



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(Through Physical Hearing / VC Mode (Hybrid))

C.P (IB) No.139/BB/2023
Under Sec.7 of IBC, 2016
R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Canara Bank

Having its Branch Office at:
Specialised ARM Branch,
4th Floor, Circle Office,
Balmatta Road,
Mangaluru -575001

....Petitioner

Versus

Bava Infrastructure Developers Pvt. Ltd

Having its registered office at:
Door No. 113/21, Ground Floor,
Commerce Centre,
Airport Road, Kulur
Mangalore -575013

...Respondent

Order delivered on: 20.06.2024

Coram: 1. Hon'ble Shri K Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present/Counsels Present:

For the Petitioner: Shri Hemanth R. Rao
For the Respondent: Shri Abhiram Anand

ORDER


Per: Manoj Kumar Dubey, Member (Technical)

1. The present petition is filed on 24.07.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC/Code'), r/w, Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 by Canara Bank (for brevity "Financial Creditors/Petitioners") inter alia seeking Corporate Insolvency Resolution Process in respect of M/s Bava Infrastructure Developers Pvt. Ltd (hereinafter referred as "Corporate



Debtor/Respondent”) for defaulting an amount of Rs.45,08,21,868.88/- due and payable by the Corporate Debtor (“CD”) as on 30.06.2023.

2. The Corporate Debtor, namely Bava Infrastructure Developers Pvt. Ltd is a Company incorporated on 09.07.2009 with CIN: U45200KA2009PTC050351 having its registered office at Door No. 113/21, Ground Floor Commerce Centre, Airport Road, Kulur, Mangalore- 575013 which falls within the territorial jurisdiction of this Adjudicating Authority. The Company is engaged in the business of infrastructure development. The Authorised Share Capital of the Respondent/CD is Rs. 10,00,00,000/- and Paid Up Share Capital is Rs. 9,74,25,000/-
3. On the perusal of the incumbent application, the following facts are relevant to the issue in question and is produced herein:
 - a) The present Petition has been filed by the above Financial Creditor Bank against the Corporate Debtor in respect of the default amount of Rs. 45,08,21,868.88/- (Rupees Forty Five Crores Eight Lakhs Twenty One Thousand Eight Hundred and Sixty Eight Rupees and Eighty Eight Paise) as on 30.06.2023 payable to the Financial Creditor as per part IV of Form-1. The date of default as per Form-1 is 19.04.2022 and the account of the CD has been classified as a NPA on 18.07.2022.
 - b) Further the FC has also filed an application bearing OA No. 1615/2022 before the DRT-1 Bengaluru on 28.11.2022 for recovery of a sum of Rs. 41,50,36,807/- and the same is pending adjudication.
 - c) In Part-IV of Form No.1, the Petitioner/Financial Creditor (“FC”) submits that the CD has availed the following credit facilities from the FC Bank:
 - i. The FC has sanctioned Over-Draft (“OD”) Secured Limit of Rs.4,50,00,000/- vide Sanction Memorandum dt.02.11.2012 for which the CD has executed Request for Overdraft Facilities dt.02.11.2012 for Rs.450 Lakhs and Pronote dt.02.11.2012 for Rs.450 Lakhs.
 - ii. The CD requested for the renewal of the OD of Rs. 450 Lakhs vide Sanction Memorandum dt.25.12.2014 for which the CD executed Letter of Renewal dt.21.02.2015 and Letter of Revival dt.21.02.2015.
 - iii. At the request of CD, the FC again renewed the OD facility vide Sanction Memorandum dt.20.10.2015. The CD executed a Letter of



Renewal dt.21.11.2015, Link Letter dt.21.11.2015 and Common Hypothecation Agreement dt.21.11.2015 in pursuance of the OD facility.

