

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

**C.P. No. 322/IBC/MB/2023**

Under Section 7 of the Insolvency and  
Bankruptcy Code, 2016  
*In the matter of*

**TECHNOLOGY DEVELOPMENT  
BOARD**

Having registered office at:  
Technology Bhavan, Block-II, 2<sup>nd</sup> floor,  
New Mehrauli Road,  
New Delhi – 110 016.

... Financial Creditor/Petitioner  
Vs

**PERFECT INFRAENGINEERS  
LIMITED**

(CIN: L29190MH1996PLC099583)

Registered office at: Plot No. R-637,  
TTC Industrial Area, Thane Belapur  
Road, Rabale, Navi Mumbai 400 701.

... Corporate Debtor

**Order delivered on: 15.07.2024**

**Coram:**

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

**Appearance :-**

For the Financial Creditor : Mr. Aniket Malu, Advocate

For the Corporate Debtor : Mr. Nedumpura, Advocate

*[Per: Justice (Retd.) V. G. Bisht, Member (J)]*

1. This is an application filed by Financial Creditor/applicant under section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as “IB Code” for short) against Corporate Debtor/Respondent, for initiating Corporate Insolvency Process (“CIRP” for short).

**Brief facts:-**

2. The Financial Creditor has been set up to provide financial assistance to Indian Industrial concerns and other agencies, attempting development and commercial application of indigenous technology, or adapting imported technology to wider domestic applications.
3. In the year 2018, Corporate Debtor approached the Financial Creditor with a request for the loan facility for project titled “Development and Commercialization of Hybrid Thermal Systems”. Financial Creditor accordingly entered into a loan agreement dated 20.09.2018 with the Corporate Debtor and granted loan facility of Rs. 750 Lakhs. Sanctioned letter/letter of intent (Annexure-B) is of dated 15.09.2018.
4. In order to secure said loan facility the Corporate Debtor executed various documents (Annexure C to G) and agreed to repay the loan as per Schedule II of the Loan Agreement in (9) half yearly instalments and that the same shall carry an interest of 5% p.a. Corporate Debtor was also liable to pay Royalty at the rate of 0.5% as per the loan agreement, of the turnover.

5. Out of the total sanctioned Loan Amount, an amount of Rs. 450 Lakhs was disbursed by way of two instalments of Rs. 187 Lakhs and Rs. 263 Lakhs on 08.11.2018 and 21.11.2019 respectively. However, after the realization of second instalment, the Financial Creditor observed that the Company i.e. Corporate Debtor could not fully meet the conditions of collaterals as mentioned in the Loan Agreement. Ultimately, the Financial Creditor informed that account of the Corporate Debtor was declared as NPA on 21.09.2021. The Financial Creditor accordingly issued a Show Cause Notice dated 07.04.2021 to the Corporate Debtor to provide clarification with regard to milestones and the status of account held with ICICI Bank. Further, letter of non-continuation of loan dated 31.05.2021 was issued to the Company, whereby, revised repayment scheduled was provided to the Corporate Debtor for repaying the loan amount. However, the Corporate Debtor failed to comply with any of the suggestions/requests of the Financial Creditor.
6. Because of the Corporate Debtor's negligent attitude of the repayment of Loan Amount as per Schedule II of the Loan Agreement, Financial Creditor was constrained to recall the Loan facility by issuing loan recall notice dated 26.04.2022 calling upon the Corporate Debtor to pay the entire loan dues with interest and other charges as on the date of the said notice i.e. of Rs. 5,76,25,606/- as agreed in the aforesaid Loan Agreement. Despite receipt and knowledge of the said loan recall notice the Corporate Debtor has failed and neglected to comply with the demand raised therein. Therefore, the present Company petition.

