

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT-III**

C.P. No.2677/1&BP/2018

Under section 7 of the IBC, 2016

In the matter of

Union Bank of India,
Branch Office at 1st Floor, IFB Branch,
Union Bank of India Bhawan, 239, Vidhan
Bhavan Marg, Nariman Point, Mumbai-
400021

...Petitioner

v/s.

Rajahmundry Godavari Bridge Ltd,
Regd. Office at Gammon House, Veer Savarkar
Marg, Prabhadevi Road, Mumbai-400025

...Corporate Debtor

Order Pronounced on: 27.02.2020

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V Nallasenapathy, Member (Technical)

For the Petitioner : Adv. Sushila Vichare a/w Adv. Vinita Hombalkar i/b
Orbit Law Services

For the Respondent: Gautam Ankhad a/w Navsher Kohli i/b DSK Legal

Per: V Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by Union Bank of India (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Rajahmundry Godavari Bridge Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default



in making payment to the extent of ₹223,98,56,380.46 as on 31.08.2015 under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

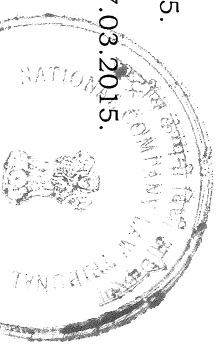
2. The Financial Creditor was incorporated on 11.11.1919 bearing Identification Number U99999MH1919PTC000615 whereas the Corporate Debtor was incorporated on 19.08.2008 bearing CIN U45203MH2008PLC185941 and having Authorised Share Capital of ₹203,96,00,000/-.

3. The brief facts of the case are that the Corporate Debtor entered into a Concession Agreement with Government of Andhra Pradesh through Andhra Pradesh Road Development Corporation (referred to as "APRDC") for the construction, operation and maintenance of a bridge across Godavari River on 5.11.2008 (referred to as the "Project"). The total cost of the Project was estimated at ₹861 Crores.

4. Subsequently, the Corporate Debtor entered into a Common Loan Agreement with a Consortium of Banks led by Canara bank on 26.05.2009 for an aggregate principal amount of ₹566 Crores. The Petitioner was one of the Lenders in the said Consortium and had disbursed ₹160 crores to the Corporate Debtor.

5. In pursuance to the aforesaid sanction, the Corporate Debtor had executed loan and security documents which are provided as under: -

- a. Copy of Common Loan Agreement dated 26.05.2009.
- b. Copy of Lenders Agent Agreement dated 26.05.2009.
- c. Copy of Security Trustee Agreement dated 26.05.2009
- d. Copy of Inter Creditor Agreement dated 26.05.2009
- e. Copy of Corporate Guarantee dated 26.05.2009.
- f. Copy of Supplementary Escrow Agreement dated 26.10.2009.
- g. Copy of Indenture of Mortgage dated 19.07.2010.
- h. Copy of Master Restructuring Agreement dated 27.03.2015.
- i. Letter of Confirmation of Intercreditor Agreement dated 27.03.2015.



- j. Copy of Simple Debt Balance Confirmation Letter dated 15.07.2015
- k. Copy of Revival Letter dated 27.06.2017
- 6. Further, vide letter dated 25.02.2015, the Petitioner approved the request of the Corporate Debtor to restructure the existing Term Loan and grant a new Term Loan of ₹24.85 crores. Thus, Petitioner sanctioned a total amount of ₹184 crores. The same amount with respect to the Petitioner Bank is reflected in the Master Restructure Agreement executed on 27.03.2015 between the Consortium of Banks and the Corporate Debtor amongst others.
- 7. The Petition reveals that the Petitioner Bank also filed Original Application bearing OA No. 404 of 2018 before the Debts Recovery Tribunal-I at Mumbai on 02.07.2018 for recovery of ₹223 crores which is pending for adjudication.
- 8. The Petitioner further submits that the Corporate Debtor availed the credit facilities but failed to fulfil the conditions of repayment. The Corporate Debtor has acknowledged the outstanding liability/debt vide the simple debt balance confirmation letter dated 15.07.2015 issued by Union Bank of India.
- 9. The Corporate Debtor had been classified as NPA on 31.12.2015. Subsequently, the Petitioner issued a Recall notice on 30.01.2016 and on 02.06.2018 for repayment of its dues.
- 10. The Petitioner has enclosed the Statement of Account for the aforesaid credit facilities granted to the Corporate Debtor which shows that the amount claimed in the Petition is in consonance with the Statement of Account. The Petitioner has also enclosed the CRILC report, Certificate under the Banker Book Evidence Act, 1891. Hence this Petition.
- 11. The Corporate Debtor filed reply to the petition and raised the following contentions:
 - a) The Corporate Debtor in its reply vehemently denied all the averments made by the Petitioner. The Corporate Debtor submits that the Andhra Pradesh Road Development Corporation (hereinafter referred as APRDC)



invited the proposals by a Tender Notice dated 08.01.2007 and under this tender, Gammon India Limited was selected as successful bidder.