- iv. The CD requested reduction of OD limit from Rs.4.50 Crores to 3.10 Crores which was sanctioned by the financial creditor vide Sanction Memorandum dt.28.10.2016. For the same, the CD sent a Letter of Renewal dt.2.12.2016, Link Letter dt.02.12.2016 and 2 Letters of Revival dt.2.12.2016.
- v. The CD sought renewal cum enhancement of OD Limit to Rs.6.50 crores and Term Loan-1 of Rs.67.69 lacs for purchasing Leeboy Motor Grader machinery and Term Loan-II of Rs. 267.90 lacs to purchase Plant and Machinery. The FC sanctioned the same vide Sanction Memorandum dt.8.12.2018. The CD executed the following loan documents –
 - a) Pronote of Rs. 200 lakhs dt.14.02.2018;
 - b) Letter of Renewal dt.14.02.2018;
 - c) Letter of Revival dt.14.02.2018;
 - d) Link Letter in respect of enhancement of Credit Facilities dt.14.02.2018;
 - e) Term Loan Agreement dt.14.02.2018;
 - f) Particulars of Machinery/Equipment hypothecated dt.22.02.2018.
- vi. The CD entered into another Sanction Memorandum dt.29.12.2018 with the financial creditor for seeking vehicle loan for purchasing BMW Car. The documents entered upon by the CD are:
 - a) Canmobile Loan Agreement dt.31.12.2018;
 - b) Letter of Undertaking re: Loan and Advances dt.31.12.2018;
 - c) Particulars of Machinery/Equipment of hypothecated dt.31.12.2018.
- vii. The CD then sought renewal cum enhancement of OD limit to Rs.1100.00 Lakhs and Term Loan of Rs.236 Lakhs for purchasing hydraulic excavators. The FC sanctioned the same vide Sanction Memorandum dt.16.04.2019 for which the following documents were executed;
 - a) Letter of Renewal dt.16.04.2019;
 - b) Pronote for Rs.450 lakhs dt.16.04.2019;
 - c) Link Letter in respect of enhancement of credit facilities dt.16.04.2019;
 - d) Supplemental Agreement dt.16.04.2019;

e) Term Loan Agreement for Rs. 236.00 Lakhs dt.16.04.2019; f) Letter of Revival dt.16.04.2019.

viii. The CD sought Term Loan of Rs.19,05,000/- to purchase commercial vehicles. The FC sanctioned the same vide Sanction Memorandum dt.21.08.2019 and entered into the following documents:

- a) Deed of Hypothecation re: Vehicles dt.07.01.2019;
- b) Letter of Undertaking re: Loans/Advances dt.07.01.2019;
- c) Particulars of machinery/vehicle hypothecated.

ix. The CD sought renewal of OD limit to Rs.1100.00 Lakhs, Bank Guarantee of Rs. 3 crores and COVID FILT of Rs.84 lacs. The FC sanctioned the same vide Sanction Memorandum dt.31.07.2020 and executed the following documents: a) Letter of Renewal dt.19.09.2020; b) Link Letter to be obtained from the Borrower/Guarantor whose limit is getting renewed dt.19.09.2020; c)Supplemental Common Hypothecation Agreement dt.19.09.2020; d) Letter of Revival dt.19.09.2020.

x. The CD sought Guaranteed Emergency Credit Line (GECL) of Rs.378 lakhs due to COVID-19 pandemic. The financial creditors sanctioned the same vide Sanction Memorandum dt.20.08.2020 and executed the following documents: a) Pronote for Rs.378,00,000/- dt.19.08.2020; b) Supplemental Common Hypothecation Agreement dt.19.08.2020; c) Letter of Undertaking Re: Loans/Advances dt.19.08.2020.

xi. The CD sought GECL extension of Rs.1.89 crores due to COVID-19 pandemic. The financial creditor sanctioned the same vide Sanction Memorandum dt.02.12.2021 and the CD executed the following documents: a) Pronote dt.04.12.2021 for Rs.1.89 crores; b) Disbursement request format for loans dt.4.12.2021; Undertaking Letter from the borrowers dt.4.12.2021; d) Supplemental Common Hypothecation Agreement dt.4.12.2021; e) Letter of Undertaking re: Loans/Advances dt.04.12.2021.

xii. The CD sought renewal cum enhancement of OD limit to Rs. 1600.00 lakhs by executing the sanction memorandum dt.24.09.2021. The CD executed the following loan documents: a) Pronote of Rs.1600.00 lakhs dt.24.09.2021; b) Supplemental Common Hypothecation Agreement dt.24.09.2021.

