

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

CP (I&B) 3457/NCLT/MB/2018  
Under Section 7 of the IBC, 2016

In the matter of  
**Corporation Bank**

...Financial Creditor

V/s

**Trimax IT Infrastructure Service Limited**

...Corporate Debtor

Order delivered on: 21.2.2019

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)  
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Adv. Darshit Dave, Adv. M. Swati

For the Respondent: Adv. Yahya Batatawala

*Per V.P. Singh, Member (Judicial)*

**ORDER**

1. It is a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (IBC) by the financial creditor namely **Corporation Bank** against the Corporate Debtor namely **Trimax IT Infrastructure Service Limited** to initiate corporate insolvency resolution process against the corporate debtor. The amount claimed to be in default is Rs. 84,94,87,361.06/- comprising of the principal amount of Rs. 75,11,84,550/- and interest of Rs. 1,24,85,853.28/-. The date of declaration of Corporate Debtor's account as a non-performing asset is stated as 31.3.2018.
2. The Financial Creditor has disclosed in Form 1 under the column Part-IV 'Particulars of Financial Debt', by sanction letter dated 17.3.2016, the Financial Creditor disbursed (1) Rs. 23.50 crores towards cash credit, (2) Rs. 50.50 crores towards letter of credit, (3) Rs. 74 crores towards forward sale contract, (4) Rs. 6.30 crores towards term loan. These facilities were renewed *vide* sanction letter dated 31.3.2017. The amounts towards cash credit and letter of credit were sanctioned under a Working Capital Consortium Agreement dated 28<sup>th</sup> September 2012. Refer clause A at page 174 of the petition.
3. In column V of Form 1, the Financial Creditor has provided details of securities held by the Financial Creditor concerning facilities provided by it to the Corporate Debtor. It is



also stated that (a) personal guarantee was provided by Mr Surya Prakash Madrecha and Chandra Prakash Madrecha, (b) Corporate Guarantee was provided by Standard Fiscal Market Pvt. Ltd., Shrey Technologies Pvt. Ltd. and Pratik Technologies Pvt. Ltd.

4. The Financial Creditor has annexed notice dated 23.5.2018 issued under Section 13(2) of SARFAESI Act, 2002 by the Financial Creditor to the Corporate Debtor and Guarantors calling upon the Corporate Debtor and Guarantors to pay the liability.
5. The Financial Creditor has also annexed a copy of the CIBIL Report dated 2.8.2018 of the Corporate Debtor.
6. The Financial Creditor has annexed a letter dated 4.3.2016 titled acknowledgement of debt/ liability by the borrower/s. The subject reads as 'My/ Our Account No. TLS/1/140002', whereby the Corporate Debtor has confirmed and acknowledged the joint and several liabilities for the balance outstanding of Rs. 6,30,00,000/- as on 22.2.2016.
7. The Financial Creditor has also annexed a letter dated 4.3.2016 titled acknowledgement of debt/ liability by the borrower/s. The subject reads as 'My/ Our Account No. CC/1/110007', whereby the Corporate Debtor has confirmed and acknowledged the joint and several liabilities for the balance outstanding of Rs. 23,47,99,525.93/- as on 22.2.2016.
8. The Financial Creditor has proposed Mr Krishna Chamdia as the interim resolution professional and has annexed his consent in Form 2.
9. The Financial Creditor has filed an affidavit dated 8.1.2019 annexing the authority letter dated 18.7.2018 authorising the Chief Manager of the Financial Creditor to file the company petition before this Tribunal. The authority letter *inter-alia* states

*"4. Branch is permitted for issuing our Bank's mandate to the Lead Bank (State Bank of India) for initiation of Corporate Insolvency Resolution Process (CIRP) under the provisions of Insolvency and Bankruptcy Code 2016 subject to the condition that the selection of Insolvency Resolution Professional (IRP) and other processes shall be based on the JLF decision.*

*5. In the event of any delay in filing of a petition by the Lead Bank, the Branch is permitted*





*to file application independently before NCLT for initiation of CIRP against the borrower.*

*6. Branch is permitted to refer the case through an Advocate having expertise and adequate experience in this field.*

