

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1



ITEM No.301 **C.P/363(AHM)2020**
AND
ITEM No. 302 **IA/276(AHM)2022**

Order under Section 7 of IBC
IN THE MATTER OF: C.P/363(AHM)2020

State Bank of IndiaApplicant
V/sRespondent
Hubtown Bus Terminal (Vadodra) Pvt Ltd
AND

Order under Section 65 of IBC
IN THE MATTER OF: IA/276(AHM)2022

Hubtown Bus Terminal (Vadodra) Pvt LtdApplicant
V/sRespondent
State Bank of India

Order delivered on: 24/11/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH -I, AHMEDABAD**

CP(IB)/363(AHM)/2020

And

IA No. 276 of 2022

(An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of **M/s. Hubtown Bus Terminal
(Vadodara) Private Limited**

State Bank of India

Having its registered address at:
State Bank Bhavan, Corporate Centre,
Madame Cama Road, Mumbai-400021.
Through its,
Stressed Assets (Management) Branch,
2nd Floor, Paramsiddhi Complex,
Ellisbridge, Ahmedabad-380006.

...Applicant/Financial Creditor

VERSUS

Hubtown Bus Terminal (Vadodara) Private Limited

(CIN: U45203GJ2008PTC069640)
Makarpura Bus Depot, Nr. G.I.D.C,
Opp. Toyota Show Room,
Makarpura Main Road,
Vadodara, Gujarat-390010.

...Respondent/Corporate Debtor



AND

IA No. 276 of 2022 in CP(IB) No. 363 of 2020

(An application filed under Section 65 of the IBC, 2016)

M/s. Hubtown Bus Terminal (Vadodara) Pvt. Ltd.

Makarpura Bus Depot, Nr. GIDC,
Opp. Toyota Show Room,
Makarpura, Main Road,
Vadodara, Gujarat-390010.

....Applicant

Versus

State Bank of India

Stressed Assets Management Branch
2nd Floor, Paramsiddhi Complex,
Nr. Mahakant Building,
Opp. VS Hospital, Ellisbridge,
Ahmedabad-380006.

....Respondent

Order pronounced on 24.11.2023

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance

For the Applicant : Mr. Rashesh Sanjanwala, Ld. Sr.
Adv. a.w. Mr. Mandeep Singh, Ld.
Adv.
For the Respondent : Mr. Arjun Sheth, Ld. Adv. a.w. Mr.
Dev Shah, Ld. Adv.



ORDER

(Per: BENCH)

1. This is an application filed on 13.11.2020 by the **State Bank of India (“SBI- Applicant/Financial Creditor”)** through its Stressed Assets Management Branch, Ahmedabad under Section 7 of the of the Insolvency and Bankruptcy Code, 2016 (**“IBC, 2016”**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Hubtown Bus Terminal (Vadodara) Private Limited (“Respondent/Corporate Debtor”)** with prayers to admit the Respondent to the Corporate Insolvency Resolution Process (**“CIRP”**), appoint Interim Resolution Professional (**“IRP”**) and declare the moratorium.
2. From the application, it is seen that the Applicant is State Bank of India through its Stressed Assets Management Branch 2nd Floor, Paramsiddhi Complex, Ellisbridge, Ahmedabad-380006.
3. From application Part-I, it is seen that the original loan was granted by the State Bank of Bikaner and Jaipur (**“SBBJ”**) and State Bank of Mysore (**“SBM”**) which



merged with the Applicant on 22.07.2017. The Gazette copy to this effect, which is dated 22.02.2017, is attached as Annexure- A.

4. The application is affirmed by Mr. Viveka Nand, Assistant General Manager of State Bank of India.
5. From Part-II, it is seen that the Respondent in the matter is M/s. Hubtown Bus Terminal (Vadodara) Private Limited, having CIN: U45203GJ2008PTC069640. The Corporate Debtor was incorporated on 08.04.2008. The registered office of the Corporate Debtor is located at Makarpura Bus Depot, Nr. G.I.D.C Opp. Toyota Show Room, Makarpura Main Road, Vadodara, Gujarat-390010 which is in the jurisdiction of this Tribunal.
6. From Part-III of the application, it is seen that the Applicant has named CA Vinod Tarachand Agrawal having Registration No. IBBI/IPA-001/IP-P00641/2017-18/11090. The Form-2 is annexed at Annexure-D.
7. Perusal of Part-IV indicates that the Applicant has granted a sum of Rs.27.00 Crore and Rs.4.66 Crore



through State Bank of Bikaner and Jaipur (“SBBJ”) as per the sanctioned letter dated 03.07.2012 which is placed at Annexure-E.

