

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT I

Interlocutory Application No. 3291/2024
IN
Company Petition No. (IB) 322 of 2023

M/s. Perfect Infraengineers Ltd.

... Applicant/Corporate Debtor

Vs.

Technology Development Board

... Respondent/Financial Creditor

Order delivered on: **15.07.2024**

Coram:

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearance:

For the Financial Creditor : Mr. Sumedh Ruikar, Advocate
i/b Mr. Pradip Yadav, Advocate

For the Corporate Debtor : Mr. Mathews Nedumpara, Advocate

ORDER

- 1) The present Interlocutory Application has been filed by the Applicant/Corporate Debtor, praying for the following reliefs:

- a. To allow the Application and direct the Petitioner to implead the Proposed Respondents Nos.1 to 12 as Respondents Nos.2 to 13 in CP/322(MB)/2023 as per schedule annexed in the present Application.
- 2) It is submitted that the TDB is equally guilty of gross breach of contract, culpable negligence, malicious and tortious action. Therefore, the officers of the TDB who are defendants in the suit are liable to be brought on the party array, for without them on the party array, the Petitioners cannot seek adjudication of the Petitioners' case against them. The IBC is one of the most ill-drafted and thoughtless legislation enactments since independence. It has forgotten the fact that enquires in the realm of contract cannot be one-sided and that in as much as a bank or financial institution may have a cause of action against a borrower, a borrower too may have a cause of action and enforceable remedies as against the lender.
- 3) It is further submitted that this Tribunal has limited jurisdiction, but it is invested of such inherent powers without which it cannot function. There is no provision for reference to the High Court for the determination of any questions of law, which itself is a major lacuna of the statute. In the event of this Tribunal holding that it has no jurisdiction to entertain the instant application for want of express provision, an adjudication to that effect will give room to the Petitioner to seek appropriate declaratory relief in the pending suits/review petition/writ petition.

- 4) Heard Ld. Counsel for the Applicant and perused the material available on record.
- 5) The Technology Development Board (TDB) filed an Application u/s 7 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency Resolution Process in the case of the Corporate Debtor. Applicant has sought the impleadment of officers' of TDB as Respondent Nos. 2 to 5 and Officers' of another Financial Creditors, ICICI Bank as Respondent Nos. 6 to 12. It is the case of the Applicant/Corporate Debtor that these persons are necessary parties as they were equally responsible for the default in repayment of terms of the facility extended by TDB.
- 6) It is no longer res integra that the proceedings in terms of Section 7, 9 and 10 of the Code are in the interest of the Corporate Debtor and intended to address the financial default committed by it so that the Corporate Debtor can be brought back on its own feet. If we look at the allegations in the Application in this backdrop, we are of the considered view that whose conduct had caused the Corporate Debtor to commit default in repayment of its debt is not a relevant consideration for the adjudication of the Application filed u/s 7, 9 and 10 of the Code. Because, the Corporate Insolvency Resolution Process itself contemplates constitution of a committee of all lenders and resolves the financial stress of the Corporate Debtor. It is not disputed fact that the Corporate Debtor is in default. At this juncture, we find the tendency of existing management to resist the

initiation of Insolvency Resolution Process to the hit at the expense of the Corporate Debtor simply to avoid transfer of control of the Affairs in the hands of the Insolvency Professional during the period of Resolution. Such management, in case of MSMEs, can very well seek the restoration of control of MSME enterprises by participation in such Resolution Process in terms of Section 240A of the Code and also address the Financial Stress which they allege to be attributable to other persons.

- 7) Accordingly, we do not find any necessity of impleading Respondent Nos. 2 to 12 for the adjudication of Section 7 Application. This Application has no merit and, therefore, is liable to be dismissed.
- 8) With the aforesaid observations, the Interlocutory Application bearing **IA No. 3291 of 2024**, is **dismissed**.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Sapna