7. The Corporate Debtor though admits that entire loan amount of Rs. 750 Lakhs was sanctioned but the same was never disbursed in full. It alleges that the Financial Creditor deprived the Corporate Debtor of the remaining funds required in the form of loan by withholding the remaining portion of Rs. 300 Lakhs out of total Rs. 750 Lakhs. Due to which, the Corporate Debtor was compelled to not meet their obligations towards Financial Creditor.
8. According to the Corporate Debtor, going through the provisions of MSME (Micro Small and Medium Enterprises) notification S.O. 1432 (E) dated 29.05.2015, the account of the Corporate Debtor could not have been declared as NPA forthwith without having recourse to the revival mechanism as prescribed by the said notification. According to it, the MSMED Act being a special law in relation to the SARFAESI Act, it will prevail over the SARFAESI Act and IB Code. The Financial Creditor being a Corporate Debtor is covered under MSME notification S.O. 1432 (E) dated 29.05.2015 and thus, it is bound by the said notification. There being gross violation of said MSME notification, the Corporate Debtor cannot be subjected the provisions of IBC and thus there is no requirement to appoint Resolution Professional. The Financial Creditor is not entitled to any relief and the Company Petition deserves to be dismissed, concluded Corporate Debtor.
9. Heard Mr. Aniket Malu, learned Counsel for the Financial Creditor. We may point out here that the reply to the present petition was filed by the Corporate Debtor on 13.07.2023. Since on 21.08.2023 the Corporate Debtor

was not represented before this Tribunal despite directing Corporate Debtor to remain present in the Court on the said date (21.08.2023) of hearing and advance their arguments without fail, failing which matter shall be decided on the basis of material available on record. We also find that since hard copy of the reply was not available on record vide order dated 05.09.2023 the Corporate Debtor was given last opportunity to bring on record its reply and the matter was adjourned to 09.10.2023. However, the Corporate Debtor remained absent on 09.10.2023. Still by way of another opportunity, in the interest of justice matter was adjourned to 10.11.2023.

10. On 10.11.2023 learned Counsel for the Corporate Debtor informed that the matter cannot be proceeded any further because the Writ Petition for the interpretation of the provisions of MSME Act qua IBC is pending before the Hon'ble High Court, decision has been reserved and orders are awaited. This Bench considered it appropriate, though there was no stay to the proceeding, to adjourn the matter to next date i.e. 01.12.2023 because the learned Counsel for the Corporate Debtor was not ready to make any arguments on merits of the case. The same story was repeated by the learned Counsel for the Corporate Debtor on 01.12.2023. On 23.01.2024 since the Corporate Debtor was not represented the matter was adjourned to 08.02.2024, on which date also, the learned Counsel remained absent but the Corporate Debtor was represented by junior counsel. The matter was then adjourned to 29.02.2024.

11. On 29.02.2024 the learned Counsel for the Corporate Debtor informed that their Writ Petition has been dismissed and Review Petition has been filed and thus sought adjournment.
12. It is again pertinent to note here that though there was no stay to the proceedings in question yet the learned Counsel chose to prolong the matter on one pretext or other and never came forward with arguments on merits of the case.
13. On 12.03.2024 an adjournment was again sought on the ground of illness of arguing Counsel. On 18.03.2024 one advocate representing Corporate Debtor repeated the same submission and sought adjournment, however, looking the past conduct of the learned Counsel and the fact that there was no stay to the proceedings and moreover the proposition advanced by the learned Counsel for the Corporate Debtor that MSME Act overrides IBC had dully been decided by the Hon'ble High Court, this Bench arrived at conclusion that Corporate Debtor is deliberately dragging the issue and therefore the Bench proceeded to hear learned Counsel for the Petitioner and reserved the matter for judgment.
14. There is no dispute from the side of the Corporate Debtor in respect of Loan Agreement dated 20.09.2018 arrived at between him and the Financial Creditor. There is also no dispute of the fact that Corporate Debtor was granted loan facility of Rs. 750 Lakhs vide sanctioned letter/letter of intent dated 15.09.2018.

15. According to the Financial Creditor, out of the sanctioned letter amount an amount of Rs. 450 Lakhs was disbursed by way of 2 instalments viz. Rs. 187 Lakhs and Rs. 263 Lakhs on 08.11.2018 and 21.11.2019 respectively. The Financial Creditor has come with a very specific case that after realization of second instalment, it observed that Company i.e. Corporate Debtor could not fully meet the conditions of collaterals as mentioned in the Loan Agreement. As against this, the Corporate Debtor has taken a plea that as Financial Creditor failed to disburse the entire loan amount of Rs. 750 Lakhs within reasonable time due to which, the Corporate Debtor was compelled to not to meet obligations towards Financial Creditor.
16. We have carefully gone through the terms and conditions of the Loan Agreement which is at Annexure-C, page 28 of the Petition. The terms of the said Loan Agreement clearly and unambiguously provide that after each instalment the Borrower was saddled with certain obligations and its only after fulfilment of those obligations, the Corporate Debtor would have entitled for the next instalment. It is quite relevant to note that after the second instalment of Rs. 263 Lakhs towards implementation of the project, the Corporate Debtor was required to fulfil certain conditions or requirements and which is rightly so pointed out by the learned Counsel for the Financial Creditor. But, the Corporate Debtor failed to meet those conditions of collaterals as mentioned in the Loan Agreement more particularly after the payment of second instalment. Therefore, there is no gainsaying that the Corporate Debtor would have complied the conditions of collaterals only after