8. A perusal of Part-IV also indicates that the Applicant has granted a sum of Rs.27.00 Crore and Rs.4.66 Crore through State Bank of Mysore (“SBM”) as per the sanction letter dated 06.08.2012 which is placed at Annexure-F.
9. The Board Resolution of the Corporate Debtor accepting above which is dated 13.02.2012 is placed at Annexure-G.
10. Upon an application dated 15.04.2014 the Date of Commencement of Commercial Operations (“DCCO”) was extended by the SBBJ and SBM vide their letter dated 25.09.2014 and 05.01.2015 respectively.
11. The DCCO was again extended from time to time by the Applicant.
12. The project cost was revised due to the exclusion of Block-A and accordingly, the banks have reduced their sanction from Rs.55 Crore (collectively) to Rs.50 Crore. Based on



the request letter, the DCCO was again revised on 28.05.2016 by SBBJ and on 05.11.2016 by SBM.

13. The total amount claimed in default is Rs.68,04,48,188.30 as on 04.11.2020. The date of default is mentioned as 28.07.2017. It is further stated that on 02.05.2018, the Applicants issued notice under Section 13(2) of the SARFAESI Act, 2002.

14. It is stated that the Corporate Debtor submitted a request letter for a compromise settlement on 14.11.2019 which was approved by the Applicant and sanction was conveyed on 13.12.2019. The Corporate Debtor failed to pay the amount as per terms and conditions of the compromise settlement and, hence, the Applicant –Bank has cancelled the compromise settlement with the Corporate Debtor on 21.08.2020 for which letter is attached as Annexure-L.

15. Under part-V of the application, the Applicant has stated that they are holding the following securities:

“Hypothecation of the whole of the Borrower’s movable properties, including all current and non-current assets, moveable machinery spares, equipment, tools and accessories, furniture, fixtures,



vehicles and all other movable assets, both present and future, all the Borrower's Project Revenue, escrow account, retention account, books debts, all the right, all the right, title interest benefits, claims and demands whatsoever of the Borrower in the Concession Agreement"

16. The Applicant Bank states that the Original Application No. 1000 of 2018 is pending before the Hon'ble Debt Recovery Tribunal-II.
17. The record of default with Information Utility is annexed at Annexure-M.
18. The Applicant Bank relied upon the following documents:

7.	Annexure E The copy of the sanction letter by State Bank of Bikaner and Jaipur dated 03.07.2012	48-55
8.	Annexure F The copy of the sanctioned by State Bank of Mysore dated 06.08.2012	56-66
9.	Annexure G Copy of Board Resolution of meeting dated 13.08.2012.	67-69
10.	Annexure H The copy of request letter dated 15.4.2014 for extension of DCCO and revision of repayment submitted by the Corporate Debtor along with sanction letter dated 25.9.2014 of SBBJ and 05.01.2015 of SBM	70-83
11.	Annexure I The copy of extension letter of DCCO and revision of payment dated 05.11.2015 along with sanction	84-93





	letter dated 24.02.2016 issued by SBBJ.	
12.	Annexure J The copy of request letter dated 15.06.2016 for extension DCCO and revision of payment schedule submitted by Corporate Debtor along with sanctioned letter dated 25.08.2016 issued by State Bank of Bikaner and Jaipur and sanction letter 05.11.2016 issued by State Bank of Mysore.	94-107
13.	Annexure K Copy of the account statement	108-110
14.	Annexure L Copy of request letter dated 14.11.2019 for compromise settlement submitted by Corporate Debtor and approval letter dated 13.12.2019 & 20.12.2019 issued by Applicant Bank and Copy of Board Resolution of meeting dated 14.12.2019 of Corporate Debtor along with letter dated compromise settlement cancellation letter dated 21.08.2020 issued by Applicant Bank.	111-120
15.	Annexure M Copy of the Information Utility	121-138
16.	Annexure N Copy of Board Resolution of meeting dated 11.02.2015 along with Copy of Revival Letter 23.09.2015	139-141
17.	Annexure O Copy of Board Resolution of meeting dated	142-153