*7. The Circle Office- Mumbai is permitted to identify and appoint a suitable Insolvency Resolution Professional (IRP) by following the due procedure as detailed in Annexure."*

10. The Corporate Debtor has filed an affidavit dated 4.1.2019 admitting the liability. The Corporate Debtor has stated that the Corporate Debtor is engaged in IT Infrastructure & Services in Telecom, Transport, Government and Enterprise Verticals. It is stated that the Corporate Debtor was in the process of executing the Wi-Fi Networking Project with BSNL. However, due to the Telecom Industry facing issues, the investments did not yield the expected returns. It is further stated that in the interest of 3600 employees, multiple customers including Government Undertakings and smooth running of the Corporate Debtor, it is necessary to revive the Corporate Debtor through the resolution process.

11. We have heard the parties and perused the record.

12. The Financial Creditor disbursed to the Corporate Debtor (1) Rs. 23.50 crores towards cash credit, (2) Rs. 50.50 crores towards letter of credit, (3) Rs. 74 crores towards forward sale contract, (4) Rs. 6.30 crores towards term loan. These facilities were renewed *vide* sanction letter dated 31.3.2017. The Corporate Debtor defaulted in payments, and its account was declared as a non-performing asset on 31.3.2018. The Corporate Debtor acknowledged liability of debt *vide* letters dated 4.3.2016 towards its Account No. TLS/1/140002 and Account No. CC/1/110007. The Corporate Debtor has also admitted its liability in the affidavit filed before this Tribunal.

13. The Hon'ble NCLAT in the case of *Innoventive Industries Ltd. v. ICICI Bank*, 2017 SCC Online NCLAT 70 has held that:

82. *As discussed in the previous paragraphs, for initiation of corporate resolution process by financial creditor under sub-section (4) of Section 7 of the Code, 2016, the 'adjudicating authority' on receipt of application under sub-section (2) is required to ascertain existence of default from the records of Information Utility or on the basis of other evidence furnished by the financial creditor under sub-section (3). Under Section 5 of Section 7, the 'adjudicating authority' is required to satisfy -*

- (a) Whether a default has occurred;*
- (b) Whether an application is complete; and*
- (c) Whether any disciplinary proceeding is against the proposed Insolvency Resolution Professional.*

83. *Once it is satisfied it is required to admit the case, but in case the application is incomplete application, the financial creditor is to be granted seven days' time to complete the application. However, in a case where there is no default or defects cannot be rectified, or the record enclosed is misleading, the application has to be rejected.*

84. *Beyond the aforesaid practice, the 'adjudicating authority' is not required to look into any other factor, including the question whether permission or consent has been obtained from one or other authority, including the JLF. Therefore, the contention of the petition that the Respondent has not obtained permission or consent of JLF to the present proceeding which will adversely affect loan of other members cannot be accepted and fit to be rejected.*

14. As per the Section 7 of IBC provides, a petition has to be admitted if a default has occurred, debt is due, and application filed for initiating CIRP is complete, and no disciplinary proceedings are pending against the proposed resolution professional.

15. This Petition reveals that there is a debt as defined in Section 3(11) of IBC. There is default within the meaning of Section 3(12) of IBC. The application of the Financial Creditor is complete, amount of more than Rs one lac is a due and no disciplinary proceedings are pending against the proposed resolution professional. Therefore, this petition deserves to be admitted.

### ORDER


The petition filed by the Corporation Bank for initiating corporate insolvency process under Section 7 of IBC, 2016 against the corporate debtor is admitted. This Bench at this moment declare moratorium U/S 14 of the I&B Code 2016 with consequential directions as mentioned below:


- I. That this Bench at this moment 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 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 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 IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- 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 IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process should be made as per provision specified under section 13 of IBC.
- VI. That this Bench at this moment appoints, Mr Krishna Chamadia is having registration number IBBI/IPA-001/IP-P00694/2017-2018/11220 as Interim Resolution Professional to carry the functions as mentioned under IBC.
16. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by email and speed post.

  
**RAVIKUMAR DURAISAMY**  
Member (Technical)

  
**V. P. SINGH**  
Member (Judicial)

DT. 21.2.2019