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**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 19.02.2020

PRIORITY CAUSE LIST – 1

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittalala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 357/BB/2019	For admission	Sec 7 of I&B code 2016	M/s Allahabad Bank	H.R. Katti Advocate	M/s Southern Batteries Pvt Ltd	

✓ ADVOCATE FOR PETITIONER/s:

Handwritten notes:
2006. 984411954
D.S. MURTHY
ASST. GEN. MGR
ALB
LCB.
(S. RAMAKRISHNAN)

ADVOCATE FOR RESPONDENT/s:

Handwritten signature:
(S. RAMAKRISHNAN)

ORDER

Heard Shri H.R Katti Learned Counsel for the Petitioner along with Mr. D.S Murthy Assistant General Manager, Allahabad Bank and Mr. S. Ramakrishnan Learned Counsel for the Respondent.

CP (IB) No. 357/BB/2019 is allowed by separate order

Handwritten signature:
MEMBER (T)

Handwritten signature:
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.357/BB/2019

U/s.7 of the IBC, 2016

R/w Rule 4 of the I&B (AAA) Rules, 2016

Between:

Allahabad Bank,
Head office at No.2,
Nataji Subhas Road,
Kolkata 700 001

Branch Office
Allahabad Bank
Large Corporate Branch
No. 1/32, Ulsoor Road Cross,
Ulsoor Road,
Bangalore – 560 042 ---

Petitioner/Financial Creditor

And

M/s. Southern Batteries Private Limited,

Plot No.30, KIADB, Industrial Area,
Bommasandra,
Bengaluru – 560 099 -

- Respondent/Corporate Debtor

Date of Order: 19th February, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittalala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Mr. H.R. Katti with
Mr. D.S. Murthy,
Assistant General Manager,
Allahabad Bank

For the Respondent : Mr. S. Ramakrishna

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ORDER

Per: Rajeswara Rao Vittalana, Member (Judicial)

1. C.P.(IB) No.357/BB/2019 is filed by M/s. Allahabad Bank ('Petitioner/Financial Creditor') U/s 7 of the Insolvency and Bankruptcy Code, 2016 R/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Southern Batteries Private Limited ('Respondent/Corporate Debtor') on the ground that the Corporate Debtor committed default for total amount of Rs.141,01,20,530/- (Rupees One Forty One Crore and One Lakh Twenty Thousand Five Hundred and Thirty Only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s. Allahabad Bank (herein after referred to as Petitioner/ Financial Creditor') is a Bank incorporated on 24.04.1865 with PAN No. AACCA8464F and having its registered office at No.2, Netaji Subhas Road, Calcutta, West Bengal and Branch office at No.1/32, Ulsoor Road Cross, Ulsoor Road, Bangalore - 560 042.

(2) M/s. Southern Batteries Private Limited ('Respondent/Corporate Debtor') is a Private Limited Company incorporated on 02.02.1996 under the provisions of Companies Act, 1956 with CIN: U31404KA1996PTC019739 and having its registered office at Plot No.30, KIADB, Industrial Area, Bommasandra, Bengaluru - 560 099. Its Authorized Share Capital is Rs. 50,00,00,000/- (Rupees Fifty Crores Only). Its main objectives inter alia manufacturing of various types of



Batteries and its parts there of viz., UPS, inverters, Industrial, Automotive & Solar Batteries etc.,

(3) It is stated that the Corporate Debtor availed certain financial facilities from the Financial Creditor. The Corporate Debtor has been banking with Financial Creditor for nearly 30 years. And they are also under multiple banking arrangements with Union Bank of India, Dhanalakshmi Bank and Allahabad Bank as Members. The existing securities are held by the lenders under paripassu charge. The Corporate Debtor could not arrange funds for payment under LCs and BG commitments resulting in Devolvement of LCs and BG.

(4) It is stated that the Financial Creditor has sanctioned the following credit facilities to the Corporate Debtor ;

1.	Nature/Type of Loan	Working capital & Term Loan		
2.	Date of Sanction	14.02.2008, 1.12.2009, 08.01.2010, 14.07.2010, 17.03.2012, 21.05.2014, 28.05.2014, 05.11.2015, 20.11.2015, 14.07.2017- Sanction Letter & Renewal Letters		
3.	Loan Amount (in Rs.)	Facility	Limit (Rs. In Crores)	Rate of Interest
		Working Capital:		All Bank One year MCLR + 4.20% (present effective : 12.70%)
		Cash Credit	90.00	
		Letter of Credit Bank Guarantee	35.00	
		Term Loan :	5.00	All Bank One year MCLR+ 4.20% (present effective: 12.70%)
		Total :	141.42	