	11.02.2015 along Copy of Addendum-1 dated 29.04.2015	
18.	Annexure P Copy of Board Resolution of meeting dated 18.12.2015 along Copy of Addendum-2 dated 14.03.2016	154- 165
19.	Annexure Q Copy of Board Resolution of meeting dated 19.09.2016 along Copy of Addendum-3 dated 17.11.2016	166- 180
20.	Annexure R Certificate under Banker Book of Evidence	181- 182
21.	Copy of Common Rupee Loan Agreement dated 28.09.2012	183-260
22.	Copy of Agreement for Assignment dated 28.09.2012.	261- 268
23.	Copy of Deed of Hypothecation dated 28.09.2012.	269- 280
24.	Copy of Undertaking dated 28.09.2012	281- 282
25.	Copy of Escrow Account Agreement dated 28.09.2012	283- 297
26.	Copy of Inter Creditor Agreement 28.09.2012	298- 322
27.	Copy of Confirmation of Inter Creditor Agreement dated 28.09.2012 by Corporate Debtor	323
28.	Copy of Irrevocable Power of Attorney dated 28.09.2012	324- 326



19. It is further stated that the Financial Creditor has given loan to the Corporate Debtor for the execution of the project. The authorization letter authorizing Mr. Viveka Nand, Assistant General Manager is attached at page no. 42 of the application.

20. Affidavit in reply was filed by the Corporate Debtor under Diary No. D4642 dated 07.06.2021 which was affirmed by Mr. Malavsinh Bharatsinh Jadeja, Authorized Signatory of the Corporate Debtor.

21. The reply in brief is given below:
 - (a) Petition is no longer maintainable in light of subsequent developments.
 - (b) OTS was sanctioned after filing present petition giving fresh term for making the payment.
 - (c) No default under such fresh term.

22. It is stated that post-filing the present petition on 05.11.2020, the Petitioner has issued OTS letter dated 30.11.2020 revising the dates of repayment and new schedule/term has given for repayment for of the loan which is the subject matter of the present petition and



time till 30.07.2021 is given for repayment. The said OTS was accepted by the Respondent.

23. The purported date of default dated 28.07.2017 is superseded by the new term ending 30.07.2021.
24. It is stated that the loan in question was taken for the PPP Project with the Gujarat Government for building the bus terminal facility and commercial units and that these units will belong to the State Government were then permitted to be given on long-term lease by the Respondent, and earn 'premia' from the same, which was to be used in repaying the said loan.
25. It is further stated that Respondent has entered into a concession agreement with the State Government. The rights were assigned to the Petitioner bank and that the Respondent was required to take NOC from the Petitioner bank in order to lease out the units.
26. It is the case of the Petitioner that NOCs were never issued/belatedly issued which culminated into default by the borrower/Corporate Debtor.



27. It is stated that even after the OTS, the Petitioner bank was not releasing the NOCs and the Respondent was forced to approach the Hon'ble DRT and Hon'ble Gujarat High Court vide SCA No. 7243 of 2021.
28. It is stated that Hon'ble Gujarat High Court vide order dated 31.05.2021 was pleased to direct the Petitioner bank to release NOCs for sale of the units to permit repayment of the loan.
29. It is further stated that in similar such matters pertaining to associate companies, the lenders issued NOCs which is forming part and parcel of SCA No. 7243 of 2020.
30. It is further contention of the Respondent is that NOCs were withheld by the Applicant due to which repayment of the loan in question could not be done. It is further stated that the action of the Applicant are fraudulent and malicious in nature and call for proceedings under Section 65 of the IBC, 2016 and consequential dismissal of the present matter.



31. The Respondent has also challenged the authority of the person concerned who has affirmed the petition.
32. The Respondent has further raised issue regarding non-filing of working for computation and days and default and non-filing of the mandatory Bankers evidence Act Certificate.
33. It is further stated that counting from the date of default (28.07.2017), the petition is time-barred since filed on 06.11.2020.
34. It is stated that the Corporate Debtor is a going concern and having about 10 employees and that the parent company is a listed company having good market capitalization.
35. Rejoinder was filed under Diary No. D5388 dated 09.07.2021. It is stated that OTS was sanctioned under the SBI OTS Scheme, 2020 which is applicable across the country to all similar situated borrowers which has to be accepted as it is verbatim. However, the Respondent sought modification of the conditions of the OTS leading



to file Writ Petition being Special Civil Application No. 7243 of 2021 before the Hon'ble High Court which was ordered on 31.05.2021 whereby the Hon'ble High Court modified the conditions of the OTS and directed the bank to issue two steps NOCs. Against the said order, the bank (Applicant) has approached the Hon'ble Division Bench seeking withdrawal of the OTS.

