

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**CP(IB)/232(CHE)/2021**

*(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 **J.K.S. Construction Private Limited,**

**State Bank of India,**

Represented by its Asst. General Manager,  
Stressed Assets Management Branch,  
Red Cross Building,  
No.32, Montieth Road, Egmore,  
Chennai – 8

*... Financial Creditor*

*-Vs-*

**J.K.S. Construction Private Limited,**

Represented by its Directors,  
Having its Registered Office at,  
No.12, Sammandam Street, Bharathipuram,  
Chromepet, Chennai – 44.

*... Corporate Debtor*

*Order Pronounced on 11<sup>th</sup> March 2022*

CORAM:

**Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)  
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor: M.L. Ganesh, Advocate  
S. Arun Kumar, Advocate*

*For Corporate Debtor: Ex-Parte*

ORDER

**Per: Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

Under Adjudication is an Application that has been filed by  
**State Bank of India** (hereinafter referred to as '*Financial  
Creditor*') under Section 7 of the Insolvency & Bankruptcy Code  
2016 (in short, '*IBC, 2016*') r/w Rule 4 of the Insolvency &  
Bankruptcy (Application to Adjudicating Authority) Rules, 2016

against **J.K.S. Construction Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is the State Bank of India having its branch office at Chennai. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company and the CIN of the Corporate Debtor reflects in the Ministry of Corporate Affairs website as CIN: U45202TN2005PTC058011, the Corporate Debtor was incorporated on 14.11.2005 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.12, Sammandam Street, Bharathipuram, Chrompet, Chennai – 44. As per Part III of the application, the Financial Creditor has proposed the name of one Mr.Raghu Babu Gunturu, as the Interim Resolution Professional, who has also filed his consent in Form – 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.1,03,36,97,378/- as on 28.10.2013 and the outstanding as on 18.01.2021, is Rs.113,55,25,659.93/- are being claimed by the Financial Creditor as the Financial debt and the date of default is



mentioned as 13.12.2017. Part – V of the Application discloses the details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt'.

4. It was further submitted by the Learned Counsel for the Applicant that the Corporate Debtor is engaged in the Construction of Infrastructure facilities. The Corporate Debtor had availed the fund based and non-fund based credit limits amounting to Rs.30 Crore on 02.12.2009, Rs.50 Crore on 16.11.2010, Rs.60 Crore on 21.03.2011 and Rs.70 Crore on 25.06.2012 from the Financial Creditor.

5. It was further submitted that the Corporate Debtor has availed Cash Credit, LC, BG facilities aggregating to the tune of Rs.40 Crore from Bank of Maharashtra (BOM) on 20.12.2012.

6. It was further submitted that the Corporate Debtor availed credit facilities amounting to Rs.100 Crore from SBI and BOM by executing a consortium of loan security documents on 16.02.2013.

7. The Corporate Debtor and Guarantors have executed the loan security documents on 07.12.2009, 20.12.2010, 28.04.2011, 08.10.2011, 25.06.2012, 01.11.2012 and 28.11.2012 in favour of SBI. Further, it was averred that the Corporate Debtor and guarantors have executed the Loan Security Documents on 31.12.2012, 03.01.2013 and 23.01.2013 in favour of BOM.

8. It was further submitted that the Corporate Debtor and guarantors have executed the loan security documents on 16.12.2013 in favour of SBI and BOM.

9. It was further submitted that the Corporate Debtor and the guarantors had deposited the original title Deeds pertaining to the mortgaged property with an intention to create equitable mortgage in favour of the Financial Creditor as evident from the letter of confirmation for creation of mortgage by deposit of title deeds on various dates.

10. It was further submitted that the loan account of the Corporate Debtor had become NPA in the books of the SBI on 28.10.2013, and it was transferred to Stressed Asset Management Branch. Similarly, the loan account of the Corporate Debtor had become NPA in the books of BOM on 01.12.2013.

11. It was further submitted that the Financial Creditor along with BOM filed OA No.333/2015 before DRT-II, Chennai for recovery of Rs.115,39,31,669.57/- as on 20.03.2015 which was admitted by the DRT on 18.09.2017. Pursuant to that the Financial Creditor an appeal before DRAT, Chennai against the discharge of certain immovable property mortgaged by the guarantors which is pending adjudication.



12. It was further submitted that the Corporate Debtor is liable to pay a sum of Rs.113,55,25,659.93/- as on 18.10.2021 towards the cash credit facility availed from the Financial Creditor. It was further submitted that the Corporate Guarantor had given OTS letter on 07.02.2015, which has been rejected by the Financial Creditor.

13. It was also submitted that the Corporate Debtor has diverted the bank funds for the ulterior purpose and the Financial Creditor had lodged a criminal complaint before CBI which is investigating the same against the promotor / director of the Corporate Debtor and its Guarantors.

