

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT-IV

9. RCP(IB)/10(MB)2023
Connected to
C.P. (IB)/4426(MB)2019

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **02.07.2024**

Name of the Party: Mascot Capital and Marketing Private
Limited
Vs
Savair Energy Limited

Section 7 of Insolvency and Bankruptcy Code, 2016

ORDER

1. Ld. Counsel for the Applicant/ Financial Creditor present through physical mode. No representation on the part of the Corporate Debtor.
2. This is a Company Petition bearing C.P. (IB)/4426(MB)2019 filed by the Financial Creditor/ Applicant u/s 7 of IBC seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the Savair Energy Limited, Corporate Debtor.
3. Vide order dated 20.01.2023, the captioned Petition was dismissed by this Bench on the ground of "*the transaction of Investment under a Joint Venture arrangement does not qualify as a financial debt under Section 5(8) of the Code*". Subsequently, the Financial Creditor approached the Hon'ble NCLAT against vide order dated 20.01.2023. On 27.09.2023 the Hon'ble NCLAT had passed the order and stated that "*the liability to repay the loan primarily vested with the Corporate Debtor. The Corporate Debtor had accepted before the AA that it is not in a position to repay 'debt' because of financial distress. The AA ought to have admitted the Application of the Appellant under Section 7 of the IBC, 2016 as there is no dispute about the 'debt' or liability of the Corporate Debtor and the*

Corporate Debtor has admitted that it is defaulting in repayment of "debt" due to its financial condition."

4. Ld. Counsel for the Financial Creditor filed Application before this Bench for restoration of the Company Petition. Vide order dated 01.12.2023, the Company Petition was restored.
5. During the course of arguments, this Bench noticed that the date of default has not mentioned in the Part-IV of the captioned Petition and also not disclosed the same anywhere in the records. On 07.05.2024, the Applicant sought time to clarify and file an affidavit for mentioning the date of default. At the request of the Counsel, the matter was adjourned to 19.06.2024. On 19.06.2024, the Counsel for Applicant did not file any affidavit for the date of default and submitted that the arguing Counsel was not available due to medical emergency and sought a time. At the request of Counsel, this Bench granted final opportunity to the Petitioner for filing an affidavit and argue the case, failing which, the matter would be dismissed on account of non-prosecution on the next date of hearing.
6. Today, the Counsel for the Financial Creditor appeared, and he is repeating the same and requested for some time to file an affidavit.
7. This Bench granted ample opportunities and two months' time was already granted for filing an affidavit. However, the Counsel for the Applicant has not filed affidavit and also not interested to argue the matter. The captioned Petition is pending since, 2019.
8. This Bench feels that the Counsel for the Financial Creditor is not interested to pursue the matter. Hence, this present Company Petition bearing *RCP(IB)/10(MB)2023* is **dismissed** on account of non-prosecution.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

/Dubey/

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)