

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

CP(IB)No.384/7/HDB/2018

Under Section 7 of the Insolvency and Bankruptcy
Code, 2016, Read with Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority)
Rules, 2016.

In the matter of:-

Stressed Assets Stabilization Fund,
IDBI Tower, 3rd Floor,
WTC Complex, Cuffe Parade,
Mumbai – 40000.

... Financial Creditors

Vs

Galada Power And Telecommunication Limited,
P2/6, IDA Block III, Uppal,
Hyderabad, Telangana, India – 500039.

...Corporate Debtor

Order pronounced on: 14.08.2019

**Coram: Shri. K. ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL
Dr. BINOD KUMAR SINHA, MEMBER TECHNICAL**

Parties/Counsel Present:

For the Petitioner/Financial Creditor:

Mr.V.V.S.N.Raju, Advocate

For the Respondent/Corporate Debtor:

Dr.S.V.Rama Krishna, Advocate

Mr.S.V.Vanshi Krishna, Advocate

Per: Dr. BINOD KUMAR SINHA, MEMBER TECHNICAL

ORDER

1. The present petition is filed by 'Stressed Assets Stabilization Fund' (hereinafter referred to as 'Financial Creditor') under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Galada Power And Telecommunication Limited(hereinafter referred to as 'Corporate Debtor').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. The learned counsel appearing for Petitioner/Financial Creditor stated that the Corporate Debtor has approached the Industrial Development Bank of India (IDBI) for grant of credit facilities to finance its business activities.
4. It is stated that, the IDBI has granted three credit facilities i.e, Rupee Term Loan Facility vide Agreement dated 28.06.1995 for Rs.8,00,00,000/-(Rupees Eight Crores only), guarantee Assistance Facility vide Agreement dated 22.11.1996 for Rs.10,78,54,691/- (Rupees Ten Crores seventy Eight Lakhs Fifty Four Thousand Six Hundred Ninety One Only) and Debenture Subscription Facility vide Agreement dated 24.03.1998 for Rs.5,00,00,000/- (Rupees Five Crores only), respectively for which the Corporate Debtor has executed all the necessary loan documents including hypothecation and mortgage in favour of IDBI.

Total amount of debt granted is tabulated as below:

Nature of Debt	Amount Sanctioned	Debt Granted
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Rupee Term Loan Facility	8,00,00,000	8,00,00,000
Guarantee Assistance Facility	10,78,54,691	10,78,54,691
Debenture Subscription Facility	5,00,00,000	5,00,00,000
TOTAL	23,78,54,691	23,78,54,691

Dates of Disbursements of debts are tabulated as below:

Nature of Debt	Dates of Disbursements	
Rupee Term Loan Facility	Date of First Disbursement	July 5, 1995
	Date of Last Disbursement	September 4, 1997
Guarantee Assistance Facility	Date of First Disbursement	December 10, 1997
	Date of Last Disbursement	December 7, 2001
Debenture Subscription Facility	Date of First Disbursement	March 31, 1998
	Date of Last Disbursement	October 23, 1998

5. It is stated that, the said loans, together with all underlying security interest and all rights, titles and interest therein, were subsequently transferred by IDBI in favour of Financial Creditor herein i.e., Stressed Assets Stabilization Fund vide registered transfer Deed dated 30.09.2004.
6. It is stated that the Corporate Debtor has been duly acknowledging the dues payable to IDBI/Financial Creditor till the year 2016 in its books of accounts.
7. It is stated that the outstanding due amount claimed by the Financial Creditor is Rs.727,68,77,776/- (Rupees Seven Hundred Twenty Seven

Crores Sixty eight Lakhs Seventy Seven Thousand Seven Hundred Seventy Six Only) as on 01.04.2018.

8. In support of his contention, the learned counsel for the Petitioner relied on the following documents:-

- Delegation of Power effective from 05.04.2005.
- Form 2 dated April 25, 2018
- Detailed bifurcation of the amount claimed to be in default
- Certified true copy of workings for computation of amount and days of default in tabular form.
- Table giving particulars of security held.
- Deed of Hypothecation dated June 28, 1995 executed by the Corporate Debtor in favour of IDBI for securing the Rupee Term Loan Facility.
- Deed of Hypothecation dated November 22, 1996 executed by the Corporate Debtor in favour of IDBI for securing the Guarantee Assistance Facility.
- Deed of Hypothecation dated October 26, 1998 executed by the Corporate Debtor in favour of IDBI for securing the Debenture Subscription Facility.
- Memorandum of Entry No.594 dated August 14, 1997.
- Memorandum of Entry No.600 dated September 10, 1997.
- Memorandum of Entry No.707 dated July 10, 1998.
- Copies of the certificates of registration of charge issued by the Registrar of Companies.
- Loan Agreement dated June 28, 1995 entered into among the Corporate Debtor, IDBI and other lenders in respect of the Rupee Term Loan Facility.

