

S.No.101

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
04-03-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP(IB) No.103/7/HDB/2020
U/s 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

Vs

Mata Energy Ltd

...Corporate Debtor

CORAM:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Learned Counsel Mr. S. Krishna for Financial Creditor is present.

Order in CP(IB) No.103/7/HDB/2020 pronounced vide separate sheets. In the result, the company petition is allowed and Corporate Debtor is put into Corporate Insolvency Resolution Process(CIRP) in terms of the order of this tribunal.


MEMBER (T)

Srinivas


MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

CP(IB) No. 103/7/HDB/2020

Petition filed under Section 7 of IBC, 2016, r/w Rule 4 of I & B (AAA), 2016

In the matter of

State Bank of India
State Bank Bhavan, 14th Floor, Madama Cama Road
Nariman Point, Mumbai

...Financial Creditor

VERSUS

M/s Mata Energy Limited
503, TOPAZ Building, Panjagutta
Hyderabad – 500082

...Corporate Debtor

Date of order: 04.03.2022

Coram

Dr. N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)
Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance:

For Petitioner: Shri G.P. Yashvardhan and Shri Saini Keshava Rao,
Advocates

For Respondent: Shri Gagan Narang, Advocate



PER: BENCH

ORDER

1. This Petition is filed by State Bank of India under Section 7 of Insolvency and Bankruptcy Code (hereinafter to be referred as "Code"), read with Rule 4 of Insolvency and Bankruptcy seeking initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Respondent defaulted in the payment of alleged debt of Rs. 81,42,42,317.30 (Rs. Eighty one crore, forty two lakhs, forty two thousand three hundred seventeen and thirty paise) as on 29.11.2018.
2. The averments in brief are: -
 - 2.1 M/s Mata Energy Limited (herein after referred to as Corporate Debtor) is a coal based power plant which is established for supply of power to Sri Mata Infra Tech Ltd, which is engaged in cement production. The Corporate Debtor has availed the following financial assistance/credit facilities from the Financial Creditor against the charge created with respect to the immovable properties and hypothecation of goods and Assets etc of the Corporate Debtor for the limits sanctioned under the loan Agreement. However, the Corporate Debtor failed to repay the outstanding loan amount.



Limits	Loan amount sanctioned	Disbursed amount	Date of sanction letter	Amount claimed to be in default as on 30.11.2019	Rate of interest under recovery certificate
Term-I	32.50	32.50	14.05.2011	75,64,57,216.64	13.95%
Term-II	2.50	2.50	12.09.2012	5,77,85,100.66	13.95%
TOTAL Amount at default				81,42,42,317.30	-

- 2.2 When the financial assistance/credit facilities provided to the Corporate Debtor became irregular, the account of the Corporate Debtor was classified as Non-Performing Asset on 29.08.2012. The Financial Creditor had exercised its rights and remedies available to them under the SARFAESI Act, 2002 by filing OA No. 2325 of 2017 (old OA No. 1389 of 2014) before the Hon'ble DRT-II Hyderabad for recovery of outstanding amount of Rs. 42,24,17,738.09 with interest and cost. The defendants therein was set ex-parte and Hon'ble DRT had passed order basing on the documentary evidence on 14.09.2018 directing the Corporate Debtor and other Defendants therein to pay an amount of Rs. 42,24,17,738.09 to the Financial Creditor. Subsequently, the DRT vide its order dated 29.11.2018 in RC No. 1389 of 2018 had issued a Recovery Certificate in favour of the Financial Creditor for recovery of the said amount, along with the cost, expenses and future interest @ 13.95% p.a. from date of OA i.e. 25.11.2014 till the date of realization.
- 2.3 With regard to the record of default with the information utility, the Financial Creditor has filed documentary evidence to demonstrate debt and default committed by the Corporate Debtor, which is marked as Annexure-6 to the Application.



- 2.4 It is further stated by the Financial Creditor in its Annual Report for the year 2012-13 had admitted to availing term loans from the Financial Creditor, copy of which is annexed and marked as Annexure-33.
- 2.5 The Financial Creditor submits that Corporate Debtor had approached the Financial Creditor with a request for One Time Settlement (OTS) offer of Rs. 12 crores, vide letter dated 21.11.2019 stating that the financial condition of the Corporate Debtor is not sound but the proposal was turned down by the Financial Creditor due to non-receipt of upfront amount of 5% of the compromise offer. To substantiate their claim of debt and default committed by the Corporate Debtor, the Financial Creditor has filed order and Recovery Certificate of the Hon'ble DRT, sanction letters, loan documents, statement of the account and financial statements filed as annexures to the company petition.
- 3.1 Counter is filed by the Corporate Debtor, inter-alia, contending that the authorization filed along with company petition is bad in law as the authorization is evasive and general. Further contended that owing to shortage of funds and reasons beyond the control of the Respondent and its promoters, the erection and commissioning of the Respondent Unit could not be completed and the cash flow module of the Company was severely affected and resulted into cost escalation, which in turn affected the loan re-payment schedule of the Company.
- 3.2 It is submitted that property of the Company (around 30,540 sq.yds) in Krishna District, AP worth Rs. 30 crores was illegally sold by the Financial Creditor for Rs. 6 crores and the sale of the same is challenged before the Hon'ble High Court vide WP No. 26450/2017 which is



pending/sub-judice before the Hon'ble High Court. It is further alleged that, had there been co-operation and accession to the legible request of the Corporate Debtor by the Financial Creditor at the appropriate time, the Unit would have been completed on time and helped in inflow of revenue for the Corporate Debtor.

3.3 It is averred that, though the Corporate Debtor is deliberating with prospective investors/ creditors to take over the loan account of the Corporate Debtor from the Applicant, there is no response from the side of the Financial Creditor.

