

SL. No.1

NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II

Video Conference

CORAM: HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,-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 17.06.2022 AT 02:15 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.402/7/HDB/2020
NAME OF THE COMPANY	DQ Entertainment (International) Ltd
NAME OF THE PETITIONER(S)	Export -Import Bank of India
NAME OF THE RESPONDENT(S)	DQ Entertainment (International) Ltd
UNDER SECTION	7 of IBC

ORDER

Order Pronounced vide separate sheets. CP(IB) No. 402/7/HDB/2020 is hereby admitted.

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MEMBER (I)

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MEMBER (J)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.402/7/HDB/2020  
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 DQ ENTERTAINMENT (INTERNATIONAL LIMITED)**

Between:

M/s. Export-Import Bank of India,  
Having his head office at  
Floor 21, Centre One Building,  
World Trade Centre Complex,  
Cuffe Parade, Mumbai – 400 005  
and is acting through its Regional Office at  
6-3-639/640, 2<sup>nd</sup> Floor, Golden Edifice,  
Raj Bhavan Road, Khairtabad,  
Khairtabad Mandal,  
Hyderabad – 500 004, Telangana.

...Petitioner/  
Financial Creditor

And

M/s. DQ Entertainment (International) Limited,  
Regd. Office: #644, Aurora Colony,  
Road No.3, Banjara Hills, Shaikpet Mandal,  
Hyderabad – 500 034, Telangana, India.

...Respondent/  
Corporate Debtor

**Date of Order: 17.06.2022**

**Coram: Dr. Venkata Ramakrishna Badarinath Nandula, Member Judicial.  
Dr. Binod Kumar Sinha, Member Technical.**

**Parties/Counsels present:**

For the Financial Creditor: Mr. P. Ravi Charan and Ms. Niharika, Counsel

For the Corporate Debtor: Mr. A. Chandra Shekar, Counsel

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Per: Bench

ORDER

- 1) Under consideration is a Company Application filed by M/s. Export-Import Bank of India (Exim Bank) (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 initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. DQ Entertainment (International) Limited (in short, "*Respondent/Corporate Debtor*").
- 2) Brief facts of the case as submitted by the Financial Creditor are as follows:
  - a) Financial Creditor was established by virtue of Export-Import Bank of India Act, 1981 which came into force on January 1, 1982. That the Corporate Debtor is engaged in the business of animation, gaming, live action entertainment, production and distribution, Television, Feature Films, Home Video, Online Game Art, Visual Effects, mobile and next generation console games.
  - b) That the Applicant extended a non-funded facility upto a limit of USD 3.25 Million by way of issuance of Stand by Letter(s) of Credit ("**SBLC**") towards Corporate Debtor's contribution for the various global animation co-production projects, including any amendments and modifications therein from time to time. The Initial Facility was subsequently renewed and modified from time to time.
  - c) Under the Renewed Facility, the Applicant issued a SBLC aggregating USD 2,692,831.66 in favour of Bank of India, Jersey ("*Beneficiary*") with validity upto January 31, 2017, to facilitate Corporate Debtor's Subsidiary, DQ Entertainment (Ireland)

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Limited, to avail finance for the project named "The New Adventures of Lassie".

- d) That the said SBLC was invoked by the Beneficiary and the applicant on January 31, 2017 remitted to the Beneficiary an aggregate amount of USD 2,692,831.66 (**Invoked amount**). The Applicant vide its letter dated February 03, 2017 called upon the Corporate Debtor to immediately pay to the Applicant the Invoked Amount. However, the Corporate Debtor failed to make any payments to the Applicant and consequently the account of the Corporate Debtor was classified as a Non-Performing Asset in the books of account of the Applicant w.e.f. May 02, 2017 as per directives issued by the Reserve Bank of India vide its letter dated October 31, 2017.
- e) That the Applicant once again called upon the Corporate Debtor to pay all amounts due to it. However, the Corporate Debtor failed to clear its overdue and accordingly, the entire foreign currency overdue amounts were converted into Indian Rupee (INR) @ 74.05/USD attracting interest payable from October 31, 2018 till date of payment at the Applicant's Prime Lending Rate which was then 15% p.a., liquidated damaged at 2% p.a. and additional interest at the rate of 1% p.a. The same was communicated to the Corporate Debtor vide Applicant's letter dated November 02, 2018, by which the applicant called upon the Corporate Debtor to pay to it an aggregate amount of Rs.19,13,84,483.00/- (Rupees Nineteen Crore Thirteen Lakh Eighty Four Thousand and Four Hundred Eighty Three only) due as of October 31, 2018 along with interest at the rates specified in the said letter. Since no payments were received, the Applicant, on November 22, 2018, invoked the personal guarantee of Mr. Tapaas Chakravarti. However, as on

