

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

**CP(IB) No. 308/07/HDB/2022
U/s. 7 of IB Code, 2016**

In the matter of:

State Bank of India,
2nd Floor, Prabhat Towers,
Opp : SBI LHO,
Chapel Road, Gunfoundry,
Hyderabad – 500 001.

.... Applicant /
Financial Creditor

Vs.

M/s Gayatri Projects Limited,
TSR Towers, B-1, 6-3-1090,
Rajbhavan Road, Somajiguda,
Hyderabad – 500 082.

....Respondent/
Corporate Debtor

Date of order: 15.11.2022

CORAM:

**Dr. Venkata Ramakrishna Badarinath Nandula, Member (Judicial)
Mr. Satya Ranjan Prasad, Member (Technical)**

Counsels present:

For the Financial Creditor : Mr. P. Ravi Charan and
Ms. Niharika Agarwal, Advocates.

For the Corporate Debtor : None [*Ex-parte*]

[PER: BENCH]

ORDER

1. Under consideration is an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by M/s. State Bank of India against M/s. Gayatri Projects Limited, *inter-alia*, seeking to admit the Application and refer the Corporate Debtor to Corporate Insolvency Resolution Process and appoint Interim Resolution Professional.
2. Brief facts of the case as stated by the Applicant is as under:-
 - a. That the Applicant (earlier State Bank of Bikaner and Jaipur which got merged with the Applicant) along with consortium of lenders on the request of the Corporate Debtor has sanctioned Term Loans including Short Term Loans, Equipment Loans, Demand Loan, ECB Loan and working capital facilities, both fund based and non-fund based for the purpose and the terms and conditions contained in various loan agreements / facility agreements entered into between the Corporate Debtor and the Applicant and other lenders. Further, in order to secure such facilities, the Corporate Debtor has from time-to-time, created security by way of hypothecation of its movable assets, book-debts etc. the Applicant has specifically vide its sanction letter bearing No.SGH/ADV/458 dated 14.01.2012 has sanctioned fund based working capital facility of Rs.50 Crores and the Corporate Debtor has executed Agreement of Loan for overall limits with the Applicant in furtherance of the same.
 - b. That the Applicant submits that the working of the Corporate Debtor's operating divisions came under strain and in the year 2014, the lenders have

- identified incipient stress and categorized the account of the Corporate Debtor as SMA-2.
- c. In order to overcome difficulties faced by the Corporate Debtor, the Corporate Debtor had requested the lenders including the Applicant for carrying out debt restructuring. Pursuant to which a joint lenders' forum (the "JLF") meeting was convened on August 13, 2014 as per the extent guidelines of the Reserve Bank of India and the lenders including the Applicant decided to restructure the facilities granted to the Corporate Debtor as a corrective action taken by the lenders and Pursuant thereto MITCON was requested to draw a Techno Economic Viability Report (the "TEV Report") and based on which a restructuring package was drawn by IDBI Capital Market Service Limited. Thereafter, the restructuring package was approved by the Joint Lenders Forum on 19.01.2015 ("**Approved JLF**"). In furtherance of the said package, the Applicant also sanctioned the said restructured facilities to the Corporate Debtor.
- d. That the Applicant submits that the Corporate Debtor has executed Master Restructuring Agreement dated 23.01.2015 wherein the existing loans were restructured in terms of the said Agreement. The details of the existing loans upon restructuring of the existing loans by lenders including the Applicant are as follows:

In Crores

Facility	Aggregate Limit
Facility A-Restructured Term Loan	450.00
Facility B-Rupee Term Loan (ECB) by IDBI Bank	135.00
Facility C-Working Capital Term Loan	165.23

Facility D-Funded Interest Term Loan (FITL)	130.99
Facility E-Cash Credit	776.00
Facility F-Bank Guarantee and Letter of Credit	2563.81
Total :	4221.04

Out of the said total amount of Rs.4221.04 Crores, the restructured amount of Applicant was Rs.50 crores which is part of FB-WC Facility E.

- e. The Applicant submits that the above-mentioned restructured facilities were secured by (1) Deed of Hypothecation dated 12.03.2015 (ii) Personal Guarantee Agreement dated 12.03.2015 (iii) Corporate Guarantee Agreement dated 12.03.2015 (iv) Pledge Agreement dated 12.03.2015 and Power of Attorney (v) Memorandum of Entry dated 12.03.2015 and Declaration and Undertaking dated 12.03.2015 (vi) Trust and Retention Agreement dated 23.01.2015 (vii) Security Trustee Agreement dated 23.01.2015.
- f. The Applicant submits that at the request of the Corporate Debtor, the lenders have from time-to-time either revised or enhanced or granted additional facilities to the Corporate Debtor.
- g. The Applicant submits that as on the date of Seventh Amendment to the MRA on 09.11.2020 the following facilities were extended to the Corporate Debtor by the lenders.

In Crores

Facility	Aggregate Limit
Facility A-Restructured Term Loan	347.08
Facility B-Rupee Term Loan (ECB) by IDBI Bank	107.64

Facility C-Working Capital Term Loan	124.44
Facility D-Funded Interest Term Loan (FITL)	36.77
Facility E-Cash Credit	1023.50
Facility F-Bank Guarantee and Letter of Credit	4447.16
Facility G-COVID Emergency Credit Line (CECL)	60.25
Facility H- COVID FITL	81.60
Facility I-Arbitration BGs by Canara Bank & IDBI as sub-limit of existing limits	(227.11)
Total :	6228.44

Out of the said total amount of Rs.6,228.44 Crores, the restructured amount of Applicant is as under.