36. In para 4 of the rejoinder, it is stated that one of the conditions of the loan agreement dated 28.09.2012 was as under:

"...the Borrower shall obtain the No-Objection Certificate (NOCs) from the Rupee Lenders, for lease/sale of the Built up Area which the Rupee Lenders shall issue, subject to the Borrower depositing the respective lease/sale proceeds in the Escrow Account, to their satisfaction".

37. It is stated that the conditions were not complied with and the borrower did not deposit the sale proceeds of the units in the escrow account and diverted the sale proceeds. Further, no information was shared.

38. It is stated that the application was duly signed by the person who was authorized by the Deputy General



Manager in terms of Regulation 76(1) of the State Bank of India General Regulation, 1955 under Section 50 of the SBI Act, 1955. The Gazette Notification is attached at Annexure-A/2.

39. It is stated that the required statement showing the calculation of amount + rate of interest + penal interest is attached at page no. 108 of the application.
40. It is stated that at the request of the borrower dated 14.11.2019, the Bank has sanctioned compromise settlement vide letter dated 13.12.2019 and as the Corporate Debtor failed to pay the amount, the compromise settlement was cancelled on 21.08.2020 and as such the cause of action would start from 21.08.2020.
41. In response to the rejoinder, a sur-rejoinder was filed by the Corporate Debtor under Diary No. D2460 dated 05.07.2023. In the sur-rejoinder, the Corporate Debtor is placing reliance on **Vidarbha Industries Power Limited v. Axis Bank Limited (2022 SCC Online SC 841)**.



42. In para 9 of sur-rejoinder, the Corporate Debtor states that settlement offer vide letter dated 28.09.2022 to the tune of Rs.35 Crore payable within a period of 16 months. Copy of such letter is marked as Annexure-A.
43. It is further stated that a settlement was arrived between the contesting parties and it is also submitted that the same was recorded by the Hon'ble Gujarat High Court while disposing of the main appeal being LPA No. 1 of 2022 vide its order dated 18.10.2022 marked as Annexure-B. Based upon the such order, the Corporate Debtor wrote to the Applicant to issue final NOCs for 12 units which was replied by the SBI vide letter dated 24.11.2022 rejecting the offer of settlement of Rs.35 Crore sent by the Corporate Debtor.
44. It is further submitted that the Corporate Debtor has issued proposal dated 11.01.2023 for Rs.35 Crore being full and final settlement amount against the entire dues from the bank payable within a period of 18 months instead of 24 months earlier.



45. The same offer was rejected by the Applicant vide letter dated 25.01.2023.
46. Subsequent to the above, the Corporate Debtor issued letter dated 27.03.2023 to SBI/Applicant with a revised proposal of Rs.35 Crore payable within 17 months instead of 18 months earlier which was replied by the Applicant vide letter dated 10.04.2023 and the settlement was refused. The said letter of settlement is attached as Annexure-I.
47. Another settlement proposal was given by the Corporate Debtor which is dated 23.06.2023.
48. The Respondent further states that against the sanction of Rs.50 Crore, the Applicant has only disbursed Rs.44.31 Crore and the amount which has been since paid by the Corporate Debtor to the Applicant herein is aggregate to Rs.44.57 Crore and that the OTS proposals have been rejected arbitrarily.
49. The Corporate Debtor further states that the project with the Corporate Debtor executing is under the PPP Project



category. A large amount of monies have been invested by the Corporate Debtor to construct nearly 760 units aggregating to Rs.2.33 Lakhs Sq.ft. saleable area. This is a public interest project to improve urban in transport and infrastructure in the State of Gujarat and no purpose will be achieved by putting the Corporate Debtor into insolvency.

50. The Corporate Debtor, thereafter, has dealt with the corporate structure of the holding company and its shareholders. The status of the other SPVs which were 4 in number executing similar projects in the State of Gujarat and states that corporate insolvency is not going to help in the matter.

51. Reply to sur-rejoinder was filed by the Applicant herein under inward Diary No. D2864 dated 02.08.2023. It is stated that the Applicant has been providing the complete details and calculations to the Corporate Debtor from time to time and also provided the reason for not accepting the compromise offer. It is submitted that as per the bank's laid down instructions 25% upfront



amount of the compromise settlement amount is required to be deposited in the “No Lein Account/Non Interest Bearing Account” of the bank along with the offer of compromise and the Corporate Debtor has failed to provide the same.

