

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDEABAD BENCH
HYDERABAD**

**C.P. (IB) No.24/7/HDB/2018
U/s 7 of the IB Code 2016**

In the matter of:

M/s SREI Equipment Finance Limited,
'Vishwakarma',
86C, Topsia Road,
Kolkata – 700 046,
West Bengal.

.... Financial Creditor / Applicant

And



M/s MIC Electronics Limited,
A4/II, Electronic Complex,
Kushailguda,
Hyderabad – 500 062,
Telangana.

.... Corporate Debtor / Respondent

Order pronounced on: 13.03.2018

CORAM:

Hon'ble Shri Bikki Raveendra Babu, Member Judicial

Parties / Counsels Present:
Counsels for the Applicant/
Financial Creditor.

Mr. Srikanth Hari Haran along with
Ms. Risha Banerjee.

Counsel for the Corporate Debtor/
Respondent

Mr. Malleswara Durga Prasad,

Per: Shri Bikki Raveendra Babu, Member (Judicial)

ORDER

1. SREI Equipment Finance Limited, styling itself as Financial Creditor,
filed this Petition, U/s 7 of the Insolvency and Bankruptcy Code 2016,

read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with a request to commence Corporate Insolvency Resolution Process in respect of MIC Electronics Limited styling it as Corporate Debtor.

2. The Board of Directors of the Petitioner in its meeting held on 25.10.2017 resolved to constitute Credit & Investment Committee and accordingly a Credit & Investment Committee was constituted. The said Committee in its meeting held on 06.11.2017, authorised Mr. Shamik Roy, to file the present Petition.



3. The Authorised Equity Share Capital is Rs.50,00,00,000 (Rupees Fifty Crores. The Paid Up Equity Share Capital of the Company is Rs.33,22,76,246/- (Rupees Thirty Three Crores Twenty Two Lakhs Seventy Six Thousand Two Hundred and Forty Six only), The Registered Office of the Company is situated in Kushaiguda, Hyderabad, Telangana State.

4. It is stated that at the request of the Respondent the previous Loan Agreements were restructured under a Loan-cum-Hypothecation Agreement bearing No.116741, dated 22.09.2016 entered into between the Respondent Company and the Petitioner for the purpose of business, of Respondent.

5. As per the Loan-cum.-Hypothecation Agreement dated 22.09.2016 the Total Default is Rs.418,509,879/-. It is further stated that Respondent provided the following Collateral Security:

Land admeasuring 4468.31 Sq. mtrs. situated in Phase-III, Cherlapally Village, Ghatkeshkar Mandal, R.R. District (vide Memorandum of

Deposit of Title Deeds dated 30.08.2011 . Respondent also pledged 52 lakhs shares which accounted 2.36% of the shareholding to the Petitioner. Dr. MV. Rama Rao, stood as a personal guarantor to the Loan by executing Guarantee Agreement on 22.09.2016

6. The Petitioner issued a final notice of default to Respondent on 13.07.2017 and it was duly received by the Respondent on 17.07.2017. The Respondent does not given any reply to the said notice. Prior to that on 16.07.2017 Financial Creditor wrote a letter to the Respondent demanding the outstanding amount. Respondent did not choose to give reply to the said letter also. Petitioner proposes the name of Mr. Prabhakar Nandiraju, as an Insolvency Professional to act as Interim Resolution Professional.



7. Respondent in the reply raised the following objections:
- a) Petitioner is not a Financial Creditor as defined in Section-5 (7) of IBC Code 2016 .
 - b) Petitioner has defaulted in releasing the hypothecated movable properties worth Rs.54,00,00,000/-, inspite of allotment of 52,00,000 Equity Shares of the Respondent to the Petitioner as per the Agreement dated 22.09.2016, and therefore there is no debt more so a Financial Debt due and payable to the Petitioner by the Respondent.
8. The Petitioner suppressed the following facts:
- a) Petitioner suppressed the value of the movable properties which is worth Rs.54 Crores.
 - b) The EP No.356 and 357 of 2015 filed by the Petitioner in the Court of

the 2nd Additional District Judge, R.R. District to take the possession of the immovable property was dismissed which was filed pursuant to the Arbitral Award. The challenge made to the dismissal of the EP in CRP No.6006/16 before the Hon'ble High Court of Judicature at Hyderabad has been withdrawn.

c) Petitioner has to dispose off the movable property worth Rs.54 Crores and adjust the said amount to due amount.