In Crores

Facility	Aggregate Limit
Facility A-Restructured Term Loan	-
Facility B-Rupee Term Loan (ECB) by IDBI Bank	-
Facility C-Working Capital Term Loan	-
Facility D-Funded Interest Term Loan (FITL)	-
Facility E-Cash Credit	50.00
<i>Sub limit of CC</i>	<i>(30.00)</i>
Facility F-Bank Guarantee and Letter of Credit	250.00
Facility G-COVID Emergency Credit Line (CECL)	5.00
Facility H- COVID FITL	4.45
Facility I-Arbitration BGs by Canara Bank & IDBI as sub-limit of existing limits	-

Total :	309.45
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- h. The aggregate amount of default of the Corporate Debtor with respect to Applicant/Financial Creditor as on 30.09.2022 is Rs.242,33,00,269/- (Rupees Two Hundred and Forty-Two Crores Thirty-Three Lakhs Two Hundred and Sixty-Nine only) and the date of default along with days of default with respect to facilities availed by Corporate Debtor have been annexed Exhibit-4 at Page No.34.
- i. The account of Corporate Debtor has been declared as Non-Performing Asset (NPA) on 30.04.2022 with Applicant in accordance with the guidelines prescribed by Reserve Bank of India.
- j. The Applicant upon default committed by Corporate Debtor in repayment of the dues has issued demand notice on 04.08.2022, under Section 13(2) of Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002, calling upon Corporate Debtor to pay outstanding liabilities (in aggregate) amounting to Rs.182,21,12,388.20/- excluding BG in force (Rs.55,56,18,677.00/-) as on 03.08.2022 with further interest and incidental expenses, costs etc. The Corporate Debtor in response to the said notice has issued reply on 08.10.2022 to the Applicant.

Reiterating above, counsel for the Financial Creditor prayed to admit the Corporate Debtor for CIRP.

3. That the above matter when listed on 21.10.2022, this Adjudicating Authority has directed the Financial Creditor to serve notice upon the Corporate Debtor by speed post and email and file proof of service and adjourned to 04.11.2022. On 04.11.2022, the counsel for Financial Creditor filed proof of service and as per the same, notice was delivered to the Corporate Debtor on 26.10.2022 and an

email copy was also filed whereby also the Corporate Debtor has been served. However, the Corporate Debtor was called absent. Therefore, holding service to be sufficient, this Adjudicating Authority has set the Corporate Debtor Ex-Parte on 04.11.2022.

4. That on 10.11.2022, we have heard the Ld. Couse for the Financial Creditor. There was no representation for the Corporate Debtor even on 10.11.2022, we therefore reserved the matter for orders.
5. A perusal of the record placed before us by the Financial Creditor discloses that it has provided various Term Loans including Short Term Loans, Equipment Loans, Demand Loan, ECB Loan and working capital facilities, both fund based and non-fund based to the Corporate Debtor from time to time and that an amount of Rs. 242,33,00,269/- became due and payable as on 30.09.2022 and the account of the Corporate Debtor was classified as NPA on 30.04.2022. Despite opportunity the corporate debtor failed to place any record disclosing that there is no debt or default as claimed by the applicant. Thus, the record placed and the averments made in the company petition by the Applicant remain un rebutted.
6. The Financial Creditor proposed the name of Mr. Sai Ramesh Kanuparthi as Interim Resolution Professional and he has filed his written consent in Form – 2. Thus, this Tribunal hereby appoints Mr. Sai Ramesh Kanuparthi as Interim Resolution Professional, having Registration No. IBBI/IPA-001/IP-P00910/2017-18/11510, e-mail id: info@ksrfms.com as Interim Resolution Professional.
7. Hon'ble Supreme Court, in re, **Vidharbha Industries Power Limited vs. Axis Bank Limited in Civil Appeal No.4633 of 2021**, had held that –

“88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of

the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realisation. The example is only illustrative”.

8. We, therefore, in the light of the above ruling carefully examined whether the Corporate Debtor had made out any ground against admission of the present application for initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and found none.
9. Further, we found due compliance of the requirements in terms of Section 7(3) of IB Code by the financial creditor, and this Adjudicating Authority in terms of its power under section 7 (4) ascertained the existence of debt and default if any as alleged on the part of the corporate debtor from the record placed by the financial creditor under sub section (3) of Section 7 of IB Code, and is fully satisfied that present application under subsection 2 of Section 7 of IB Code is complete in all aspects and that there are no disciplinary proceedings pending against the proposed resolution professional, hence we admit the instant Application.
10. Accordingly, the instant application is hereby admitted and we hereby order commencement of the Corporate Insolvency Resolution Process (CIRP) which shall be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed,
11. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-
 - 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 or 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 rights 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
 - iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
 - v. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*
12. *The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.*
13. The IRP, above named is directed to take charge of the Respondent/Corporate Debtor's management immediately. Further, IRP is directed to file Authorization for Assignment within three days from the date of this order.

14. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
15. We direct the Financial Creditor/Petitioner to pay sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.
16. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
17. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
18. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
19. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
20. Accordingly, this Petition is admitted.

Sd/-

Sd/-

Satya Ranjan Prasad
Member Technical

Dr.Venkata Ramakrishna Badarinath Nandula
Member Judicial

SKRathi