

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II



IA No. 2380 of 2023
IN
CP (IB) No. 368/MB/C-II/2023

In the Application of IA No. 2380 of 2023

Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 (“code”)

Axis Bank Limited

...Applicant

V/s

Supreme Transport Organization Private Limited

...Respondent

In the matter of

Axis Bank Limited

...Financial Creditor

Versus

Supreme Transport Organization Private Limited

...Corporate Debtor

Order Delivered on : 08.09.2023

Coram:

Hon’ble Member (Technical)
Mr. Anil Raj Chellan

Hon’ble Member (Judicial)
Mr. Kuldip Kumar Kareer

Appearances:

For the Applicant/Financial Creditor

: Adv. Prakash Shinde a/w

Yash Dhruva and Meghna Arvind

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For the Respondent/Corporate Debtor : Adv. Shyam Kapadia a/w
P. Ranjan and Yash Jain

ORDER

Per: Kuldip Kumar Kareer, Member Judicial

1. This Company petition is filed by Axis Bank Limited (hereinafter called as "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Supreme Transport Organisation. (hereinafter called as "Corporate Debtor") by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Principal amount being Rs. 10,49,26,262/- (Rupees Ten Crores Forty-Nine Lakhs Twenty-Six Thousand Two Hundred and Sixty Two only) and interest being 6,46,69,647.29/- (Rupees Six Crores Forty Six Lakhs Sixty Nine Thousand Six Hundred and Forty Seven and Twenty Nine Paisa only) aggregating to Rs. 16,95,95,909.29/- (Rupees Sixteen Crores Ninety-Five Lakhs Ninety-Five Thousand Nine Hundred and Nine and Twenty-Nine Paisa only) as on 16.03.2023. The date of default is on 01.05.2019 and was declared as NPA on 30.07.2019.



Facts of the Case:-

2. It is submitted by the Financial Creditor that the Corporate Debtor was sanctioned a loan facility aggregating to Rs. 24.90 crores vide sanctioned letter dated 27.03.2017. Following the sanctioning of the loan, the Corporate Executed Loan Agreement dated 30.03.2017. The Corporate Debtor further created equitable mortgage of its properties by executing a Memorandum of Entry dated 31.03.2017. The Corporate Debtor further executed a Declaration cum Confirmation deed dated 03.04.2017. It also executed a deed of hypothecation dated 30.03.2017 hypothecating all outstanding, monies receivable, claims and bills etc. A demand Promissory Note dated 29.03.2017 was also executed towards Term Loan Facility and a separate demand notice was executed on 29.03.2017 towards invoice billing discounting facility. To secure the repayment of the loan, Deeds of Guarantee dated 29.03.2017 were separately executed by Mr. Akash Kamal Agrawal, Mr. Ammeet Kamal Agrawal, Mr. Girish Jagdishkumar Agarwal and Mr. Kamal Agarwal.
3. It is further stated that pursuant to the Loan Agreement executed between the Financial Creditor and the Corporate Debtor, an amount of Rs. 12.50 crores were disbursed as on 31.03.2017. However, the Corporate Debtor failed to repay dues under the Term Loan Facility, and started committing default in repayments. Eventually, the Corporate Debtor was classified as

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Non-Performing Asset on 30.07.2019. On 28.02.2020, the Financial Creditor issued a recall notice to the Corporate Debtor and the Guarantors to pay the outstanding dues of Rs. 11,68,23,187/- due and payable as on 31.01.2020. However, no payment was made by the Corporate Debtor.

4. It is further submitted that the Financial Creditor issued several remainders including demand notice dated 24.08.2020 under Section 13 (2) SARFESI Act but despite that no payment was made by the Corporate Debtor. Instead, the Corporate Debtor vide letter dated 23.10.2020 proposed to the Financial Creditor One Time Settlement of Rs. 5 crores against the entire pending dues. Later on, the Corporate Debtor vide letter dated 02.11.2020 modified/enhanced the offer to Rs. 5.50 crores.
5. The Financial Creditor has further submitted that the Corporate Debtor has committed a default of Rs. 16,95,95,909.29/- as on 16.03.2023. Hence the Petition.

Reply Filed by the Respondent/Corporate Debtor:-

6. In the reply filed by the Respondent/Corporate Debtor, it has been admitted that the Financial Creditor sanctioned a Term Loan Facility of Rs. 12.50 crores and Invoice Bill Discounting facility of Rs. 12.40 crores against execution of various documents by the Corporate Debtor and its Directors. The Corporate Debtor has further mortgaged and hypothecated its

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properties with the Financial Creditor. However, the Financial Creditor failed to disburse the entire Loan Facility of Rs. 24.90 crores, as promised in the sanctioned letter.

