



SL. No.2

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

PHYSICAL HEARING

**CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 04.10.2023, At 11:00 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB /4/2022
NAME OF THE COMPANY	Bharat Waterfront Pvt Ltd
NAME OF THE PETITIONER(S)	IL & FS Financial Services Ltd
NAME OF THE RESPONDENT(S)	Bharat Waterfront Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Present: Ld. Counsel for the Petitioner.
Ld. Counsel for the Respondent.

Orders pronounced, recorded vide separate sheets. In the result, Company Petition IB/4/7/HDB/2022 is allowed and admitted.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II**

CP(IB) No.4/7/HDB/2022

[Section 7 of the Insolvency and Bankruptcy Code, 2016]

Between:

M/s.IL & FS Financial Services Limited

Plot C-22

G-Block, Bandra Kurla Complex

Bandra East

Mumbai - 400 051.

....Applicant/Financial Creditor

AND

M/s.Bharat Waterfront Private Limited,

Sanpras Corporate Capital

115/1 & 115/29

6th Floor, Sheraton Towers

Financial District, Nanakramguda

Gachibowli

Hyderabad – 5000 032

.....Respondent/Corporate Debtor

Date of Order: 04.10.2023

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr.T.Vijayakumar Reddy, Advocate

For the Respondent : Mr.DVAS Ravi Prasad, Advocate

Heard on : 06.09.2023



PER: RAJEEV BHARDWAJ, MEMBER (JUDICIAL)

ORDER

1. This application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by M/s.IL & FS Financial Services Limited, Financial Creditor (Applicant) to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Bharat Waterfront Private Limited, Corporate Debtor (Respondent).

2. The facts necessary to dispose of this application, as stated, are that:

2.1 The corporate debtor approached the financial creditor for a long term loan of Rs.140 crores. On this request, the financial creditor issued offer letter dated 24th June, 2015. This offer was accepted by the corporate debtor on 26th June, 2015.

2.2 Consequently, both the parties entered into loan agreement (Annexure 7 of the application) on 26.06.2015. On the same date, promissory note (Annexure 6 of the application), Corporate Guarantee Deed (Annexure 8 of the application) and Personal Guarantee Agreement (Annexure 9 of the application) were also executed. On 27th January, 2015, Pledge Agreement (Annexure 10 of the application) was also executed between the financial creditor, corporate guarantor, personal guarantor and the corporate debtor.

2.3 It is claimed that the corporate debtor failed to honour its obligation as per the loan agreement and as a result, the financial creditor classified the corporate debtor as NPA on 27.09.2018. Therefore, the financial creditor issued



demand notice dated 02.11.2018 to the corporate debtor, corporate guarantor and personal guarantor asking them to pay the loan amount, but they failed to pay.

2.4 The total loan liability till 22.12.2021 was Rs.16,72,02,857/- which includes Rs.9,36,81,241/- as principal amount and the remaining as the interest. Thus, the cause of action to file the present application arose on 27.09.2018 and 4.11.2019 when the loan facilities were declared as NPA and shown in the corporate debtor's balance sheet respectively.

3.1 The corporate debtor while filing the counter has contended and disputed the averments of the application, but admitted that only Rs.9 crores was left and for which settlement was offered on 30.09.2019 and 24.01.2020 (Annexure 3 of the counter).

3.2 The respondent has denied its liability towards the applicant on the plea that this transaction is circular. In order to justify this contention, the corporate debtor has made reference to many dealings which were conducted between the corporate entities of the financial creditor with the respondent and these transactions are given below:

a) On 28.10.2009, the applicant granted a loan of Rs.127.50 crores to a group entity of the corporate debtor, M/s.Sriba Seabase Pvt Ltd for a period of one year. When this loan amount could not be repaid within the stipulated period, the applicant in order to keep the account evergreen so as to suppress the nature of the transactions, extended a fresh loan of Rs.150 crores on 18.10.2010 to M/s.Sriba Seabase Pvt Ltd. This loan was granted by the applicant so as to adjust against the existing loan to show a rosy picture in its balance sheet.



