

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 12.01.2021 AT 10:30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 625/7/HDB/2019
NAME OF THE COMPANY	Totem Infrastructure Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Totem Infrastructure Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed vide separate orders.
CP (IB) No. 625/7/HDB/2019 is admitted.


MEMBER (TECHNICAL)


MEMBER (JUDICIAL)

Pavani

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

CP (IB) No.625/7/ HDB/2019

U/s 7 of I&B Code, 2016 read with Rule 4
of I & B (AAA) Rules, 2016.

In the matter between :

State Bank of India
14th Floor, Madame Cama Road
Nariman Point, Mumbai
Maharashtra – 400021.

**.. Petitioner
Financial Creditor**

VERSUS

M/s Totem Infrastructure Ltd
H. No.8-2-334/B/2, Road No.5
Banjara Hills
Hyderabad – 500082.

**.. Respondent
Corporate Debtor**

Date of order : 12.01.2021

Coram:

**HON'BLE SHRI K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Parties / counsels present:

For the Petitioner : Ms. Grishma Acharya, G.P. Yash Vardhan and Anil
Kumar Kommireddy, Advocates.

For the Respondent: Shri Dhananjaya Naidu and R. Rajani.



**Per: HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Heard on: 16.03.2020, 21.12.2020, 23.12.2020, 04.01.2020,
06.01.2020 and 11.01.2020.

ORDER

The petitioner was incorporated as State Bank of India on 01.07.1955 vide State Bank of India Act, 1955. Its registered office is as described in column 4, Part-I of the of the petition.

2. The respondent/ Messrs Totem Infrastructure Limited is a limited company incorporated under the provisions of the Companies Act, 1956 on 07.11.1997. Its registered office is as mentioned in Column 5, Part-II of the petition.

3. The present application is filed by the financial creditor/ State Bank of India against the Corporate Debtor for default of financial debt of **Rs.222,00,00,000.00** (Rupees two hundred and twenty two crores only) as on 31.07.2019. Hence, this Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

4. The petitioner-SBI, by way of consolidation, has merged its associate banks, viz. State Bank of Hyderabad (SBH), State Bank of Mysore (SBM), State Bank of Travancore (SBT), State Bank of Bikaner & Jaipur (SBBJ) and State Bank of Patiala (SBP). Prior to such merger SBI, SBH, SBH TL, SBM CC, SBBJ TL have granted and disbursed facilities to the Corporate Debtor the following financial facilities:

Account No.	Date of disbursement
30319660894 (SBI CC)	07.02.2008
33360886582 (SBI CC)	08.10.2013
62009677471 (SBH CC)	13.06.2006

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62106387066 (SBH TL)	08.09.2009
64054173576 (SBM CC)	29.12.2009
61078919101 (SBBJ TL)	22.09.2009
61085563197 (SBBJ TL)	26.12.2009

The accounts of the above mentioned banks stood transferred and merged with the petitioner/ Financial Creditor with all rights and remedies available under the law. The accounts of the respondent/ Corporate Debtor are maintained with the Stressed Asset Management, Branch-II, Kachiguda, Hyderabad.

5. The respondent/ Corporate Debtor having availed financial facilities from the Financial Creditor/ Banks has committed default in repaying the loan amounts. Pursuant to which the Financial Creditor has initiated proceedings as mentioned hereunder.

Financial facility granted by	Recovery proceedings	Amount claimed by Financial Creditor and Associate Banks.	Outcome of the proceedings
FINANCIAL FACILITY - WORKING CAPITAL			
State Bank of Hyderabad; State Bank of Mysore.	Joint Original Application No.154 of 2014, re-numbered as 1563 of 2017 (OA-1) before the Debt Recovery Tribunal, Hyderabad-II.	Total amount of Rs.864,36,71,855.40 was sought to be recovered by the Financial Creditor and other Banks. The amount that was claimed by the Financial Creditor and its associate Banks, viz. erstwhile State Bank of Hyderabad and State Bank of Mysore, was Rs.222,91,37,610.59.	DRT vide order dated 30.06.2017 has directed the Corporate Debtor to pay Rs.864,36,71,855.40 to all the applicants therein including the Financial Creditor and its associate banks. The DRT, vide order dated 17.10.2017 in RC 2615 of 2017, had issued Recovery Certificate (RC-I) in the said OA-1 in favour of Financial Creditor and its Associate Banks and other Banks to recover an amount of Rs.1408,03,14,857.40. Out of the said amount the Financial Creditor and its Associate Banks are entitled to recover Rs.368,22,13,348.59.

