

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

CP (IB) No. 677/7/HDB/2018
U/s 7 of IBC, 2016
R/w Rule 4 of I & B (AAA) Rules, 2016

IN THE MATTER OF M/S. VMC SYSTEMS LIMITED

M/s. State Bank of India

REGISTERED OFFICE:

State Bank Bhavan, 14th Floor,
Madame Cama Road, Nariman Point, Mumbai- 400021.

... Petitioner/Financial Creditor

VERSUS

M/s.-VMC Systems Limited,

Registered Office:

4th Floor, D.No.2-56/2/19, Vijaya Towers,
100Ft Road, Khanamet Village, Hitech City,
Madhapur, Hyderabad- 500081.

... Respondent /Corporate Debtor

Date of order: 19.08.2019

Coram:

Hon'ble Shri RatakondaMurali, Member (Judicial)

Hon'ble Shri Narendra Kumar Bhola, Member (Technical)

Parties / counsels present:

For the Petitioner: Saini Keshava Rao Along with Anil Kumar Komireddy,
Advocates.

For the Respondent: B. Raghavendra, K.Ram Murthy, Advocates.

Per: Hon'ble Shri Ratakonda Murali, Member (Judicial)

Heardon: 30.07.2019, 05.08.2019.

ORDER

1. This petition is filed by M/s. State Bank of India, which is the Financial Creditor stating that M/s VMC Systems Limited, Corporate Debtor herein had defaulted in repaying a sum of Rs. **702,37,39,753.40/- (Seven Hundred and Two Crores, Thirty**



Seven Lakhs, Thirty Nine Thousand, Seven Hundred, Fifty Three Rupees and Forty Paisa). This petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The brief averments made in the Application are as follows:

- a) The Corporate Debtor has availed various Financial assistance in the form of Term Loan, Cash Credit, Letter of Credit, Bank Guarantees from the Financial Creditor through various sanction letters.
- b) It is averred in order to secure the repayment the Corporate Debtor executed Hypothecation Agreements, Pledge Agreements, Deed of Guarantees, Mortgage by way of Deposit of Title Deeds.
- c) It is averred that the Corporate Debtor failed to repay the outstanding amounts as per the agreed terms and the loan account of the Corporate Debtor was classified as Non-performing Asset by Financial Creditor on 23.01.2014.
- d) Mr. C. Prakash Reddy, authorized representative of the Financial Creditor and working as Assistant General Manager, State Bank of India, Stressed Assets Management Branch-2, Hyderabad has preferred this Application on behalf of Applicant State Bank of India for initiation of CIRP against the Corporate Debtor.
- e) Particulars of Financial Debt as mentioned by the Applicant in Part -IV of the Application are enumerated below:

PART-IV

PARTICULARS OF FINANCIAL DEBT AS ON 30.09.2018

1.	Total amount of Debt granted/sanctioned	Rs. 438,00,00,000/- (Rupees Four Hundred and Thirty Eight Crores Only)
	Total disbursed amount	For Cash Credit/LC/BG: These were running accounts and all transactions are routed through these accounts. No specific disbursements will take place. Total loan limits of Rs. 371.00 crores have been allowed.
	Date(s) of disbursement.	For Term Loan: Total Disbursed Amount: Rs. 66,96,40,051.67.

		Details of dates of disbursements : 13/10/10, 14/10/10, 29/10/10, 19/11/10, 07/01/11, 11/01/11, 01/03/13, 22/06/13
2.	Amount claimed to be in default and the Date on which the default occurred	RS. 702,37,39,753.40 (Rupees Seven Hundred and Two Crores Thirty Seven Lakhs Thirty Nine Thousand Seven Hundred and Fifty Three and Forty Paise only). upto 30.09.2018 Date of Default: 23.01.2014 (A/c has become NPA)

f) The Applicant has relied upon the following loan documents executed between the parties in respect of the financial facility sanctioned to the Corporate Debtor:

- i. Copy of Sanction Letter dated 02.06.2009 is annexed to the Application as **Annexure No-7.**
- ii. Copy of Joint Deed of Hypothecation dated 11.3.2010 is annexed to the Application as **Annexure No-24.**
- iii. Copy of Deed of Guarantee dated 11.3.2010 is annexed to the Application as **Annexure No-25.**
- iv. Copy of Sanction Letter by Financial Creditor dated 14.9.2010 is annexed to the Application as **Annexure No-27.**
- v. Copy of Sanction Letter by Financial Creditor dated 23.2.2012 is annexed to the Application as **Annexure No.46.**
- vi. Copy of Balance Confirmation Letter dated 01.04.2012 is annexed to the Application as **Annexure No.47.**
- vii. Copy of Balance Confirmation Letter dated 1.4.2013 is annexed to the Application as **Annexure No.66.**

