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**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**

(IB)-1089(ND)/2018

**In the matter of**

TUF Metallurgical (P) Ltd.  
TUF House LSC No. 3,  
Shreshtha Vihar, Post Box No. 9237,  
East Delhi, Delhi-110092

.....Operational Creditor

V/s

Albus India Limited  
F. No. 22, Plot No. 29, Maitri Apartment  
Sector-9, Rohini, North Delhi  
New Delhi-110085

.....Corporate Debtor

SECTION: 7 of IBC, 2016

**Order delivered on 2<sup>nd</sup> January, 2019**

**Present:**

SMT. INA MALHOTRA, HON'BLE MEMBER (J)  
SMT. DEEPA KRISHAN, HON'BLE MEMBER (T)

**For the Petitioner:** Mr. Vaibhav Mahajan, Advocate

**For the Respondent:** Mr. Vineet Arora, Mr. Akshat Bajpai  
and Ms. Kanika Sondhi, Advocates

**ORDER**

**PER SMT. INA MALHOTRA, MEMBER (J)**

The Petitioner, a company engaged in the manufacture of cored wires  
and trade of raw material used in steel foundaries and metal industry had



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business relationships with the Respondent/Corporate Debtor, dealing in manufacture and production of Low Carbon Ferro Chrome.

2. As per averments, the Corporate Debtor approached the Financial Creditor for financial assistance in the last quarter of 2016. At their request, the financial creditor disbursed a total sum of Rs. 2,51,44,385/- in instalments between October, 2016 to March, 2017. The said amount was repayable by 30<sup>th</sup> June, 2017 or on demand, together with interest @ 24% per annum. The financial assistance was renewed on execution of a Finance Facility/Share Pledge Agreement dated 04.04.2017 agreeing to extend the limit to Rs. 5 crores. A demand promissory note dated 17<sup>th</sup> April, 2017 was executed by one of the Directors of the Corporate Debtor for and on behalf of the company, as well as in his personal capacity, acknowledging the liability under the said financial loan. By way of security, the Board of Directors of the Corporate Debtor offered to pledge shares worth Rs. 5 crores. To reduce the liability, the financial creditor also agreed to accept finished and manufactured goods of the Corporate Debtor. Additionally, a sister concern of the Corporate Debtor namely, Albus Conserves Pvt. Ltd. offered security by way of equitable mortgage of immovable property belonging to it.

3. As per submissions, the Corporate Debtor failed to repay the loan in terms of their agreement dated 04.04.2017. A notice dated 23<sup>rd</sup> February, 2018 was issued which was duly acknowledged by the Corporate Debtor. The Corporate Debtor also confirmed that a sum of Rs. 1,13,46,653/- was also due and payable on account of release of 18.761 MT of graphite electrodes



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from the Vizag Port paid for by the Financial Creditor for and on their behalf. In response to the legal notice, the Corporate Debtor issued 4 cheques amounting to Rs. 8,27,63,010/-. These returned dishonoured on grounds of "Insufficient Funds". The financial creditor submits that the total liability under the finance facility agreement has accumulated to Rs. 10,29,56,582/-. Recall notices were issued which failed to evoke any response. Failure to pay the same has necessitated initiation of the resolution process of the Corporate Debtor.

The disbursal of loan has been categorised as Loan I and Loan II.

4. In the reply to the petition filed by the Corporate Debtor, the prayer made is vehemently opposed. It is their case that the parties have had long standing trade relationship. The Financial Creditor had been purchasing Carbon Ferro Chrome produced by the Corporate Debtor. All this was in the nature of ordinary trade transaction and there was never any relationship of a financial creditor but that of a buyer and a supplier only. It is submitted that the money received from the petitioner was against supplies of future material and at no point of time any disbursement was made by the Financial Creditor against time value of money to qualify as a financial debt as per the definition of the Code. It is averred that the respondent faced a liquidity crunch in the last quarter of 2016 and informed the applicant about its inability to supply the raw material. To tide over their financial crisis, the petitioner offered advance payments in consideration of future supply of material sought to be purchased from them. It is submitted that since the





supply was taking more time than what was envisaged, on request of the petitioner, the respondent executed promissory notes, only by way of security.

5. The Corporate Debtor further seeks to dispute the transaction as a financial claim, by relying upon the terms of the agreement dated 04.04.2017, the sum and substance of which also includes that the petitioner would have the first right of procurement from the respondent corporate debtor on priority basis for a minimum of 500 MT of Low Carbon Ferro Chrome per month. In case of a supply made directly to third parties, the respondent would be entitled to a commission of 3 to 5% of the billed amounts. It was also argued that the loans claimed as loans 1 and loan 2 are incorrect and without any substantiation. The total amount disbursed under loan 1 is wrongly being portrayed as the financial debt, while the amount claimed as loan 2 is nothing short of demurrage charges. It is also stated that the amount claimed includes liquidated damages which does not constitute a financial debt. The Corporate Debtor further asserts that the material held by the petitioner in their custody could have been sold to mitigate the amount due, which was also specifically requested for the Directors of the Corporate Debtor vide their written communicate.

6. Upon appraisal of the facts of the case and arguments advanced on behalf of both parties, this Bench is of the opinion that a financial transaction did taken place. The agreement on record is prima-facie one of granting financial assistance to be repaid along with interest. Further, a financial debt as defined under Section 5(8)(f) includes any amount raised under any other



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transaction, including any forward sale or purchase agreement having the commercial effect of borrowing.

7. The facts of this case squarely fall within the definition of Section 5(8)(f) to qualify as a financial debt, notwithstanding that it was a loan attracting interest. The execution of the demand promissory note, tender of cheques which bounced, acceptance of receipt of financial assistance against offer of security, execution of a specific Finance Agreement all point out to financial assistance availed to be liquidated against future purchases or be returned on demand. In view of the same, the objections raised on behalf of the Corporate Debtor do not merit any consideration. The petitioner/financial creditor is entitled to the prayer made. This Petition is therefore Admitted.

8. A moratorium in terms of Section 14 of Code comes into effect forthwith, staying:

*“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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*



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including any action under the Securitisation 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 corporate debtor.

Further,

(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.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(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.”

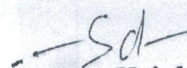


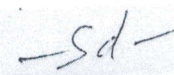
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9. The Operational Creditor has proposed the name of Mr. Sandeep Kumar Bhatt, Registration No. IBBI/IPA-003/IP-N00038/2017-18/10298, Email id: [skbmica@gmail.com](mailto:skbmica@gmail.com) to be appointed as the IRP. His consent and certificate of eligibility are on record. We therefore confirm Mr. Sandeep Kumar Bhatt as the IRP in this case. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21. The IRP shall file his report within 30 days as per statutory requirements.


10. Copy of the order be communicated to both the parties as well as to the IRP.

11. To come up on 12<sup>th</sup> February, 2019 for further consideration

  
(Deepa Krishan)  
Member (T)

  
(Ina Malhotra)  
Member (J)



  
व.वि.बं. राजू / V.V.B. RAJU  
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