52. It is further stated that the amount of Rs.5.80 Crore which was lying in the RERA Account was appropriated by the Applicant pursuant to the order of Hon’ble High Court.

53. It is further submitted that the OTS letter of 30.11.2020 was rejected on the grounds that the Corporate Debtor has failed to comply with the conditions of OTS because of non-payment and that there is arbitrariness.

54. As regards the issue of NOCs, it is stated that NOCs were stopped as the entire proceeds were not realised to be escrow account and the Corporate Debtor diverted the funds to another account maintained by them with other banks which was in violation of the escrow agreement.



55. It was stated that IA No. 276 of 2022 was simply filed with an ultra-motive to delay the proceedings filed under Section 7 of the IBC, 2016 as the Corporate Debtor has not disputed the fact of availing loan facilities from the bank, disbursement of loan and default in the loan account.
56. Pursish along with written submissions, certain documents and judgments were filed which are taken on record and have been considered here.

IA No. 276 of 2022

57. This application is filed by M/s. Hubtown Bus Terminal (Vadodara) against State Bank of India under Section 65 of the IBC, 2016 seeking the following prayers:
- a. *Pass appropriate order declaring that the CP(IB) No. 363 of 2020 filed by respondent herein is initiated fraudulently and/or with malicious intent for purpose other than for the resolution of insolvency of the Corporate Debtor and further this Hon'ble AA be pleased to pass appropriate order levying penalty as per s.65 of the IB Code on the respondent/financial creditor, and further be pleased to pass appropriate order dismissing the CP(IB) No. 363 of 2020;*
 - b. *Pending admission, hearing and final disposal of present IA, this Hon'ble Adjudicating Authority be pleased to:*



- i. Pass order staying the proceedings of CP(IB) No. 363 of 2020 pending before this Hon'ble AA;*
- c. Pass ex-parte ad-interim/interim order in terms of paragraph 47(b) hereinabove; and*
- d. Pass any other order(s) that this Hon'ble Adjudicating Authority deems fit.*

58. All the contentions are similar to the ones raised by Corporate Debtor in its reply.

59. From the pleadings on record, it is seen that the Corporate Debtor has approached the Hon'ble Gujarat High Court in Special Civil Appeal No. 10985 of 2021 wherein an order was passed on 10.12.2021. The said order was challenged by the Financial Creditor in LPA No. 1 of 2022 wherein certain orders were passed by Hon'ble High Court on 18.10.2022. From the said order it is seen that parties consented based on which orders were passed taking on record the consent terms. The operative portion of the order is reproduced below:

“a. That the amount of Rs.5.80 crores lying in RERA Account with Appellant shall be appropriated towards the loan account of the Respondent no.1 with the Appellant.

b. With regard to any units where final NOCs has not been issued, the Respondent No.1 shall provide requisite details for such units while making application for seeking NOC.



c. However, if the Appellant is not satisfied with the value consideration of such unit(s) then the R1 at its option may deposit the differential amount in the RERA / Escrow account with the Appellant for the release of provisional NOCs with the Appellant or alternatively, with regard to any dispute between the parties (including but without limitation) in respect of issuance of NOCs or valuation of units or any other issues for the units where NOC has not been issued, it will be open for either party to approach the Hon'ble DRT, Ahmedabad in the pending OA by filing an IA and the Hon'ble DRT, Ahmedabad will decide the said application in accordance with law as expeditiously as possible and within an outer limit of 3 months.

d. If the Appellant is satisfied with the value consideration of the unit(s) and the R1 has deposited the differential amount as sated above in clause 'c', the Appellant shall promptly release provisional NOC(s) for such units.

e. On release of provisional NOC(s), the R1 shall promptly deposit the agreement value of the unit for which NOC(s) is sought including the differential amount as stated above in clause 'c', in RERA / Escrow account with the Appellant.

f. That on deposit of the agreement value of such units including the differential amount as stated above in clause 'c' in the RERA / Escrow account for which provisional NOC(s) is issued, the Appellant shall promptly issue final NOC(s) for execution and registration of respective lease deed(s).