xiii. The CD sought OD limit of Rs.900 lakhs for Rail Infrastructure Development Company (Karnataka) Ltd's project. The CD has executed the following loan documents: a) Pronote for Rs.900 lakhs dt.27.09.2021; b) Supplemental Common Hypothecation Agreement dt.27.09.2021; c) Request for Overdraft Facilities dt.27.09.2021.



xiv. It is submitted that the CD request, the FC issued a Bank Guarantee in favour of Rail Infrastructure Development Company (Karnataka) Ltd. The CD executed two Counter Indemnity dt.28.09.2021 and 18.10.2021. In turn, the financial creditor has issued the following Bank Guarantees:

- a) Contract Performance Security (Bank Guarantee) No.4 of 2020 dt.28.12.2020 in favour of Rail Infrastructure Development Company (Karnataka) Ltd for a sum of Rs.23,47,816/-;
- b) Contract Performance Security (Bank Guarantee) No.2 of 2021 dt.21.01.2021 in favour of Rail Infrastructure Development Company (Karnataka) Ltd for a sum of Rs.48,69,33/-;
- c) Bank Guarantee No. 15 of 2021 dt.23.04.2021 in favour of Karnataka Urban Water Supply and Drainage Board for sum of Rs.42,60,971/-;
- d) Bank Guarantee No.16 of 2021 dt.23.04.2021 in favour of Karnataka Urban Water Supply and Drainage Board for a sum of Rs.63,91,456/-;
- e) Bank Guarantee No.18 of 2021; Bank Guarantee No.18 of 2021 dt.24.05.2021 in favour of Karnataka Urban Water Supply and Drainage Board for a sum of Rs.16,39,030/-;
- f) Bank Guarantee No.17 of 2021 dt.24.05.2021 in favour of Karnataka Urban Water Supply and Drainage Board for a sum of Rs.94,00,000/-;
- g) Contract Performance Security (Bank Guarantee) No. 01/B/10296/2021 dt.28.09.2021 in favour of Rail Infrastructure Development Company (Karnataka) Ltd. for a sum of Rs.23,70,662/-;
- h) h) Bank Guarantee No. 02/B/10296/2021 dt.29.09.2021 in favour of Karnataka Urban Water Supply and Drainage Board for a sum of Rs.1,53,00,00;
- i) Contract Performance Security (Bank Guarantee) No. 03/B/10296/2021 dt.18.10.2021 in favour of Shri Bajarang Power and Ispat Ltd. for a sum of Rs.50,00,000/-.

xv. Subsequently the beneficiaries have invoked the Bank Guarantees by issuing the following letters: a) Invocation of Bank Guarantee No.41 of 2020 dt.24.08.2022 by the Rail Infrastructure Development Company (Karnataka) Ltd; b) Invocation of Bank Guarantee No. 02/2021 dt.21.09.2022 by the Rail Infrastructure Development Company (Karnataka) Ltd; c) Invocation of Bank Guarantee No. 01/B/10296/2021 dt.29.09.2022 by the Rail Infrastructure Development Company (Karnataka) Ltd; d) Invocation of Bank Guarantee No. 15 to 18 of 2021 dt.15.11.2-22 by the Karnataka Urban Water Supply and Drainage Board.

4. The FC submits that the CD has executed loan documents for all the credit facilities advanced by the Financial Creditor and has provided



movable and immovable assets as security for the said loans as could be evidenced from the aforementioned documents. It is submitted that the CD has defaulted in servicing the debt on 19.04.2022 and its account has been classified as NPA on 18.07.2022. Thus, the CD is liable to pay a sum of Rs.45,08,21,868.88/- and the same is outstanding inspite of sufficient time and opportunity granted by the financial creditor. Therefore, the FC submits that the CD has defaulted in repaying its debts and has become insolvent.

