SL. No.127

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Video Conference

CORAM: HON'BLE BHASKARA PANTULA MOHAN,–MEMBER (J)
CORAM: HON'BLE DR. BINOD KUMAR SINHA,-MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 09.06.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.744/7/HDB/2019
NAME OF THE COMPANY	Asip Pvt Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Asip Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

In CP(IB) No. 744/HDB/2019: Order pronounced vide detailed Order passed in the case of State Bank of India vs Asip Pvt Ltd. under Section 7 Corporate Debtor admitted to CIRP.

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MEMBER (T)

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MEMBER (J)

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IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No.744/7/HDB/2019
Under section 7 of the IB Code, 2016
Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M/s. ASIP PRIVATE LIMITED

Between:

M/s. State Bank of India,
Stressed Assets Management Branch,
Secunderabad Branch,
5th floor, Rear Block of HMWSSB Compound,
D.NO.6-2-915, Khairatabad, Hyderabad-500 004
Represented by Mr. S.S.V.S. Hari Krishna.

...Petitioner/
Financial Creditor

And

M/s. Asip Private Limited,
Having its Registered office at:
473R, Road No.87, Phase-III,
Jubilee Hills, Hyderabad 500 033.

...Respondent/
Corporate Debtor

Date of Order: 09.06.2022

Coram: Shri Bhaskara Pantula Mohan, Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsels present:

For the Financial Creditor: Mr. V.V.S.N. Raju, Counsel

For the Corporate Debtor: Ms. Monica P Pole, Counsel

Per: Bench

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ORDER

1. Under consideration is a Company Application filed by M/s. State Bank of India (in short "*Petitioner/Financial Creditor*") under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s Asip Private Limited under the Insolvency and Bankruptcy Code, 2016.

2. Brief facts of the case as submitted by the Financial Creditor are as follows:

   a) That the Corporate Debtor is a company limited by shares, in the business of construction of infrastructure projects in various sectors, including the construction and management of roads, implementation of irrigation projects etc.

   b) That the Corporate Debtor herein approached the Financial Creditor for grant of credit facilities. The Corporate Debtor was sanctioned certain credit facilities from time to time, by the Financial Creditor and the erstwhile State Bank of Mysore, under consortium arrangement with Canara Bank and Laxmi Vilas Bank.

   c) That the business, assets and liabilities of the erstwhile State Bank of Mysore (**"eSBM"**) were taken over by the Financial Creditor with effect from 01.04.2017 by virtue of Notification No. 128 Part II, Section 3, Sub-Section (i) and Order No. G.S.R.157(E) dated 22.02.2017 of the Government of India. Therefore, the present Company Petition is filed in respect of default committed in both, the Financial Creditor as well as the erstwhile State Bank of Mysore's financial assistances.

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d) That the Corporate Debtor failed to adhere to the terms and conditions of sanction and as a result the loan accounts of the Corporate Debtor became irregular. At that stage in the month of March, 2014 the Corporate Debtor requested the Consortium Banks for restructuring the loan account with assurance to repay the loan outstanding amounts as per the terms and conditions of the restructured loan. Considering the request of the Corporate Debtor, the Banks under Consortium including the Financial Creditor herein restructured its loan account under Corporate Debt Restructuring Scheme. The restructuring proposal was approved under CDR system vide letter of approval dated 14.03.2014. The Corporate Debtor has accepted the terms and conditions of restructuring proposal approved under CDR Scheme.

e) That as per restructuring promoted under the CDR System, the State Bank of Mysore (now merged into Financial Creditor) at the request of the Corporate Debtor sanctioned the credit facilities by way of renewal with enhancement from the existing Rs.15.00 Crore to Rs.18.53 crore (CC Limit 4.07 Crores, Priority Debt Rs.1.00 Crore, WCTL Rs.1.05 Crores, FITL Rs.1.02 Crores & BG Limit Rs.11.39 Crores) on the terms and conditions vide sanction letter dated 24.03.2014. The Corporate Debtor accepted the terms and conditions of the sanction. After restructuring the various credit facilities of the Corporate Debtor, the repayment schedule will end in March, 2023.

f) That the said credit facilities with a limit of Rs.151.25 crores and 18.53 crores (eSBM) sanctioned to the Corporate Debtor by the Financial Creditor are primarily secured by

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hypothecation of entire chargeable current assets of the company on pari passu basis with other member Banks in the Consortium. They are also primarily secured by hypothecation of the machinery and equipment acquired out of the Bank finance and by equitable mortgage.

g) That the Corporate Debtor failed in adhering to the terms and conditions of the restructuring facilities. The instalments in the Term loan accounts were not paid and they also failed to operate the Cash Credit Loan and Priority Debt account as per the terms. The Bank Guarantees invoked by the beneficiaries were not honoured by the Corporate Debtor by payment. As a result of such non-adhearance to the terms of the restructured loans, the accounts of the Corporate Debtor has been classified as NPA on 28.12.2013. The accounts of the erstwhile State Bank of Mysore were migrated to the Financial Creditor, in view of acquisition of its assets by the Financial Creditor.