g. For the units where R1 has deposited entire value of the unit(s) as per clause 'e' including the shortfall in valuation as stated above in clause 'c' above, and subsequently the lease premia from the bankers of the purchasers is deposited into the RERA / escrow account pursuant to execution and registration of such lease deeds, the Appellant shall be entitled to appropriate the latter amount from the RERA / Escrow account (viz. 'premia from bankers'). Thereafter, the amounts already deposited by the R1 as referred in this clause 'g' to the extent received from the bankers of the purchaser, the same shall be considered towards future NOCs for remaining units.

h. To trigger the aforesaid arrangement, the R1 shall deposit a sum of Rs.50,00,000/- within 7 working days of passing of order by this Hon'ble Court for implementing this arrangement which amount shall considered towards future NOCs for remaining units, as per clause 'e' and 'g' hereinabove.]



i. This arrangement will be continued and valid for a period of 1 year from the date of the order that may be passed by this Hon'ble Court, subject to further time that may be mutually agreed between the Appellant and the R1 for the purpose of issuance of NOC and for the remaining units in the commercial facilities.

j. Towards the end, after issuance of NOCs of all the units and all units are disposed of, the additional funds brought in by the R1 in the RERA / escrow account with the Appellant under the arrangement mentioned herein (which is greater than the aggregate value of the units leased out under this arrangement) shall forthwith be returned to the Respondent no.1 by the Appellant. It is clarified that the Appellant shall appropriate amounts from the RERA / Escrow account only to the extent of the value mutually agreed between the Appellant and R1 of the unit(s) for which NOC is issued for execution of lease deeds.

k. This Hon'ble Court be pleased to direct the Hon'ble DRAT, Mumbai to decide two appeals filed by Respondent No.1 and one appeal filed by the Appellant together within an outer limit of 3 month from a date of receipt of copy of this order.

l. The Appellant and the Respondent No.1 are at liberty to work out a settlement in an expeditious manner for repayment of the outstanding loan amount to be mutually agreed upon and the time frame thereto and for the disposal of the balance units in the commercial facilities.

m. This Hon'ble Court be pleased to direct the Hon'ble NCLT, Ahmedabad before whom the insolvency petition being CP (IB) No.363 of 2020 is instituted by the Appellant, to defer the hearing of the same for a period of 6 months from the date of receipt of a copy of this order."

(emphasis supplied)

3. *Above said consent terms results in respondent No.2 herein executing the lease deed in favour of lessees and the lessees, in turn, would deposit the amount payable to respondent No.1 in an escrow account with the appellant bank who, in turn, would be entitled to appropriate the same towards loan account, for which NOCs are to be furnished by appellant bank and same having been agreed to be furnished by the appellant as stated in the terms of settlement noted hereinabove, this appeal would stand disposed of in terms of the*



settlement arrived at and substituting the order of the learned Single Judge to that of the terms set out hereinabove.

4. *It is made clear that respondent No.2 herein shall execute the lease deeds in respect of the parties identified by respondent No.1 as agreed under the concession agreement dated 26.8.2010 and subject to the consent terms as entered into hereinabove between appellant and respondent No.1.*

5. *In view of the above, the interim order passed in this appeal stands vacated and by virtue of the same, parties would be required to act upon the consent terms in true letter and spirit. It is also made clear that by virtue of the settlement having been entered into between the parties, Special Civil Application No.10985 of 2021 would not survive and writ applicant viz. applicant in the said Special Civil Application would file necessary purshis for withdrawal of the said Special Civil Application before the learned Single Judge and it is also made clear that in the insolvency petition being CP (IB) No.363 of 2020 filed by appellant bank which is pending before the National Company Law Tribunal, Ahmedabad would be deferred as agreed between the parties for a period of six months from the date of receipt of the copy of this order, in view of the application for OTS filed by respondent No.1 before the appellant being pending and in view of the consent terms entered into between the parties. In view of appellant and respondent No.1 making attempts to work out a settlement for repayment of the outstanding loan amount as may be mutually agreed upon including the time-frame thereto which we do hope and trust would be brought about between the parties in view of the present settlement, the appeals before the Debts Recovery Appellate Tribunal may also be rendered infructuous and in such an event, the parties would be at liberty to make mention before the Debts Recovery Appellate Tribunal for appropriate orders being passed thereon. Accordingly, appeal stands disposed of. All pending applications stand consigned to records.*

60. It is stated that subsequent to the said order, Miscellaneous Civil Application (Modification of Order) No. 1 of 2023 was filed by the Corporate Debtor. Order dated 25.10.2023 of Hon'ble High Court reveals that such



Miscellaneous Civil Application was later withdrawn by the Corporate Debtor.