5. The Respondent/Corporate Debtor has filed statement of objections vide diary no.1284 on 26.02.2024. The CD contends that as per the Ledger Account of the CD from the Financial Year 2012-2013 to 2021-2022 the CD has maintained a healthy track record of repayment of loan. The CD also relies on the NOC of the said respective loans issued by the FC.
6. The CD submits that it has got the development contract from the Rail Infrastructure Development Company (Karnataka) Ltd. for an amount of Rs.154.63 crores for which the CD executed the following loan documents as required by the FC: a) Pronote for Rs.900 lakh dt.27.09.2021; b) Supplemental Common Hypothecation Agreement dt.27.09.2021; Two Counter Indemnities, one dt.28.09.2021 and the other one dt.18.10.2021.
7. The CD has further contended that the financial creditor intentionally delayed the sanction of the said loan which made the CD suffer due to which the CD was compelled to pay 100% amount for providing Bank Guarantee instead of 15-20%. The CD states that in a span of 9 months from the date of sanctioning of the project, the enormous increase in the cost of the material together with heavy bank guarantee amount prevented him from proceeding ahead in successful completion of the project, ultimately resulting in the termination of the contract dt.06.09.2022.
8. The CD submits that earlier the financial creditor vide its letter dt.02.12.2021 bearing Ref. No. 10296/Sanction/BIPDL/2021-2022 provided GECL extension loan of Rs.1.89 crore vide the Guarantee Scheme covered under Emergency Credit Line Guarantee Scheme (ECLGS) administered by National Credit Guarantee Trustee Company (NCGTC). The CD contends that the financial creditor proceeded with the approval of the aforementioned additional working capital as the CD's Long Term Rating by CRISIL was "B Stable" which shows that the CD maintained a healthy financial record.



9. Moreover, in terms of the Scheme of the Central Government and as floated vide circular of the financial creditor, the aforementioned facility were to extend only to such existing customers whose limits were in force as on date of sanction irrespective of risk taking and further to only those customers whose account were not SMA 2 or NPA.
10. The CD further submits that it failed to make repayment of the amounts lent by the FC for the reason that the financial creditor from time to time did not provide the loan amount required by the CD for the said specific project. Further, the CD through one of the of the company under the Bava Group of Companies, namely –M/S Bava Mines and Minerals and as the properties under this group Company serving as collateral to the said loan, the CD vide its letter dt.26.09.2022 made a proposal to the FC for swapping and selling of common property with the group Company. However, vide its reply letter dt.16.06.2023, the FC rejected the same.
11. The CD submits that in a meeting called by the FC at its Branch premises, expressed its inability to settle the dues at any amount higher than INR 25-30 crores and finally the aforementioned amount of Rs.35 crores was thrust upon by the Financial Creditor to agree terming the same as full and final settlement. It is further being submitted that vide its offer letter dt.20.11.2023, the CD submitted an OTS proposal with respect to the CD;s account Nos. 0631256005454, 125000749287, 0631755000090, 170002611477, 0631768000287, 0631773003802, 0631773003804, -631773003805 an for M/s Bava Mines Account No: 0631605000008, 0631603004069 and Mrs. Nageena Moideen Bava's Account No: 063160500008, 0631603004069; making an offer thereunder for Rs.35 crores to settle its above accounts under the said OTS scheme of the Bank. However, the Financial Creditor through its ARM Branch vide its letter dt.13.02.2024 bearing REF: ARM: MNG: F - 341/937/2023-24 rejected the aforementioned offer of settlement proposed by the CD assigning the following reason: "The amount of Rs.35 crores offered by you to settle your accounts under OTS scheme of the Bank is rejected by the Bank, being too low having regard to the huge liability."
12. It is further submitted that even during the COVID-19 pandemic it repaid unsecured loans which shows the willingness and commitment towards repaying its debts. The CD has regularly shown its full willingness and commitment in repayment of loans. It is submitted that the financial creditor has filed an application before the DRT Bengaluru on 28.11.2022 for recovery of a sum of Rs.41,50,36,807/- and the same is pending adjudication, therefore, the present petition under Sec 7 of



the Code as it very much appears has been filed with no genuine interest and most likely at the behest of few employees working with the FC and having ill will against the CD's business, have to defeat any future prospects of growth of the CD and the other Bava Group Companies and as such the same deserves to be dismissed.

