



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

CP (IB) No. 1011/MB-IV/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

IDBI Bank Limited

[CIN: L65190MH2004GOI148838]

...Financial Creditor/Applicant

V/s

**Process Construction and Technical
Services Private Limited**

[CIN: U29113MH2006PTC161487]

...Corporate Debtor/Respondent

Order Dated: 28.04.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Monika Tanna , Advocate.

For the Respondent(s) : Mr. Davis Daniel, Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is an application bearing C.P. (IB) No. 1011/MB-IV/2022 filed by IDBI Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against

Process Construction and Technical Services Private Limited,
Corporate Debtor.

2. The Application is filed by Mr. Srinivas Vesala, Deputy General Manager of the Financial Creditor duly authorised vide its Authority Letter dated 03.09.2022, claiming total default of Rs.4,88,10,462.70 (Rupees four crore eighty-eight lakh ten thousand four hundred sixty-two and seventy paise only) as on 01.09.2022 which includes:
 - 2.1. Principal amount of Rs.3,75,62,720.70; and
 - 2.2. Interest amount of Rs.1,12,47,742/-.
3. The Date of Default is not clearly mentioned in Part-IV of the Petition. The Petition is filed on 13.09.2022. The Account of the Corporate Debtor was classified as NPA on 31.03.2021.
4. The case of the Financial Creditor is that:
 - 4.1. The Financial Creditor had sanctioned Credit Facility of Rs.25,00,00,000/- (Rupees twenty-five crore only) vide Letter of Working Capital Facilities dated 20.04.2015. The said Credit Facilities were renewed, enhanced and revised from time to time subject to terms and conditions stipulated. The Credit Facility was lastly revised vide its sanction letter dated 15.06.2020.
 - 4.2. Vide Acknowledgement and Revival Letters dated 06.10.2017 and 06.10.2020, the Corporate Debtor acknowledged and confirmed the debts and execution of loan and security documents in favour of the Financial Creditor.

- 4.3. As per Sanction Letter dated 15.06.2020 and Facility Agreement Schedule, principal and interest component fell due on 31.03.2021.
- 4.4. The Financial Creditor issued Notice dated 11.06.2021 under section 13(2) SARFAESI Act, 2002 upon the Corporate Debtor for claiming aggregate sum of Rs.11,41,13,009/- to be payable within a period of 60 days from the date of this Notice. The Financial Creditor has filed the NeSL Report dated 23.08.2022.
5. The Corporate Debtor appeared on 08.12.2022, 12.01.2023, 22.02.2023 and 27.03.2023, however, the Corporate Debtor did not file its Affidavit-in-Reply in the matter and hence, vide order dated 08.12.2022, right to file reply of the Corporate Debtor was forfeited. Hence, on 27.03.2023 the matter was finally heard and reserved for orders.

Findings/Observations:

6. This Bench heard the arguments of the Learned Counsel for Financial Creditor and the Corporate Debtor and perused the material on record.
 - 6.1. After perusal of the material on record, it is observed that The Financial Creditor had sanctioned Credit Facility of Rs.25,00,00,000/- (Rupees twenty-five crore only) vide Letter of Working Capital Facilities dated 20.04.2015. The said Credit Facilities were renewed, enhanced and revised from time to time subject to terms and conditions stipulated. The Credit Facility was lastly revised vide its sanction letter dated 15.06.2020.
 - 6.2. As per submissions of the Financial Creditor in Part-IV, the debt fell due on 31.03.2021, which is the date of NPA. The Financial

Creditor has annexed the Letter of Acknowledgement of Debt and Confirmation of Security dated 06.10.2017 and 06.10.2020 wherein the Corporate Debtor has confirmed the loan and security documents to the extent of Rs.25,00,00,000/-.

6.3. On perusal of the material this Bench notices that Date of Default as per NeSL report in Form C is 31.03.2021 and default amount is Rs.4,81,65,527.70. Further, as per Certificate dated 03.09.2022 the Financial Creditor Bank has certified that Fund Based Facilities were declared as NPA on 31.03.2021. Also, the Corporate Debtor was asked to substitute Bank Guarantees for aggregate value of Rs.6,70,16,411/- and pay outstanding working capital facilities amounting to Rs.4,70,96,598/- within 15 days from the date of Recall Notice dated 27.05.2021. The Corporate Debtor has not filed any reply however, the Corporate Debtor was represented through the Counsel during the course of hearing, it was pleaded that a sum of Rs.50,00,000/- has already been paid by the Corporate Debtor and it is contemplating one-time settlement of the remaining outstanding with the Financial Creditor on 12.01.2023. However, no settlement was reported either on 22.02.2023 and 27.03.2023 by the Corporate Debtor. These facts clearly show that a sum in excess of Rs.1,00,00,000/- is due and in default as Financial Debt.

6.4. It is observed from the records and daily orders available with this Bench that, on 08.12.2022, Ld. Counsel for the Corporate Debtor appeared and submitted that there were settlement talks going on between the parties and the matter was in the advance stage of settlement. On 12.02.2023, at the time of hearing, the Ld. Counsel for the Financial Creditor submitted that the Corporate Debtor has

deposited Rs.50,00,000/- on 07.01.2023 towards outstanding dues and sought some time to apprise the Bench regarding remaining balance and settlement process. Thereafter, the matter was listed on 22.02.2023, however, no settlement could take place between the parties and hence, on 27.03.2023 after hearing both the parties, the matter was Reserved for Orders.

- 6.5. After perusal of the material on record, this Bench is of considered view that the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor is complete and filed in the proper form. The Corporate Debtor has failed to appear in the matter after being afforded several opportunities in the matter.
- 6.6. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. This Bench does not find any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor deserve to be admitted u/s 7 of the Code.
7. The Applicant has proposed the name of Mr. Sunil Kumar Kabra, a registered Insolvency Resolution Professional as Interim Resolution Professional (IRP) to carry out the functions as mentioned under I&B Code.

ORDER

8. This Application being C.P. (IB) No. 1011/MB-IV/2022 filed by IDBI Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against Process Construction and Technical Services Private Limited, Corporate Debtor is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 possession of the corporate debtor.

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- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench appoints Mr. Sunil Kumar Kabra, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P01011/2017-2018/11662], as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Prabhat Kumar
Member (Technical)
28.04.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)