

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

CP(IB)No. 140/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

FAIRDEAL POLYTEX PRIVATE LIMITED

[CIN: U17110MH2004PTC034298]

Having its registered office at

Nanavati Mansion 66 Nakhoda Street

Tambakanta, Mumbai , Maharashtra-400003.

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

Versus

**TRUEVALUE ENGINEERING PRIVATE
LIMITED**

[CIN: U74210MH19999PTC122998]

203,Loha Bhavan,P.D Mello Road, Carnac

Bunder, Mumbai-400009.

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

Order Delivered on : 16.04.2024

Coram:

Sh. Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Pranav Sampat, Advocate

For the Corporate Debtor : Mr. Manoj Mishra, Advocate

ORDER

Per: Justice V.G Bisht, (Retd).

1. This Company Petition has been filed by **Fairdeal Polytex Private Limited** ("**Financial Creditor**"), a non-banking finance company is seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **Truevalue Engineering 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 1,12,80,740/- (Rupees One Crore Twelve Lakhs Eighty Thousand Seven Hundred and Forty Only), as on 28.11.2023 including the interest at the rate of 12% per annum from the date of default. 01.05.2023 is the date of default which is recorded in the National E-Governance Services Limited.
2. The Financial Creditor was incorporated on 30.09.2004, having CIN: U17110MH2004PTC034298 and the registered office is situated at 1208,12th Floor, Vikrant Tower, Rajendra Place, Patel Nagar, Central Delhi, New Delhi-110008.

Submissions made by the Financial Creditor:

3. The Financial Creditor submits that in or around February 2023, the Corporate Debtor approached the Financial Creditor for availing certain finance facilities for business purpose. The Financial Creditor executed a loan agreement on 07.03.2023 with the Corporate Debtor for grant of a finance facility for sum of Rs. 1,10,00,000 (Rupees One Hundred and Ten

Crores only). The Loan agreement envisaged an interest rate of 12% per annum which was to be calculated from the date of disbursement of the loan until the date of loan is fully repaid. The calculation of the total debt to be in default along with interest are as follows:

<i>Sr No.</i>	<i>Date</i>	<i>Particular</i>	<i>Amount In (Rs.)</i>
1.	13.03.2023	Disbursement by Financial Creditor	25,00,000/-
2.	14.03.2023	Disbursement by Financial Creditor	20,00,000/-
3.	17.03.2023	Disbursement by Financial Creditor	45,00,000/-
4	28.03.2023	Disbursement by Financial Creditor	20,00,000/-
5.		Add Interest at the rate of 12% per annum from the date of disbursement	5,50,000/-
6		Subtract: Payment by Financial Creditor	2,69,260/-
		Total	1,12,80,740/-

4. The Financial Creditor submits that the Loan Agreement envisaged that the loan shall be repaid in Four (4) instalments of INR 27,50,000 each beginning on 01.05.2023 and ending on 01.08.2023.

5. The Loan Agreement further provides for a default clause which has been reproduced below for facility:

“If the Borrower fails to pay any installment when. due, the Loan shall be in default and the Lender may declare the entire unpaid balance of the Loan immediately due and payable, and may pursue other remedies available at law or in equity”

6. The Financial Creditor submits that the Corporate Debtor made a payment of INR 2,69,260 which has been duly recorded in the books of the Financial Creditor. Thereafter the Corporate Debtor defaulted loan on various occasions, i.e. on 01.05.2023; 01.06.2023; 01.07.2023; 01.08.2023.
7. The Parties exchanged few correspondences, whereby the Financial Creditor called upon the Corporate Debtor to pay the outstanding amount but the Corporate debtor neglects to the pay the outstanding debt.
8. The Financial Creditor submits that on 01.07.2023 the Corporate Debtor responded to the email dated 29.06.2023 and apprised the Financial Creditor of the payment of interest under the Loan Agreement and later on 11.07.2023 the Financial Creditor responded to the Corporate Debtor stating that the payment made by the Corporate Debtor only amounts to the Interest component and not the principal amount and reiterated the request for repayment of the loan amount.
9. The Financial Creditor yet again emailed the Corporate Debtor to seek an update on the status of repayment of the loan amount. That on 27.07.2023 the Corporate Debtor vide its email acknowledge the debt and delay in repayment of the loan and promised to repay at the earliest.
10. The Financial Creditor yet again on 24.08.2023 escalated an email in regard to the outstanding payment along with interest amount. The Financial Creditor also expressed that they would be compelled to initiate legal proceedings if there is further failure in repayment persist from the Corporate Debtor. In view thereof, the Petitioner granted a period of three days to initiate the payment which they owe to the Financial Creditor.
11. That on 28.08.2023 the Corporate Debtor responded to the above correspondence and categorically denied repayment in light of certain 'unprecedented circumstance' faced in its business operations.