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- date, neither the Corporate Debtor nor Mr. Tapaas Chakravarti have made any payments to the Applicant/Financial Creditor.
- f) That the aggregate amount of default as on 26.08.2020 is Rs.254,786,651.96/-.
  - g) That the Corporate Debtor has acknowledged the debt and default in repayment of principal and interest to the Applicant/Financial Creditor and same is evident from its Annual Report and independent auditor report for the year ending 31.03.2019.
  - h) The Applicant annexed the details of Record of Financial Information-Form C as on 14.09.2020 filed with National E-Governance Services Limited (Information Utility) and CRICIL report.
  - i) Reiterating the above, learned counsel for the Financial Creditor prayed to admit the instant Application.
- 3) Learned counsel for the Respondent filed counter inter-alia stating that the allegations made by the Financial Creditor are denied except those that are specifically admitted hereunder:
- a) That the registered office is situated in Hyderabad, but the documents were executed at Mumbai and the parties to the agreement have agreed to resolve the dispute in Court located in Mumbai. Hence, subject matter is outside the jurisdiction of the Adjudicating Authority.
  - b) The Application is not maintainable as the applicant failed to comply with the provision of Circular No. IBBI/LD35/2020 dated 29.10.2020 which mandatorily prescribed for submissions of the applications to IBBI before submitting to Adjudicating Authority.
  - c) That the Respondent is not liable to pay Rs.25,47,86,651.96/- as the Applicant has not disbursed the full amount of the sanctioned facilities and failed to honour the terms of the various contracts and agreement entered between both the parties.

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- d) The Respondent has never received any payments. The Applicant failed to file Statement of Accounts as per the Bankers books of evidence.
- e) The amounts are inflated only for the purpose of filing the present application. That the applicant is unsure about the amount being claimed as the mentioned outstanding amount of Rs.25,47,86.651.96/-. The mismatched figures show the casual manner of Applicant in which the accounts are maintained.
- f) That the application has not been filed by authorized person.
- g) That all the facilities were executed in year of 2017. The Applicant declared the Respondent as NPA on May 02, 2017. Therefore, the application is barred by limitation. The Section 238A of the code provides for Limitation. The present application is filed on 23.10.2021 thus, it is barred by limitation.
- h) The Applicant failed to consider the payments made by the Corporate Debtor from time to time and deducted huge amounts from the accounts without any valid reasons and consent. The letter allegedly sent by the Applicant were never received by Respondent.
- i) That the Applicant converted the entire foreign currency into Indian Rupees without any confirmation from Respondent which cause huge financial loss. That the conversion of the amount from USD dollars to Indian Rupees and applying interest of 15% pa. is unilaterally done and is in violation of banking regulations. That the Respondent specially requested to continue the loan in USD dollars.
- j) That the personal guarantee of Tapaas Chakravarthi is not a valid document and the same cannot be enforced in accordance with law as they are not properly stamped, and amounts, disbursed to the Respondent were not notified to the guarantor.

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- k) That the documents were signed under undue influence and coercion of the Representatives of the Applicant.
- l) That the Corporate Debtor has gone undergone several Financial crises and same is continuing till date. That many employees have not worked due to Covid-19 which delayed the execution of the projects and all payments due to the Applicant are delayed. The entire business operations of the Respondent were closed due to lockdown in March 25 to 15 June 2020.
- m) The Applicant has been attending the joint lenders meeting with other banks and has agreed for the arrangement to receive part payments in instalments from all the revenues earned by the corporate debtor.
- 4) That the Applicant filed rejoinder and written submissions, inter-alia stating as under:-
- a) The Application under Section 7 of the IBC Code can be made against the Corporate Debtor only where its registered office is situated. Therefore, the jurisdiction of this bench is Hyderabad.
- b) The Applicant has delivered the copy of Application to IBBI through speed post on 23.10.2020 and through email as well. Therefore, the contention of the Corporate Debtor that the circular dated 29.10.2020 Circular No. IBBI/LAD/35/2020 is not complied is wrong and baseless.
- c) It is denied that the Applicant has not filed the statements of accounts as per the bankers' book of evidence.
- d) The Applicant denies that the application is not filed by an authorized person. The application is filed by authorized person who is authorized to sign loan agreements, accept title deeds, to sign Vakalats and enforce rights/actions under the SARFESI Act as well as under Insolvency and Bankruptcy Act, 2016/ Therefore, the

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authorized person Ms. Poornima Busi is validly authorized to file Section 7 Application under the Code.