the full disbursal of loan amount of Rs. 750 Lakhs. We do not find merit of candour in the stand taken by the Corporate Debtor.

17. After going through the record, we find that letter (Annexure K) dated 31.05.2021 intimated Corporate Debtor about the non-continuation of loan agreement dated 20.09.2018 on the various grounds mentioned therein. It was also given the revised Schedule in respect of loan amount of Rs. 450 Lakh already granted to the Corporate Debtor. However, Corporate Debtor failed to comply with any of the suggestion/request of the Financial Creditor.
18. Because of the non-compliance of the above said letter, Financial Creditor issued Loan recall notice (Annexure-L) dated 26.04.2022 and called upon the Corporate Debtor to pay the entire due loan with interest and other charges as on the date of notice amount of Rs. 5,76,25,606/- in consonance with terms and conditions of aforesaid agreement.
19. As if it was not enough, the Corporate Debtor was again served with a demand notice (Annexure-M) dated 04.07.2022 and after giving re-payment details at Para (J) along with statement of account as on 12.12.2022 was called upon to pay the entire amount within a period of 10 days from the date of receipt of notice. However, the Corporate Debtor remained non-committal.
20. The above noted documentary evidence clearly establishes amount due and default on the part of Corporate Debtor.



21. It would be apt and apposite to note that the Corporate Debtor was declared NPA by its bankers namely ICICI Bank on 21.09.2021. The grievance of the Corporate Debtor is that going through the provisions of MSME notification S.O. 1432 (E) dated 29.05.2015, the account of the Corporate Debtor could not have been declared as NPA without having recourse to the revival mechanism as prescribed by the said notification. We may point out here that whether Corporate Debtor ought to have been declared NPA or is not the issue with which we are seized of. This was purely between Corporate Debtor and its bankers namely ICICI Bank. Similarly, to say that MSMED Act being special law will prevail over SARFAESI Act and IB Code would be farfetched. The optimism of the Corporate Debtor is totally misplaced.
22. Necessary conclusion is that the application made by the Financial Creditor is complete in all respects as required by law. It sufficiently establishes that Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under Section 4(1) of the IB Code. Therefore, the debt and default stands established and we do not see any reason to deny the admission of the petition.
23. We, therefore, admit the above Company petition and pass following order.

### **ORDER**

This Application being **C.P.(IB) No. 322/2023** filed under Section 7 of the I & B Code, 2016, filed by **Technology Development Board**, Financial Creditor/applicant

against **M/s. Perfect Infraengineers Limited** Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I & B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - 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 Operational 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 possession of the corporate debtor.
- II. That 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.

- III. That the provisions of sub-section (1) of Section 14 of I & B Code shall not apply to
  - a. Such transactions as may be notified by the Central Government in consultation with any operational sector regulator;
  - b. A surety in a contract of guarantee to a corporate debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I & B Code or passes an order for the liquidation of the corporate debtor under section 33 of I & B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under Section 13 of I & B Code.

VI. That this Bench hereby appoints **Mr. GAURANG CHHOTALAL SHAH**, a registered insolvency resolution professional having **Registration number- IBBI/IPA-002/IP-N00947/2019-2020/13002** and Email ID- **fcsgaurang.shah@gmail.com** as Interim Resolution Professional to carry out the functions as mentioned under I & B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VII. 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). The Remuneration of Interim Resolution Professional shall be Rs. 1,00,000/- p.m. till the

constitution of CoC and decision of CoC in relation to remuneration of IRP/RP, in case it is not fixed by the operational creditor so far.

VIII. A copy of this order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the corporate debtor.

IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the interim resolution professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

**Sd/-**

**PRABHAT KUMAR  
MEMBER (TECHNICAL)**

**Sd/-**

**JUSTICE VIRENDRASINGH BISHT  
MEMBER (JUDICIAL)**

*Sapna*