

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP/1183/IB/2018

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of M/s. Aascar Films Private Limited

M/s. Indian Overseas Bank

---Financial Creditor

V/s

M/s. Aascar Films Private Limited

---Corporate Debtor

Order delivered on: 19.09.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri. F.B Benjamin George, Advocate*

Ms. G. Jeyanthi, Advocate

Shri. R. Kandeegan, Advocate

For the Corporate Debtor : *Shri. Shankarnarayanan, Sr. Advocate*

Shri. K. Moorthy, Advocate

For Shri. Narayanaswamy, Advocate

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 18.09.2019

It is a Company Petition filed u/s 7 of the Insolvency & Bankruptcy Code, 2016 ("the Code") by the Financial Creditor namely, Indian Overseas Bank (hereinafter called as "Creditor

Bank") for initiation of Corporate Insolvency Resolution Process ("CIRP") on the ground the Corporate Debtor namely, M/s. Aascar Films India Private Limited (hereinafter called as "Debtor") defaulted in repaying ₹116,22,80,135.26 as on 20.08.2018.

2. Before going into the facts of this case, we believe it is pertinent to mention that at request of the Debtor when this case was posted to 06.09.2019, this Bench was informed that the Hon'ble High Court of Madras passed an order directing this Bench to proceed in accordance with law based on the undertaking given by the Debtor to pay a sum of ₹15Crores on or before 13.09.2019 and remaining sum of ₹46.20Crores on or before 30.09.2019 (totaling to ₹61.20Crores) to the Creditor Bank with a further clarification that in case there is any default or non-compliance on the part of the Debtor with regard to the aforesaid undertaking to pay money as stated above, this order of stay should be treated as dismissed and the interim relief granted should be treated forthwith entitling this Creditor Bank as well as this Bench to take further action as considered appropriate by the Creditor Bank as well as this Bench.

3. Today, it is an admitted fact that this Corporate Debtor has not paid ₹15Crores by 13.09.2019 which is in flagrant violation of the undertaking given by this Corporate Debtor as well as the order of the Hon'ble High Court of Madras. The amount mentioned in the order passed by the Honorable High Court is an amount arrived at for One-Time Settlement (OTS) proposal given by the Debtor but as to the default amount payable by this Corporate Debtor is ₹116,22,80,135.26. Since the payment as aforesaid in the writ order has not been made by this Debtor, the Creditor Bank counsel has insisted upon this Bench to proceed with this case because the Hon'ble High Court of Madras itself has stated that the Creditor Bank as well as this Adjudicating Authority are at liberty to proceed against this Debtor in the event the payment is not made as stated in the undertaking given by the Debtor. Since it is a fact that this Debtor had not paid to the Creditor Bank, we are of the considered view that we are relieved from the order passed by the Hon'ble High Court of Madras on 06.09.2019 in W.P. No.26692 of 2019. Accordingly, we have proceeded as follows.

4. The case of the Creditor Bank is that this Debtor availed cash credit limit of ₹10Crores on 05.10.2006 and term loan of ₹30Crores on 31.12,2011 from the Creditor Bank. Again on 31.12.2011, this Debtor availed another term loan of ₹60Crores from Cathedral Branch of this Creditor Bank to produce a movie titled "I" in Tamil with an undertaking that the entire dues would be paid before release of the movie within 18 months from the day this loan was availed by this Debtor, but whereas, this Creditor Bank counsel says, the movie was released on 14.01.2015 without clearing the loan availed by the Debtor, which is in violation of the term loan agreement dated 31.12.2011 because in the term loan agreement, the Debtor agreed that it would release the movie after clearing the dues of the Creditor Bank.

5. When no payment came from the Debtor in pursuance of the agreement dated 31.12.2011, this Creditor on 15.01.2015 initiated OA35/2015 before the Hon'ble DRT to recover ₹59,84,99,048 whereupon, the Corporate Debtor had appeared before the DRT and given an undertaking to pay the entire dues on or before 24.02.2015

but on the contrary, this Corporate Debtor had paid only ₹11.50Crores.

6. As to whether Term Loan Agreement dated 31.12.2011 and Cash Credit Limit dated 05.10.2006, the Creditor Bank, having branch at Sriram Nagar, on 13.04.2015 filed OA235/2015 on the file of the Hon'ble DRT to recover ₹39,39,25,420 which is still pending.

