

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

CP(IB) 413 (IB)2023

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

IN THE MATTER OF

ICICI Bank Limited

ICICI Bank Tower, Near Chakli Circle, Old Padra Road Vadodara Gujarat - 390007.

And

Branch Office:- Unit No. G-19, Ground Floor, Utility Center, Sharanpur Road, Nahik Maharashtra - 422002.

... Financial Creditor

V/s.

Mavin Switchgears and Control Private Limited

Plot No. 9, N-11 CIDCO Aurangabad Maharashtra - 431003.

... Corporate Debtor

Order delivered on :- 07.02.2024

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Financial Creditor : Adv. Yash Dhruva a/w Ruchita Jain
For the Corporate Debtor : Adv. Rahul Totala

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by ICICI Bank Limited (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Mavin Switchgears and Control Private Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by Financial Creditor invoking the provisions of Section 7 Insolvency and bankruptcy code, 2016 (hereinafter called "**Code**") on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 2,50,98,290.54 as on 03.03.2023/-.

The submissions by the Financial Creditor: -

2. The Corporate Debtor is a limited company within the meaning of the Companies Act, 1956, engaged, inter-alia in the business of EPC in power transmission and distribution.
3. In/or around August 2016, the Corporate Debtor approached financial creditor and erstwhile State Bank of Hyderabad and requested for credit facility for its business purpose. Pursuant to the request of the Corporate Debtor, the financial creditor and Erstwhile State Bank of Hyderabad sanctioned cash credit and other credit facilities for an aggregate amount of Rs. 41,00,00,000/- (Rupees Forty-One Crores Only).

4. The Financial Creditor vide Credit Arrangement Letter bearing Ref. No. 67/W35MUM/100555 dated 2nd August, 2016 sanctioned the facilities to the corporate debtor. The Corporate Debtor had passed Board Resolution dated 25th August 2016 wherein they authorized Shri. Afroz Jahan Pathan and Shri. Irshad Ahmed Khan to execute various security documents in favour of the Financial Creditor.
5. On request of the Corporate Debtor, the financial creditor modified certain terms and condition of the credit facilities and subsequently issued amendment to credit arrangement letter bearing ref. no. 67/W35MUM/103316 dated 14th October, 2016.
6. In order to secure the credit facility of Rs.175.0 Million, the Corporate Debtor executed Working Capital Consortium Agreement dated 7th October, 2016 executed by the Corporate Debtor in favour of the financial creditor and erstwhile State Bank of Hyderabad where the corporate debtor agreed and confirmed the terms and conditions obligations etc. governing the consortium.
7. Further, the Corporate Debtor executed Joint Deed of Hypothecation dated 7th October, 2016 in favour of the financial creditor and erstwhile State Bank of Hyderabad towards the working Capital facility aggregating to Rs. 41.00 crore (financial creditor's exposure being Rs.170,000,000/-), inter alia, creating hypothecation charge over its movable properties, plant and machinery and current assets more particularly mentioned in Schedule II to the said Joint Deed of Hypothecation ("Pari Passu Hypothecated Assets").
8. In order to secure the repayment of the various credit facilities sanctioned and disbursed/granted to the Corporate Debtor, Mr. Irshad Ahmed Khan and Mrs. Afroz Begam Pathan stood as guarantors in their personal and individual capacity and have

executed Agreement of Guarantee dated 20th September, 2016 in favour of the financial creditor and erstwhile State Bank of Hyderabad. Mr. Irshad Ahmed Khan and Mrs. Afroz Begam Pathan have personally executed the Agreement of Guarantee in favour of the financial creditor for securing various credit facilities, whereby they agreed to repay the said credit facilities due and payable by the corporate Debtor, on its failure, to the financial creditor and the erstwhile State Bank of Hyderabad together with cost, interest and charges.