4.	Rate of Interest	Working Capital : All Bank One year MCLR + 4.20% (present effective : 12.70%) Term Loan : All Bank One year MCLR + 4.20% (present effective : 12.70%)
5.	Repayment Period	Repayment Schedule - a) Cash Credit – on demand b) Letter of Credit – 1 year, repayable on demand c) Bank Guarantee : 1 year, Repayable on demand d) Term Loan 11 – i) Door to Door Tenor – 6 years starting from 26.03.2013 including moratorium period of 1 year, upto 26.03.2014 ii) Repayment (As existing) – Repayable in 60 equal monthly installments w.e.f 26.04.2014, Interest to be realized as and when charged. Residual Period – 21 months starting from July 2017 to March 2019
6.	Whether consortium Advance or not	Multiple Banking arrangement

The same was disbursed in the various stages starting from 2008. The total advance extended to the Corporate Debtor is Rs. 141.42 crores.

5) The entire facility sanctioned is secured by following loan documents executed by Borrower Company and Guarantors:

I. Sanction letter dated 21.05.2014 & 28.05.2014 – loan document for Working Capital loans are:

- a) Third Supplementary General Letter of Hypothecation dated 31.05.2014
- b) Guarantee Agreement dated 31.05.2014 executed by B.Radhakrishnan
- c) Guarantee Agreement dated 31.05.2014 executed by R. Sreenivasan
- d) Guarantee Agreement dated 31.05.2014 executed by R. Sudarshan
- e) General counter Indemnity dated 31.05.2014
- f) Demand Promissory Note dated 31.05.2014 issued by the Company
- g) Undertaking dated 31.05.2014 for the review cum enhancement of limits



- h) Undertaking dated 31.05.2014
 - i) Undertaking dated 31.05.2014 for review cum enhancement of limits
 - j) Undertaking dated 31.05.2014 for review cum enhancement of limits
- II. Sanction letter dated 05.11.2015 & 20.11.2015 – loan documents for Working Capital loans are
- a) Term Loan agreement dated 28.07.2016 executed by the Company in favour of the Bank
 - b) Fourth Supplementary of general letter of Hypothecation dated 28.07.2016
 - c) Guarantee Agreement dated 28.07.2016 executed by R. Radhakrishnan
 - d) Guarantee Agreement dated 28.07.2016 executed by R. Sreenivasan
 - e) Guarantee Agreement dated 28.07.2016 executed by R. Sudarshan
 - f) Demand Promissory Note, Letter waiving Presentment of Pronote and letter of continuing Security dated 28.07.2016 issued by the Company.
 - g) General Counter Indemnity dated 28.07.2016
 - h) Undertaking dated 28.07.2016 for credit facilities
 - i) Undertaking dated 28.07.2016 for term Loan 11 of Rs. 22.81 crore

III. Sanction Letter dated 14.07.2017 loan documents for Working Capital and Term Loan are –

- a) Term Loan Agreement dated 30.08.2017 executed by the Company in favour of the Bank for Term Loan 11
- b) Fifty Supplementary of General Letter of Hypothecation dated 30.08.2017
- c) Guarantee Agreement dated 30.08.2017 executed by B. Radhakrishnan
- d) Guarantee Agreement dated 30.08.2017 executed by R. Sreenivasan
- e) Guarantee Agreement dated 30.08.2017 executed by R. Sudarshan
- f) Demand Promissory Note dated 30.08.2017 issued by the Company
- g) ADV 2 agreement by Borrower to Depositor dated 30.08.2017
- h) ADV 24 Agreement dated 30.08.2017
- i) General Counter Indemnity dated 30.08.2017
- j) Undertaking dated 30.08.2017 for credit facilities
- k) Undertaking dated 30.08.2017 – CIBIL Guarantors
- l) Undertaking dated 30.08.2017 – CIBIL Company



m) Proforma of endorsement of the Banks' Hypothecation charge on insurance Policy dated 30.08.2018