Submissions made by the Corporate Debtor:

12. At the outset, the Corporate Debtor 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.
13. The Respondent submits that it had availed a loan to the tune of Rs.1,10,00,000/-(Rupees One Crore and Ten Lakhs Only) from the Petitioner by way of a loan agreement on 07.03.2023.
14. The Corporate Debtor further submits that it had made payment of the interest to the Financial Creditor which indicates the Bona fide intent of the Respondent. Till date the Respondent has transferred a sum of Rs 2,69,260/- (Rupees Two Lakhs Sixty-Nine Thousand Two Hundred and Sixty Only) till 31.05.2023 to the Petitioner as payment of interest.
15. However, due to poor financial conditions and a sudden crash in business, the Corporate Debtor is facing genuine difficulty in repaying the Principal amount of the loan at such a short notice. Therefore, the Respondent had also intimated the Financial Creditor about its present Financial condition.
16. The Corporate Debtor submits that they have complete intentions of repaying the debt owed to the Petitioner, however due to poor financial conditions and a sudden crash in business, the Respondent is facing genuine difficulty in repaying the principal amount of the loan.
17. The Corporate Debtor takes a plea that the Financial Creditor has filed this petition under Section 7 of this code with an intent to recover its dues and is just not maintainable and is therefore, liable to be dismissed in limine.
18. The Corporate Debtor submits that however, despite being well privy to the financial condition of the Respondent, the Petitioner out of Personal vendetta has invoked section 7 of the code with mala fide intent of placing the Respondent into the CIRP.

19. The Corporate Debtor submits that the Resolution passed in the Meeting of the Board of Directors of the Corporate Debtor Company which was held on 22.03.2024, as it was resolved that Deepak Nirvan be and is hereby individually Authorized Representative of the Corporate Debtor.

Findings

20. Heard learned counsel and perused the materials on record.

21. We find that the Corporate Debtor has defaulted on several terms as stipulated in the Loan Agreement and has also failed to repay the outstanding amount due. The Parties exchanged few correspondences through email, whereby the Financial Creditor called upon the Corporate Debtor to pay the outstanding amount, but the Corporate debtor neglected to the pay the outstanding debt. The Financial Creditor through email dated 24.08.2023 gave a final reminder to the Corporate Debtor to clear all its due and recalled the entire loan amount being an aggregate sum of Rs.1,12,80,740/- (Rupees One Crore Twelve Lakhs Eighty Thousand Seven Hundred and Forty Only), as on 28.11.2023 including the interest at the rate of 12% per annum from the date of default.

22. The Corporate Debtor submits that they are currently combating with a financial exigency within the business operations, compounded by the prevailing downtrend observable within the market. This has resulted in the Corporate Debtor encountering unavoidable challenges and intricate complexity that hinder the ability to adhere to the provisions set forth within the aforementioned agreement.

23. From perusal of the record and the documents relied upon by the Applicant it stands proved that there exists 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) 140/MB/C-I/2024 filed by **Fairdeal Polytex 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 **Truevalue Engineering Private Limited**, the Corporate Debtor, is admitted.
- b. This Bench hereby **appoints Ms.Megha Agrawal, Registration No: IBBI/IPA-001/IP-P-01456/2018-2019/12272 as the Interim Resolution Professional** having **email: ip.meghaagrwal@gmail.com** , 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/-

SH. PRABHAT KUMAR
Member (Technical)

Shivang Rawat-LRA

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)