

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -I**

CP(IB)No. 229/MB/2024

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

In the matter of

Q West Infrastructure Private Limited

[CIN: U43299MH2014PTC252734]

Having its registered office at

One BKC,Unit No.501,C Wing,Plot No.66,G
Block ,BKC,Bandra-East,Mumbai-400051.

.....**Applicant/
Financial Creditor**

Versus

Starwort Engineers Private Limited

[CIN: U74210MH1993PTC070215]

Mayuresh Cosmos,10th Floor, Plot No.37,

Sector 11 C.B.D. Belapur,Navi Mumbai-400614

.....**Corporate Debtor/**

Respondent

Order Delivered on : 16.07.2024

Coram:

Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Mr.Anirudh Lad, Advocate

For the Corporate Debtor : Mr.Sameer Singh,Advocate

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This Company Petition has been filed by **Q West Infrastructure Private Limited ("Financial Creditor")**, non-banking finance company is seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **Starwort Engineers Private Limited. ("Corporate Debtor")** by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for having committed a default in repayment of outstanding principal debt of INR 17,90,73,973/- (Rupees Seventeen Crores Ninety Lakhs Seventy Three Thousand Nine Hundred and Seventy Three Only). The date of default is 30.06.2023.
2. The Financial Creditor and the Corporate Debtor had entered and executed an Inter Corporate Deposit Agreement ("ICD Agreement") dated 10.11.2020 for an amount of Rs. 11,00,00,000 (Rupees Eleven Crores only) ("ICD Amount") inter-alia at the rate of 15 % p.a. interest on such terms and conditions as more particularly mentioned in the ICD Agreement. Accordingly, the repayment of the ICD Amount along with accrued interest thereon was required to be done on or before 10 .11. 2021 (the Due Date). The ICD Amount was disbursed by the Financial Creditor by cheque No. 000336 on 11.11.2020.

Submissions made by the Financial Creditor:

3. The ICD Amount was disbursed by the Financial Creditor by cheque on 11.11.2020.
4. As security for repayment of ICD Amount along with the interest thereon, the Financial Creditor was provided irrevocable and unconditional Corporate Guarantees dated 10.11.2020 by the following security providers (the Corporate Guarantors) on behalf of the Corporate Debtor:
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- a. Grevek Investments & Finance Private Ltd.
 - b. Budding Mercantile Co. Pvt. Ltd.
 - c. Replenish Realty Private Ltd.
 - d. Avocado Realty Pvt. Ltd.
 - e. Slimline Realty Pvt. Ltd.
 - f. Winsome Realty Pvt. Ltd.
5. The Corporate Debtor had also provided a Demand Promissory Note dated 10.11.2020 for repayment of the ICD Amount alongwith the interest on demand by the Financial Creditor.
6. The amount of Rs. 12,65,00,000/- & 10.11.2021 (Rupees Twelve Crores and Sixty-Five Lakhs Only) (the ICD Amount + interest @ 15% per annum thereon) fell due for repayment on the Due Date. However, the Corporate Debtor, vide letter dated 05.11.2021 addressed to the Financial Creditor, sought for extension of the Due Date in consonance with clause 1. 5 of the ICD Agreement. The said extension was sought for a period of one-year i.e upto 10.11.2022.
7. The said extension was granted by the Financial Creditor vide its letter dated 08.11.2021 and accordingly the Due Date was revised to 10.11.2022 ("the Extended Due Date"). However, the Corporate Debtor failed to make payment to the Financial Creditor as per the ICD Agreement and did not adhere to the Extended Due Date citing its financial constraints and sought some relief from the Financial Creditor with regard to repayment amount and time to repay the same.
8. Thereafter, the Financial Creditor and the Corporate Debtor eventually entered into a settlement agreement dated 15.02.2023 ("the Settlement Agreement") in order to amicably settle the said debt. Under and as per the Settlement Agreement, the Corporate Debtor was required to pay only the ICD Amount is mentioned below:-

- a. Rs. 5,50,00,000/- (Rupees Five Crore Fifty Lakhs only) on or before 30th June 2023.
 - b. Rs. 5,50,00,000/- (Rupees Five Crore Fifty Lakhs only) on or before 31st December 2023.
9. The Corporate Debtor failed to adhere to the repayment schedule as agreed between the parties in the Settlement Agreement and in view of the Corporate Debtor's failure to pay as per the Settlement Agreement, the Financial Creditor vide its Demand cum Invocation Notice dated 01.01.2024 called upon the Corporate Debtor along with the Corporate Guarantors to repay the entire amount of Rs. 17,90,73,973/-, comprising of the ICD Amount of Rs. 11,00,00,000/- and Rs. 6,90,73,973 towards the interest amount. The said Demand cum Invocation Notice, despite being duly received by the Corporate Debtor, the Corporate Debtor has failed to make the said repayment and has thus defaulted under the code.

