Financial Creditor has further relied upon computation of default annexed as part 4 with the application.

Reply of the Corporate Debtor:

4. The Corporate Debtor has not filed its Reply in the matter.

Findings/Observations:

5. We have heard the arguments of the Learned Counsel for Financial Creditor and oral arguments of the Director of the Corporate Debtor namely Mr. Amjad Adam Arbani, who was present at the time of argument and have perused the records.

5.1. The captioned Petition is filed by the Financial Creditor under Section 7 of the Code for initiating CIRP against the Corporate Debtor on the basis of non-receipt of financial debt of Rs.5,96,33,275/-. As per the submissions of the Financial Creditor, the Corporate Debtor availed financial assistance from the Financial Creditor during the period from F.Y. 2012-2013 to F.Y. 2020-2021. The Financial Creditor has filed the details of the disbursement and dues annexed as **Annexure “4”** of the Company Petition.

5.2. It is observed by this Bench that the Corporate Debtor has not filed its reply in the matter. However, Mr. Amjad Adam Arbani, Director of the Corporate Debtor company appeared in person on 16.05.2023 and admitted that the Corporate Debtor is liable to pay the outstanding dues to the Corporate Debtor and the same has not been paid to the Financial Creditor.

5.3. From the material on record, it has been observed by the Bench that the Financial Creditor has not relied upon any loan

Agreement/Document establishing the terms and conditions of financial assistance provided to the Corporate Debtor. Further, the Financial Creditor has failed to demonstrate as to how and when the loan was repayable by the Corporate Debtor. Therefore, in the absence of the Loan Agreement, it is not possible to determine the date on which default took place. It is pertinent to note that as per Part-IV of the Petition, the financial assistance was provided to the Corporate Debtor from the year 2012 onward and the Petition has been filed on 05.12.2022.

5.4. It is further observed by the Bench that since no loan agreement have been relied upon or produced on record by the Financial Creditor, it cannot be ascertained as to when the loan was repayable. In addition to this, no Demand Notice is shown to have been served by the Financial Creditor asking for repayment of dues from the Corporate Debtor. It is well settled that the event of default takes place only when the loan is not paid after it becomes due. Since there is no due date of the alleged loan, it was imperative on the part of the Financial Creditor to have issued a notice demanding back its funds. Under the given circumstances, the default cannot be said to have occurred in the absence of any demand by the Financial Creditor. Therefore, the Financial Creditor has miserably failed to have prove the factum of default. It is equally well settled that an application under Section 7 of the Code cannot be filed if no default has taken place. Therefore, in our considered view, the Financial Creditor has miserably failed to make out a case for admission of the instant Petition under Section 7 of the Code.

5.5. Hence, this Bench orders as follows:

ORDER

- a. The Application bearing C.P. (IB) No. 1303/MB-V/2022 filed by **Fabtech Technologies International Limited**, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against **Buildmighty Techno Private Limited**, Corporate Debtor is **Dismissed**.
- b. We make it clear that any observations made in this order shall not be preclude the petitioner from seeking any remedy as per the law before any other judicial forum/court of competent jurisdiction.

SD/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)