b) When the loan of Rs.150 crores advanced on 18.10.2010 also remained unpaid, the applicant extended a loan of Rs.143 crores to the respondent on 18.11.2011 to adjust the same against the outstanding loan of Rs.150 crores advanced to M/s.Sriba Seabase Pvt Ltd. (Copy of this agreement is at Annexure 1 of the counter).

c) The loan of Rs.143 crores advanced to the respondent in the year 2011 also could not be repaid and in order to clear this loan, another loan of Rs.140 crores was extended to M/s.Sriba Seabase Pvt Ltd on 31.12.2013 and which was adjusted against the outstanding loan of Rs.143 crores. (Copy of agreement is at Annexure 2 of the counter).

d) The loan advanced on 31.12.2013 to M/s.Sriba Seabase Pvt Ltd also could not be repaid and the applicant again to keep the account evergreen granted loan of Rs.140 crores on 02.07.2015 to the respondent and this was adjusted against the loan of Rs.140 crores.

e) Again the applicant granted a loan of Rs.115 crores on 10.10.2017 to another group company M/s.Aarkey Energy (Rameswaram) Limited for the repayment of the outstanding loan of the respondent and subsequently M/s.Aarkey Energy (Rameswaram) Limited cleared the loan.

3.3 On the basis of the balance sheet for the year ended 31st March, 2021 (Annexure 4 of the counter), it is submitted that CIRP will not yield any result because the respondent is not a going concern and is not having any asset base, except the liabilities. (Copy of the balance sheet is at Annexure 5 of the counter).



3.4 Besides, it is claimed that the present application has been filed with malafide reasons.

4.1 In the rejoinder, the applicant has reiterated and reaffirmed the contentions put forward in the application. It is denied that the applicant has granted loans to keep its account evergreen. The loan was granted for the purpose mentioned in the loan agreement.

4.2 It is claimed that the respondent has tried to mislead this Authority by making reference to certain transactions in para 2 of the counter. The term loan sanctioned to the respondent fell within the purview of the offer letter dated 24.06.2015 and the loan agreement dated 26.06.2015. It is averred that the respondent was required to provide certificate from the statutory authority confirming the end use of the funds disbursed and the certificate (Annexure 3 of the rejoinder) has been accordingly furnished on 31.08.2015 confirming that the funds sanctioned were released for the purpose for which it has been sanctioned, and thereby acknowledging the debt and purpose.

4.3 About the grant of loan, it is averred that in pursuance of letter of offer dated 24.06.2015 (Annexure 7 of the application) for a grant of Rs.140 crores to the respondent, the latter has accepted this offer and executed the loan agreement on 24.06.2015. The respondent in para No.2(f) of the counter has admitted the debt liability by submitting that only Rs.9 crores were left to be paid and regarding this composite settlement was offered on 30.09.2019 and 24.01.2020 vide Annexure 3 of the rejoinder. However, the total liability of the respondent is what has been claimed and this has been detailed in Annexure 3 of the application.



5. We have heard the counsel for both the parties and have also gone through the entire record.

6. The financial creditor can initiate Corporate Insolvency Resolution Process by filing an application before the National Company Law Tribunal. The financial creditor is required to prove the default and outstanding dues as per section 7(3)(a) of IBC, besides following conditions under sections 5(7) and 5(8):

- i. Disbursal of loan amount.
- ii. Such disbursal should be made for a consideration for time value of money, and
- iii. The debt, whole or any part, becomes due and payable and is not paid by the corporate debtor, meaning thereby commission of default.

7. The first contention of the Ld.Counsel for the respondent is based upon the disbursal of loan amount that there were circular transactions involving financial creditor and other two companies of the same group, namely, M/s.Sriba Seabase Pvt. Ltd and M/s.Aarkay Energy (Rameswaram) Ltd, to make the accounts evergreen. He has taken us to the Annexure 5 of the counter, which contains summary of loan movement, interest and other charges paid against Rs.143 crores as on 31.01.2009 and subsequently.