3. The brief averments made in the Counter are as follows:

- a) It is averred that the Financial Creditor has already taken steps under SARFESI Act. The Properties of the Corporate Debtor were sold through Auction and sale proceeds are sufficient for recovery of outstanding debt.
- b) It is averred that the Interest was calculated at 47% which is usurious in nature.
- c) It is averred the Financial Creditors already approached DRT for recovery of money and the proceedings are still pending.



d) It is averred that the Deputy Manager is not competent to give authorization to trigger the Corporate Insolvency Resolution Process against the Corporate Debtor.

e) It is averred that the Financial Creditor doesn't have the legally enforceable debt since all the agreements signed by the Corporate Debtor are beyond 3 years.

4. The brief averments made in rejoinder are as follows:

a) It is averred that the Corporate Debtor acknowledged payment of outstanding loan amounts to the Financial Creditor in its monthly stock statements dated 19.11.2015 submitted to the Financial Creditor and also on 03.12.2015 when the Corporate Debtor submitted restructuring proposal, wherein it acknowledged the payment of outstanding loan amounts to the Financial Creditor to the tune of Rs. 370.36 Cr as on 30.09.2015.

b) It is averred the Factory, Land and Building along with Plant and Machinery and Stocks were sold for an amount of Rs. 20.47 Crores which was shared among the Consortium of Banks and the Financial Creditor received an amount of Rs. 4.75 Crores only towards its share which was appropriated towards outstanding loan amounts on 15.06.2018 and 28.06.2018.

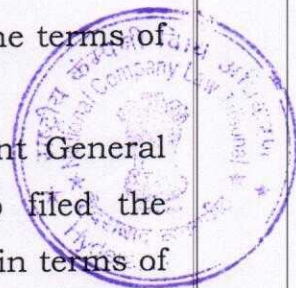
c) It is averred that the interest is calculated as per the terms of loan agreements and sanctioned letters.

d) It is averred that Mr. C. Prakash Reddy, Assistant General Manager of Financial Creditor, is authorized to file the present Application on behalf of Financial Creditor in terms of State Bank of India General Regulations, 1955.

5. We have heard the Counsel for Financial Creditor and also the Counsel for Corporate Debtor. Perused the Material on Record.

6. The Financial Creditor filed this Application under Section 7 of the Code to trigger CIRP against the Corporate Debtor. In order to prove its claim the Financial Creditor has relied on Annexure-1 to Annexure -67 filed along with the Application.

7. The Learned Counsel for Financial Creditor would contend that Financial Creditor granted various loans to the Corporate Debtor from time to time. The Counsel contended the Corporate Debtor committed default of Rs. **702,37,39,753.40/- (Seven Hundred and Two Crores, Thirty Seven Lakhs, Thirty Nine Thousand, Seven Hundred, Fifty Three Rupees and Forty Paisa)**. The contention of Counsel the Corporate Debtor admits availing various loans



sanctioned by Financial Creditor and Corporate Debtor further admits non-payment of debt but alleged various grounds as to why it failed to service the debt.

8. The Corporate Debtor has raised mainly the following objections:

- a) The debt claimed by Financial Creditor which is in default is barred by limitation.
- b) the Financial Creditor cannot maintain the present petition under Section 7 of IBC on the ground that already Financial Creditor initiated proceedings before DRT and the matter is still pending before the DRT.
- c) The Application is filed without any valid Authority.