9. Further, a Deed of Guarantee dated 4th May, 2017 executed by Ms. Sana Khan in favour of the financial creditor, inter alia, guaranteeing due repayment of the amount credit facilities. By the said Deed of Guarantee, Ms. Sana Khan, inter alia, undertook not to create third party right, title or interest in respect of their assets or such other properties that may be acquired by her in future as and by way of security to the credit facility granted to the Corporate Debtor.
10. Further, a Deed of Mortgage dated 7th October, 2016 was executed by the Corporate Debtor, Mr. Irshad Ahmed Khan and Mrs. Afroz Begam Pathan in favour of the Financial Creditor and by executing the said document, the Corporate Debtor had created charge on its immovable properties as follows:
 - (i) Plot No. 01. Gut No. 137/P, Mitmita, Aurangabad.
 - (ii) Plot No. 622, Gut no. 162/P, Tisgaon Growth Centre, CIDCO, Walunj, Aurangabad.
 - (iii) Plot No. M9, N-11, CIDCO, Aurangabad.
 - (iv) Plot No. 20, N-13, CIDCO, Aurangabad.

- (v) Plot No. 103-104, Survey No. 117/P, Sector-A, N-13, CIDCO, New Aurangabad.
- (vi) HouseNo.10-2-289/120/29/A/1, Original MCH No. 10-2-289/120/29 (Old No. 342/rt Part), situated at P.S. Nagar, Masab Tank, Hyderabad.

More particularly mentioned in schedule I of the said Deed of Mortgage ("Pari Passu charge Mortgage Properties"). The said Deed of Mortgage to that effect is duly registered with the office of the sub registrar at Aurangabad District Aurangabad vide AGG-5/6502/2016. Further, the changes of the Financial Creditor has been noted in the record of the Registrar of Companies, Mumbai on 18.10.2016.

11. Further, an equitable mortgage was executed with the financial creditor by Ms. Sana Khan vide Memorandum of entry dated 4th May, 2017 by deposit of title deeds in order to secure the credit facilities provided by the financial creditor. The title deeds of the immovable property being Plot No. 11/12, sector No. N-13A, Opposite Taj Hotel, CIDCO, Aurangabad more particularly mentioned in schedule II of the said Memorandum of entry ("Exclusive charge Mortgage Properties") were delivered with the financial creditor.
12. The Corporate Debtors through its directors agreed that the financial creditor will have pari passu charge over the properties mortgaged to the extend as provided in the agreement with erstwhile State Bank of Hyderabad to an extent of Rs.170,000,000/- (Rupees Seventeen Crores out of Rupees Forty-One Crores total loan amount granted by Consortium).

13. In or around February 2018, the Corporate Debtor approached the financial creditor with a request to renew the working capital facilities. Pursuant to the said request, the financial creditor renewed the working capital facilities of Rs. 170.million vide Renewal Credit Arrangement letter bearing Ref. No. CAL706345019340 dated 6th February, 2018. The Corporate Debtor had executed the Board Resolution dated 8th February, 2018, inter alia, accepting to credit facilities on the terms and conditions mentioned in the Renewal Credit Arrangement letter dated 6th February, 2018.
14. Lastly, at the request of the corporate Debtor, the Financial Creditor have renewed the said Working Capital credit facility of Rs.170.0 Million (Rupees Seventeen Crores only) on the terms and conditions set out therein to the Corporate Debtor vide Renewal credit arrangement letter bearing ref no. CAL1565651936915 dated 26th February, 2020 as follows:

Nature of Facility	Limit (Rs in million)
Fund Based	
Cash Credit	10.00
Non-Fund Based	
Bank Guarantee	160.00
Letter of Credit (as a sub limit of Bank Guarantee)	(10.00)
Overall Limit (Total)	170.00
Facility/ies valid up to	December 16 th , 2020

The Corporate Debtor had executed the Board Resolution dated 26th February 2020, inter alia, accepting to credit facilities on the terms and conditions mentioned in the Renewal Credit Arrangement letter dated 26 February 2020.