8. Para No.2(a)(f) of the counter pertains to Annexure 5 and these transactions can be understood from the tabular form given below:

S.No	Date of Loan	Amount of Loan (Rs.)	Name of the Entity	Period of loan	Repayment date as per Annexure 5 of the Counter
1	28.10.2009	127.50 crores	Sriba Seabase Pvt Ltd	One year (Repayable)	27.12.2011



				on or before Oct, 2010)	
2	18.10.2009	150 crores	Sriba Seabase Pvt Ltd	-	27.12.2011
3	18.11.2011 (Loan agreement Annexure I)	143 crores	Bharat Waterfront Pvt Ltd	-	31.12.2013
4	31.12.2013 (Loan agreement dated 27.12.2013	140 crores	Sriba Seabase Pvt Ltd	-	30.06.2015
5	02.07.2015 (Annexure 7 of the Peti- tion)	140 crores	Bharat Waterfront Pvt Ltd	-	31.03.2017
6	10.10.2017	115 crores	Aarkay Energy (Rameswaram) Ltd	-	Still outstanding

9. On the basis of these transactions, the Ld.Counsel for the applicant has tried to make out a case that the financial creditor was extending loan to the aforesaid 3 entities, so that on paper there appears no default as to breach the guidelines of the Reserve Bank of India and law. In support of his contention, he has also relied upon the decision of the Hon'ble NCLAT in *Ocean Deity Investment Holdings Limited, PCC versus Mack Star Marketing Private Limited, Company, Appeal No. 795 of 2021 decided on 8th September, 2022* to argue that in similar type of matter, it was held that the transactions were collusive in nature. In that case, M/s.Yes Bank Limited ('Yes Bank') advanced loans through M/s.Mack Star Marketing Private Limited to pay the dues owed by Mr.Wadhawan of HDIL to the bank.

10. On the other hand, Ld.Counsel for the applicant has claimed that the allegations of circular transactions are baseless and without any substance. In fact, the impugned loan falls within the purview of the loan agreement executed between the parties. All the three entities, i.e., M/s.Sriba Seabase Pvt. Ltd,



M/s.Aarkay Energy (Rameswaram) Ltd. and M/s.Bharat Waterfront Private Ltd are independent and separate, hence, one cannot be held liable for anything done by the other as the liability of the loan depends upon the agreement executed by the parties. The applicant was only a party to the agreements or arrangements entered into by the corporate debtor for the loan facility and not to its disbursement. He has relied upon the judgement of the Hon'ble NCLAT in *Sandeep Kasare versus IL&FS Financial Services Ltd & Anr. CA(AT) (Ins.) No.468/2022, decided on 20.09.2022* and tried to distinguish the judgement in *M/s.Ocean Deity Investment Holdings Limited (PCC) and Ors versus Suraksha Asset Reconstruction Limited and Ors.CA(AT) (Ins.) No.795/2021* primarily on the plea that Yes Bank admitted about the collusive arrangements in the disbursal of term loans.

11. Circular transactions are collusive in nature and are made only on paper to show the balance sheet of the financial creditor healthy. There is virtually no disbursal of loan to the party, but it is only shown on paper and finally the loan is routed back to the lender.

12. In order to understand the circular transactions, we need to know the meaning of 'financial debt' in section 5(8) of the IBC, 2016 and this cannot be read in isolation without considering other relevant definitions, particularly definition of 'claim' in section 3(6), 'corporate debtor' in section 3(8), 'creditor' in section 3(10), 'debt' in section 3(11), 'default' in section 3(12), 'financial creditor' in section 5(7). Here reference can also be made to the decision of the Hon'ble Apex Court in *Orator Marketing Pvt. Ltd. versus Samtex Desinz Pvt. Ltd. (2023)3 SCC 753*. Section 5(8) reads as below:



"5(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes--

- (a) money borrowed against the payment of interest;
- (b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;
- (e) receivables sold or discounted other than any receivables sold on non-recourse basis;
- (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation.--For the purposes of this sub-clause--

- (i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and
- (ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.