FINANCIAL FACILITY – TERM LOAN			
State Bank of Bikaner & Jaipur.	SBBJ has preferred Original Application No.1930 of 2014 (OA-II) before DRT, Bengaluru.	Rs.5,22,21,750/- was claimed against Corporate Debtor and other defendants therein.	DRT vide order dated 08.09.2015 in OA-II directed the Corporate Debtor and other defendants to pay Rs.5,22,21,750/- to SBBJ. DRT vide order dated 04.08.2017 in RC No.12257 of 2017 issued Recovery Certificate (RC-II) in OA-II in favour of SBBJ for recovering Rs.5,22,21,750/- with 14.25%.
FINANCIAL FACILITY – TERM LOAN			
State Bank of Hyderabad (SBH)	SBH has preferred OA No.221 of 2014 (OA-III) before DRT, Hyderabad against the Corporate Debtor and other defendants.	Rs.11,51,64,253.23 with interest and cost.	DRT vide order dated 27.07.2015 in OA-III directed the Corporate Debtor and other defendants to pay Rs.14,50,06,349.23 to SBH with ROI @ 14.45% from the date of OA till realisation.

6. It is submitted that as per Statement of Accounts (ANNEXURE-2, Page 32 of the petition) the total amount claimed to be in default is **Rs.613,27,01,598.23** (Rupees six hundred thirteen crores twenty seven lacs one thousand five hundred and ninety eight and paise twenty three only). The dates of default for initiation of CIRP is the dates of Recovery Certificates issued by the DRT in the above three OAs. Thus, dates of default are as under:

Original Application (OA-I)	..	17.10.2017
Original Application (OA-II)	..	04.08.2017
Original Application (OA-III)	..	08.09.2015

7. COUNTER DATED 26.02.2020/ 27.02.2020 FILED BY THE CORPORATE DEBTOR.

7.1 It is submitted by the Corporate Debtor that due to unfavourable market conditions, such as bad debts, loss of 7 BOT projects, land acquisition issues, obtaining regulatory and other clearances, due to

pending approval orders executed not getting converted to cash and other reasons, the Corporate Debtor could not repay the amount. Further, Bank Guarantees were invoked by different entities as referred in Joint Lenders Meeting (JLM) dated 31.12.2011, JLM dated 31.01.2012. Ultimately the Corporate Debtor has been classified as NPA during February 2012 – March 2013. (para 4)

7.2 The Corporate Debtor had been referred to Corporate Debt Restructuring Cell (CDR Cell). CDR Proposal was on record on 24.08.2012, which has been admitted by some Banks. However, Bank of India, a lead banker has rejected the CDR Proposal.

7.3 The Corporate Debtor contends that the petition is required to be rejected on the grounds ---

- (i) that the petition is barred by limitation, and
- (ii) that the petition has been initiated as per RBI Circular dated 12.02.2018, which was held ultra vires of Section 35AA of Banking and Regulation Act, by the Hon'ble Supreme Court.

7.4 It is further contended that date of default cannot be the date of order/ decree Recovery Certificate issued by the DRT, rather default is as defined in section 3(12) of the I&B Code. It is therefore, submitted that date of NPA is the date of default and the date of orders/ decree passed by DRT have no significance. The Corporate Debtor has, therefore, relied on Demand Notice dated 16.08.2013 (page 284) issued by Union Bank of India Khairatabad Branch under section 13(2) of the SARFAESI Act, wherein dates of NPA is mentioned. According to the Corporate Debtor date of default was during the years 2012/ 2013. Three year limitation period would expire during 2015/ 2016. Corporate Debt Restructuring (CDR) Proposal was taken on record and the same was rejected by the Financial Creditor on 23.05.2013. Thus, filing of the present petition on 06.09.2019, is hit by section 137 of the Limitation Act.

7.5 It is further averred that it is trite law that CIRP is not a recovery proceeding. Thus, the proceeding under I&B Code cannot be used to seek recovery in disguise rather than resolution.

7.6 The Corporate Debtor has relied on RBI Circular dated 12.02.2018, whereby the lenders were directed to resolve stress on their respective

balance sheets due to growing NPA. Said Circular has scrapped all the past restructuring mechanisms. Thus, all the accounts including the ones whereby any of the schemes had been invoked but not yet implemented were to be governed by the revised framework. Even the present petition filed by the Assistant General Manager, SBI is as per guidelines issued by the above Circular dated 12.02.2018.

OBSERVATIONS :

8. We have heard the learned counsel for the Financial Creditor as well as the learned counsel for the Corporate Debtor through videoconference.

9. The case of the Financial Creditor is that the respondent/ Corporate Debtor having availed financial facilities from the Financial Creditor/ Banks has committed default in repaying the loan amounts, pursuant to which the Financial Creditor has initiated proceedings in the DRT by way of three different Original Applications (OA). The DRT vide three different orders has directed the Corporate Debtor to pay the amounts to all the applicants therein including the Financial Creditor and its associate banks. The DRT, had further issued three Recovery Certificates in three different OAs in favour of Financial Creditor and its Associate Banks and other Banks to recover an amount of Rs.1408,03,14,857.40. Out of the said amounts the Financial Creditor and its Associate Banks are entitled to recover Rs.368,22,13,348.59.

