

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH - I  
KOLKATA**

**C.P (IB) No. 891/KB/2020**

*An application under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;*

**Bank of India**

*...Financial Creditor/ Applicant*

*Versus*

**McNally Bharat Engineering Company Limited** [CIN L45202WB1961PLC025181],having registered office at 4, Mango Lane,7th floor, Kolkata- 700001, West Bengal,

*...Corporate Debtor*

**Date of Hearing: 25.04.2022**

**Date of Pronouncement: 29.04.2022**

**Coram:**

**Rajasekhar V.K.** : **Member (Judicial)**  
**Balraj Joshi** : **Member (Technical)**

**Appearances (through Video Conferencing/physical)**

Mr. Jishnu Chowdhury, Advocate	] <b>For the Financial Creditor</b>
Mr. Soumabho Ghose, Advocate	]
Mr. Ankur Singhi, Advocate	]
Ms. Riti Basu, Advocate	]
Ms. Piyali Pan, Advocate	]
Ms. Chandrani Das, Advocate	]
Mr. Ratnanko Banerji, Sr. Advocate	] <b>For the Corporate Debtor</b>
Mr. Soorjya Ganguli, Advocate	]
Mr. Prithwish Roy Chowdhury, Advocate	]
Ms. Kiran Sharma, Advocate	]
Mr. Tridib Bose, Advocate	]

**ORDER**

***Rajasekhar V.K., Member (Judicial)***

***Prologue***

1. The Court convened *via* video conference.
2. This is a Company Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, filed Mr. Manish Gupta, Assistant General Manager, Bank of India (***‘Financial Creditor’***), duly authorized<sup>1</sup>*vide* Letter of Authorization dated 16 March, 2020<sup>2</sup> to initiate Corporate Insolvency Resolution Process (***‘CIRP’***) against McNally Bharat Engineering Company Limited (***‘Corporate Debtor’***).
3. The present Petition has been filed on the grounds that the Corporate Debtor had committed default in paying of Rs.4,78,73,25,854.29/- (Rupees Four Hundred Seventy-Eight Crore Seventy-Three Lakh Twenty-Five Thousand Eight Hundred Fifty-Four and paise Twenty Nine Only) as on 10 March, 2020. The date of default is stated to be ***30 January, 2019***.

<b><i>Particulars</i></b>	<b><i>Amount (in crores)</i></b>
Cash credit Limit	2,85,00,00,000.00
(+) Net Interest Outstanding as on 10.03.2020	47,17,49,414.8
(+) BG invocation	108,90,02,420
(+) LC Devolvement	37,65,74,019.78
<b>Default Amount</b>	<b>4,78,73,25,854.29</b>

4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.50,00,000,000/- (Rupees Five Hundred Crore only) with paid up Capital of Rs.221,32,07,570/- (Rupees Two Hundred Twenty One Crore Thirty Two Lakh Seven Thousand Five Hundred Seventy only).

<sup>1</sup>Power of Attorney – Annexure – A of the Petition.

<sup>2</sup>Annexure A1 of the Petition

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**5. Submission of Mr. Jishnu Chowdhury, Ld. Counsel appearing on behalf of the Financial Creditor.**

5.1 At the request of the Corporate Debtor, the Financial Creditor had sanctioned the cash credit facility, which was being renewed from time to time. However, the cash credit facility was last renewed on 27 March, 2018,<sup>3</sup> on the terms and conditions, in the following manner:

<i>Nature of Facility</i>	<i>Sub-limit sanctioned (in rupees/crores)</i>	<i>Limit Sanctioned (in rupees/crores)</i>	<i>Total Limit Sanctioned (in rupees/crores)</i>
<b><i>Fund Based</i></b>			
Cash Credit Facility (Against Stock/ Book Debts - 180/365 days)		285.00	
<b><i>Fund Based Total</i></b>			<b><i>285.00</i></b>
<b><i>Non Fund Based</i></b>			
LC (I/F)-DP/ DA-180 days		80.00	
BG (I/F)		344.00	
BG (Onerous)	(100.00)		
CEL on Forward Contract Limits/ Derivatives	(0.11)		
<b><i>Non Fund Based Total</i></b>			<b><i>424.00</i></b>
<b><i>Total</i></b>			<b><i>709.00</i></b>

5.2 The following security interest were held by the Financial Creditor towards the credit facility;

- I. Hypothecation of Stock and Book Debts
  - i. Hypothecation of Stocks and book debts and other current assets on *pari passu* basis.
  - ii. Margin on NFBL at 5% on LC and BG

<sup>3</sup>Annexure – D of the Petition

II. Collateral Security

- i. First *pari passu* mortgage charge on Kumardhubi Unit No. 1 property presently owned by McNally Sayaji Engineering Co. Ltd.
- ii. Copy of the Registrar of Loan Securities of the Financial Creditor dated 24.04.2011 and the extension of mortgage dated 01.03.2017 drawn by the Financial Creditor, in evidence of creation of Equitable Mortgage,
- iii. Subservient *pari passu* charge on fixed assets of the corporate debtor.
- iv. Pledge of 16.00 lakh shares of McNally Sayaji Engineering Co. Ltd .. BookValue per share Rs. 125.00 on 28.12.2017.
- v. Non-disposable undertaking of its shareholding in Singapore Subsidiary i.e., MBE Mineral Rechnologies PTE Ltd.