13. The Hon'ble Supreme Court in **Anuj Jain IRP for Jaypee Infratech Ltd. versus Axis Bank Ltd. (2020) 8 SCC 401**, examined the ingredients of Section 5(8), wherein it was held:

"43.....The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in sub-clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of 'disbursement' against 'the consideration for the time value of money' could be forsaken in the manner that any transaction could stand alone to become a financial debt. In other words, any of the transactions stated in the said sub-clauses (a) to (i) of Section 5(8) would be falling within the ambit of 'financial debt' only if it carries the essential elements stated in the principal clause or at least has the features which could be traced to such essential elements in the principal clause. In yet other words, the essential element of disbursal, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as 'financial debt' within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money."

14. Thus, the pre-requisites for any transaction falling under sub-clauses (a) to (i) of section 5(8) are 'debt' and 'disbursement'. There is admission of the respondent about the existence of debt in Para no 2(f) of the Counter that there was settlement proposal for Rs. 9 crores. The second ingredient 'disbursement' entails that disbursal must be for consideration for time value of money. The term disbursement for the time value of money has been explained by the Hon'ble Apex Court in **Phoenix Arc Private Limited versus Spade Financial Services Limited and Ors (2021)3 SCC 475**:

*46. In this context, it would be relevant to discuss the meaning of the terms "disburse" and "time value of money" used in the principal Clause of Section 5(8) of the IBC. This Court has interpreted the term "disbursal" in **Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416** in the following terms:*



70. The definition of "financial debt" in Section 5(8) then goes on to state that a "debt" must be "disbursed" against the consideration for time value of money. "Disbursement" is defined in Black's Law Dictionary (10th Edn.) to mean:

1. The act of paying out money, commonly from a fund or in settlement of a debt or account payable. 2. The money so paid; an amount of money given for a particular purpose.

71. In the present context, it is clear that the expression "**disburse**" would refer to the payment of instalments by the allottee to the real estate developer for the particular purpose of funding the real estate project in which the allottee is to be allotted a flat/apartment. The expression "disbursed" refers to money which has been paid against consideration for the "time value of money". In short, the "disbursal" must be money and must be against consideration for the "time value of money", **meaning thereby, the fact that such money is now no longer with the lender, but is with the borrower, who then utilises the money...**

(own emphasis)

47. The report of the Insolvency Law Committee dated 26 March 2018 has discussed the interpretation of the term "time value of money" and stated:

The current definition of 'financial debt' Under Section 5(8) of the Code uses the words "includes", thus the kinds of financial debts illustrated are not exhaustive. The phrase "disbursed against the consideration for the time value of money" has been the subject of interpretation only in a handful of cases under the Code. The words "**time value**" have been interpreted to mean compensation or the price paid for the length of time for which the money has been disbursed. This may be in the form of interest paid on the money, or factoring of a discount in the payment.

(own emphasis)

G.3.3 Collusive Transactions

48. The above discussion shows that money advanced as debt should be in the receipt of the borrower. The borrower is obligated to return the money or its equivalent along with the consideration for a time value of money, which is the compensation or price payable for the period of time for which the money is lent. A transaction which is sham or collusive would only create an illusion that money has been disbursed to a borrower with the object of receiving consideration in the form of time value of money, when in fact the parties have entered into the transaction with a different or an ulterior motive. In other words, the real agreement between the parties is something other than advancing a financial debt. A useful elaboration of "sham transactions" can be found in the opinion of Diplock LJ in *Snook v. London and West Riding Investments Ltd.* [1967] 2 QB 786:



15. Accordingly, the transaction can't be termed as circular one when the money does not remain with the lender, but with the borrower and he then utilises this amount for the purpose agreed upon. In the present case also, the lender has not kept the amount with it but has transferred to the account of the respondent. The statutory auditor of the respondent has also authenticated the end use of the loan amount as per the agreement executed between the parties. The respondent was required to submit statutory audit certificate confirming the end use of funds within 30 days from the date of disbursement for using the loan amount as per the agreement. The certificate required was provided by the applicant on 31.08.2015 (Annexure 3 of the rejoinder). The relevant Clause 2 is reproduced below:

“That the Company has not, directly or indirectly, utilised the funds availed from IFIN for speculative purposes or the purposes of circular trading, insider trading or for any other purposes which are prohibited under law and/or by the Securities and Exchange Board of India and /or the Reserve Bank of India and/or Foreign Exchange Management Act and/or any competent authority and manner of utilization is in compliance with guidelines, rules and regulations of the regulatory bodies.”

