

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.973/MB-IV/2023

Under Section 7 of the IBC, 2016

In the matter of

Bank of India

[CIN:U99999MH1906PLC000243]

[PAN:AAACB0472C]

...Financial Creditor

v/s.

*MEP Infrastructure Developers
Limited*

[CIN: L45200MH2002PLC136779]

...Corporate Debtor

Order Delivered on: 28.03.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor :

Ms Ooshma Jain a/w Ms
Smriti Shahani i/b M.V.Kini
Law Firm Ld, Counsel.

For the Corporate Debtor : Mr. Rohit Gupta a/w Adv
Nevil M Chopra i/b Naik
Naik & Co.

ORDER

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Intec Capital Limited. (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of MEP Infrastructure Developers Limited., the Corporate Debtor by invoking the provisions of Section 7 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 127,86,33,662/- (Rupees One Hundred and Twenty Seven Crores Eighty-Six Lakhs Thirty-Three Thousand Six Hundred and Sixty Two Only). The Petition is filed on 17.10.2023. The date of default as Specified in Part IV of the Petition is 20.10.2022. The date of default as per NesL report is 20.10.2022 with a color code green which is duly authenticated by the Corporate Debtor.
2. The submissions of the Financial Creditor are as follows:
 - 2.1. The Corporate Debtor has availed certain financial assistance from Bank of India under Multiple Banking Arrangements (“MBA”) led by IDBI Bank since 16.03.2010. Initially, Bank of India as a member of the

MBA had sanctioned Non-Fund Based Credit Limit of Rs.150 crores vide its First sanction letter dated 16.03.2010.

2.2. That on 27.11.2013 within the above-mentioned aggregate non-fund-based limit of Rs.150 crores, working capital fund-based limit of Rs.50 crores were sanctioned by way of sub-limit. Further, as on 13.02.2015, the working capital fund based and non-fund-based limits were enhanced. According to that, overall non-fund based credit was enhanced from existing Rs. 150 crores to Rs.175 crores and within that limit working capital fund based limit was enhanced from Rs.50 crores to Rs.75 crores. Thereafter, the said credit facilities were renewed/reviewed from time to time.

2.3. That a recall notice was issued on 04.10.2022 by recalling the entire credit facilities sanctioned to the Corporate Debtor which were outstanding.

2.4. The Corporate Debtor showed interest in settling their dues out of court and also approached the Financial Creditor with OTS proposals i.e. 09.09.2022, 16.12.2022 and the last one being on 07.08.2023. However, the financial creditor has not considered the same since it involves huge haircut and there was no clarity on the source of funds.

Resultantly, this Company Petition under Section 7 of the Insolvency and Bankruptcy Code is filed.

Findings

3. This bench observed that, vide order dated 17.10.2023 the Corporate Debtor was granted 2 weeks' time to file reply. On 05.12.2023, upon the request of the Corporate Debtor further 2 weeks' time was granted to file reply as a final chance in the interest of justice. Thereafter, the matter was listed on 15.01.2024. In spite of repeated opportunities by this bench, the Corporate Debtor did not file its reply, therefore right to file reply was forfeited by this bench on 21.02.2024.

4. This bench has perused the documents and pleadings available on record. Heard both the counsels. In the absence of reply of the Corporate Debtor the case is decided on merits based on the material available on record.

4.1. This bench observes that, as per the sanction letters dated 27.11.2013, 13.02.2013 the loan was sanctioned to Corporate Debtor. The Corporate Debtor has defaulted in repayment of the loan, pursuant to which the Financial Creditor had issued Demand/ Recall Notice dated 04.10.2022 seeking release of payment of Rs. 69,46,59,152.50 as on 30.09.2022. Further the Financial Creditor had placed reliance upon letter dated 19.01.2018 received from the Corporate Debtor wherein it is stated "*we hereby confirm and acknowledged our indebtedness*

to you in respect of outstanding amounts due and payable by us... ”. This confirmation by the Corporate Debtor establishes the existence of debt.

4.2. We notice that the Corporate Debtor acknowledged its liability in respect of dues payable to the Financial Creditor in the One Time Settlement (OTS) proposal vide letter dated 07.08.2023 and admittedly the Corporate Debtor has utilized the said facilities/loan. Therefore, this tribunal is of the considered view that the OTS proposal is within the definition of the ambit of ‘acknowledgement of debt’.

4.3. This bench takes note that NesL report recording the debt; subsequent default of Corporate Debtor and date of default as 20.10.2022 is duly authenticated by the Corporate Debtor. Therefore, this bench is of the considered view that the Corporate Debtor has not disputed the loan facility which was provided by the Financial Creditor.

5. The factum of existence of financial debt and its default stands proven on record. It has also been established that the petition is within time. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency Process be initiated in the matter of the Corporate Debtor.

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6. As a result of the foregoing discussion, we deem it to be a fit case for admission under Section 7 of the Code. It is ordered accordingly in the following terms.

ORDER

7. The Petition bearing CP (IB) No.973/MB-IV/2023 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Intec Capital Limited. (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of MEP Infrastructure Developers Limited., is **Admitted**.

- a) 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.

(c) Notwithstanding the above, during the period of moratorium, -

(v) 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;

(vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

(d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read

with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (f) The bench hereby appoints **Mr. Ravindra Kumar Goyal**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P-02019/2020-2021/13098** and email- **ravindra1960_goyal@yahoo.co.in** . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) 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 IBC. 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.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so

deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- (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) A copy of this Order be sent 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/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
28.03.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)