

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

CP(IB) No.565/KB/2020

In the matter of:

An application under section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:

ICICI Bank Limited, CIN No. L65190GJ1994PLC021012, a Company incorporated under the provision of the Companies Act, 1956, and licensed as a Bank under the Banking Regulation Act, 1949, and having its Registered Office at ICICI Bank Tower, near Chakli Circle, Old Padra Road, Vadodara – 390007, Gujarat, India, represented by its Authorised Signatory, Arghya Brata Mandal, ICICI Bank, ICICI Bank House, 3A, Gurusaday Road, Kolkata 700019;

...Financial Creditor

Versus

Stone India Limited, CIN No. L35201WB1931PLC006996, a company incorporated under the Companies Act, 1913, and having its Registered Office at 16, Taratala Road, Alipore, Kolkata, West Bengal 700088.

...Corporate Debtor

Date of hearing : 10/08/2021

Order Pronounced on : 09/11/2021

Coram:

Mr. Rajasekhar V.K., Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsel appeared through Video Conference

For the Financial Creditor : 1. Mr. Soorya Ganguli, Advocate
: 2. Mr. Somdutta Bhattacharyya, Advocate
: 3. Ms. Kiran Sharma, Advocate

For the Corporate Debtor : 1. Mr. Sayantan Bose, Advocate
: 2. Ms. Madhurima Das, Advocate

O R D E R

Per: Rajasekhar V.K., Member (Judicial)

1. The Court convened by video conference.
2. This application under section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **ICICI Bank Limited** (hereinafter referred to as the Financial Creditor), through one of its Authorised Signatory, Mr. Arghya Brota Mandal, who was authorised to file this Petition before this Adjudicating Authority vide Power of Attorney dated 04/05/2017 read with the Board Resolutions dated 03/05/2002, 30/10/2009, 27/10/2017 and 27/07/2018 thereby seeking initiation of Corporate Insolvency Resolution Process in respect of **Stone India Limited**, a corporate entity having its Registered Office at 16 Taratala Road, Alipore, Kolkata, West Bengal - 700088, CIN No. L35201WB1931PLC006996 (hereinafter referred as the Corporate Debtor).
3. It is submitted in the Petition Part IV, that Financial Creditor had sanctioned working capital facilities aggregating to Rs.15,00,00,000/- governed by the terms and conditions as specified in the credit arrangement letter dated 17/04/2008 and working capital facility dated 26/05/2008, both as amended

from time to time. Subsequently, the non-fund-based limit aggregating to Rs.7,00,00,000/- was cancelled and debts were granted and disbursed in domestic currency for Working Capital Facility (**“the Facility”**) aggregating to a cumulative value of Rs.8,00,00,000/-, governed by the terms and conditions as specified in the Credit Arrangement Letter dated 06/11/2009 as amended from time to time and Working Capital Facility Agreement dated 07/12/2009 (hereinafter referred to as **“the Facility Agreement”**) as amended from time to time.

4. In support of the petition the petitioner has annexed the following documents to prove the existence of financial debt:
- (a) A Credit Arrangement Letter dated 17/04/2008 and the subsequent Master Facility Agreement dated 26/05/2008 as amended vide Note of Amendment dated 02/09/2008¹;
 - (b) A Credit Arrangement Letter dated 06/11/2009 and a subsequent Master Facility Agreement dated 07/12/2009², as amended vide following documents :
 - (i) Note of Amendment dated 27/12/2010 executed subsequent to a credit arrangement letter dated 14/12/2010 issued by the Financial Creditor to the Corporate Debtor³;
 - (ii) Note of Amendment dated 22/12/2011 executed subsequent to a credit arrangement letter dated 21/12/2011 issued by the Financial Creditor to the Corporate Debtor⁴;
 - (iii) Letter of Amendment dated 27/12/2012 executed subsequent to a credit arrangement letter dated 27/12/2012 issued by the Financial Creditor to the Corporate Debtor⁵;

¹ Annexure G at pages 74 to 101 and page 106 of the petition

² Annexure G at pages 107 to 134 of the petition

³ Annexure G at pages 135 to 145 of the petition

⁴ Annexure G at pages 146 to 157 of the petition

⁵ Annexure G at pages 158 to 173 of the petition

- (iv) Note of Amendment dated 17/07/2014 executed subsequent to a credit arrangement letter dated 11/06/2014 and two amendatory credit arrangement letters both dated 17/07/2014 issued by the Financial Creditor to the Corporate Debtor⁶;
- (v) Supplementary and Amendatory Agreement dated 18/08/2014⁷;
- (vi) Supplementary and Amendatory Agreement dated 09/11/2015 executed subsequent to a credit renewal arrangement letter dated 29/09/2015 issued by the Financial Creditor to the Corporate Debtor⁸;
- (vii) Note of Amendment dated 22/02/2017 executed subsequent to a credit arrangement letter dated 25/01/2017 issued by the Financial Creditor to the Corporate Debtor⁹;
- (viii) Supplementary and Amendatory Agreement dated 23/03/2018 executed subsequent to an amendatory credit arrangement letter dated 16/03/2018 issued by the Financial Creditor to the Corporate Debtor¹⁰;
- (ix) Deed of Hypothecation dated 07/12/2009¹¹;
- (x) Supplemental Deed of Hypothecation dated 18/08/2014¹²;
- (xi) Supplemental Deed of Hypothecation dated 26/07/2016¹³;
- (xii) Supplemental Deed of Hypothecation dated 23/03/2018¹⁴;
- (c) Copies of certificate of Registration of charges issued by the Registrar of Companies with respect of the securities along with the estimated value of the securities held by the Financial Creditor¹⁵;
- (d) A copy of the CIBIL report dated 22/01/2020¹⁶;