15. The Corporate Debtor has been enjoying the credit facilities from the Financial Creditor since August 2016 and the financial creditor has also time and again at the request of the Corporate Debtor enhanced/revised/renewed the various credit facilities sanctioned to the Corporate Debtor, and the Corporate Debtor have in order to secure the various credit facilities sanctioned to the Corporate Debtor, have executed various security documents in favour of the financial creditor. The financial creditor has disbursed the aforesaid credit facility of Rs.170.0 million in favour of the Corporate Debtor, who has utilized the same for the purpose of their business requirements.
16. In or around July 2021, the Corporate Debtor started committing defaults in making payment towards the loan facilities granted to the Corporate Debtor, due to which the account of Corporate Debtor with the financial creditor became irregular. Despite repeated requests and reminders, the Corporate Debtor failed and neglected to clear the overdue amount under the respective loan facilities availed from the financial creditor and hence, the account of the corporate debtor was classified as Non-performing Assets (NPA) on 28th September, 2021 as per the extent guidelines of RBI.
17. The Financial Creditor vide their letter dated 28th December, 2021 addressed to Corporate debtor, Mr. Irshad Ahmed Khan, Mrs. Afroz Begam Pathan and Ms. Sana Khan ("Guarantors") stating that the Corporate Debtor's Account has been declared as NPA and recalled the entire credit facility sanctioned to Corporate Debtor and invoked

the guarantees and called upon the Corporate Debtor and Guarantors to repay the entire outstanding amount.

18. Despite receipt of the above said notice, the Corporate Debtor and Guarantors failed to repay the dues of financial Creditor.
19. Due to the default on part of the Corporate Debtor and the Guarantors, financial creditor also issued Notice under Section 13(2) of the SARFAESI Act upon the Corporate Debtor on 3rd September, 2022 calling upon the Corporate Debtor and Guarantors to repay their outstanding dues to financial creditor within 60 days. The financial creditor was left with no option but to enforce its security interest in the matter as per the provisions of the SARFAESI Act and has issued Possession Notice under section 13(4) of SARFAESI Act on 7th December, 2022. Further, the financial creditor had also approached the Chief Judicial Magistrate, Aurangabad under section 14 of the SARFAESI Act for assistance and an order dated 10th January, 2023 came to be passed.
20. Subsequently, the financial creditor had issued notice for taking physical possession of the mortgaged property which was fixed on 23.03.2023. The Corporate Debtor filed securitization Application bearing no. 53 of 2023 "the said S.A." before the Hon'ble Debt Recovery Tribunal, Aurangabad and the Hon'ble Tribunal granted conditional stay on the possession of the property vide order dated 22.02.2023 and the same was adjourned to 21.03.2023 for filing reply of the financial creditor to Securitization Application.
21. Pursuant thereto, the Financial Creditor filed an Original Application (dairy) No. 759 of 2022 before the Hon'ble Debt Recovery Tribunal, Aurangabad on 6th August, 2022 "the said O.A." which is pending for adjudication. The Financial Creditor craves leave to refer to and

rely upon the Original Application filed before the Hon'ble Debt Recovery Tribunal, Aurangabad against the Corporate Debtor and the Guarantors for the recovery of the outstanding dues.

22. In the given facts and circumstances, the Financial Creditor has filed the present Company Petition against the Corporate Debtor, within the period of limitation.
23. No reply has been filed on behalf of the Corporate Debtor though sufficient opportunity was given for the purpose. On 09.11.2023 also, the Corporate Debtor was given two weeks time to file reply failing which right to file reply would stand forfeited. Despite that, no reply was filed. Instead it was stated by the counsel for the parties that the matter has been settled and some part payment has been made by the Corporate Debtor and a copy of the settlement terms was also placed on record. As per the settlement terms, the Corporate Debtor was required to pay a sum of Rs. 2,75,64,516/- along with interest at the contractually agreed rates till 31.12.2023. As per the consent terms, a part amount of Rs. 81 lakhs were paid to the Financial Creditor on 26.09.2023. However, the remaining amount was not paid and the remaining amount of about Rs. 2 crores plus interest was not paid by the Corporate Debtor.