- e) The Corporate Debtor has paid an amount of Rs.8,99,395/- on 13.09.2019 towards partial discharge of its outstanding's payable to the Applicant.
- f) The Corporate Debtor has also issued two cheques dated 21.09.2018 which is equivalent to Rs.3.76 Crores which were dishonored and a complaint under Section 138 of the Negotiable Instruments Act, 1881 is filed and pending for adjudication. The said issuance of cheques and dishonor evidences the default committed by the Corporate Debtor in repayment of its outstanding to the Financial Creditors. The Corporate Debtor has admitted the debt and default in its annual reports, gave balance confirmation letter hence, the contention of the Corporate Debtor that the application is barred by limitation is liable to be rejected.
- g) That here is only one facility i.e. Stand by Letter(s) of Credit granted to the Corporate Debtor hence, filing of statement for each of the facilities does not arise. The default of the Corporate Debtor is in excess of Rs.1 Crore, therefore the Application under Section 7 of the code is maintainable.
- h) That the Applicant relies on the following case law:
- i. Lakshmi Narayan Sharma Vs. Punjab National Bank and Anr. Company Appeal (AT)(CH)(Insolvency) No.01 of 2021, Date of Order:12.05.2021
  - ii. Rajendrakumar Kundanmal Jain Vs. Vijail A. Jain & Anr. Company Appeal (AT) (Insolvency) No.366 of 2020, Date of Order: 04.03.2021
  - iii. Asset Reconstruction Company (India) Private Limited Vs. Bishal Jaiswal and Another Civil Appeal No.323 of 2021, Date of Order: 15.04.2021

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- i) Reiterating the above, the learned counsel for the Respondent prayed to reject the instant Application.
- 5) Heard and perused the record.
- 6) It is the case of the Applicant that an amount of Rs.254,786,651.96/- is due and payable by the Corporate Debtor as on 20.08.2020. Per contra, the Applicant herein has nowhere denied its debt due and payable but has only raised certain technical grounds for rejection of this Application which have been duly explained point by point in the rejoinder filed by the Applicant herein as summarized above. In fact, all the grounds as raised by the Corporate Debtor are untenable grounds for rejection of the instant Application by virtue of Law as settled by various judicial pronouncements of Hon'ble NCLAT and Hon'ble Supreme Court and therefore these grounds are overruled. The contention raised regarding Limitation also fails in view of partial payments made on 13.09.2019 which extends the limitation u/s 19 of the Limitation Act.
- 7) 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 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."*
- 8) After hearing both sides and perusing record, we are of the view that in the instant case there is a financial debt for an amount exceeding the pecuniary threshold as provided in Section 4 of the IB Code, 2016, and

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there has been a default in repayment of the same. Hence, the contentions of the Corporate Debtor are overruled and we are inclined to admit the instant Applications. 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.

- 9) 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 of this order is passed.
- 10) This Adjudicating Authority appoints Mr. Madhusudhan Rao Gonugunta, having his Reg. No. IBBI/IPA-001/IP-P00181/2017-18/10360 as IRP. He has also filed his written consent in Form-2. He is directed to file Authorization for Assignment within three (3) days of this order.
- 11) 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.
- 12) We direct the Financial Creditor/Petitioner to pay sum of Rs.50,000/- towards the advance fee of IRP, which shall be ratified later on by CoC.
- 13) 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,*

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- 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);*
  - 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.*
- 14) 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.
- 15) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance

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and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

- 16) 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.
- 17) The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
- 18) The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
- 19) Accordingly, CP (IB) No. 402/7/HDB/2020 is hereby admitted.

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**Dr. Binod Kumar Sinha**  
Member Technical

**Dr. Venkata Ramakrishna Badarinath Nandula**  
Member Judicial

Santi/SKRathi

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17/06/2022