61. During the hearing on 30.10.2023, it was explained by the Financial Creditor that the Corporate Debtor has applied for seeking NOCs in case of 366 units out of which for 365 units, the NOC has since been issued. Upon confirmation from the Corporate Debtor, the learned counsel agreed with the above position by and large. It was revealed that some new application has been filed on 12.10.2023 and the NOC for the same is awaited. Be that as it may, post the directions issued by the Hon'ble High Court, the Financial Creditor has by and large issued the NOCs. As such the allegation that Financial Creditor has contributed towards the delay/realization of its loan are unfounded and appears to be baseless and without any foundation. If at all, there was a delay, the delay was due to judicial intervention and as the account of the Corporate Debtor was declared N.P.A etc. for which legal remedies were available and **were availed** by the Corporate Debtor.



62. The fact of the matter remains that the account of the Corporate Debtor has turned N.P.A as early as 2017 due to non-payment of loan/interest.
63. From the above discussion, it can be easily concluded that there exists a debt which is in default. The Corporate Debtor has on numerous occasion filed various OTS proposals before the Financial Creditor sometimes they were accepted and were not adhered to and were recalled and other times the Financial Creditor rejected the OTS proposal.
64. A categorical statement was made by the counsel appearing for the Applicant and also the Bank Officer present during the hearing that as on the date of the last hearing, there was no OTS proposal pending on the file of Financial Creditor.
65. The Applicant Bank has placed reliance on ***M. Suresh Kumar Reddy v. Canara Bank (Civil Appeal No. 7121 of 2022)***, the Hon'ble Supreme Court has stated in para 13 that:-



“Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries and E.S. Krishnamurthy. The view taken in the case of Innoventive Industries still holds good.”

66. Be that as it may, at this stage, this Tribunal is not bothered to consider:-

- (a) The reasons for dismissal of the OTS proposal.
- (b) Ability of the holding company or its promoters to pay the financial debt.
- (c) Whether the concession agreement will survive or not.
- (d) The fate of the employees and other associates as IRP will keep the Corporate Debtor as going concern, if the Corporate Debtor is one at the date of this order.

67. The reason for our above assessment is based upon judgment of the Hon’ble Supreme Court in the matter of

Innoventive Industries Limited v. ICICI Bank Limited

wherein the Hon’ble Supreme Court held that:-

“..28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant



financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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 sub-section (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.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise..”

68. At the stage of admission, this Tribunal is only to ascertain about the debt which should be and the default and such default to be in excess of Rs.1 Crore.



69. The Applicant has placed on records before us to prove sufficient evidence that there is a debt which is in default and the repetitive OTS requests placed by the Corporate Debtor go on prove that he admits the debt and default and that the amount in default is more than Rs.1 Crore. We also hold that the repetitive OTS proposals have given new lease to the debt and present application is within limitation period.

70. In view of the above discussion, the application filed by the Financial Creditor under Section 7 of the IBC, 2016 deserves to be admitted.

71. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-

(i) The Respondent/Corporate Debtor- **M/s. Hubtown Bus Terminal (Vadodara) Private Limited** is admitted in the Corporate Insolvency Resolution Process under section 7 of the IBC, 2016.

(ii) As a consequence thereof, the moratorium under Section 14 of the IBC, 2016 is declared for



prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.

- 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.*
- e. *The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*

(iii) 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31



or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

- (iv) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- (v) As proposed by the Financial Creditor, we appoint C.A. Vinod Tarachand Agrawal, having Registration No. IBBI/IPA-001/IP-P00641/2017-18/11090, and ([email-ca.vinod@gmail.com](mailto:ca.vinod@gmail.com)), under section 13 (1)(c) of the Code to act as Interim Resolution Professional (“**IRP**”) of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.



(vi) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.

(viii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without



any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- (ix) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (x) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.
- (xi) The Financial Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along



with First Progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per the Rules.

(xii) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

72. Accordingly, CP (IB)/363(AHM) 2020 stands admitted.



73. In line of the forgoing discussion, we do not find any reason to entertain IA No. 276 of 2022 as we have come to the conclusion that application CP(IB) No. 363 of 2020 is complete and accordingly, IA No. 276 of 2022 stands rejected and we find that CP(IB) No. 363 of 2020 is not violative of Section 65 of the Code. No order as to costs.
74. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)**

**-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)**

Rajeev/P.S