Analysis and Findings:-

24. We have heard the Counsel for the parties and have gone through the records.
25. This Petition has been filed by the Financial Creditor in respect of default amount of Rs. 2,50,98,290.54/-. According to the Financial Creditor, cash credit and other credit facilities were granted to the Corporate Debtor in August, 2016 vide sanction letter dated 02.08.2016 which was subsequently modified vide letter dated

14.10.2016. The Corporate Debtor executed Working Capital Consortium Agreement Deed dated 07.10.2016. The Corporate Debtor further executed joint deed of Hypothecation dated 07.10.2016 towards the working capital facilities aggregating to Rs. 41 crores to secure the repayment of the loan. A deed of guarantee dated 04.05.2017 was also executed by Ms. Sana Khan in favour of the Financial Creditor. In addition to this, deed of Mortgage dated 07.10.2016 was also executed by the Corporate Debtor whereby immovable properties belonging to the Corporate Debtor were mortgaged in favour of the Financial Creditor. In February, 2016, on the request of the Corporate Debtor, the Financial Creditor renewed the working capital facilities of Rs. 170 million vide letter dated 06.02.2016. The Corporate Debtor has been enjoying the creditor facilities since August, 2016.

26. It has further been pointed out by the Counsel for the Financial Creditor that in July 2021, the Corporate Debtor started committing default in making the payment towards the loan facilities with the result that the amount was declared NPA with effect from 28.09.2021. Thereafter, notice under Section 13(2) of SARFAESI Act was also issued to the Corporate Debtor on 03.09.2022. Subsequently thereto, another notice under Section 13(2) of SARFAESI Act also issued on 07.12.2022. As the payment was not been made by the Corporate Debtor, the Financial Creditor filed an Original Application No. 759 of 2022 before the Hon'ble DRT, Aurangabad which is pending for adjudication.
27. The Counsel for the Financial Creditor has further submitted that the Corporate Debtor executed consent terms to repay the sum of Rs. 2.75 crores along with interest at contractually agreed rates till the date of repayment. Though as per the terms and conditions the

payment was to be made by 31.12.2023, the payment has not been paid except an amount of Rs. 83.61 lakhs. The Counsel for the Financial Creditor has further pointed out that it was agreed in the consent terms itself that in case the amount is not paid as per the consent terms and default was committed by the Corporate Debtor, the Financial Creditor shall be at liberty to pursue the Company Petition in respect of the entire debt amount.

28. No reply has been filed on behalf of the Corporate Debtor and right to file reply is deemed to have been forfeited. It has also not been disputed on behalf of the Corporate Debtor that the entire amount agreed as per the consent terms have not been paid. Even otherwise from the averment made in the Petition as well as the document relied upon by the Financial Creditor, which have not been controverted at all by the Corporate Debtor, it stands established that the Corporate Debtor owed the financial debt of Rs. 2,50,98,290.54/- to the Financial Creditor and the default in respect was committed on 30.06.2021 and, as stated above, even after taking into consideration the repaid amount of Rs. 83.61 lakhs, a liability of more than Rs. 1 crore is still outstanding. It further stands established on record that the Petition has been filed within the period of limitation as the default took place on 30.06.2021 and the present Petition was filed on 30.03.2023. Therefore, in our considered view, it is a fit case for admission u/s 7 of the Insolvency and Bankruptcy Code, 2016. It is **admitted** accordingly in the following terms:

ORDER

- a. **The above Company Petition No. (IB) - 413(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Mavin Switchgears and Control**

Private Limited.

- b. This Bench hereby appoints Mr. Indrajit Mukherjee, Registration No: IBBI/IPA-001/IP-P-01533/2018-19/12450 as the Interim Resolution Professional having registered office at B405, Sidhivinayak Twin, Plot No. 9 Roadpali, Sector 17 Kalamboli, Navi Mumbai 410218 (MH), email :- indrajitmukherjee15@yahoo.com, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 3 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.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their

knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANIL RAJ CHELLAN
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)

ANKIT