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- Guarantee Agreement dated November 22, 1996, entered into between the Corporate Debtor and IDBI in respect of the Guarantee Assistance Facility.
- Subscription Agreement dated March 24, 1998, entered into between the Corporate Debtor and IDBI in respect of the Debenture Subscription Facility.
- Trust Deed dated September 24, 2004 executed between the Government of India and the Trustees under which the Financial Creditors was constituted.
- Transfer Deed dated September 30, 2004 executed by IDBI in favour of the Financial Creditor, under which the loans sanctioned by IDBI to, inter alia, the Corporate Debtor were transferred to the Financial Creditor.
- Rupee Term Loan Facility, Guarantee Assistance Facility Debenture Subscription Facility Expense and Corporate Debtor account statement.
- Certified dated May 26, 2018 under the Bankers Book Evidence Act, 1891 (18 of 1891).
- Letter bearing reference no. IDBI (H) No.751/CFD(GPTL) dated May 17., 2001 issued by IDBI Bank Limited (erstwhile IDBI) ("IDBI Bank") to the Corporate Debtor, informing about the defaults committed and recalled the loans.
- Letter bearing reference no. IDBI (H) No.1207/CFD (GPTL) dated June 19, 2001 issued by IDBI Bank to Shri D.C.Galada, informing him about the defaults committed and invoking his personal guarantees.
- Letter bearing reference no. IDBI (H) No.1210/CFD (GPTL) dated June 19, 2001 issued by IDBI Bank to Shri M.C.Galada, informing

him about the defaults committed and invoking his personal guarantees.

- Letter bearing reference no. IDBI (H) No.1212/CFD (GPTL) dated June 19, 2001 issued by IDBI Bank to Shri S.M.Kankaria, informing him about the defaults committed and invoking his personal guarantees.
- Notice bearing reference no. BY/SASF/Galada /No. dated March 6, 2013, issued by the Financial Creditor to the Corporate Debtor, under Section 13(2) of the SARFAESI ACT, 2002.
- Letter bearing reference no. GPTL/2013-14/181/ dated January 9, 2014, issued by the Corporate Debtor to the Financial Creditor, requesting the Financial Creditor to accept a settlement proposal of Rs.14,30,00,000/-.
- Letter bearing reference no. SASF/Galada/LOA/216 dated July 7, 2014, issued by the Financial Creditor to the Corporate Debtor, agreeing in principle for settlement of dues of the Corporate Debtor on the terms and conditions mentioned therein and requesting the Corporate Debtor to convey their acceptance for the same.
- Letter bearing reference no. GPTL/2014-15/71 dated July 10, 2014 issued by the Corporate Debtor to the Financial Creditor, requesting the Financial Creditor to consider their proposal to settle the dues as per the terms and conditions therein.
- Letter bearing reference no. SASF/Galada/LOA/274 dated August 1, 2014, issued by the Financial Creditor to the Corporate Debtor, agreeing in principle for granting extension of repayment period from 24 months to 36 monthly instalments and asking the Corporate Debtor to arrange for payment of interest of Rs.65,93,000/- on or before August 16, 2014.



- Letter bearing reference no. GPTL/2014-15/94 dated August 11, 2014, issued by the Corporate Debtor to the Financial Creditor, requesting the Financial Creditor to consider a one-time settlement proposal of Rs.15,47,00,000/-
- Letter bearing reference no. GPTL/2015-16/ dated August 28, 2015, issued by the Corporate Debtor to the Financial Creditor, requesting the Financial creditor to consider the payment of outstanding principal dues of Rs.14,97,00,000/- over a period of 4 years, commencing from January 2016 in 48 equated monthly instalments.
- Letter bearing reference no. SASF/Galada/C2/63 dated April 27, 2016, issued by the Financial Creditor to the Corporate Debtor, conveying that the Corporate Debtor has not complied with the terms and conditions of the Negotiated settlement of dues and that the Financial Creditor is revoking the Negotiated Settlement with immediate effect.
- E-mail dated May 9, 2016 issued by Shri V. Subramanian, the Vice President & Secretary & Chief Financial Officer of the Corporate Debtor, conveying that the shall be submitting a revised proposal for the same by the ned of May, 2016.
- Letter bearing reference no. GPTL/2016-17/22 dated May 31, 2016, issued by the Corporate Debtor to the Financial Creditor, requesting the Financial Creditor to consider the revised proposal for one time settlement on the terms and conditions therein.
- Letter bearing reference no. GPTL/2016-17/146 dated March 31, 2017 issued by the Corporate Debtor to the Financial Creditor, offering to settle the debts by offering Rs.10,20,00,000/-
- Letter bearing reference No. SASF GPTL/2016-17/87&88 dated April 21, 2017 issued by the Financial Creditor to the Corporate