Submissions made by the Corporate Debtor:

10. At the outset, the Respondent submits that the present application filed by the Applicant is misconceived, bad in law and devoid of any substance, not maintainable and as such liable to be dismissed.
11. At further outset. The Corporate Debtor submits that Petitioner has failed to produce any evidence to prove the existence of a financial debt and a default. which evidence is admissible in the eyes of law. The Corporate Debtor Further submits that the Petitioner has relied on the following material in support of its contention thill there exists a financial debt which has been defaulted upon.
 - Inter-Corporate Deposit Agreement dated 10th November 2020(annexed as a part of Annexure A to the Petition);
 - Settlement Agreement dated 15th February 2023(annexed as a part of Annexure D to this Petition).

12. The Corporate Debtor submits that aforementioned documents have been executed on stamp paper of Rs.500/- only. The Corporate Debtor emphasized on the fact that it is now a settled position in law that no instrument chargeable with stamp duty shall be admitted in evidence for any purpose by any person having by law or by consent of parties authority to receive evidence or be acted upon in any other manner, unless such instrument is duly stamped. Her Corporate Debtor further submits that it is settled position of law that a Financial Creditor along with its petition filed under section 7 of the code, furnishes evidence of a financial debt and default. Thus, when this tribunal entertains and adjudicates a petition under Section 7 of the code, it receives evidence of a financial debt and a default.

13. The Corporate Debtor submits that both the Inter-Corporate Deposit Agreement dated 10th November 2020 and the Settlement Agreement dated 15th February 2023 are insufficiently stamped. The Corporate Debtor further submits that both these instruments according to the Petitioner, purport to create a right and/or interest and/or obligation having a monetary value. Therefore, both these instruments are chargeable with stamp duty under Article 5(h)(A)(iv)(b) of the Maharashtra Stamp act,1958

14. The Corporate debtor lastly submits that even a simple calculation would reveal that the stamp duty payable under Article 5(h)(A)(iv)(b) would be in excess of Rs. 500/-, these instruments have been insufficiently, stamped and cannot be admitted in evidence. Without these two documents the Petitioner cannot say that the produced material on the record will constitute a financial debt and that the Corporate Debtor has (allegedly) defaulted on the said debt.

Findings

15. Heard learned counsel and perused the materials on record.
16. We find that the Corporate Debtor has defaulted on several terms as stipulated in the Agreement and has also failed to repay the outstanding amount due. The Financial Creditor and the Corporate Debtor had entered and executed an Inter Corporate Deposit Agreement ("ICD Agreement") dated 10.11.2020 for an amount of Rs. 11,00,00,000 (Rupees Eleven Crores only) ("ICD Amount") inter-alia at the rate of 15 % p.a. interest on such terms and conditions as more particularly mentioned in the ICD Agreement. Accordingly, the repayment of the ICD Amount along with accrued interest thereon was required to be done on or before 10 .11. 2021 (the Due Date). The ICD Amount was disbursed by the Financial Creditor by cheque No. 000336 on 11.11.2020.
17. The Corporate Debtor failed to adhere to the repayment schedule as agreed between the parties in the Settlement Agreement and in view of the Corporate Debtor's failure to pay as per the Settlement Agreement, the Financial Creditor vide its Demand cum Invocation Notice dated 01.01.2024 called upon the Corporate Debtor along with the Corporate Guarantors to repay the entire amount The said Demand cum Invocation Notice, despite being duly received by the Corporate Debtor, the Corporate Debtor has failed to make the said repayment and has thus defaulted under the code
18. On the other hand, Counsel for the Corporate Debtor has argued that the Inter-Corporate Deposit Agreement dated 10th November 2020(annexed as a part of Annexure A to the Petition) and Settlement Agreement dated 15th February 2023(annexed as a part of Annexure D to this Petition) are insufficiently stamped. According to the Counsel for the Corporate Debtor, the cause of action in this case arises on the basis of these two documents which are insufficiently stamped. He has further contended that no Application u/s 7 of Code, 2016 can be filed on the

basis of the insufficiently stamped document which are not admissible in evidence nor on the basis of these documents, the liability of the Corporate Debtor can be ascertained or quantified.