9. The amount settled after restructure is Rs.23.5 Crores. Out of it 13.5 Crores converted into Equity by allotment of 52 lakh shares of the Respondent Company. The said fact has been suppressed.

10. Respondent further stated that it is Principal Lender SBI that had extended finance for the operations of the company is considerate not to precipitate the situation by invoking provisions of IB Code.

10. The Respondent is able to successfully engage three prospective investors who have shown interest in investing in the company, because of its technology, credibility in the Management of the Company and ability to create the market for its products. According to the Respondent, Petitioner with a view to coerce the Respondent to collect the amount that are not due and payable, filed this petition. Respondent took another objection namely non furnishing of information with regard to default recorded with the information utility.

10. Before reaching the conclusion, considering the objections raised by the Corporate Debtor it has become necessary for this Authority to give a finding whether there is any amount due from the Respondent to the Petitioner and if so



whether it is a financial debt or not and if it is a financial debt whether any default has occurred in repayment of the same. To consider the objections of the Respondent it is necessary to refer to certain relevant clauses in the Loan-cum-Hypothecation Agreement dated 22.09.2016.

2.1 Facility and Application of Proceeds & Terms of Disbursement:

2.1.1 The parties to the instant agreement had agreed that by way of the instant Agreement the entire claim in respect of the Four Agreements being No.HL0044090 dated May 12, 2011, Agreement No. HL0046121 dated June 15, 2011, 45611 dated June 30, 2013 and No.HL0062166, dated Sept 27, 2012, would be rescheduled and restructured in the following manner.

- (i) The present accumulated dues as agreed upon by and between the parties herein under the aforesaid four agreements being Rs.35,02,00000/- (Rupees Thirty Five Crores and Two Lacs Only.
- (ii) Out of the aforesaid amount of Rs.35,02,00,000/- (Rupees Thirty Five Crores Two Lacs only), a sum of Rs.23.50 (Rupees Twenty Three Crore Fifty Lakh) only would be repaid along with interest in the following manner:
 - (a) The parties have agreed that the Borrower will pay off Rs.10 crores (Rupees Ten Crores only) along with interest as mentioned in Schedule I and in the manner as set out in Schedule II. This amount of 10 Crores will be considered as a facility extended to the Borrower Company.



b) It is further agreed between the parties that the Borrower would as a security keep the property more fully described in the Schedule V herein below, which was also part of the security of the earlier agreements being HL0044090 dated May 12, 2011 and Agreement No. HL0046121 dated June 15, 2011 in favour of the party of the First Part by a registered Memorandum of Deposit of the Deeds executed on 30th August, 2011.

c) i) Against the balance amount of Rs.13.5 crores (Rupees Thirteen Crores Fifty Lakhs Only) out of Rs.23.05 crores (Rupees Twenty Three Crores Fifty Lakh) Only provided to the Borrower, the Borrower Company would issue 52,00,000/- numbers of shares of the Borrower Company @ Rs.26/- per share mournfully described in Schedule IV therein these shares will be issued on preferential allotment basis in compliance with SEBI guidelines, rules and regulations. The shares so issued will be held by the Lender under lock in period for a period of one year (12 months) from the date of issuance of the same as per SEBI guidelines.

ii) The said shares shall be issued by the Borrower Company within a period of 90 days from date of execution of these presents.

iii) After a period one year from the date of issuance of the said shares the Lender would be entitled to sell the said shares in the open market and recover the market value of the same.



iv) If at the time of sale of the shares by Lender, the value of the shares in the market is above Rs.31/- (Rupees Thirty One) per share, the Lender shall retain an additional 30% of the value over and above Rs.31/- per share. The balance 70% of the difference amount being the value over and above Rs.31/- (Rupees Thirty One only)—per share shall be refunded to the Borrower.

(c) However in case the shares are sold in the open market and the value of the shares as on the date of sale of the shares is lower than the price of Rs.31/- (Rupees Thirty One) per share, the Borrower Company shall pay the difference amount together with within a period of 15 days from the date of demand made by the Lender.



(d) It is further agreed that the concessions on the entire dues of Rs.35,02,00,000/- (Thirty Five Crores and Two Lacs only) given by the Lender in this agreement are extended only on the assurance of the Borrower Company that the settled amount of Rs.23.5 crores together with accrued interest will be cleared and/or realized without default in the manner as mentioned herein. However in case of non-realization of a sum of Rs.23.05 Crores together with accrued interest or any part thereof in terms of this instant agreement, all the concessions shall stand withdrawn.