Debtor, conveying that the one time settlement proposal provided by the Corporate Debtor for an amount of Rs.10,20,00,000/- is inadequate and requesting the Corporate Debtor to improve the settlement offer.

- Letter bearing reference no. GPTL/VS/2017-18/45 dated July 27, 2017 issued by the Corporate Debtor to the Financial creditor, conveying that the Board Members of the Corporate Debtor have consented to settle the dues payable to the Financial Creditor and further requesting the Financial Creditor to consider the settlement offer which was proposed earlier of Rs.16,67,00,000/-.
- Letter bearing reference no. SASF GPTL/2017-18/583 dated July 31, 2017 issued by the Financial Creditor to the Corporate Debtor, requesting the Corporate Debtor to improve the settlement offer.
- Letter bearing reference no. GPTL/VS/2017-18/47 dated August 4, 2017 issued by the Corporate Debtor to the Financial Creditor, improving the settlement offer to Rs.20,00,00,000/-.
- Letter bearing reference no. SASF/GPTL/2017-18/637 dated August 8, 2017, issued by the Financial Creditor to the Corporate Debtor, conveying that the settlement proposal submitted is incomplete and seeking further details.
- Letter bearing reference no. GPTL/VS/2017-18/49 dated August 14, 2017, issued by the Corporate Debtor to the Financial creditor, submitting the income tax returns and net worth statement, and requesting to consider a one-time settlement proposal of Rs.20,00,00,000/-.
- Letter bearing reference no. SASF/GPTL/2017-18/759 dated September 12, 2017, issued by the Financial Creditor to the Corporate Debtor, conveying that the one-time settlement proposal of the Corporate Debtor has been closed and that the Financial

Creditor will take action against the Corporate Debtor under the SARFAESI Act.

- Letter bearing reference no. GPTL/VS/2017-18/61 dated September 22, 2017, issued by the Corporate Debtor to the Financial Creditor, seeking waiver of upfront payment with respect to the one-time settlement proposal.
- Letter bearing reference no. GPTL/2017-18/75 dated November 10, 2017 issued by the Corporate Debtor to the Financial Creditor, requesting the Financial Creditor to stay the further course of action under the SARFAESI Act, 2002.
- Letter bearing reference no. SASF/GPTL/2017-18/1004 dated November 23, 2017 issued by the Financial Creditor to the Corporate Debtor, advising the Corporate Debtor to submit an improved proposal.

9. Respondent filed counter. The learned counsel for the Respondent stated:-

- a. That the first production facility of the Corporate Debtor was set up in 1972-73 in Uppal IDA, Hyderabad after availing loan facilities from APIDC and APSFC while IDBI participated to the equity under Direct Investment Scheme. Subsequently, in 1994-95 the second Unit was established in Silvassa with a capital outlay of Rs.32 Crores which was met by promoters contribution and term loan/NCDs from Financial Institutions viz., IDBI, IIBI, UTI, ICICI and working capital facilities from consortium of Banks comprising Canara Bank (Lead Bank) and Syndicate Bank over a period of time.

10. The learned counsel for the Corporate Debtor raised objections in its counter, inter-alia, stating as under:-

- a) That the present Petition is barred by limitation.

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- b) That the Amounts claimed are arbitrary, baseless, fanciful and not admitted by the Corporate Debtor. The principal amount claimed at Rs.23,78,54,691/- is not correct; the correct figure is Rs.16.67 crores only. Further, a huge amount of interest of Rs.711 crores has been claimed, which is 42.65 times of the principal amount.
- c) That the Doctrine of Novation will be applicable in the present case due to fresh Negotiated Settlement agreed by Financial Creditor and acted upon by both the parties.
- d) That the Petitioner is guilty of suppression of vital fact of payment of Rs.2.10 Crore towards 10% OTS amount paid pursuant to the proceedings before the Hon'ble District Magistrate/Collector, Dadra & Nagar Haveli, Silvassa.
- e) That the Financial Creditor is responsible for delay in payments under OTS and not cooperating in disposing of non-core asset i.e., property at Uppal, IDA to enable the Corporate Debtor to pay the agreed amounts.
- f) That the Cases filed before DRT, Hyderabad are pending adjudication.
- g) That the Case filed u/s. 17 of SARFAESI Act, 2002 before the Hon'ble DRT, Hyderabad is pending adjudication.
- h) That there is a High Court stay order in WP No.18833 of 2010 against BIFR and AAIFR.
- i) That the present Petition is an abuse of provisions of IBC, 2016 and covered u/s. 65 of the Code.
- j) That there is no authority to file the petition on behalf of Financial Creditor.
- k) That the Gazette Publication dated 09.10.2004 is not relevant.