14. In view of the submissions *supra*, the Ld. Counsel for the Financial Creditor argued that the present application has been filed by invoking the final order dated 18.09.2017 passed by the DRT against the Corporate Debtor and further argued that the OTS letter dated 13.12.2017 of the Corporate Debtor shall be taken as evidence for admission of the default and sought initiation of CIRP against the Corporate Debtor.

15. We have heard the Learned Counsel for the Financial Creditor and perused all the documents and proceedings placed on record, it can be seen that the Corporate Debtor had not entered an appearance in the said matter irrespective of the notice having



been issued to the Corporate Debtor by the Registry. Further, it is seen from the AOS S.R.No.547/2021, that notices issued to the Registered Office of the Corporate Debtor had been returned with the endorsement 'Returned as Unclaimed'. However, this Adjudicating Authority takes the abovementioned notices on record and concludes that sufficient notice had been given to the Corporate Debtor. In this regard, it is relevant to refer to the decision of the Hon'ble NCLAT in the matter of **Shri Bijay Pratap Singh -Vs- Unimax International and another** in *Company Appeal (AT) (Insolvency) No. 1273 of 2019*, wherein at para 37 it has held as follows;

*"37. One of the essential features for consideration of an Application under Section 9 of I & B Code is service of notice. A mere perusal of the paragraph 11 of the Impugned Order passed by the Adjudicating Authority patently indicates that a perusal of the pleadings showed that the proper 'service' was effected on the registered office of the 2nd Respondent/ Corporate Debtor situated at D-410, Pocket 16, Sector VII, Rohini, New Delhi – 110085. Also, it was observed by the Adjudicating Authority that there was no change in the address of the 'Corporate Debtor' in the 'Ministry of Corporate Affairs Record' which also shows the same address. Even the Resolution passed by the 'Corporate Debtor' on 27.03.2019 had shown the same 'Registered Office' address. Therefore, the Adjudicating Authority had very rightly adverted to Section 27 of the General Clauses Act and Section 20 of the Companies Act, 2013 read with Rule 35 of the Companies (Incorporation) Rules, 2014 in and by which the 'service' is to be effected on the 'Registered Office' address and that process was carried out. Therefore, this Tribunal holds that it was 'Sufficient service' of the 'Demand Notice'. As such, the plea taken on behalf of the Appellant that there was no service effected upon the 'Corporate Debtor' is not acceded to by this Tribunal. The other plea taken that there was no service by hand or electronic mail service to the 'Corporate Debtor' relegates to the background and it pales into insignificance because of the fact that failure/omission to effect service by hand or electronic mail service is not fatal to the instant case."*



16. As noticed from the relevant parts of the order of the DRT-II, Chennai dated 18.09.2017 in OA No.333/2015, makes it clear that there is an existence of debt and default in respect of the Corporate Debtor and it gives a fresh cause of action to approach this Adjudicating Authority under Section 7 of IBC, 2016. The One Time Settlement (OTS) letter dated 13.12.2017 proposed by the Corporate Debtor shows the clear admission of debt and default by the Corporate Debtor. Further, the limitation period to file the application before this Adjudicating Authority begins from the date of the OTS letter i.e. 13.12.2017, considering the limitation extension granted by the Hon'ble Apex Court in *Suo Moto* Writ Petition No.3 of 2020, we accede that the present application is filed within the limitation period. In this regard, it is relevant to refer to the precedent of the Hon'ble Apex Court in ***Dena Bank Vs. C. Shivakumar Reddy and Anr.,*** it was held as follows

"138. A final judgment and order/decreed is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decreed, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decreed and/or the amount specified in the Recovery Certificate.

139. The Appellant Bank was thus entitled to initiate proceedings under Section 7 of the IBC within three years from the date of issuance of the Recovery Certificate. The Petition of the Appellant Bank, would not be barred by limitation at least till 24th May, 2020.

xxx      xxx      xxx

142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the



ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.”

17. With the aforesaid observations and considering the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the IBC, 2016.

18. The Financial Creditor has proposed the name of one **Mr. Raghu Babu Gunturu**, having Registration Number **[IBBI/IPA-002/IP-N00025/2016-2017/10053]**, (e-mail ID: **raghu@ezresolve.in**) as Interim Resolution Professional (IRP) and written communication in the format prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the



initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

19. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the 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.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues

arising for the use or continuation of the license or a similar grant or right during moratorium period;

20. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

- (a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

21. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:



- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

22. Based on the above terms, the Petition stands **Admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with a copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

**B. ANIL KUMAR**  
MEMBER (TECHNICAL)

-Sd-

**Justice (Retd.) S. RAMATHILAGAM**  
MEMBER (JUDICIAL)

*Gopishankar D*