3.4 The Corporate Debtor, by relying on the following rulings, submits that the petition is barred by limitation.

- (i) Hon'ble Supreme Court of India judgement in the matter of Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (I) Ltd (Civil Appeal No. 4952 of 2019).
- (ii) Hon'ble Supreme Court of India judgement in the matter of "Jignesh Shah vs IL&FS (Writ Petition Civil 455 of 2019), wherein the Hon'ble Supreme Court reiterated the view that Article 137 of the Limitation Act is applicable for an application under the IBC.

3.5 The Corporate Debtor further submits that RBI Master Circular on Prudential Norms on Income Recognition, Assets Classification and Provisioning pertaining to Advances dated 01.07.2015 provides exploring possibilities for revival of account, either by rectification or restructuring and if both are not feasible, then they should resort to recovery, which has not been done in the instant case. It is further alleged that the Financial Creditor has not responded well to the OTS



offer made to them by the Corporate Debtor. Thus, submitting, prayed the Tribunal to dismiss the petition.

- 4.1 Rejoinder is filed by the Financial Creditor reiterating the averments made in the Petition. In response to the contentions raised by the Corporate Debtor with regard to defects in the authorization filed along with the Company Petition, it is contended that the Deputy General Manager is the branch Head of the Creditor and as such the Financial Creditor has locus standi to file the same. In response to the sale of the property by the Financial Creditor at a very low rate, the Financial Creditor contended that the after failure to get bids four times, the said property was auctioned in the year 2017 after following due process of law.
- 4.2 With respect to the limitation aspect, the Financial Creditor denies that their claim is time bared. The order of Hon'ble DRT in favour of Financial Creditor is dated 29.11.2018. The Financial Creditor has referred to para 143 of Hon'ble Supreme Court of India order dated 04.08.2021 in the matter of Dena Bank & Ors Vs C. Shiva Kumar Reddy, wherein it has been held that judgement and/or decree for money in favour of the Financial Creditor, passed by the DRT or any other Tribunal or Court, or the issuance of a certificate of recovery in favour of Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of IBC. As such, the petition is well within the limitation. The Financial Creditor further submits that it had filed this petition with a bonafide intention to revive the Corporate Debtor and to get best resolution and not with a sole intention to recovery the outstanding amount. Thus





submitting, the Financial Creditor again prayed for initiation of CIRP against the Corporate Debtor.

5. In this backdrop, the points that arise for consideration of this Tribunal are;

(i) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

(ii) Whether financial claim by the Applicant is barred by limitation?

6. We have heard the Ld. Counsel for the Financial Creditor and Ld. Counsel appearing for the Corporate Debtor, perused the record and case laws.

POINT (i)

Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

7. At the outset it may be stated that availing of credit facilities by the Corporate Debtor from the Applicant/Financial Creditor as mentioned in the application, besides default in repayment of the same is not in dispute. It is also a fact that the Applicant has initiated recovery proceedings of its dues against the Corporate Debtor before the DRT Hyderabad and obtained a recovery certificate in its favour vide order dated 29.11.2018. The Applicant also initiated measures under SARFAESI Act and sold the "secured asset" and realised part of the outstanding dues. It is also on record that an OTS has been offered to the Corporate Debtor which the corporate debtor failed to utilize.



8. The Applicant also filed the record of default recorded in the information utility and contended that from the aforesaid undisputable facts and circumstances, existence of debt and the default are apparent on the face of the record of this case, as such, the Applicant is entitled for an order for initiation of CIRP against the Corporate Debtor.
9. The resistance of the Corporate Debtor is on the plea that the claim is barred by limitation and that the Corporate Debtor has not been given sufficient opportunity to comply the terms of the OTS, besides that, as a challenge before the Hon'ble High Court of Telangana regarding the sale of the assets of the Corporate Debtor, is pending, this application is not maintainable.
10. As already stated, availing of credit facilities and committing default thereof, besides recording of default in information utility is not disputed,. We, therefore straight away rely on the ruling of Hon'ble Supreme Court of India in ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited***, wherein it is held as follows

"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." (Emphasis is ours).

We have carefully perused the record and fully satisfied from the record produced before us that there is debt payable by the Corporate Debtor, which has not been paid. Point (i) is answered accordingly.

Alk...

J

POINT NO. (ii)

Whether financial claim by the Applicant is barred by limitation?

11. In so far as the plea of limitation is concerned, we find no force whatsoever in the contention of the Corporate debtor that the claim is barred by limitation. Firstly, for the reason that, in OA No. 2325 of 2017 filed by the Applicant against the Corporate Debtor no such plea has been raised, OA has been allowed and recovery certificate dated 29.11.2018 for realization of the same against the Corporate Debtor has been issued by DRT-II, Hyderabad.

12. ***Hon'ble Supreme Court of India in Dena Bank (now Bank of Baroda) vs C. Shivakumar Reddy and Anr***, has held as follows:-

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.*

143. *Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.*

Abhishek

J

Therefore, the present application having filed on 26.12.2019 is perfectly within limitation. Point (ii) is answered accordingly.


13. In the light of our discussion on the above points, we firmly hold that this is a fit case to order CIRP, against the CD herein. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

ORDER

- (1) The Bench hereby prohibits 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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- (2) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.



- (3) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) That the order of moratorium shall have effect from 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 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- (5) This Bench hereby appoints Mr. B. Naga Bhushan, Insolvency Professional, having Registration No. IBBI/IPA-001/IP-P00032/2016-2017/10085 #R/o 1-1-380/38, Ashok Nagar Extension, Hyderabad – 500020, as Interim Resolution Professional, who has given his consent in Form-2.
- (6) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.
- (7) Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Dr. N. Venkata Ramakrishna Badarinath)
Member (Judicial)