10. The Financial Creditor has claimed that the dates of default by the Corporate Debtor are the date of orders passed by the DRT in three Original Application, viz. Original Application (OA-I) (17.10.2017), Original, Original Application (OA-II) (04.08.2017) and Original Application (OA-III) (08.09.2015). On the other hand the Corporate Debtor claims that date of default cannot be the date of order/ decree Recovery Certificate issued by the DRT, rather default is as defined in section 3(12) of the I&B Code. It is therefore, submitted that date of NPA is the date of default. Thus, the date of orders/ decree passed by DRT have no significance.

11. The Corporate Debtor, in para 4 of its counter, has stated that due to unfavourable market conditions, such as bad debts, loss of 7 BOT

projects, land acquisition issues, obtaining regulatory and other clearances, due to pending approval orders executed not getting converted to cash and other reasons, the Corporate Debtor could not repay the amount.

12. The Corporate Debtor has raised two-fold contention, viz.

- (i) **The petition is barred by limitation:** The Corporate Debtor has relied on Demand Notice dated 16.08.2013 (page 284) issued by Union Bank of India Khairatabad Branch under section 13(2) of the SARFAESI Act, wherein dates of NPA is mentioned. According to the Corporate Debtor date of default was during the years 2012/ 2013. Three year limitation period would expire during 2015/ 2016. Corporate Debt Restructuring (CDR) Proposal was taken on record and the same was rejected by the Financial Creditor on 23.05.2013. Thus, filing of the present petition on 06.09.2019, is hit by section 137 of the Limitation Act.
- (ii) The petition has been **initiated as per RBI Circular dated 12.02.2018**, which was held ultra vires of Section 35AA of Banking and Regulation Act, by the Hon'ble Supreme Court.

13. We have considered the rival submissions made by the parties. There is no dispute that the Corporate Debtor has availed various financial facilities from the Financial Creditor and its former associate Banks, now merged into the SBI. Having availed such financial facilities from public sector banks, the Corporate Debtor cannot avoid repayment merely relying on technicalities. While harping on the provisions of Limitation Act, the Corporate Debtor itself has filed Counter only on 27.02.2020, in a petition filed on 06.09.2019. Time for filing Counter was sought on different occasions, viz. 05.12.2019, 23.01.2020 and 07.02.2020.

14. Apart from the technical issues raised, the Corporate Debtor did not dispute existence of debt and default, albeit it may differ dates of default and so on. Public money cannot be squandered away by the Corporate Debtor by finding loopholes.



15. From the record it is observed that the Corporate Debtor addressed letter dated 29.01.2020 (Annexure-I, Page 4 of Memo dated 07.02.2020 filed by the Corporate Debtor) to the Union Bank of India and also SBI agreeing, in principle, to repay the amount due to the Financial Creditors and requesting the Bank to support them during the financial crisis the Corporate Debtor is facing due to various reasons beyond their control. They also requested vide the above letter to waive off the penal interest levied. The Corporate Debtor has also requested the Financial Creditors for One Time Settlement (OTS). By addressing such letter to the Financial Creditors, the Corporate Debtor has acknowledged the debt and also the Corporate Debtor was seeking OTS from the Financial Creditors. There was a decree issued by the Debt Recovery Tribunal (DRT) in the instant case based on which the instant application was filed and acknowledgement of debt by the Corporate Debtor vide their above letter dated 29.01.2020 to the Financial Creditor amply proves that there is financial debt and also the debt was not paid. The Financial Creditor has submitted various correspondence, such as letter dated 03.02.2020 and e-mail correspondence from the Corporate Debtor. It is observed that the OTS proposal was also submitted by the Corporate Debtor and the Financial Creditors have met on 07.02.2020 to discuss about such OTS proposal. The above correspondence and the decrees passed by the DRT in the instant case amply prove that there is financial debt which was due. We, are therefore, of the view that by accepting liability vide their letter dated 29.01.2020, agreeing to repay the debt, the Corporate Debtor now cannot take a stand that the debt is barred by limitation. Acknowledgement of debt and agreeing to repay the same amounts to liability and it automatically extends the limitation period.

16. It is not in dispute that the Financial Creditor disbursed various types of loans from time to time and there is default. Other contentions raised by the learned counsel for the Corporate Debtor cannot be entertained since the Financial Creditor is able to establish the debt and default. Therefore, the petition is to be admitted against the Corporate Debtor. After going through the documents filed by the petitioner we are of the view that the petition is liable to be admitted against the Corporate Debtor. The petition is accordingly admitted.



17. Hence, 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 following directions:-

(A) 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;

(B) 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.

(C) 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.

(D) 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.

(E) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(F) That this Bench hereby appoints Shri G. SATYANARAYANA MURTY, having Registration No.IBBI/ IPA-001/ IP-P00177/ 2017-18/10356, as Interim Resolution Professional, whose contact details are:

Address: Shri G. Satyanarayana Murty
Chartered Accountant
Partner, GS Murty & Associates
Chartered Accountants



Flat No.308B, 3rd Floor
Sai Tirumala Towers
Hyderguda
Hyderabad – 500029.

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(G) Proposed IRP filed Form-2. Authorisation for Assignment is valid till 04.012.2021. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

18. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

19. Accordingly, this Petition is admitted.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL) 12/01/2024


K. ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)

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