h) That the Financial Creditor got issued legal notice dated 24.02.2018 to the Corporate Debtor calling upon them to repay the loan outstanding/dues the aggregate sum of Rs.149.26 crore as on 20.02.2018 within a week from the date of receipt of notice. The Corporate Debtor issued reply notice dated 08.03.2018 requesting the Financial Creditor not to initiate any coercive measures for the recovery of loan outstanding/dues and promised to repay the dues within a short time.

i) That the Corporate Debtor herein had submitted an OTS proposal to the Financial Creditor on 18.01.2019 and resubmitted the same on 11.02.2019 after incorporating certain changes for an amount of Rs.43,00,00,000/- (Rupees

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Forty Three Crores only). However, the Corporate Debtor, vide their letter dated 30.04.2019 stated that they are unable to meet the commitments of the proposal. The Financial Creditor sent a letter to the Corporate Debtor on 13.05.2019, informing that the OTS offer is no more valid.

j) That till date the outstanding due amount of Rs.276,97,85,960.13/- (Rupees Two Hundred Seventy Six Crores Ninety Seven Lakhs Eighty Five Thousand Nine Hundred Sixty and Thirteen Paise only) as on 20.10.2019 remains unpaid by the Corporate Debtor to the Financial Creditor.

k) Table reflecting various chronology of events is placed as under:-

Event	Date
Assets and Liabilities of State Bank of Mysore over taken by State Bank of India	01.04.2017
Date of Classification as NPA	28.12.2013
Legal Notice issued by Financial Creditor	24.02.2018
OTS Proposal by Corporate Debtor	18.01.2019

l) Reiterating the above, learned counsel for the Financial Creditor prayed to admit the instant Application.

3. Counsel for Respondent filed counter, *inter-alia* stating as under:-

a) That the Company Petition filed by the Financial Creditor is barred by limitation and therefore needs to be dismissed in limine. The account of the Corporate Debtor was classified as NPA on 28.12.2013, whereas the present company petition has been filed in the month of October, 2019.

b) That the Financial Creditor has sanctioned credit loan facility on an application made by the corporate debtor in the year

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2013. At the time of sanctioning the said credit facility, the financial creditor using their regular practice had taken numerous signatures of the corporate debtor on numerous blank forms and printed proformas with blank fields. The same is also evident from the perusal of the documents filed by the financial creditor in support of the present application.

c) That the Financial Creditor had subsequently restructured the loan account of the corporate debtor and availed signatures of the corporate debtor on blank papers and proforma documents. For the credit facility availed by the corporate debtor, no mortgages were created in favour of the Financial Creditor and no charges were created or any shares were pledged in favour of the Financial Creditor. Further, there also does not exist any personal guarantee.

d) That the rate of interest being charged upon the loan by the financial creditor was never agreed by the corporate debtor and the financial creditor had itself raised exorbitant rate of interest by making it sign on documents with empty blanks. Further, the corporate debtor had made numerous repeated requests to the financial creditor for providing information on the rate of interest being charged on the loan amount and to provide with a calculation in the account statement. But, the financial creditor had never responded to the same. Thus, the financial creditor resulted in cropping up a difficult position for the corporate debtor for repayment of the loan amounts with exorbitant rate of interest and subsequently on 28.12.2013, the account of the corporate debtor was declared NPA.

e) That the present petition has been filed by the financial creditor after a lapse of 6 years from the date of account being declared as NPA.

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f) That the outstanding amount of Rs.276,97,85,960.13 being claimed by the financial creditor is not supported by any valid calculated rate of interest and the computation of interest filed by the financial creditor is not as per the RBI guidelines and the same was also never agreed by the corporate debtor. The liability is cast upon the financial creditor to substantiate the exorbitant rate of interest being charged by it on the loan availed by the corporate debtor.

g) That the present company petition is ought to be dismissed.

4. Counsel for Financial Creditor filed Rejoinder stating as under:-

a) The present company petition is in no way barred by limitation. Although the account of the Corporate Debtor was classified as a Non-Performing Asset in the year 2013, there has been restructuring of loan account and a fresh set of master restructuring agreement and other documents were executed. The Corporate Debtor also executed the Revival Letter on 10.01.2017 and there was continuous correspondence between the Financial Creditor and Corporate Debtor herein thereafter, until the date of filing the present Application. Therefore, the present company petition is in no way barred by limitation.

b) That the contention of the Corporate Debtor stating that the signatures of the Corporate Debtor were taken on blank forms and proformas with blank fields is entirely false and fictitious. The loans taken by the Corporate Debtor were secured by Corporate Guarantees, hypothecation and equitable mortgage. They availed the loan facilities accordingly.