16. From the table given in earlier para, it is seen that a loan of Rs.150 crores was sanctioned in favour of M/s.Sriba Seabase Pvt. Ltd on 28.10.2009. Another loan of Rs.150 crores was advanced on 18.10.2010 to the same company. The applicant granted another loan of Rs.143 crores on 27.12.2011. The first two loans were cleared in the year 2011, while the loan of the respondent on 31.12.2013. Another loan of Rs.140 crores was sanctioned to M/s.Sriba Seabase Pvt. Ltd on 31.12.2013, which was paid back on 30.06.2015. Therefore, there is substantial time gap between the taking of loan and its repayment. The latest loan was advanced on 10.10.2017 to M/s.Aarkay Energy (Rameswaram) Ltd which is claimed to have been used for the settlement of the loan taken on 31.03.2017 by the respondent.



17. The transactions as carried out between these three entities show that there is no connection between them to link that one loan was taken for the repayment of another loan. There is not only big time gap between the taking of loan and its repayment but these three entities are also separate and independent. It is well settled law that the suspicion or doubt howsoever strong cannot take place of the evidence and cannot be made basis of drawing inference. Here, we place reliance on the decision in *Commissioner of Income Tax versus Daulatram Rawatmall (1964) 53 ITR 574 SC*. The applicant was also not party to the agreements which were executed by M/s.Sriba Seabase Pvt. Ltd or M/s.Aarkay Energy (Rameswaram) Ltd with others after the disbursal of loan to them.

18. The judgment in *M/s.Ocean Deity Investment Holdings Limited (Supra)* has been given on the basis of different facts and which is clearly distinguishable from the present one. In that case, there was direct payment of Rs.40 crores, part of the loan amount granted in favour of M/s.Mack Star Marketing Private Limited to the account of M/s.IL & FS Financial Services Limited even before the execution of loan documents. Four term loans to the sum of Rs. 147 Crores were sanctioned in between 2012 to 2016 by the Yes Bank to the M/s.Mack Star for the purpose of renovating Kaledonia which is a brand new building and was two years old, constructed at a cost of Rs. 100 Crores. Out of this amount, Rs. 40 Crores were directly disbursed by the Yes Bank to the Bank Account of Wadhawans HDIL instead of M/s.Mack Stars Bank Account even before related documents were signed. The entire loan amount was siphoned off by the Wadhawans through their HDIL group companies to Yes Bank again for settling the HDIL group companies' earlier loans taken from Yes Bank. Actually, these loans were on the verge of turning into NPA. Therefore, the purpose of the sanctioning and disbursement of loans was to evergreen the accounts of HDIL with Yes Bank to save them from becoming NPA. Yes Bank never carried out any due diligence on Mack Star's



need for funds and the ultimate end-use because they knew that the ultimate use was to finance loan repayments by the HDIL Group companies. The loan was advanced ignoring the Articles of Association of the Mack Star availing any loans without the approval of its shareholders and Yes Bank continued disbursing these loans despite being asked in writing by the appellant that their affiliated company HDIL were not authorized to avail any loan on behalf of Marck Star's behalf. More than 99% of the loan disbursed was used to discharge the liabilities of the HDIL Group to Yes Bank. There was criminal conspiracy not only of the officials of the Companies used for taking loan or its disbursal and also the Statutory Auditor of Mack Star, therefore, the CBI and the ED registered cases.

19. However, the facts in the present case are totally different. On the other hand, the decision relied upon by the Ld.Counsel for the applicant in "***Sandeep Khare Supra***" is applicable to the present case because the facts are almost similar.

20. Thus, there is not only time gap between the transactions executed by the applicant with the three entities, but there is also no direct or indirect link to say that the loan amount was meant to clear the loans granted by the applicant. It cannot be said in any manner like in the case of ***M/s.Ocean Deity (supra)*** that the loan amount was raised by the respondent from M/s.Sriba Seabase Pvt. Ltd or M/s.Aarkay Energy (Rameswaram) Ltd. to pay off the debt of the financial creditor. Therefore, we come to the conclusion that there was no circular transaction.