9. The Financial Creditor submitted that the loan was acknowledged by the Corporate Debtor on various occasions. The Corporate Debtor has acknowledged payment of outstanding loan amounts as on 31.10.2015 to the Financial Creditor in its monthly stock statements dated 19.11.2015 submitted to the Financial Creditor. The Corporate Debtor submitted the restructuring proposal wherein, it has acknowledged and admitted the outstanding loan amounts payable to the Financial Creditor to the tune of Rs.370.36 Cr as on 30.09.2015. Further, the Corporate Debtor through its One Time Settlement Proposal dated 28.12.2016 and 03.11.2017 submitted to the Financial Creditor acknowledged that the outstanding amount payable to the Financial Creditor is Rs. 361.23 Crores as on 19.11.2015. However, the Corporate Debtor has not disputed the fact that the debt was acknowledged by him on various occasions. We have seen the documents with regard to Acknowledgment of debt. The Corporate Debtor in its monthly stock statements dated 19.11.2015 acknowledged the debt which is shown at Page No.738 of Rejoinder. The Corporate Debtor further acknowledged the debt in its restructuring proposal submitted to the Financial Creditor and stated debt position as on 30th September, 2015 is 370.36 Crores which is shown at Page No.745 of Rejoinder. The Corporate Debtor through its OTS proposal dated 28.12.2016 and 03.11.2017 acknowledged the debt payable to the Financial Creditor which is shown at Page No.767,772 of Rejoinder. The Corporate Debtor clearly acknowledged the debt on various occasions and the Petition is well within the Limitation. On the other hand the Petitioner submitted that the loan was shown in the balance sheet of the Corporate Debtor which is an acknowledgement of liability and hence the debt is not barred by limitation. It is the case of Financial Creditor that debt is secured by mortgage. Therefore, the limitation

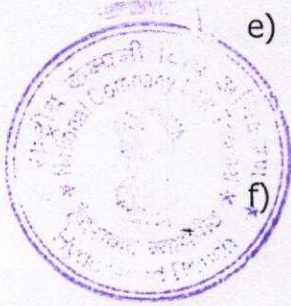
is 12 years. The claim is not barred by limitation in view of mortgage in favour of Financial Creditor / Petitioner.

10. In connection with simultaneous pendency of proceedings, it is well settled that the pendency of DRT proceedings and initiation of action under SARFESI Act cannot be an impediment or bar to initiate the Corporate Insolvency Resolution Process under Section 7 of the Code.
11. Corporate Debtor raised another objection that the Application is filed without any valid Authority. In this regard Financial Creditor in its rejoinder has affirmed that Mr. C. Prakash Reddy, working as Assistant General Manager, State Bank of India, Stressed Assets Management Branch-2, Hyderabad is duly authorized to file the present application as per State Bank of India General Regulations, 1955. The Financial Creditor filed along with the Application "LETTER OF AUTHORITY" which is shown at Page No.17 of the Application. The Assistant General Manger of the Applicant Bank filed the Present Application on behalf of the Financial Creditor. As per State Bank of India General Regulations, 1955 the Assistant General Manger is competent to file the Present Application.
12. The Applicant has placed various documents in relation to the disbursement of various loans. The material on record and loan documents clearly depict that the loan was sanctioned, disbursed and the loan agreements were properly executed. The corporate debtor admitted default. The Corporate Debtor acknowledged the debt on various occasions. The Petition is not barred by limitation. The Financial Creditor suggested the name of IRP and there is no compliant against proposed IRP. The financial creditor has fulfilled all the requirements as contemplated under Code. The petition is in order. Therefore the petition is fit for admission.
13. 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) The Bench hereby prohibits 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; 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

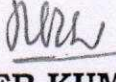


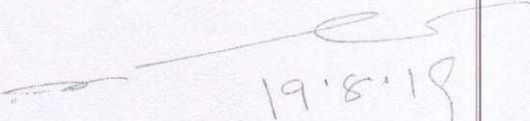
any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor.

- b) 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.
- c) 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.
- d) That the order of moratorium shall have effect from 19.08.2019 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.
- e) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- f) That this Bench hereby appoints Mr. Dr. K.V.Srinivas having registration number IBBI/IPA-001/IP-P00520/2017-18/10945 residing at #3-4-756/1, Flat No:402, 4th Floor, Sai Ragahvendra Residency, Barkatpura, Hyderabad- 500027 with effect from 19.08.2019.

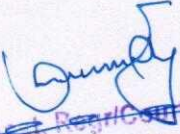


Accordingly, this Petition is admitted.


19.8.19
(NARENDER KUMAR BHOLA)
(Member Technical)


19.8.19
(RATAKONDA MURALI)
(Member Judicial)

Viswaraj (LRA)


Dy. Regr./Asst. Regr./Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस नंबर
CASE NUMBER: (P(113) No: 677/7 /1408/2016
निर्णय का तारीख
DATE OF JUDGEMENT: 19/8/19
प्रति हस्ताक्षर दिनांक तथा तारीख
प्रमाणित प्रति तैयार
COPY MADE READY ON: 20/8/19