19. We have thoughtfully considered the aforesaid contentions raised by the Counsel for the Corporate Debtor and have also carefully gone through the document cited by the Counsel for the Corporate Debtor. The IBC was enacted to facilitate the revival of the debtor by a resolution process, and such resolution process, as contained in the IBC, does not stipulate that the enforcement of such rights in the resolution process. The Hon'ble Supreme Court in case of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.* (2019) ibclaw.in 03 SC had held that "*It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors*"
20. In our considered view, Proceedings u/s 7 or for that matter u/s 9 of the Code are not recovery proceedings. In fact, the object of the entire Code is to resolve the distressed Corporate Debtors. This Authority is not envisaged to ascertain the liability of the Corporate Debtor strictly on the basis of loan or security agreements and other documents executed by the Corporate Debtor or its Guarantors, and the existence of debt can be proved by other evidences also. The Tribunal, while adjudicating upon an application for admission into Resolution Process filed by a creditor, is mandated to ascertain the existence of the debt, and any default in payment of such debt. Ascertainment of existence of debt and default is not necessarily to be evidenced by a loan agreement or ancillary agreement or mortgage agreement. Instead, it can be proved by other means, as provided in Section 7(3) of the IBC prescribing record of default recorded with the information utility or such other records or evidence such may be specified. Further, Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 prescribed Form-1

under Chapter-II and IV of Part-II of the Code for making an Application under 7 of the Code by Financial Creditor. Part-V of this Application requires details of financial debt document records and evidence of default to be stated by the Applicant. In the present case the existence of debt is evidenced by the bank statement showing disbursement and further by financial statement of the corporate debtor. Accordingly, this Bench of the view that, even if the contention of the Corporate Debtor is accepted that the ICD Agreement and Settlement documents cannot be taken in evidence to establish the existence of debt and default in payment thereof, this Bench finds that the fact of debt and default stands proved otherwise by other evidences, as is held in case of Hon'ble NCLAT, Chennai Bench decision in the case of Ashique Ponnamparambath vs. The Federal Bank Limited (2021) ibclaw.in 336 NCLAT. Therefore, inadequacy of any document in terms of requirement of the Stamp Act, in our considered view, cannot be made a ground to nonsuit the Petitioner in an Application u/s 7 of the Code. Rather, in such proceedings, this Authority has simply to arrive at a conclusion that the Corporate Debtor has not been able to repay its debts of more than Rs. 1 crore and is no longer in a position to sustain itself financially so much that it requires resolution. Besides, in an Application u/s 7 of the Code, for the purposes of admission, Therefore, in our considered view, documents executed, and which are not sufficiently stamped as per the Stamp Act, the Application u/s 7 cannot be dismissed.

21. No other pointes have been raised by the Counsel for the Corporate Debtor.
22. From perusal of the record and the documents relied upon by the Applicant it stands proved that there has been a financial debt in respect of which default has been committed by the Corporate Debtor and further that the Application has been filed within the period of limitation. Therefore, the Application u/s 7 of the Code, deserves to be admitted. It is ordered accordingly in the following terms:

ORDER

- a. The petition bearing CP (IB) 229/MB/C-I/2024 filed by **Q West Infrastructure Private Limited**, the Financial Creditors, under Section 7 of the Code read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **Starworth Engineers Private Limited**, the Corporate Debtor, is admitted.
- b. This Bench hereby **appoints Mr Rajendra Dattatray Aphale, Registration No: IBBI/IPA-002/IP-N01002/2020-21/13258 as the Interim Resolution Professional** having email: - rajaphale.ip@gmail.com, Mobile No.-9871045874 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

- d. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- e. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under Sub-Section (1) of Section 31 of the Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- f. Public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code read with Regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. The Financial Creditor shall deposit an amount of **Rs. Three Lakhs** towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- h. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- i. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by speed post and email

immediately, and in any case, not later than two days from the date of this Order.

- j. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)