21. The next argument of the Ld.Counsel for the respondent is that the respondent is no more an ongoing concern because in the balance sheet for the year ended 31st March, 2021 (Annexure 4 of the application), it was observed that this concern has no asset, but only liabilities and accordingly, no purpose will be served if the CIRP is started. He has also relied upon the decision of Hon'ble NCLAT in *M/s.Synew Steel Pvt Ltd CP(IB) No.96/BB/2020, decided on 16.11.2020*, wherein it was held that no useful purpose would be served by placing the corporate debtor under liquidation process if no assets are owned by the corporate debtor.

22. To the contrary, Ld.Counsel for the applicant submitted that IBC, 2016 provides a speedy mechanism to identify the early financial adversity and initiate winding up of the company even when the corporate debtor is not having any asset, the application for dissolution is to be allowed.

23. It is settled position of law that once debt and default is proved to the satisfaction of the Adjudicating Authority, there is hardly a discretion left with the NCLT to refuse admission of the application under section 7. [See *Innoventive Industries Limited versus ICICI Bank & Anr., 2018 1 SCC 407* and *M.Suresh Kumar Reddy versus Canara Bank & others (2023) ibclaw.in 67 SC*]. It has been held by the Hon'ble Supreme Court in *Arun Kumar Jagatramka versus Jindal Steel and Power Ltd. (2021) 7 SCC 474* that judicial intervention or innovation be kept at bare minimum and not to disturb the foundational principles of the IBC. In view of the law discussed above, we can't go beyond four corners of law and invent out our own way to stop CIRP. It is not the duty of the Adjudicating Authority to resolve the disputes like settlement, arbitration etc., and for the release of debt, the insolvency resolution process is to be followed. [See *Sesh Nath Singh and another versus*



Baidyabati Sheoraphuli Cooperative Bank Limited (2021)7 SCC 313]. It is only after the CIRP, this authority would come to know about the exact assets and liabilities as detailed enquiry is to be conducted by the RP who will examine not only the balance sheet of the corporate debtor, but also other material. The decision in *M/s.Synew Steel Pvt Ltd* supra is not applicable because in that case after the initiation of CIRP, the IRP could not constitute the CoC and further on enquiry, no asset was found to be owned by the corporate debtor and this was also confirmed by the balance sheet ended on 31.03.2020. It is on the basis of this material, the Hon'ble NCLAT came to conclusion that there was no need to convene the meeting of the CoC etc., and it would be just and proper to dissolve the company as proposed by the Resolution Professional.

24. Another plea which has been raised by the Ld.Counsel is that this petition has been filed with malafide intention, but this ground has been taken only for the sake of objection because there is nothing on record to prove that there is malafide purpose of the applicant to file the present application. The applicant is able to prove the requirements of section 7 of the IBC that there are debt and default.

25. For the reasons as discussed above, we come to the conclusion that the applicant is able to prove that Rs.9,36,81,241/- as principal amount and interest thereon is still due from the respondent and the latter has made default in making payment. Hence, this application is allowed.

26. As a result, 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 the following directions: -



- i. 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;

- ii. 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.

- iii. 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.



- iv. 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.
- v. That 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 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.
- vi. That the Financial Creditor proposed the name of Mr. Murali Mohan Chevuturi as Interim Resolution Professional and he has given his consent in Form-2 and as per IBBI website, his Authorisation for Assignment (AFA) is valid upto 06.06.2021. Accordingly, this Adjudicating Authority appoints Mr. Murali Mohan Chevuturi as Interim Resolution Professional, having Registration No. IBBI/IPA-003/00307/2020-2021/13464, email: mohan.chevuturi@gmail.com, as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- vii. The Petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional within three days from the date of this Order to meet out the expenses and his fee to perform the functions assigned to him in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The initial expenditure incurred by IRP shall, however, be subject to the approval by the Committee of Creditors, in its first meeting.



- viii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- ix. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of the Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.
- x. As a result, CP(IB) No.4/7/HDB/2022 is admitted.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

Vinod/Syamala