

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD**

SPECIAL BENCH - COURT I (HEARINGS THROUGH VIDEO CONFERENCE)

**PRESENT: HON'BLE SHRIMADAN BHALCHANDRA GOSAVI- MEMBER JUDICIAL**

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 23.09.2021 AT 12:00 PM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.1/7/HDB/2020
NAME OF THE COMPANY	Chadalvada Infratech Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Chadalvada Infratech Ltd
UNDER SECTION	7 of IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

Order is pronounced. Company Petition is admitted vide separate order.

  
**MEMBER (TECHNICAL)**

  
**MEMBER(JUDICIAL)**

*Kurim*

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

**CP (IB) No.1/7/ HDB/2020**

U/s 7 of I&B Code, 2016 read with Rule 4  
of I & B (AAA) Rules, 2016.

**In the matter between :**

State Bank of India  
Stressed Assets Management Branch  
Secunderabad Branch, 5<sup>th</sup> Floor  
Rear Block of HMWSSB Compound  
D. No.6-2-915, Khairatabad  
Hyderabad – 500004.  
Represented by its Assistant General Manager  
Mr. J. Vijaya Kumar.

.. **Petitioner  
Financial Creditor**

**VERSUS**

CHADALAVADA INFRATECH LIMITED  
8-3-988/19, SBH Colony  
Sri Nagar Colony (Post)  
Hyderabad – 500073.

.. **Respondent  
Corporate Debtor**

**Date of order : 23<sup>rd</sup> September 2021**

**Coram:**

**HON'BLE SHRI MADAN BHALCHANDRA GOSAVI  
MEMBER (JUDICIAL)**

**and**

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI  
MEMBER (TECHNICAL)**

**Parties / counsels present:**

For the Petitioner : Shri VVSN Raju, Advocate

For the Respondent: Shri G. Giridhar, Advocate

**Per Bench**

Heard on: 16.03.2021, 16.07.2021, 05.08.2021 and 16.09.2021.

**ORDER**

The petitioner was incorporated as State Bank of India on 01.07.1955 vide State Bank of India Act, 1955 and its PAN is AAACS8577K. Its Corporate Office is at State Bank Bhavan, 14<sup>th</sup> Floor, Madam Cama Road, Nariman Point, Mumbai, Maharashtra – 400021; and its Branch office is at : State Bank of India, Stressed Assets Management Branch, Secunderabad, Door No.6-2-915, 5<sup>th</sup> Floor, Rear Block, HMWSSB Compound, Khairatabad, Hyderabad – 500004.

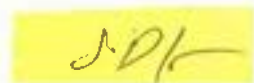
2. The respondent/ Chadalavada Infratech Limited is a company incorporated under the Companies Act, 1956. Its original incorporation was in the name of “Chadalavada Constructions Pvt Ltd under Certificate of Incorporation dated 09.02.2000. However, its name was changed to “Chadalavada Infratech Ltd.”, vide Certificate of Change of Name issued by Registrar of Companies.

3. The Corporate Debtor is, inter alia, engaged in the business of all types of infrastructure projects including power project facilities or works and to build, construct, install, erect, undertake, lay down, commission, establish, own, operate, manage, control and administer, lease, travel, all infrastructure parks, gardens, roads, bridges, flyovers, highways, runways, structures and facilities, railroads, etc. and also to carry on the business of electrical engineers, contractors, etc.

4. The Corporate Debtor had approached the Financial Creditor for sanction of fund-based and non-fund based credit limits and the Financial Creditor had considered favourably and sanctioned cash credit limits and enhanced credit limits from time to time as under:

<b>Vide sanction Advice dated</b>	<b>Cash Credit limit Rs.</b>	<b>Bank Guarantee limit Rs.</b>	<b>Letter of credit Rs.</b>	<b>Total credit limit Rs.</b>
08.02.2006	1,50,00,000	5,50,00,000	--	7,00,00,000
01.012.2006	2,50,00,000	7,90,00,000	5,00,00,000	15,40,00,000





(enhanced limits)				
10.10.2007 (enhanced limit)				32,00,00,000
05.05.2008 (enhanced limit)				60,00,00,000
14.05.2009 (enhanced limit)				1,80,00,00,000
08.10.2010 (enhanced limit)				2,43,00,00,000

**Irregularity - first instance:**

5. When Bank Guarantees were invoked the accounts became irregular and the Cash Credit account of the Corporate Debtor was classified as NPA on 15.04.2011. The Corporate Debtor had requested vide letter dated 18.07.2011 to allow it to operate the accounts within Rs.1,85,29,00,000/-, while acknowledging its liability. The Corporate Debtor has further requested the Financial Creditor for restructuring the accounts vide letter dated 24.12.2013.