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11. Reiterating above, counsel for the Respondent prayed to dismiss the present application.
12. Counsel for the Financial Creditor filed rejoinder reiterating the averments made in the Petition denying the allegations made in the counter and further prayed to allow the Application.
13. Heard both sides and perused the records including written submissions filed by both the parties.
14. It is the case of the Petitioner that, it has provided various credit facilities to the Corporate Debtor herein, for which the present Corporate Debtor was liable to pay and has defaulted in repayment of the same.
15. Respondent in its counter nowhere denied the disbursements of credit facilities from the Petitioner and its failure in repayment of the same. However, Respondent has raised two major objections regarding the Petition:
 - a) That the Petition is barred by limitation; and
 - b) That the actual amount of debt is Rs.16.67 crores only as against the claim of Rs.727,68,77,776/-.
16. As regards the objection that the Petition is barred by limitation, on perusal of documentary records it is observed that the Corporate Debtor has acknowledged the debt from time to time, the last such acknowledgement being in the month of November, 2017. Thus, the instant Petition is within time and not barred by limitation.
17. As regards the actual amount of debt being Rs.16.67 crores only as is admitted by the Respondent, it is observed that the provisions of Sec.7 get triggered in cases where the financial debt is for an amount of Rs.1 Lakh and above and there is a default in relation to the said debt. Since

in the instant case the admitted debt is of a much higher amount than Rs.1 Lakh, the objection raised by the Respondents fails.

18. As has been observed by the Hon'ble Supreme Court in the case of M/s. Innoventive Industries Ltd. Vs ICICI Bank and Anr. in Civil Appeal No. 8337-8338/2017, in cases of financial debt, the Adjudicating Authority has to satisfy itself that there is a financial debt of Rs.1 Lakh or more and a default has occurred and the Application filed u/s.7(2) is complete in all respects and there is no disciplinary proceedings pending against the proposed IRP. Once the above conditions are fulfilled, the Adjudicating Authority will admit the Application filed by the Financial Creditor. Thus the objection raised by the Respondent with regard to the actual amount of debt being much less than the claim amount of debt does not come to their rescue.
19. Further, the Petitioner has proved its case by placing documentary evidences which prove that the default has been occurred for which the present Corporate Debtor was liable to pay. In these circumstances, this Adjudicating Authority is satisfied with the submissions put forth by the Petitioner/Financial Creditor. Further, the Financial Creditor has fulfilled all the requirements as contemplated under IB Code, in the present Company Petition and has also proposed the name of IRP after obtaining the written consent in Form-AA. In view of the above, we are inclined to admit this petition.
20. Various other objections have also been raised which are untenable grounds for rejection of the present Petition.
21. Accordingly, instant petition is admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process



which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

22. This Adjudicating Authority hereby appoint Shir Nitin Panchal, as IRP as proposed by the Financial Creditor. There is no disciplinary proceedings pending against the IRP as evidenced from Form-2 and his name is reflected in IBBI website. 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 Insolvency and Bankruptcy Code, 2016 within three days from the date the copy of this order is received, and call for submission of claims in the manner as prescribed.

23. We declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order 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, 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 Securitisation 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.*

24. The supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
25. 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 and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.
26. The Petitioner/FC 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.
27. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
28. The address details of the IRP are as follows:-
Shri Nitin Panchal,
Address: A-203,
Suraj Eleganza - I CHS,
Pitamber Lane, Near Dena Bank, Mahim (West),
Mumbai, Pin - 400021.
Email: nitin@waterfallip.com
Registration No: IP-P00777/2017-2018/11350
29. The present Petition is hereby admitted.


14.08.19
Dr. BINOD KUMAR SINHA
MEMBER (TECHNICAL)


K. ANANTHA PADMANABAHA SWAMY
MEMBER (JUDICIAL)

Alekhya