- 6) It is stated that having availed and utilized the entire limit sanctioned/disbursed, the Corporate Debtor committed default in observing the terms of the sanction in the matter of repayment, and consequently the Loan Account was classified as NPA as on 25.11.2018. Therefore, the Loan in question was recalled on 27.11.2018, 15.04.2019, 02.07.2019. Further, the Financial Creditor has initiated recovery proceedings by filing Original Application before DRT, Bangalore, which is still pending there. It has also initiated proceedings under SARFAESI Act on 27.11.2018 and 30.01.2019 against the Hypothecated and mortgaged properties, which was not challenged by the Corporate Debtor.
- 7) It is stated the Corporate Debtor, and personal guarantors have executed various documents on –
- a) Loan documents on 31.05.2014, 28.07.2016 & 30.08.2017
 - b) Executed Hypothecation and EM Documents on various dates as stated
 - c) Confirmed balance and security by Acknowledgement of Debt letter dated 30.01.2018 & 27.11.2018
 - d) The loan was recalled on 27.11.2018, 15.04.2019, 02.07.2019
 - e) The original application (OA) was filed before the DRT, Bangalore on 28.08.2019
- 8) It is stated that the statement of accounts and audited balance sheet for the year 2016, 2017 and 2018 of the Corporate Debtor shows and acknowledges the loan liability to be paid to the Financial Creditor. The Corporate Debtor has submitted several Resolution plans on 03.10.2018, 15.10.2018, 16.10.2018, 02.11.2018 by promising to regularize the Account by bringing equity funds into the



Company. The Financial Creditor conducted joint meeting on 08.01.2019 and MD Mr. R. Sreenivasan assured that they are working on the regularization of the Credit facilities by bringing in Promoter's contribution/private equity/other means. This has not been complied with by the Corporate Debtor and there is a failure to adhere to the plans proposed.

3. Heard Shri H.R.Katti, learned Counsel for the Petitioner and Mr. S. Ramakrishnan, Learned Counsel for the Respondent. We have carefully perused the pleadings of the Parties, and the extant provisions of the Code.
4. Shri H.R. Katti, the Learned Counsel for the Petitioner, while reiterating averments made in the main Company Petition, has further submitted that the Petitioner initially has served several notices and also served notice by hand to the Respondents and the same was duly acknowledged by the Respondent on 18.01.2020. The instant Petition is filed in accordance with law, and there is an admitted debt and default, and a qualified Resolution Professional namely Shri Ramanahalli Shivanna DoddaByregowda, bearing Registration No. IBBI/IPA-002/IP-N00583/2017-18/11775 is proposed to appoint him as Interim Resolution Professional, who has filed Written Communication and affidavit dated 04.09.2019, in a prescribed form by interalia declaring that he is qualified Resolution Professional and not undergoing any disciplinary proceedings etc. Therefore, he has urged the Adjudicating Authority to admit the instant Company Petition by initiating CIRP as prayed for.
5. The instant Petition case was filed in the Registry as early as on 07.11.2019, and it was listed before the Bench on various dates viz: 8.11.2019, 11.11.2019, 12.12.2019, 06.01.20, 13.01.2020. and today. It was adjourned on those dates at the request of Parties on

one ground or the other including service of notice, settlement of issue etc. However, the Respondent has filed a Memo dated 29.01.2020 by interalia stating that the Directors of Company are seriously making efforts with Allahabad Bank for one time settlement and are hopeful of matter being resolved and thus requested further time for the same. But there is no Reply Statement filed on their behalf till date.

6. In pursuance to the direction of Adjudicating Authority to submit details of auction being undertaken by the Petitioner, the Petitioner has filed a memo dated 18.02.2019 by furnishing details of action taken by the Petitioner with regard to the debt. The memo reads as follows:

- "1. DRT-OA No. 1160/2019 has been filed in DRT, Bangalore for recovery of Rs. 141,01,20,530/- and sale of mortgaged properties. The case was listed on 12.02.2020 and the Hon'ble Tribunal has allowed three IA's filed by the Bank. The case is now adjourned to 26.02.2020 for hearing on remaining IA's*
- 2. Sale notices issued under Sarfaesi Act for sale of Mortgaged properties –*
 - a) 1st E-Auction/SARFAESI was notified by us on 19.11.2019 with sale notice dated 16.11.2019 issued to the borrower. The 1st E-Auction fixed on 23.12.2019. The Reserve price fixed for the immovable and movable properties of s. 14734.87 lacs. 1st E-Auction failed due to no bidders.*
 - b) 2nd E-Auctions/SARFAESI was notified by us on 03.01.2020 with sale notice dated 30.12.2019 issued to the borrower. The 2nd E-Auction fixed on 18.01.2020. The Reserve Price fixed for the immovable and movable properties of Rs. 13998.13 lakhs. 2nd E-Auction failed due to no bidders.*
 - c) 3rd E-Auction/SARFAESI was notified by us on 11.02.2020 with sale notice dated 07.02.2020 issued to the borrower. The proposed 3rd E-auction fixed on 29.02.2020. The Reserve price fixed for the immovable and movable properties of Rs. 13261.38 lakhs. Proposed 3rd E-Auction is on 29.02.2020*
- 3. OTS Position : No fresh proposal has been submitted by the Company*