**Enhancement of credit facilities on progress shown by the Corporate Debtor :**

6. The Corporate Debtor, subsequently, showing some progress and executing projects, had requested for enhancement of credit facilities while continuing restructuring scheme. The Financial Creditor had agreed and sanctioned the following facilities vide sanction letter dated 24.12.2015 :

- Credit limit was increased from Rs.1,57,27,00,000/- to Rs.2,81,23,00,000/-.
- Irregular portions in cash credit account was converted to WCTL-1 and WCTL-2.
- Interest payable but remained unpaid was converted to FITL-1 and FITL-2.

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**Irregularity - second instance:**

7. The Corporate Debtor failed to adhere to the terms and conditions of sanction. As a result the loan accounts of the Corporate Debtor became irregular.

8. The Financial Creditor issued Demand Notice dated 26.09.2017 under section 13(2) of SARFAESI Act, 2002 calling upon the Corporate Debtor to pay the amounts due in the loan accounts of the Corporate Debtor as on 31.08.2017 along with interest, incidental expenses and costs. The Corporate Debtor failed to pay the same.

9. The Corporate Debtor submitted proposal of One Time Settlement (OTS) to the Financial Creditor and the same was rejected by the Financial Creditor.

10. The present application is filed by the financial creditor/ State Bank of India against Corporate Debtor for default of financial debt of **Rs.216,95,55,314.55** (Rupees two hundred sixteen crores ninety five lakhs fifty five thousand three hundred fourteen and paise fifty five only) as on **31.10.2019**. Hence, this Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

11. The respondent/ Corporate Debtor has filed Counter dated 17.03.2020 and the Financial Creditor filed Rejoinder dated 27.04.2021, which are briefly discussed hereunder:

<b>Contentions raised in Counter dated 17.03.2020.</b>	<b>Response given by the Financial Creditor in Rejoinder dated 27.04.2021.</b>
The account of the Corporate Debtor was declared as NPA on 15.04.2011 as claimed by the Financial Creditor. Whereas, the	The account of the Corporate Debtor was classified as NPA on 15.04.2011 due to its irregularities on account of

present petition is filed on 25.11.2019. The limitation expired in 2014. Thus, the claim is made beyond three years. Hence present petition is barred by limitation under section 137 of the Limitation Act.

invocation of Bank Guarantees and loan was restructured at the behest of the Corporate Debtor. Subsequently, certain developments have taken place as under:

**18.07.2011 :**

Corporate Debtor acknowledged their liability and requested to allow to operate accounts within 1,85,29,00,000/-

**10.05.2014 :**

Rehabilitation package was granted.

**24.12.2015 :**

Financial Creditor sanctioned various additional facilities and limits were increased.

**28.12.2015 :**

Board Resolution passed to obtain working capital credit facilities from the Financial Creditor.

**03.02.2016 :**

Restructuring Package Agreement was entered into between the Financial Creditor and Corporate Debtor. Letters of Consent were obtained from Corporate Debtor / Guarantors. Supplemental Agreements were executed.

**26.09.2017 :**

	<p>Financial Creditor issued notice under section 13(2) SARFAESI Act.</p> <p><b><u>19.09.2018, 09.11.2018 and 15.07.2019 :</u></b></p> <p>Corporate Debtor addressed letters for OTS.</p> <p>Thus, the present petition is in no way barred by limitation.</p>
<p>Various companies approached Financial Creditor and several agreements were entered into. From the date of entering into agreement, debt was assigned to said companies only. This fact was concealed by Financial Creditor. Besides, lack of cooperation from Financial Creditor in assignment of debt affected performance of Corporate Debtor and damaged its financial projections.</p>	<p>Financial Creditor had duly filed tabular computation of outstanding amounts owed by Corporate Debtor along with the application. Thus, the allegations levelled by Corporate Debtor are untenable.</p>
<p>Financial Creditor has filed application before Debt Recovery Tribunal, Hyderabad against the Corporate Debtor claiming Rs.191,01,29,612.91. In the present application no such account details are furnished.</p>	<p>Financial Creditor has offered no comments.</p>
<p>As per RBI Guidelines, Financial Creditor has to provide a review period before filing any application by entering into agreements. In the present case, said guidelines were not complied with.</p>	<p>Financial Creditor has handled the instant loan account in accordance with RBI Guidelines and in compliance with the same.</p>