III. Guarantee

- i. Corporate Guarante of McNally Sayaji Engineering Co. Ltd.:to the extent of the value of Kumardhubi Unit I.

5.3 On failure of the Corporate Debtor to adhere to the payment scheduled as per the agreed terms and conditions, the Financial Creditor sent a recall notice dated 07 March, 2020 and an e-mail dated 14 March, 2020, to the Corporate Debtor for repayment of outstanding debts in various credit facilities as availed.<sup>4</sup>

5.4 The default in the payment of the debt has also been recorded with the Information utility; the Credit Information Bureau (India) Limited (CIBIL) Report dated 12 March, 2020.<sup>5</sup>

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<sup>4</sup>Annexure – Z of the Petition.

<sup>5</sup>Annexure – J of the Petition.s

6. ***Submission of Mr. Ratnanko Banerji, Ld. Sr. Counsel appearing on behalf of the Corporate Debtor.***
- 6.1 The Corporate Debtor categorically denies and disputes various submissions by Financial Creditor, save and except the matter of facts and matter of record. Further, the petition does not state the date of disbursement or withdrawal, also, the computation amount pertaining to the principal and its interest provided in part IV of the petition is inaccurate and is inconsistent with the Annexure -F to the petition and the purported debt is incomplete.
- 6.2 The alleged purported debt has not arisen out of the sanction letter dated 27 March, 2018, as the cash credit facility was to expire on 20 March, 2019. The Financial Creditor has falsely stated that an amount of Rs.731,53,52,802.55 has been utilised till March 10, 2020, which cannot be the case as the total limit granted as on 27 March, 2018 was Rs.709 crores and the credit limit cannot be exceeded.
- 6.3 Further, the date of default has been stated as the date of expiry of the sanction letter which is after the date of default. The financial creditor has failed to bring on record any documentary evidence adducing the amount due. Since the petition is lacking in these basic particulars the petition ought to be rejected *in limine*.
7. Ld. Counsel Mr. Jishnu Chowdhury appearing for the Financial Creditor, in its rejoinder has relied on the guidelines laid by the Reserve Bank of India<sup>6</sup>, where it says that the account is to be marked as NPA on expiry of 90 days from the date of default. Hence, the date of default has been rightly arrived by the Financial Creditor.

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<sup>6</sup>Income Recognition Asset Classification Provisioning and other related matters circular dated 01 July, 2015.

***Analysis and Findings***

8. We have heard the learned counsel appearing on behalf of the Financial Creditor and the learned senior counsel appearing on behalf of the Corporate Debtor and perused the pleadings filed by the parties.
9. The documents on record reflects the financial assistance rendered by the Financial Creditor to the Corporate Debtor against time value of money, which is one of the pre-requisites envisaged under section 7 of the Code. These transactions between the parties on the agreed terms and conditions is justifiable enough to construe that there is an existence of '***financial debt***'.
10. Further, Extracts of the minutes of meeting dated 09 May, 2019 of the Board of directors of McNally Bharat Engineering Company Limited at page 1086 of the Petition and Annual Accounts of McNally Bharat Engineering Company Limited for the year 2018-2019 at pages 1087-1301 of the Petition, are sound enough to shed light on the ***default of payment of the existing financial debt by the Corporate Debtor***.
11. It is also pertinent to mention that on many occasion the parties tried to come to a bargain, however, these meetings between the Corporate Debtor and the Financial Creditor did not culminate into any settlement.
12. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.
13. Accordingly, it is, hereby ordered as follows:-
  - a) The application bearing ***CP (IB) No. 891/KB/2020*** filed by Bank of India, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against McNally Bharat Engineering Company Limited Bush Tea Company Private Limited, the Corporate Debtor, is ***admitted***.
  - b) There shall be a moratorium under section 14 of the IBC.

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- c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Mr. Anuj Jain**, registration number **IBBI/IPA-001/IP-P00142/2017-2018/10306**, email: **anujjain@bsraffiliates.com**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

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- h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
  - i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
  - j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- 14.** *CP (IB) No. 891/KB/2020* to come up on **25 July, 2022** for filing the periodical report.
- 15.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rajasekhar V.K.**  
**Member (Judicial)**

SA, LRA

This order is pronounced on 29<sup>th</sup> day of April, 2022