⁶ Annexure G at pages 174 to 198 of the petition

⁷ Annexure G at pages 199 to 208 of the petition

⁸ Annexure G at pages 209 to 226 of the petition

⁹ Annexure G at pages 227 to 245 of the petition

¹⁰ Annexure G at pages 246 to 257 of the petition

¹¹ Annexure G at pages 281 to 283 of the petition

¹² Annexure G at pages 284 to 292 of the petition

¹³ Annexure G at pages 293 to 297 of the petition

¹⁴ Annexure G at pages 298 to 305 of the petition

¹⁵ Annexure F at pages 30 to 73 of the petition

¹⁶ Annexure H at pages 306 to 432 of the petition

-
- (e) A copy of Statement of Accounts from 29/08/2008 to 31/01/2020 available with the Financial Creditor along with the certificate u/s. 2A(a) of the Banker's Books of Evidence Act, 1981 (as amended up-to-date)¹⁷;
- (f) A copy of demand-cum-loan recalling notice dated 08/01/2020 issued by the Financial Creditor to the Corporate Debtor for payment of dues owed by the Corporate Debtor¹⁸.
5. The Corporate Debtor was required to repay the said Facility along with interest and other charges as specified in the Facility Agreement and other related transaction/security documents (hereinafter referred to as "**the Transaction Documents**"). However, the Corporate Debtor failed and neglected to make payment of interest due under the said Facility Agreement on 30/06/2018, i.e., date of default with regard to the said Facility. The account of the Corporate Debtor was, therefore, also classified as a Non-Performing Asset ("**NPA**") on such date, i.e., 30/06/2018.
6. The Financial Creditor issued a Loan Recall Notice dated 08/01/2020 recalling the entire facility and calling upon the Corporate Debtor to pay the amount of Rs.11,13,00,622/- as was due and payable on 30/11/2019 together with future interest, default interest, premia and other charges payable thereon¹⁹. Total amount claimed to be in default as on 31/01/2020 is Rs.11,55,27,330.05 including future interest, default interest, premia and other charges payable thereon²⁰.
7. Ld. Counsel for the petitioner submits that there have been continuous events of defaults committed by the Corporate Debtor and the date of default in respect of the Facility is 30/06/2018 and the account of the Corporate Debtor was classified as NPA on that date.
8. The Corporate Debtor has filed its reply affidavit through its manager Mr. Debabrata Ghosh.

¹⁷ Annexure I at pages 433 to 517 of the petition

¹⁸ Annexure J at pages 518 to 523 of the petition

¹⁹ Annexure J at pages 518 to 523 of the petition

²⁰ Annexure E at page 29 of the petition

9. In its reply affidavit the Corporate Debtor submitted that the alleged claim of the Financial Creditor is barred by limitation and that the said petition is misconceived, not maintainable either in law or in facts and liable to be dismissed in limine. It is alleged that the deponent of the affidavit verifying the said petition has not been duly authorized to institute the present proceedings before this Adjudicating Authority. The Corporate Debtor did not adduce anything to prove its claim. However, at the time of hearing on 13/08/2021, Ld. Counsel appearing on behalf of the Corporate Debtor stated that there is no defence, thereby admitting the default in repayment of said Facility granted by the Financial Creditor to the Corporate Debtor.
10. We have carefully gone through the pleadings filed by the parties. The reply submitted by the Corporate Debtor has no substance at all. It does not give any valid or plausible ground or reason for not making the payment.
11. Further, in so far as the limitation aspect is concerned, we notice from the documents placed on record that there has been restructuring of the facilities from time to time. The date of default is stated to be 30/06/2018, which is also the date of classification of the Corporate Debtor's account as NPA.
12. The Corporate Debtor's reply affirmed on 23/03/2021 also contains practically no defence except for bald denials. There is no defence to the section 7 petition.
13. We have also gone through the contents of the Petition and each and every relevant portion of the pleadings filed by the Financial Creditor along with Annexures, and the reply of the Corporate Debtor. We are fully convinced that there is a default in payment of loan amount which was duly disbursed to the Corporate Debtor. The requisites of an application under section 7 of IBC are available on record and duly proved.
14. The Financial Creditor has proposed the name of **Mr. Kuldeep Verma** an Insolvency Professional having **Registration No. IBBI/IPA-001/IP-P00014/2016-2017/10038** to act as Interim Resolution Professional (IRP) of the corporate debtor in Form-2 and that no disciplinary proceedings are pending against him with the Board or IIPICAI and has submitted Authorisation for

Assignment in Form B.

15. The present petition made by the Financial Creditor is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, *i.e.*, Rupees one lakh, at the relevant time.
16. It is, accordingly, hereby ordered as follows:-
 - a. The application bearing CP (IB) No.565/KB/2020 filed by ICICI Bank Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Stone India Limited, CIN No. L35201WB1931PLC006996, the Corporate Debtor, is **admitted**.
 - b. There shall be a moratorium under section 14 of the IBC.
 - c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
 - d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - e. **Mr. Kuldeep Verma**, registration number **IBBI/IPA-001/IP-P00014/2016-17/10038**, 46, B B. Ganguly Street, 5th Floor, Unit No. 501, Kolkata 700012, **email: kuverma@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate

Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Financial Creditor shall deposit a sum of **Rs. 3,00,000 (Rupees three 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).
- i. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

- j. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
17. **CP (IB) No.565/KB/2020** to come up on 18.01.2022 for filing the periodical report.
18. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Signed this, 9th day of November, 2021

hb.