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Financial Creditor converted the unpaid interest part as a loan. Said fact is not disclosed either before the Debt Recovery Tribunal or before this Tribunal.	Said fact was never concealed. Corporate Debtor has never approached Financial Creditor for any clarification on conversion of interest part into loan.
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**WRITTEN SUBMISSIONS DATED 28.07.2021 BY FINANCIAL CREDITOR :**

12. The Financial Creditor has filed Written Submissions dated 28.07.2021 contending that the present petition satisfies all the ingredient of section 7 of the I&B Code, 2016, namely :

**(a) Debt as defined under section 3(11) of the I&B code, 2016:**

Statements of loan accounts filed with the petition establish the debt and default committed by the Corporate Debtor.

**(b) Default as defined under section 3(12) of the I&B code, 2016:**

Corporate Debtor acknowledged the debt and default by virtue of the loan documents executed on 03.02.2016 by the Corporate Debtor and OTS letters dated 19.09.2018, 09.11.2018 and 15.07.2019.

**(c) Filing of application under section 7(1) of the I&B code, 2016:**

Financial Creditor satisfies all the ingredients of section 7(1) of the Code.

**(d) Proposed Insolvency Resolution Professional:**

Financial Creditor has proposed the name of IRP in Part-III of the application.

13. The Financial Creditor has relied on the following judgments in support of its case:

- (i) M/s Sanjay Lamba Vs. Union Bank of India & others, rendered by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.276 of 2020.

Para 10. Held. An acknowledgement of debt before expiry of limitation period gives fresh life to documents and it shifts limitation period, commencing from that date.

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- (ii) Hussain Kadri Vs. Edelweiss Asset Reconstruction Co. Ltd & another, Company Appeal (AT) (Insolvency) No.1073 of 2019, by the Hon'ble NCLAT.  
Paras 10-11.
- (iii) Sesh Nath Singh and another Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd & another, by the Hon'ble Supreme Court in Civil Appeal No.9198 of 2019.  
Held. There was no reason to exclude applicability of sections 14 and 18 of the Limitation Act, 1963 to matters filed under section 7 of the I&B Code, 2016.
- (iv) Laxmi Pat Surana Vs. Union Bank of India, Civil Appeal No.2734 of 2020, by the Hon'ble Supreme Court.  
Para 35. Held. There is no reason to exclude the effect of section 18 of the Limitation Act to the proceedings initiated under the Code.
- (v) Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal & another, in Civil Appeal No.323 of 2021 with Civil Appeal No.3765 of 2020 by the Hon'ble Supreme Court.  
Paras 33-34. Held. Section 18 of the Limitation Act extends the period of limitation depending upon an acknowledgment of debt made in writing and signed by the Corporate Debtor, applies to proceedings under the I&B Code.
- (vi) Rakesh Kumar Gupta Vs. Mahesh Bansal and another, in Company Appeal (AT) (Insolvency) No.1408 of 2019, by the Hon'ble Supreme Court.
- (vii) Punjab National Bank Vs. M/s Vindhya Cereals Pvt Ltd., in Company Appeal (AT) (Insolvency) No.854 of 2019, by the Hon'ble NCLAT, wherein maintenance of parallel proceedings before Debt Recovery Tribunal and NCLT, was discussed. Paras 9-10.
- (viii) A. Navinchandra Steels Private Limited Vs. SREI Equipment Finance Limited & others, in Civil Appeal Nos.4230-4234 of 2020, by the Hon'ble Supreme Court.  
Para no.27.
- (ix) Innoventive Industries Ltd. Vs. ICICI Bank and another, in Civil Appeal No.8337-8338 of 2017 by the Hon'ble Supreme Court.  
Paras 27, 28 and 30.

SBI/

SBI/

**WRITTEN SUBMISSIONS DATED 02.08.2021 BY THE CORPORATE DEBTOR.**

14. The Corporate Debtor contends that account of the Corporate Debtor was declared NPA on 15.04.2011, whereas the present application is filed on 25.11,2019. Thus, the limitation period ended in 2014 and the application is beyond the limitation period and the application is barred by Article 137 of the Limitation Act.

15. The Corporate Debtor has analysed the basic principles of limitation and how they apply to the I&B Code in clauses (a) to (j) of para 4 of the Written Submissions and also relied on the following judgments on the point of limitation itself.