(e) In view of the aforesaid payment structure the claims in respect of the party of the Third Part and the party of the Fourth would also be taken as settled between the parties to this agreement.

[Faint, illegible text]

(f) All the assets (including those hypothecated by the parties of the Third and Fourth part will be returned back to the party of the Second Part only after issuance of the shares by the party of the Second Part and after completion of all formalities since the assets are lying in the custody of several Receivers.

7.3 (ii) However in case of any single default in making payment of any instalment as mentioned in Schedule II and / or any sum payable by the Borrower to the Lender after sale of shares of any sum below the value of Rs.31/- per share as per the above terms, the party of the second part would be liable to pay the entire dues of Rs.35,02,00,000/- (Rupees Thirty Five Crores and Two Lacs only) together with accrued interest as applicable. Upon default in payment of Rs.2.30 crores within due date, the interest/overdue compensation of the sum of Rs.35,02,00,000/- (rupees Thirty Five Crores Two Lacs) will be charged in terms of the cause stated herein above.



7.4 Remedies:

- (a) In the event of continuing Event of Default, LENDER may, at their sole discretion, recall the Facility outstanding (if any), or take such other legal remedial action as LENDER may deem fit.
- (b) In the Event of Default, LENDER may, at its sole discretion, enforce the Security Interest.
- (c) In the event of breach of any of the covenants or undertakings given by the Borrower, LENDER, shall be entitled to specifically enforce any right under applicable law and in equity.

SCHEDULE I

Interest Rate & Interim Interest Rate

SCHEDULE II

The Interest payments will be made monthly/quarterly/half yearly/yearly in arrears/advance.

11. There is no denial of the fact that Loan-cum-Hypothecation Agreement has entered into between Petitioner and Respondent by way of reconstruction of earlier facility covered by previous four agreements. The liability of the Respondent as per the Loan-cum-Hypothecation Agreement is quantified as Rs.23,50,00,000/-. Repayment of the 23.50 crores has to be made with interest in the manner prescribed in the Agreement dated 22.09.2016.

Clause-2.1 (a) stipulates that the Respondent shall pay Rs.10 Crores along with interest in the manner set out in Schedule II.

12. It is further mentioned that the said amount of Rs.10 Crores is treated as a facility extended to the Corporate Debtor. In respect of the remaining 13.5 Crores Corporate Debtor agreed to issue 52 lakhs number of shares of Respondent Company @ Rs.26/- per share fully described in Schedule IV and accordingly shares of the Respondent company have been pledged with the petitioner.

13. In view of 2.1 (c) (iii) after a period of one year from the date of issuance of the shares petitioner is entitled to sell the said shares in the open market and recover the market value of the same. The pledge of shares of the Respondent



Company and sale of such shares by the Petitioner is in relation to the balance amount of 13.5 crores but not as against 10 Crores which is treated as a facility extended to the Corporate Debtor. Even after sale of pledged shares if the value realised is less than Rs.31 per share, the Corporate Debtor shall pay the difference amount within a period of 15 days from the date of demand made by the petitioner.

14. The contention of the learned counsel appearing for the Respondent that the immovable properties of the Respondent Company and as well as the immovable properties of M/s Mavee Electrical Pvt Ltd and M/s Micronet Technologies Ltd have been retained by the petitioner and they are worth of Rs.54 crores and they have to be returned to the Responded as soon as the shares of the Respondent Company have been allotted to the petitioner. In support of this contention the learned counsel for the petitioner referred to 2.1 (f) which reads as follows,.



“All the assets (including those hypothecated by the parties of the Third and Fourth part) will be returned back to the party of the Second Part only after issuance of the shares by the party of the Second Part and after completion of all formalities sine the assets are lying in the custody of several Receivers”

15. This clause no doubt says that all the assets including those hypothecated by the other two companies referred to above shall be returned to the Respondent after issuance of shares by the Respondent and after completion of all formalities. This clause has to be read along with the clause that deals with the consequences of default which is there in 7.3. 7.3 (ii) says that even in case of

a single default in making payment of any instalments as mentioned in the Schedule II which obviously referred to repayment of Rs.10 Crores which is treated as facility extended to the Respondent in the Agreement dated 22.09.2016.