7. It is further stated that the Corporate Debtor lodged complaints with the Financial Creditor that three of its high valued properties were got wrongly mortgaged by the Financial Creditor for a loan of Rs. 12.50 crores. Thereafter, the Financial Creditor sent a revised sanction letter dated 27.03.2018 mentioning that the Invoice Bill Discounting facility had been cancelled and the property situated at Village- Khanavale, Taluka-Panvel & District- Raigad would be released. However, the said property was not released from mortgaged despite assurances given by the Financial Creditor. In this manner, the Financial Creditor continued to unlawfully hold the charge of the Panvel property. The Corporate Debtor came to know that the Financial Creditor had misplaced the original documents pertaining to said property. The Financial Creditor further wrongfully deprived the Corporate Debtor of the funds agreed to be granted causing acute loss to it.

8. It is further stated that the Financial Creditor has also filed Original Application No. 64 of 2021 with the Hon'ble Debt Recover Tribunal, Mumbai against the Corporate Debtor which is still pending. The Corporate Debtor further states that the present application is barred by time. Moreover, the Financial Creditor was not entitled to retain the title documents of the properties of the Corporate Debtor as collateral security when the

entire amount of the sanctioned loan was not disbursed. The Corporate Debtor has denied all other allegations made in the petition as wrong and baseless and has also prayed for dismissal of the same.

FINDINGS

9. We have heard the Counsel for the parties and gone through the record.
10. During the course of arguments, the Counsel for the Applicant has argued that the factum of debt and default stands established on record. According to the Counsel for the applicant, the loan was sanctioned vide sanctioned letter dated 27.03.2017 (Annexure G). The Counsel for the Applicant has further referred to the Term Loan Agreement (Annexure H) executed between the parties. Counsel for the Applicant has further referred to the Memorandum of Entry (Annexure I) dated 31.03.2017 whereby the Corporate Debtor mortgaged its properties by deposit of title deeds.
11. According to the Counsel for the Applicant, the Corporate Debtor submitted default in repayment and notice dated 25.11.2019 to the Corporate Debtor classifying its account as Non-Performing Asset (NPA). The Counsel for the Applicant has further referred to the letters (Annexures X) dated 23.10.2020 and Annexure Y dated 02.11.2020 whereby the Corporate Debtor

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offered One Time Settlement of Rs. 5 crores and again Rs. 5.50 crores respectively. The Counsel for the Applicant has further argued that by submitting One Time Settlement offers through the aforesaid letters, the Corporate Debtor has acknowledged its liability to pay the outstanding sum to the applicant. Therefore, the instance application under Section 7 of the Insolvency and Bankruptcy Code, 2016 deserves to be admitted.

12. On the other hand, the Counsel for the Respondent/Corporate Debtor has argued that the present case is not a fit one to be “admitted” under Section 7 of the Code. The Counsel for the Corporate Debtor has further argued that as per the sanctioned letter dated 27.03.2017, a sum of Rs. 24.90 crores were agreed to disbursed by the Applicant/Bank to the Corporate Debtor. However, as against this, only 50% of the sanctioned amount was disbursed. On the contrary, the Applicant/Bank made the Corporate Debtor mortgage its properties to it which were worth more than Rs. 25 crores, as shown in the Memorandum of Entry. The Counsel for the Applicant has further pointed out that one of the mortgaged properties situated at Panvel was worth more than Rs. 16 crores.

13. The Counsel for the Corporate Debtor has further argued that when the Corporate Debtor asked the Applicant/Bank to release one of the properties, the Applicant/Bank imposed certain unreasonable conditions due to which it became difficult for Corporate Debtor to smoothly runs its business and to arrange for

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credit from other sources. Therefore, the Applicant/Bank cannot be allowed to take advantage of its own wrongs.

14. Counsel for the Respondent/Corporate Debtor has further argued that even otherwise the present application under Section 7 of the Code deserves to be dismissed in the light of a law laid down by *the Hon'ble Supreme Court in the matter of Vidarbha Industries Power Limited Vs. Axis Bank Limited (Civil Appeal No. 4633 of 2021 decided on 12.07.2022)* whereby it has been held that it is not object of the IBC to penalize the solvent companies, temporarily defaulting in repayment of its financial debts by initiating CIRP. It was further held that Section 7 (5) (a) of the IBC confers discretionary power on the Adjudicating Authority to admit an application of a Financial Creditor under Section 7 for initiation of CIRP. In this regard, it has been contended by the Counsel for the Corporate Debtor that the value of just one property situated at Panvel mortgaged with the applicant bank is about Rs. 16 crores which shows that the Corporate Debtor has sufficient back up to discharge its liabilities.