- (i) B.K. Educational Services Limited Vs. para Gupta and Associates, reported in 2019 (11) SCC 633. Paras 34, 36 and 42.
- (ii) Babulal Vardharji Gurjar Vs. Gurjar Aluminium Industries (P) Ltd., reported in 2020 (15) SCC 1. Paras 34.1 and 35.1.
- (iii) Sagar Sharma and another Vs. Phonex ARC Private Limited and another, reported in 2019 (10) SCC 335, wherein the Hon'ble Apex Court held that,  
*"We may point out that an application under section 7 of the Code does not purport to be an application to enforce any mortgage liability."*
- (iv) V. Padmakumar Vs. Stressed Assets Stabilisation Fund (SASF) & another, in Company Appeal (AT) No.57 of 2020, by the Hon'ble NCLAT.

Para 13. Held.

*"13. The aforesaid decisions of the Hon'ble Supreme Court and this Appellate Tribunal make it clear that the purpose of computing the period of limitation of application under section 7, the date of default is 'NPA' and hence a crucial date."*

16. We have heard the learned counsel for the Financial Creditor as well as the learned counsel for the Corporate Debtor through videoconference. Both sides filed Written Submissions. Summary of Written Submissions on both sides is briefly stated supra.

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17. The case of the Financial Creditor/ State Bank of India is that the Corporate Debtor had approached the Financial Creditor seeking fund-based and non-fund based credit limits and the Financial Creditor had considered favourably and sanctioned cash credit limits and enhanced credit limits from time to time as discussed in the preceding paras.

18. We have perused relevant letters from the Corporate Debtor for grant credit facilities, Sanction Letters issued in favour of the Corporate Debtor, which were acknowledged by the Corporate Debtor, pledge agreements, supplemental agreements of loan, Board Resolution of the Corporate Debtor.

19. As regards the contention of the Corporate Debtor that the present application is barred by limitation we are of the view that Corporate Debtor having submitted OTS proposals on 19.09.2018, 09.11.2018 and 15.07.2019, cannot afford to make such submission. Besides, the Corporate Debtor had entered into Restructuring Package Agreement dated 19.12.2015.

20. As regards the unpaid interest converted into loan, we are of the opinion that since the Corporate Debtor could not pay the interest and it was at the request of the Corporate Debtor enhanced credit facilities were granted while continuing restructuring scheme, the Corporate Debtor cannot raise such contention.

21. Existence of debt and default has duly been established by the above documents albeit the Corporate Debtor has opposed the same without substantial evidence.

22. The Corporate Debtor tried to raise contentions like lack of cooperation from the Financial Creditor in assignment of debt and that the Financial Creditor has filed proceeding before the Debt Recovery Tribunal, Hyderabad, the amounts claimed before the Debt Recovery Tribunal and the amounts claimed before this Adjudicating Authority do not match. Such contentions have no bearing before this Adjudicating Authority in the matter of considering this application under section 7 of the I&B Code, 2016. At the time of admission of the petition filed under section 7 of the I&B Code, the Tribunal has to consider whether there is

debt and default. Other contentions raised by the learned counsel for the Corporate Debtor cannot be entertained since the Financial Creditor is able to establish the debt and default. After going through the documents filed by the petitioner we are of the view that the petition is liable to be admitted against the Corporate Debtor.

23. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

- (A) Corporate Debtor, M/s Chadalvada Infratech Limited is admitted in Corporate Insolvency Resolution Process under section 7 of the Insolvency & Bankruptcy Code, 2016.
- (B) The Bench hereby prohibits 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 or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- (C) 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.
- (D) 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.

- (E) 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.
- (F) 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 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- (G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (H) That this Bench hereby appoints Shri G. Madhusudhan Rao, having Registration No. IBBI/ IPA-001/ IP-P00181/ 2017-18/ 10360, as Interim Resolution Professional, whose contact details are:

e-mail ID: madhucs1@gmail.com

Address: 7-1-285, Flat No.103

Swapnasampada Apartments

Balkampet, Hyderabad – 500038,

Telangana.

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

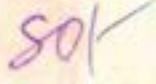
- (I) Proposed IRP filed Form-2 issued by the Institute of Insolvency Professionals. His Authorisation for Assignment is valid 02.12.2021. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.


24. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks

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against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

25. Accordingly, this Petition is admitted.

VEER.  KAPUDI  
MEMBER (TECHNICAL)

  
MADAN BHALCHANDRA GOSAVI  
MEMBER (JUDICIAL)

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