

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV**

**CP (IB) No.1055/MB-IV/2022**

Under Section 7 of the IBC, 2016

*In the matter of*

STATE BANK OF INDIA

...Financial Creditor

v/s.

VINDHYAVASINI BUILDCON

PRIVATE LIMITED

[CIN: U45309MH2012PTC235800]

...Corporate Debtor

**Order Delivered on: 11.07.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Financial Creditor:

Mr. Uditi Singh, Ld. Counsel.

For the Corporate Debtor:

None.

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by STATE BANK OF INDIA (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of VINDHYAVASINI BUILDCON PRIVATE LIMITED, the Corporate Debtor.
  - 1.1. The Company Petition is filed on 27/09/2022 claiming an amount of Rs.99,05,35,104.31/- as on 25.08.2022 alongwith interest and other charges. The Part IV of Form 1 specify the date of default as 24.07.2021 and date of NPA as 10.08.2013.
  - 1.2. This petition was amended on 28.04.2023 to allow mention of correct date of default, which was earlier stated as 31.10.2015. The Financial Creditor by modification stated the date of default under the OTS.
2. M/s. Keti Construction Ltd. was awarded the project for construction of road from Berlaphata-Amdapur-Khamgaon on a Build, Operate and Transfer (BOT) basis by the State of Maharashtra through Executive Engineer, Public Works Division ("Project"). Accordingly, an SPV namely, M/s. Keti Buildcon Pvt. Ltd. ("KETI") was formed which became Original Concessionaire under Concessionaire Agreement. Consortium of lenders funding the project including the Applicant, Axis Bank and Union Bank of India reserved right to substitute the Concessionaire in case of default.
  - 2.1. That subsequently, KETI defaulted and the Consortium lenders invoked their right to substitution whereby Vindhyavasini Megastructure Pvt. Ltd. was the successful bidder. Accordingly, the Corporate Debtor was constituted as and SPV for completion of the said Project.

- 2.2. That based on the assurances and representations made by the Corporate Debtor a term loan facility was granted by the Financial Creditor to the Corporate Debtor in 2012. The said loan was formalised by way of Sanction Letter dated 10.01.2012 and Common Loan Agreement dated 07.08.2013. However, the Corporate Debtor failed to maintain financial discipline and defaulted in the repayment of the loan on 11.05.2013 and subsequently the account of the Corporate Debtor was categorized as NPA in the books of the Financial Creditor on 10.08.2013 in accordance with applicable RBI guidelines.
- 2.3. That thereafter the Vindhyavasini Group vide Letter dated 16.05.2019 addressed to the Financial Creditor, proposed a settlement in respect of dues of the Corporate Debtor, wherein the Corporate Debtor has categorically acknowledged the debt due to the Financial Creditor. The said settlement proposal was rejected by the Financial Creditor. The earlier Company Petition No. 4657 of 2019 was filed by the Financial Creditor which was well within limitation. That subsequently, Scheme for One-Time Settlement ("OTS") for NPAs and AUCAS was accepted by the Financial Creditor vide Acceptance Letter dated 25.11.2020 and Company Petition No. 4657 of 2019 was withdrawn on 16.02.2021. Under the OTS, the Corporate Debtor was to deposit 10 % of OTS amount within 30 days and another 10% within 60 days from the date of sanction of OTS. The balance amount along with the interest was payable within 8 months from the date of sanction i.e. by 24.07.2021.
- 2.4. That the Corporate Debtor made the payments for the 1 and 2 instalments as per the agreed terms of the OTS as reflecting in the AUCA statement and working of computation of amount, the amounts being Rs. 68,09,000 (Rupees Sixty-Eight Lakhs and Nine Thousand Only) and Rs. 71,50,000 (Rupees Seventy-One Lakhs and Fifty Thousand Only) respectively. However, the Corporate Debtor defaulted in paying the balance amount

which was payable within a period of 8 months from the Acceptance Letter dated 25.11.2020, ending on 24.07.2021. As such, 24.07.2021 is the date of default under the CTS and forms the cause of action for filing the present petition.

2.5. The Financial Creditor submits that, that despite being given due notice and ample opportunity to be represented and heard, the Corporate Debtor has failed to make an appearance before this Hon'ble Tribunal in any of the hearings, and accordingly the matter was heard and reserved for orders on 16.06.2023.

3. This matter was listed on 14.12.2022 and there was no representation from the Corporate Debtor accordingly the matter was adjourned to 15.02.2023. Thereafter, this matter was again listed on 01.03.2023, 19.03.2023, and 01.05.2023, but the Corporate Debtor was not represented on any of the date. Accordingly, final opportunity was granted to the Corporate Debtor and the matter was posted on 16.06.2023. On that day, no reply was filed by the Corporate Debtor, however, Corporate Debtor was represented by one Counsel who was heard and matter was reserved for orders.

*Findings:*

4. This bench has carefully gone through the documents and pleadings available on record and considered the arguments.

4.1. Based on the documents placed on record it is clearly evident, that the Corporate Debtor has time and again acknowledged its liability in respect of dues payable to the Financial Creditor by way of Balance Sheets for year ending on 31.03.2015, 31.03.2017 and 31.03.2018 and admittedly the Corporate Debtor has utilized the said facilities/loan and deliberately failed to repay the same despite of several demands. Further in the facts and circumstances as set out, it is clear that the Corporate Debtor is unable to

pay off its debts arising in the usual and ordinary course of its business and is in default of the amount claimed in the petition.

5. Considering the facts placed before us and the fact that, the Corporate Debtor owes the financial debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.
6. The Financial Creditor has proposed the name of Interim Resolution Professional Mr. Naren Sheth, an Insolvency Professional.

#### **ORDER**

7. The petition bearing CP (IB) No.1055/MB-IV/2022 filed by, STATE BANK INDIA (“the Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of VINDHYAVASINI BUILDCON PRIVATE LIMITED, the Corporate Debtor is **admitted**.
  - a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
    - (i) 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;
    - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

- (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
  - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints Mr. Naren Sheth, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having

registration number IBBI/IPA-001/IP-P00133/2017-2018/10275 and email- [mkindia58@gmail.com](mailto:mkindia58@gmail.com) . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to

the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

PRABHAT KUMAR  
MEMBER (TECHNICAL)

**11.07.2023**

Sd/-

KISHORE VEMULAPALLI  
MEMBER (JUDICIAL)