

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-VI

IB-800/(PB)/2022

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

In the matter of:

M/S SREI EQUIPMENT FINANCE LIMITED

(A Company under Corporate Insolvency Resolution Process vide NCLT Order dated October 8, 2021)

AT: -

86C, Topsia Road Kolkata, West Bengal

Pincode - 700046,

...PETITIONER/FINANCIAL CREDITOR

Versus

M/S PRATYUSH INFRASTRUCTURE PRIVATE LIMITED

REGISTERED OFFICE AT:

A-42, Kailash Colony, New Delhi 110 048

...RESPONDENT/ CORPORATE DEBTOR

CORAM:

SHRI. BACHU VENKAT BALARAM DAS, MEMBER

(JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for Petitioner: : Mr. Anirban Bhattacharyya
with Ms. Priyanka Bhatt and
Mr. Ankit Kohli, Advocates.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER

(JUDICIAL)

Date: 23.11.2023

1. This petition has been filed by M/s SREI Equipment Finance Limited to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s. Pratyush Infrastructure Private Limited- under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) for the alleged default on the part of the Respondent in repayment of debt of Rs. 30,71,09,916/- (Rupees thirty crore seventy-one lakh nine thousand nine hundred sixteen). The date of

default as per part IV of the petition is 01.10.2022. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The Corporate Debtor is a private limited Company incorporated under the Companies Act, 1956 having its registered office in New Delhi.
- ii. The Corporate Debtor requested the Financial Creditor for grant of a loan facility of a sum of Rs. 17,00,00,000 (Rupees seventeen crore) which was granted by the Financial Creditor and accordingly, the Financial Creditor issued a sanction letter dated April 1, 2019 to the Corporate Debtor. The Sanction Letter stipulated that the same was only an indicative offer and the final terms would be as contained in the loan agreement to be executed by and between the Financial Creditor and the Corporate Debtor.
- iii. Subsequently, the Financial Creditor executed a loan agreement dated April 5, 2019 with the

Corporate Debtor whereby a loan facility of Rs. 17,00,00,000 (Rupees seventeen crore) ("Loan Agreement") was sanctioned to the Corporate Debtor which was executed in supersession of the Sanction Letter.

iv. The entire sanctioned amount of Rs. 17,00,00,000 (Rupees seventeen crore) was disbursed by the Financial Creditor to the Corporate Debtor in three tranches; details of the same are as under: -

i. Rs. 5,00,00,000 (Rupees five crore) was disbursed on April 10, 2019 vide RTGS

ii. Rs. 2,00,00,000 (Rupees two crore) was disbursed on April 10, 2019 vide NEFT I

iii. Rs. 10,00,00,000 (Rupees ten crore) was disbursed on April 10, 2019 vide RTGS

v. The Loan Facility was to be repaid in accordance with clause 2.1 read with clause 8 B 2 of the Loan cum Hypothecation Schedule forming part of the Loan Agreement.

vi. Further, Clause 13 of the Loan Agreement provides that, in the event the Corporate Debtor fails to pay any sum due and payable under the Loan Agreement on the due dates as prescribed under the Loan Agreement, the same would constitute an event of default.

vii. Furthermore, in view of the circulars issued by the Reserve Bank of India bearing no. RBI/2019-20/186 DOR. No. BP. BC. 47/21.04.048/2019-20 dated March 27, 2020 and RBI/2019-20/244 DOR. No. BP. BC. 71/21.04.048/2019-20 dated May 23, 2020, the Financial Creditor, by its letter dated March 14, 2022, granted a moratorium of 6 (six) months to the Corporate Debtor for the period commencing from March 2020 to August 2020, whereby the residual term of the Loan Facility was extended. The said letter also provided for the revised repayment schedule on account of extension of the residual term of the Loan Facility.

- viii. Despite the reliefs granted to the Corporate Debtor, the Corporate Debtor failed to repay the amounts due and payable under the Loan Agreement in accordance with the Revised Repayment Schedule and in view of the same, the Financial Creditor issued a notice dated September 19, 2022 ("Demand Notice") to the Corporate Debtor, which was emailed to the Corporate Debtor on September 23, 2022 demanding repayment of the overdue sum of Rs. 30,71,09,916 (Rupees thirty crore seventy-one lakh nine thousand nine hundred sixteen) computed as on September 15, 2022.
- ix. However, the Corporate Debtor failed to take any steps towards the repayment of the amount and also failed to issue any response to the Demand Notice.
- x. Hence this Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 has been filed.

2. The Corporate Debtor failed to appear before this Tribunal despite service of notice, therefore the CD was set ex-parte vide order dated 07.08.2023.

3. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The petitioner has claimed the default on part of the Respondent for Rs. 30,71,09,916/-

4. Section 5(7) of IBC, 2016 defines Financial Creditor as “any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.”

5. As per loan agreement executed between Financial Creditor and Corporate Debtor, the Financial Creditor has provided loan amount of Rs. 17,00,00,000/- to the Corporate Debtor.

6. The Financial Creditor has also placed on record copy of NeSL certificate in which it clearly shows that the Corporate Debtor has defaulted in the repayment of Loan. Copy of the same is reproduced as under: -



**FORM D
RECORD OF DEFAULT(RoD)**

(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Financial Creditor M/s SREI EQUIPMENT FINANCE LIMITED in respect of the default of debt as per details given below-

(a) Name of the Submitter: M/s SREI EQUIPMENT FINANCE LIMITED
 (b) Schedule-2 Bank (Y/N): N
 (c) Name of Corporate Debtor: M/s PRATYUSH INFRASTRUCTURE PRIVATE LIMITED
 (d) Unique Debt Identifier Number: AAKCS3431L_177122
 (e) Registered Address: Vishwakarma,86C Topsia Road(South), Kolkata
 (f) Total Outstanding Amount: 307109916.00
 (g) Default Amount: 239642213.00
 (h) Date of Default: 01-10-2022
 (i) Status of Authentication of Default: DEEMED TO BE AUTHENTICATED

Filing of Default(Submission ID No.)	Submitted on	Status of Authentication(Authenticated/Disputed/Deemed to be authenticated)	Authentication completed on
(1)	26-04-2023 16:08:33	*DEEMED TO BE AUTHENTICATED Colour Code :YELLOW	30-05-2023 07:43:02

7. A mere reading of the provision under Section 7 of the IBC shows that in order to initiate CIRP under Section 7, the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the

adjudicating authority to only ascertain and record satisfaction in a summary adjudication regarding the occurrence of default before admitting the application. The material on record clearly shows that there was a debt, and the CD has committed a default in the repayment of the outstanding loan amount which was admitted by the Corporate Debtor.

8. We are satisfied that the present application is complete in all respects and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been default in payment of the financial debt.

9. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

10. Sub-section (3) (b) of Section 7 mandates the Financial Creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Bishwa Ranjan Chatterjee for appointment as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N00877/2019-2020/12806. The Proposed IP has a valid AFA which is valid upto 01.11.2024. Accordingly, this Adjudicating Authority, hereby appoints Mr. Mr. Bishwa Ranjan Chatterjee (Email – brcind@gmail.com), to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

11. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this

application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

12. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a) 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;

(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 including any action

under the Securitization 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.”

13.It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

14.The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15,

17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (Tribunal) with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code

and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

15. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

Let copy of the order be served to the parties.

SD/-
Rahul Bhatnagar)
Member (Technical)

SD/-
(Bachu Venkat Balaram Das)
Member (Judicial)