7. When the Creditor Bank proceeded under SARFAESI Act, 2002 for realization of its dues from the secured assets of the Corporate Debtor, on 25.06.2015, this Debtor obtained stay in SA71/2015 filed before the Hon'ble DRT, Chennai. Thereafter, SARFAESI application was dismissed on 04.04.2017. Again, when this Creditor Bank brought another secured asset of the Debtor for sale, this Debtor this time i.e. 28.01.2016 filed WP7168/2016 and obtained an interim order of stay on the condition of deposit of ₹10Crores, but that was also not complied with. Instead of complying with the order passed by the Hon'ble High Court of Madras, this Corporate Debtor assailed the conditional order passed in WP7168/2016 before the Hon'ble Supreme Court of India by filing

SLP6455/2016. There also, on hearing this Debtor, on 04.04.2016 the Hon'ble Supreme Court of India stayed the auction sale of assets based on the undertaking given by the Debtor to pay ₹10Crores to the Creditor Bank. After obtaining stay on auction sale, the Debtor, as usual, flouted even the orders of the Hon'ble Supreme Court of India as well. For the orders of the Hon'ble Supreme Court of India not being complied with, SLP was also ultimately dismissed. Finally, in the saga of initiating proceedings for bringing the secured assets for auction, the Debtor again, on 04.04.2016, obtained another stay order on a condition to deposit ₹30Crores to the Creditor Bank. When the conditional order was not complied with, WP17310/2016 filed by the Debtor was also dismissed on 04.04.2016.

8. Looking at the Debtor coming with OTS proposal to pay ₹77.20Crores, the Creditor Bank had sanctioned OTS to the Debtor to pay ₹77.20Crores on or before 30.06.2019, but the Debtor, out of ₹77.20Crores, had only paid ₹16Crores against the release of one of the secured assets. It is not that the Debtor unconditionally paid ₹16Crores, indeed this part payment was made in lieu of release of

one of the secured assets from the charge created. Though this Corporate Debtor failed to pay OTS amount on or before 30.06.2019, on the request made by the Debtor, the Creditor Bank again on 31.07.2019 extended time upto 30.09.2019 by letter dated 20.08.2019.

9. Here, we must mention that this Creditor Bank has filed this Company Petition on 20.08.2018 for initiation of CIRP u/s 7 of the Code against the Debtor. Perhaps because this IBC proceeding pending before this Bench, the Debtor came forward with OTS proposal on 20.03.2019, under the cover of OTS, the debtor successfully obtained extensions for compliance of the OTS proposal.

10. For this IBC case was filed in the year 2018, when this Bench started insisting upon the parties to argue the matter, this Debtor again proceeded before the Hon'ble High Court of Madras stating that it would pay ₹15Crores on or before 13.09.2019 and the remaining sum of ₹46.20Crores on or before 30.09.2019, but till date this Corporate Debtor has not complied with the orders of the Hon'ble High Court of Madras.

11. It is our bounden duty to make it clear that the amount mentioned in the Writ Petition No. 26692 of 2019 dated 06.09.2019 is only in respect to OTS arrangement but as to this OTS arrangement, the Creditor Bank already withdrew from the OTS by looking at this Debtor repeatedly failing to adhere to the promises and undertakings it has given. Since this Corporate Debtor has failed to make payment with regard to OTS sanctioned by the Creditor Bank, it goes without saying that this Debtor is bound to pay the entire claim raised against it as per the agreements entered into between the Creditor Bank and the Corporate Debtor and the loan amounts availed from the Creditor.

12. As we said earlier, since the order passed by the Hon'ble High Court of Madras is to be construed as vacated, for there being no plea from the Corporate Debtor stating that debt and default are not in existence, this Bench by looking at various documents such as Cash Credit limit loan agreement dated 05.10.2006, Term Loan Agreement dated 31.12.2011, another Term Loan agreement dated 31.12.2011, Declaration of loan account as NPA in the month of June,

2014, Debt Recovery Certificate dated 08.08.2016 for recovery of ₹47,24,08,513.60 towards term loan of ₹60Crores and also the debt recovery proceedings against the cash credit limit of ₹10Crores, Demand Notice dated 11.12.2014 u/s 13(2) of SARFAESI Act, 2002, Possession Notice dated 29.04.2015 u/s 13(4) of SARFAESI Act, 2002, Auction Sale notice dated 16.05.2015 under SARFAESI Act, 2002, another Auction Sale notice dated 04.04.2016 under SARFAESI ACT, 2002 and also looking at part payments made by the Debtor, we are of the considered view that this petition is fit for admission.

13. As to part payment any made after this petition was filed, IRP shall deduct those payments from the dues outstanding and calculate the difference payable to the creditor Bank as claim against the Corporate Debtor.

14. In view thereof, we hereby admit this company petition by appointing Mr. Chandramouli Ramasubramaniam as IRP looking at the consent given by the said IRP with directions as follows.

- I. That Moratorium is hereby declared prohibiting all of the following actions, namely,
- a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of 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 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;
 - 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.
- II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from **18.09.2019** till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints **Mr. Chandramouli Ramasubramaniam**, having **Registration Number [IBBI/IPA-002/IP-N00052/2016-17/10096]**, **"RAJI"**, **3B1, 3rd Floor, Gaiety Palce No. 1L, Blackers Road, Mount Road, Chennai-600002**, **E-Mail: fcs.rms@gmail.com**, **Mobile No:**

9962568292 as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

9. Accordingly, this Petition is **admitted**.
10. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-Sd-
(S. VIJAYARAGHAVAN),
Member (Technical),

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

VS/TJS