13. Heard the Ld. Counsels for the Petitioner and the Respondent and perused the pleadings on record. Additionally, no rejoinder has been filed by the learned counsel for the Petitioner.
14. On 01.03.2024, the Learned Counsel for the Petitioner stated that at paras 11 to 13 of the Statement of Objections, the Respondent has admitted the debt and at Para 15 of the Objections, the default has also been admitted by the Respondent. This Tribunal also noted the contention of the Learned Counsel for the Respondent who stated that restructuring proposal submitted by the CD was rejected and OTS proposal was also not considered by the Petitioner.
15. As evidenced from the facts and documents provided by the Petitioners in the incumbent petition, it is observed that the Corporate Debtor has made several requests to the Petitioner for renewal of Overdraft facilities from the year 2012 to 2021 on the ground of which Petitioners agreed to sanction the credit facilities in favour of the Corporate Debtor from time to time. In so far as the limitation period is concerned, the subsequent request for renewal of credit facilities made by the Corporate Debtor commencing from the year 2012 is made within the limitation period. As per Section 18 of the Limitation Act, *'a debt is said to be acknowledged within the limitation period if it is in respect of a property or right, in writing and made before the expiration of the period prescribed for a suit or application in respect of such property or right is said to be excluded from the purview of limitation.'* Additionally the date of default as per Part IV of Form-1 is 19.04.2022 is well within the limitation period and the dates mentioned in the NeSL Report Form-D, concludes that the debt falls within the limitation period. In so far as the threshold limit of the debt amount is concerned, the same is satisfied as the debt amount is above the threshold limit of Rs.1 crores. Additionally, the Financial Creditor has also proposed the name of the Insolvency Professional along with his consent as per Form-2.
16. It is clear that the Adjudicating Authority is to only determine whether a 'default' has occurred and whether the 'debt' was due and remain unpaid, and once the Adjudicating Authority is satisfied that a default has occurred the Application must be admitted unless it is incomplete.



It is apt to note that the CD has entered into various credit facilities with the financial creditor from the year 2012 to 2022 and have entered into various loan facility agreements. It is also a matter of consideration that the CD has admitted the existence of debt as per S. 3(11) of the Code and the default in terms of non-payment of debt as per S 3(12) of the Code.

17. In view of the foregoing reasons, we are of the considered view that the instant Petition is liable to be admitted. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.45,08,21,868.88/- (Rupees Forty Five Crores, Eight Lakhs, Twenty One Thousand, Eight Sixty Eight Rupees and Eighty Eight Paise Only), the **Petition** is **admitted** in respect of the Corporate Debtor i.e. **M/s. BAVA INFRASTRUCTURE DEVELOPER PVT. LTD.** under Section 7 of the Code. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (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 off 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 (54 of 2002);*
- (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) *It is further directed that the supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*



(f) *The provisions of sub-section (1) shall however, 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, and to a surety in a contract of guarantee to a Corporate Debtor.*

(g) *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 Adjudicating Authority 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.*

18. The Financial Creditor in Part-III of Form-1 has proposed Mr. Madhugiri Venkatarayappa Sudarshan, a qualified insolvency professional as Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written Consent of the said IRP in Form-2 dated 13.07.2023 along with Affidavit dated 13.07.2023 is placed on record, wherein, the IRP *inter alia* affirmed that he is eligible to be appointed as IRP in the case of Corporate Debtor and that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.
19. In view of the above, the Bench hereby appoints **Mr. Madhugiri Venkatarayappa Sudarshan**, bearing Regn. No. IBBI/IPA-002/IP-N00561/2017-2018/11707 residing at No. 984/13, 8th Main, Girinagar II Phase, Bangalore -560085 KA, IN having Mobile: 9620300691, Email: sudarshan.mv@outlook.com **as an IRP of the Corporate Debtor**. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016. The IRP is also directed to file a copy of valid AFA within seven days from the date of receipt of copy of this Order.
20. The Financial Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakhs 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.
21. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the



Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.

22. A copy of the order shall be communicated to both the Parties. Ld. Counsel for the Petitioner shall deliver a copy of this Order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this Order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd/-

MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

-Sd/-

K.BISWAL
MEMBER (JUDICIAL)