b) In pursuance thereof, Gammon India Limited promoted and incorporated the Corporate Debtor as a Special Purpose Vehicle on 19.08.2008. Accordingly, a Concession Agreement was signed between the Corporate Debtor and APRDC on 05.11.2008.

c) The Corporate Debtor contended that APRDC had the first and foremost responsibility to provide land to the Corporate Debtor in order to carry out the implementation and execution of the project under the concession agreement. However, there was an inordinate delay by the APRDC to provide the land to the Corporate Debtor due to which the entire time line to complete the project by the Corporate Debtor was disrupted. But, since APRDC was at fault, it repeatedly extended the timeline for completion of the project.

d) The Corporate Debtor submits that during the term of the Concession Agreement, the APRDC committed numerous breaches of the Concession Agreement which were communicated to it by the Corporate Debtor through the letters dated 10.05.2011, 14.03.2013, 22.04.2013 and 18.06.2013, but the APRDC failed to remedy its breaches. As a result, the Corporate Debtor vide letter dated 12.12.2017, intimated APRDC about the delay caused in execution of the project and also hardships faced by the Corporate Debtor in respect of toll collection. Further, the Corporate Debtor informed that the APRDC had constantly breached the provisions of the agreement which entitled the Corporate Debtor to claim compensation from the APRDC for such defaults under clause 35.2 and terminate the Concession Agreement under clause 37.2.1 of the said Concession Agreement titled as "Termination for Client Default". The Corporate Debtor also requested APRDC to disburse the Revenue Shortfall Loan for an amount of ₹49.61 crores for Financial Year 2016-17 and ₹27.06 crores for Financial Year 2017-18, i.e., a total of ₹76.67 crores.

e) Subsequently, the Corporate Debtor, issued a Cure Period Notice dated 26.02.2018 to APRDC and requested APRDC to cure the breaches under clause 37.2.1 and consequently, pay the Corporate Debtor



compensation. The Corporate Debtor recorded in its Cure Period Notice that APRDC is liable to compensate the Corporate Debtor as per Clauses 37.3 to 37.3.3 of the Concession Agreement.

f) The Corporate Debtor submitted that since APRDC did not take any cognizance of either of the aforesaid notices, the Corporate Debtor was constrained to issue a termination notice dated 03.07.2018 to APRDC in pursuance of clause 37.2.2 of the Concession Agreement. The Corporate Debtor claimed the said compensation and termination payment to the tune of ₹377.46 crore and ₹1123.37 crores under this termination notice within 15 days from the receipt of the letter dated 03.07.2018, failing which APRDC shall pay interest at the rate equal to 3% above the bank rate on the amount of termination payment as mentioned in clause 37.3.3 of the Concession Agreement.

g) The Corporate Debtor, in view of the aforesaid loss and damage, issued a dispute notice vide letter dated 28.09.2018 to claim a sum of ₹1123.37 crores towards the termination payment along with ₹377.46 crores towards the compensation which totals to ₹1500.83 crores in arbitration against APRDC.

h) The Corporate Debtor further submitted that there is no event of default as per clauses 37.1.1 and 37.1.1 (j) or any other clauses of various agreements by the Corporate Debtor. It is clear from these clauses that the reason for the Corporate Debtor's default, if any as alleged by the Petitioner is consequent to the breaches attributed by the APRDC under the Concession Agreement. Despite gross violation of the terms of the Concession Agreement by APRDC, being a prudent concessionaire, the Corporate Debtor still carried out the development of the project which stands completed as on date and in operation since October 2015.

i) It is further contended by the Corporate Debtor that as per clause 1.3 (v) of the Master Restructuring Agreement, in case of any inconsistency between the provisions of Concession Agreement and the provisions of Financing Documents, the provisions in the Concession Agreement shall prevail. So, the defaults of the Corporate Debtor, if any, are to be read harmoniously with the fundamental obligations of APRDC that is, to hand over entire Project Site free of encumbrance to the Concessionaire.