15. The Counsel for the Corporate Debtor has further pointed out that the arbitration proceedings between the Corporate Debtor and an Insurance Company are pending whereby the insurance company has offered to pay an amount of Rs. 11 crores to the Corporate Debtor by way of settlement. In this regard, Counsel for the Corporate Debtor has relied upon the minutes of a meeting held on 16.06.2022, which are attached with the additional affidavit filed by the Corporate Debtor. In the said minutes, it is

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recorded that New Indian Assurance Company Limited is ready to settle the claim of the Corporate Debtor for a sum of Rs. 11 crores.

16. The Counsel for the Corporate Debtor has further argued that since the Corporate Debtor is having enough sources, as indicated above, in the shape of a valuable property worth more than Rs. 16 crores and another amount of Rs. 11 crores is likely to be realized from the Insurance Company with whom arbitration proceedings are pending, the Corporate Debtor cannot be admitted into CIRP merely for non-payment of Rs. 16 crores. Therefore, according to the Counsel for the Corporate Debtor the present case is squarely covered under the law laid down by the Hon'ble Supreme Court in Vidarbha Industries Limited is case (supra).

17. We have weighed the contentions raised by the Counsel for the parties and gone through the record.

18. So far as the question of debt and default is concerned, the same has not been disputed by the Corporate Debtor. It has also not disputed a sum of about Rs. 16 crores are outstanding. In addition, to this, the Corporate Debtor has candidly admitted its liability when it submitted the OTS proposal to pay a sum of Rs. 5.50 crores towards the outstanding dues.

19. The only question which is left to be resolved in this case is as to whether the discretion under Section 7 of the Code has to be



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exercised or not in the light of law laid down in Vidarbha Industries Limited case. In this context, it would be pertinent to refer to the OTS proposal letter dated 02.11.2020 addressed by the Corporate Debtor to the applicant bank wherein it is stated that increased amount of settlement beyond of Rs. 5.50 crores would burden the Corporate Debtor financially. From whatever has been stated in the said letter, it is evident that the Corporate Debtor is facing acute financial difficulty and was not able to shell out more than Rs. 5.50 crores against an admitted liability of more than Rs. 15 crores. This speaks volumes about the financial health of the Corporate Debtor.

20. Secondly, there is no concrete evidence on record that the Corporate Debtor holds properties or just one property held by the Corporate Debtor is sufficient to fetch a sum of Rs. 16 crores instantly. Similarly, till date, no arbitration award is shown to have been passed in favour of the Corporate Debtor in respect of the alleged amount of Rs. 11 crores. Apart from this, it has been held by the Hon'ble Supreme Court in the matter of M. *Suresh Kumar Reddy Vs. Canara Bank & Others. (Civil Appeal No. 7121 of 2022 decided on 11.05.2023)* that the decision in the case of Vidarbha Industries Limited cannot be read and understood as taking a view which is contrary to the view taken in the case of *Innoventive Industries Ltd. vs ICICI Bank & Anr. (Civil Appeal Nos. 8337-8338 of 2017 and E.S. Krishnamurthy & Ors. vs. M/s Bharath Hi Tech Builders (Civil Appeal No 3325 of 2020)* which still holds good.

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21. Hence, from a perusal of the record and the documents relied upon by the Financial Creditor, it stands proved that there has been a financial debt in respect of which default has been committed by the Corporate Debtor and further that the Application has been filed within the period of limitation. Therefore, the Application u/s 7 of the Code, deserves to be admitted. It is ordered accordingly in the following terms:

ORDER

- a) **The above Company Petition No. (IB) 368 (MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Supreme Transport Organization Private Limited.**
- b) In view of the admission of the above Company Petition, **IA No. 2380 of 2023 is infructuous.**
- c) This Bench hereby **appoints Mr. Prashant Jain, Registration No: IBBI/IPA-001/IP-P00799/2017-18/11374 as the Interim Resolution Professional** having registered address at **A-501, Shanti Heights, Plot No. 2,3,9b/10, Sector 11, Koparkharine, Navi Mumbai - 400709, email :- ipprashantjain@gmail.com**, to carry out the

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functions as mentioned under the
Insolvency & Bankruptcy Code, 2016.

- d) The Financial Creditor shall deposit an amount of Rs. 3 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- e) Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order 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 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

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Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- f) 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.
- g) 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.
- h) That the order of moratorium shall have effect from the date of pronouncement 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, as the case may be.
- i) That the public announcement of the corporate insolvency resolution process shall be

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made immediately as specified under section 13
of the Code.

- j) During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- k) Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**ANIL RAJ CHELLAN
(MEMBER TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
(MEMBER JUDICIAL)**