- 3A. *Previous proposal submitted by the Company for restructuring has been rejected by the Petitioner vide letter dated 31.08.2019 issued by FGMO, Hyderabad.*
4. *Wilful Defaulter status: Bank has issued showcase notice for declaring as Wilful Defaulter vide letter dated 25.09.2019 and company has replied vide letter dated 14.10.2019 and the same is pending at Head office, for decision.*
7. As stated supra, the Respondent not availed the opportunity given by the Adjudicating Authority. Meanwhile the Respondent failed to file statement of objections except stating before the Tribunal on 29.01.2019 by stating *"they are seriously pursuing the remedy available to get necessary funds to clear the debt, since more than 1200 employees future is at stake"*. As stated in the memo dated 18.02.2020, the proposal submitted by the Company for restructuring has been already rejected by the Bank vide letter dated 31.08.2019 issued by Petitioner Allahabad Bank. Therefore, the efforts made by the Respondent to resolve the issue failed, resulting the debt in question is established beyond doubt. It is also seen in the financial statement i.e., Balance Sheet and Profit and Loss Account for the year 31.03.2018 that the Companies liabilities, apart from the share capital have increased by almost Rs.31 crores over 31.03.2017, being Rs. 526.75 crores as on 31.3.2018 as against Rs. 474.93 crores, over 31.03.2017, thus the Company liabilities have been increased over immediately after proceedings here indicating that the Company is losing its ability to repay its debts and hence prima facie indicating its Insolvency. As stated supra, the Bank also offered several opportunities to the Respondent so as to regularize its accounts but it failed to do so and there is no proposal for OTS/settlement of issue is pending with Bank.
8. It is relevant to refer ratio as laid down by the Hon'ble Supreme Court in *"Innoventive Industries Ltd. Vs. ICICI Bank and Anr. –*



(2018) 1 SCC 407”, with reference parameters/requisite conditions to be filled to decide an Application/Petition filed U/s 7 of Code. Relevant paragraphs of the judgement is extracted below: -

“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an



application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”



9. On perusal of the pleadings, we are convinced that the debt and default in question as mentioned in the Petition is proved beyond doubt and it was not being controverted by the Respondent. All the pre-requisite conditions as per extant provisions of Code and the law as laid down by the Apex Court, as stated supra, stand fulfilled in the instant case. The instant Company Petition/Application is filed in accordance with extant provisions of Code and the Rules made thereunder, a qualified Insolvency Professional namely Shri Ramanahalli Shivanna DoddaByregowda, bearing Registration No. IBBI/IPA-002/IP-N00583/2017-18/11775 is proposed to appoint him as Interim Resolution Professional, who has filed Written Communication and affidavit dated 04.09.2019, in a prescribed forum, who is prima facie eligible to be appointed and the default in question as admittedly occurred. Hence, it is a fit case for admission to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, appointing IRP, Moratorium etc., as per the Code.
10. There are also five other cases viz., C.P (IB) No. 342/BB/2019, C.P (IB) No. 370/BB/2019, C.P (IB) No. 313/BB/2019, C.P (IB) No. 05/BB/2020, and C.P (IB) No. 420/BB/2019 along with this case seeking to initiate Corporate Insolvency Resolution Process against the same Corporate Debtor. Since the instant Company Petition is being admitted, other cases are disposed of by separate orders by permitting those Petitioners to make its claim before the IRP appointed in the case.
11. So far as the contention of Respondent that there are more than 1200 employees are working in the Company and they are still trying to resolve the issue in question and thus by initiating CIRP against the Corporate Debtor, it not only affect those employees but also effects the efforts being by the Management of Company is concerned, it is to be stated initiating CIRP is not closing the



operations of Company. And it is the process to find solution to the issue so as to make every effort to revive operation of Company by keeping the Company as a going concern. It is also permissible under law, that in case, any settlement of the issue takes place between the Parties, the Parties can also file Appropriate Application to conclude CIRP proceedings.

12. In the result, by exercising powers conferred on this Adjudicating Authority, under Section 7(5)(a) and other extant provisions of the Code, Company Petition bearing C.P. (IB) No.357/BB/2019 is hereby admitted with the following consequential directions:

(1) We hereby appointed Shri **Ramanahalli Shivanna DoddaByregowda, Director** with **Regn.No. IBBI/IPA-002/IP-N00583/2017-18/11775**, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely M/s. Southern Batteries Private Limited to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.

(2) The following moratorium is declared prohibiting all of the following, namely:

- 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 Financial 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 the possession of the corporate debtor.
 - e) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
 - f) The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
 - g) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.
- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by the IBBI.



- (5) The IRP is directed to file his progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on **24th March 2020.**



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

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