- j) The Corporate Debtor contends that the Petitioner is a member of the Consortium Bankers, therefore the Application was to be filed in a consolidated manner. Thereby, it flows that the Petitioner cannot maintain the present petition without the express and unequivocal consent of the remaining Consortium Bankers. Thus, in pursuance of clause 4.3 of Inter-Creditor Agreement, the Corporate Debtor calls upon the Petitioner to substantiate and prove that the Petitioner has duly followed the procedure laid down in clause 4.3 (a) to (f) in order to proceed with the captioned Application independently.
- k) The Corporate Debtor also submitted that the amounts purportedly claimed by the Petitioner are incorrect and disputed by the Corporate Debtor. Also, the Corporate Debtor tried for one time settlement with the Petitioner but the Petitioner refused all settlement attempts of the Corporate Debtor.
- l) The Corporate Debtor also filed an additional affidavit in reply whereby they contended that as per the financing agreement and as per the financial model approved by the Consortium Bankers, the Respondent is entitled to a financial package which included the total cost of the project and all the financial assistance which is required for the project. The Corporate Debtor further submits that the Petitioner suppressed the facts that the loan disbursed to the Corporate Debtor deposited in the Escrow Account and on termination of the concession agreement 90% of the Debt Due will become payable from the amount deposited in the Escrow Account. Further submits that they have never in the possession of loan amount and at all the times, the amount was deposited in the Escrow Account and the Consortium Lenders Bank are well aware of the Escrow Bank Account. However, further submits that the Petitioner has filed this case only to arm twisting them and defeating the Corporate Debtor claim against the APRDC. The Corporate Debtor further reiterated that the primary source to generate revenue and repay the loan only by the source of toll collection. The Corporate Debtor further reiterated that on termination of the concession agreement, the amount lies in the Escrow Account would be appropriated in accordance with mechanism set out in clause 4.2 (*withdrawals upon termination*) of the escrow agreement and distribution of proceeds of the Escrow Account, includes



the payment of 90% of Debt Due to the Respondent. The clause 4.2 extracted hereunder: -

“Clause 4.2: Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Agreement shall, notwithstanding anything in this Agreement, be appropriated and dealt with in following orders:

- (a) All taxes due and payable by the Concessionaire:*
 - (b) 90% (ninety percent) of Debt Due excluding Subordinated Debt:*
 - (c) Outstanding Concession Fee:*
 - (d) All payments and Damages certified by the Client as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including repayment of Revenue Shortfall Loan and any claims in connection with or arising out of Termination:*
 - (e) Retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 39 of the Concession Agreement:*
 - (f) Outstanding Debt Service including the balance of Debt Due;*
 - (g) Outstanding Subordinated Debt;*
 - (h) Incurred or accrued O&M expenses;*
 - (i) Any other payments required to be made under the Concession Agreement; and*
 - (j) Balance, if any, in accordance with the instructions of the Concessionaire:*
- Provided that the disbursements specified in Sub-Clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Client”*

12. The Financial Creditor/Petitioner filed its Affidavit in rejoinder and rejoined the contentions raised by the Corporate Debtor.

- a) The Petitioner submits that the contentions raised by the Corporate Debtor are false and incorrect and not relevant to this Petition and the said company Petition deserves to be admitted.



b) The Petitioner submits that that the Corporate Debtor was aware of the terms and conditions of the project as well as of the finance/loan and that they had undertaken the project being fully aware that they were liable to pay the due through tolls receivables. The Petitioner submits that the Corporate Debtor availed the loan facilities from the financial lenders and also that there were documents executed between the consortium lenders Bank and the Corporate Debtor like Loan Agreement and other security agreement. Further, the Petitioner due to delay in project the facilities available by the Corporate Debtor are restructured by the Petitioner in the year 2015-2016. It is an admitted fact the defaults are committed by the Corporate Debtor towards their payment and obligations under the loan agreement. Even otherwise from the perusal of reply it is also seen that the APRDC denied the breaches on their part. So that it cannot be a reason or an excuse.

13. Heard both the sides. This bench has gone through the pleadings of both sides.

14. The above contentions of the Corporate Debtor cannot be taken into account while considering the Petition for admission under section 7 of the code, in view of the decision of the Hon'ble Supreme Court of India in the case "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.* - (2018) 1 SCC 407" wherein it was observed as below:

"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 I accompanied by documents and records required therein. Form I 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."

15. On perusal of the documents submitted by the Parties, it is evident that Applicant had granted Financial assistance of ₹184,85,00,000/- (Rupees One Hundred and Eighty Four Crores and Eighty Five Lakhs Only) to the Corporate Debtor, the same was disbursed to the Corporate Debtor and there was a default in repayment of the said dues. Considering the above facts, we opine that the nature of debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor.
16. The debt and default of the Corporate Debtor have been established, and the Application deserves to be admitted.

17. The Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loans availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is



taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-1, namely:

- (I) (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 (SARFAESI Act);
- (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.
- (II) 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.
- (III) 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.
- (IV) That the order of moratorium shall have effect from 27.02.2020 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, as the case may be.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints Mr. Vishal Ghisulal Jain, B-3/7/1-2, Sector 15, Vashi, Navi Mumbai email-id vishal@cavishaljain.com, having Registration No. IBB/I/PA-001/IP-P00419/2017-2018/10742, as interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

18. The Registry is hereby directed to communicate this order to both the parties as well as IRP immediately.

Sd/-

V NALLASENAPATHY

Member (Technical)


/ROHIT/

Sd/-

BHASKARA PANTULA MOHAN

Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 03.03.2020

Assistant Registrar
National Company Law Tribunal Mumbai Bench