16. It is not even the case of the Respondent that it has made payments inconformity with the repayments schedule given in Schedule II in respect of Rs.10 Crores out of 23.50 crores.

17. Coming to the repayment of remaining 13.50 crores unless and until the sale of shares took place it is not possible to determine whether any amount is payable by the Respondent to the Petitioner or any amount is liable to be refunded to the Respondent by the Petitioner in view of 2.1 (c) 1,2,3,4

18. Therefore, the amount of Rs.10 Crores is due from the Respondent to the Petitioner and it has got all the characteristics of a financial debt as defined in Section 5, subsection (8) IB Code, for the simple reason that the amount of Rs.10 crores is repayable with interest and it is a part of the settled amount of Rs.23.50 crores which arises out of the previous loan agreements. When once there is a financial debt due and payable to the Petitioner, Petitioner becomes a Financial Creditor.

19. In view of the above discussion there is an occurrence of default in respect of Rs.10 Crores due and payable to the Petitioner by the Respondent. The Hon'ble Supreme Court in a case relating to CIRP initiated by a Financial Creditor reported in (2018) 1 Supreme Court Cases P 407 – Innoventive Industries Ltd Vs ICICI Bank and another, clearly held that the



Adjudicating Authority has to confine only to the existence of financial debt and occurrence of default. In the above said decision it is held as follows:

“30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise



20. This authority has to further see that whether the petition is complete in all respects. The objection of the Respondent that nonproduction of record of default recorded with the Informational Utility is no ground to conclude that the petition is incomplete. The provisions of the code say the financial creditor shall file record of default recorded with Information Utility if it is available. The relevant provision says that the Financial Creditor can establish the debt and its default by producing any other record of evidence.

21. Having perused the Petition this Authority is of the view that the Petition is complete in all respects. The contention of the Learned Counsel for the Respondent that prospective investors are showing interest in investing in the Respondent Company is no ground to avoid CIRP since the same effort can

avail the CIRP also under the guidance of Resolution Professional and with the assistance of the Committee of Creditors.

22. The fact that the Company is an ongoing concern and its principal lenders namely SBI did not choose to take steps to initiate proceedings under IB Code is no bar for the other Financial Creditors or Operational Creditors to initiate CIRP.

23. From the material placed on record, this Adjudicating Authority is satisfied that a default has been committed by the Corporate Debtor in repayment part loan amount due under the Loan-cum-Hypothecate Agreement dt.22.09.2016. The application is complete. There is a requirement of declaration by the proposed IRP that no disciplinary proceedings are pending against him.



24. In view of the above discussion this Adjudicating Authority is hereby admit the petition under Section 7 (5) (a) of the Code. The Adjudicating Authority is also appointing Sri Prabhakar Nandiraju, 11-12-7, Road No.1, Sri Rama Krishna Puram, Hyderabad – 500 035, IP Registration No.IBBI/IPA-002/IP-No.00361/2017-2018/11030. as “Interim Resolution Professional”.

24. Section 13 of the Code says that after admission of the application under Section 7, the Adjudicating Authority shall pass an Order declaring moratorium for the purposes referred to in Section 14. Therefore, in view of the commencement of Corporate Insolvency Resolution Process with the admission of this Petition and appointment of Interim Resolution Professional, this

Adjudicating Authority hereby passes the order declaring moratorium under Section 13 (1) (a) prohibiting the following as laid down under section 14 of the Code;

- a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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.
- i). The moratorium order in respect of (a), (b), (c) and (d) above shall not apply to the transactions notified by the Central Government.
 - ii) However, the order of Moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.
 - iii) The Applicant shall also make public announcement about initiation of Corporate Insolvency Resolution Process as required by Section 13(1)(b) of the Code.



25. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

26. This Petition is ordered accordingly.

27. Communicate a copy of this order to the Applicant Financial Creditor and to the Interim Insolvency Resolution Professional.



Sd/-
BIKKI RAVEENDRA BABU
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

Pronounced by me in open Court on
 This the 13th day of March, 2018.

A. Anandha Subramanian
 for Dy. Regr./Asst. Regr/Court Officer
 National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY

केस संख्या
 CASE NUMBER *CP (IB) No. 2417/HQ/2018*
 निर्णय का तारीख
 DATE OF JUDGEMENT *13.3.2018*
 प्रति तैयार किया गया तारीख
 COPY MADE READY ON *13.3.2018*