c) That after the loan accounts became irregular, at the request of the company, restructuring of accounts for rehabilitation of the company was approved on 14.03.2014. However, the said rehabilitation program failed due to non-performance of the

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company resulting in declaring that the package has failed in 2015. Therefore, as per the RBI guidelines the accounts were classified as NPA with retrospective effect i.e., 28.12.2013.

d) That the Bank sanctioned credit facilities by way of renewal with enhancement, at the request of the Corporate Debtor in the year 2014. The repayment schedule will end in the month of March, 2023. Since the company failed to honour the repayment schedule, a legal Notice recalling the loans was served on 24.02.2018 and a notice under 13(2) of SARFAESI Act was issued on 23.05.2018. Therefore, the contention of the Corporate Debtor that the present petition is barred by limitation holds no ground.

5. Heard and perused the record.

6. It is the case of the Applicant that it has provided various credit facilities to the Corporate Debtor herein for which the Corporate Debtor was due and liable and failed to repay the same. That as on date, the Corporate Debtor is due and liable to pay a sum of Rs. 276,97,85,960.13/-. Per contra, the Corporate Debtor herein has contested the instant matter on the ground of limitation.

7. In relation to the said contention, it is pertinent herein to note that it is now well settled by various judicial pronouncements of Hon'ble Supreme Court that provisions of Section 18 of the Limitation Act shall be applicable to the proceedings under the IBC, 2016 and any acknowledgement of debt by the Corporate Debtor will extend the period of limitation. It has also been categorically held by Hon'ble Supreme Court in the case of *Dena Bank v C Shivkumar Reddy & Ors in Civil Appeal No.689 OF 2021*, that an OTS proposal by the Corporate Debtor will be treated as an acknowledgement of Debt in terms of section 18 of the Limitation Act and a fresh period of limitation shall be computed from the date of such OTS proposal.

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Further, the confirmation of loan amount by way of reflection in the audited balance sheets will also be deemed to be an acknowledgement for the purposes of extending limitation. It is not denied by the Corporate Debtor that a revival letter was executed on 10.01.2017, which would be deemed acknowledgement of debt and fresh period of limitation needs to be computed from that date.

8. Further, the Financial Creditor herein has issued a recall notice, which was served on the Corporate Debtor on 24.02.2018 and a notice under 12(2) of the SARFAESI Act was issued on 23.05.2018. Considering the date of recall notice as date of default on the part of the Corporate Debtor, the period of limitation shall come to expire on 23.02.2021. If the date of submission of OTS proposal by the Corporate Debtor i.e., 18.01.2019 is taken as date of acknowledgment of debt, the limitation would expire on 17.01.2022. However, the instant Application is filed on 25.11.2019, thus the instant application is well within limitation.

9. Another contention raised against admission of the instant application is that the Financial Creditor has charged exorbitant interest which was never agreed upon by the Corporate Debtor. This Adjudicating Authority does not require to determine the quantum of the claim amount, but is only require to see that the pecuniary threshold as per Section 4 of the Code is fulfilled.

10. Be that as it may, it is not in dispute that even the principal amount is much above the threshold prescribed u/s 4 of the IBC, 2016.

11. Further, it is pertinent herein to note that the Hon'ble Supreme Court, while deciding the matter in the case of INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017, held as under:

"..............*The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is*

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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 subsection (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."

12. After hearing both sides and perusing record, we are of the view that in the instant case there is a financial debt exceeding the pecuniary threshold applicable U/s. 4 of the Code and there has been a default in repayment of the same and that this Adjudicating Authority is satisfied that the Financial Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. Hence, the contentions of the Corporate Debtor are overruled.

13. Further the Financial Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the Petitioner/Financial Creditor, this Adjudicating Authority is inclined to admit the instant Application.

14. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day this order is passed.

15. The Financial Creditor proposed the name of Mr. Gunturu Raghu Babu Interim Resolution Professional and he has given here written consent in Form 2. Accordingly, this Adjudicating Authority appoints Mr. Gunturu Raghu Babu, having Registration No. IBBI/IPA-002/IP-N00025/2016-2017/10053 e-mail id: raghu@ezresolve.in as Interim

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Resolution Professional. He is directed to file Authorization for Assignment within three days from the date of this order.

16. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
17. We direct the Financial Creditor/Petitioner to pay sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.
18. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP for the purposes referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit 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 or 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 rights 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 (54 of 2002);*

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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. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

19. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements. or other arrangement as may be notified by the Central Government in consultation with any Financial sector regulator or any other authority.

20. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person

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21. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

22. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

23. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.

24. Accordingly, this Petition is admitted.

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Dr. Binod Kumar Sinha
Member Technical

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Bhaskara Pantula Mohan
Member Judicial

Santi/SKRathi