

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-I, CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **23.08.2024** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/1208(CHE)/2018
NAME OF THE PETITIONER(S) : Bank of India
NAME OF THE RESPONDENT(S) : Hallmark Infrastructure Pvt. Ltd.
UNDER SECTION : Sec 7 Rule 4 of IBC, 2016

ORDER

Present: Mrs. Pavithra Dayalan, Ld. Counsel for the Petitioner.
Shri.Sanjay, Ld. Counsel for the Respondent.

Vide separate order pronounced in the Open Court, the petition for initiating CIRP against M/s. Hallmark Infrastructure Pvt. Ltd. is **admitted**. Shri. Pathukasahasram Raghunathan Raman is appointed as Interim Resolution Professional.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

vs

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

CP/1208/IB/2018

*(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 **Hallmark Infrastructure Private Limited**

BANK OF INDIA

Having its Head office at
Star House, C-5, "G" Block,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400 051

...Applicants / Financial Creditors

-Vs-

HALLMARK INFRASTRUCTURE PRIVATE LIMITED

Suite A, No.43, Old No.62/2,
United Plaza, Usman Road,
T. Nagar, Chennai – 600 017

...Respondent / Corporate Debtor

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SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : S. Sathiyarayanan, Advocate
For Respondent : Vishnu Mohan, Advocate

Order Pronounced on 23rd August 2024

ORDER

(Heard through hybrid mode)

This is an Application filed by **BANK OF INDIA** (hereinafter the “Financial Creditor”) against **HALLMARK INFRASTRUCTURE PRIVATE LIMITED** (hereinafter the “Corporate Debtor”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor herein.

2. In Part-I of the Application, it is stated that the Applicant is a Bank. In Part – II of the Application, it is stated that the Corporate Debtor was incorporated under the provisions of the Companies Act, 1956 on 29.08.2005 with CIN: U45203TN2005PTC057312 and the Registered office of the Corporate Debtor is situated at Suite A, No. – 43, Old No.62/2, United Plaza, Usman Road, T. Nagar, Chennai – 600 017.

3. In Part III of the application, the Financial Creditor has proposed one Mrs. M. Kavitha Surana with Registration No: IBBI/IPA-002/IP-N00166/2017-2018/10435 as the “Interim Resolution Professional” of the Corporate Debtor.

4. In Part-IV of the Application, the Financial Creditor has claimed a total sum of Rs.1,20,26,946.73/- as the amount which is due and payable by the Corporate Debtor.

5. It is stated that the Financial Creditor had granted various credit facilities to the Corporate Debtor and the same was renewed from time to time. The summary of the facilities sanctioned as per the loan and security documents on 13.03.2013 and 28.12.2013 are as follows;

FACILITY	AMOUNT (RS. IN CRORE)
LAP – OD	2.00
LAP – TL	2.94
Project – Demand Loan	10.00
Total	14.94

6. It is stated that, for the aforesaid amount of Rs.14.94 Crores, the Corporate Debtor executed three Demand Promissory Notes for a sum of Rs.2 Crores, Rs.10 Crores and Rs.2.94 Crores on 15.04.2013, 28.12.2013 and 28.12.2013 respectively.

7. It is stated that, on 01.10.2015, the Respondent / Corporate Debtor had given a balance confirmation for all the above three loans provided by the Financial Creditor. The present Application has been filed before this

Tribunal on 28.09.2018, i.e. within a period of three years from the date of balance confirmation given by the Corporate Debtor.

8. The Respondent has filed the counter. It is stated that the Respondent / Corporate Debtor ever since the beginning of the transaction has been keen in making the repayments and accordingly when it went to a position where it could not do so, the Respondent immediately started looking out for alternatives.

9. It is further stated that, under a Scheme, the Respondent submitted an OTS to the Financial Creditor on 20.06.2018. It is stated that the ledger outstanding was Rs.14.52 crore as on 31.03.2018 and the OTS amount proposed was Rs.10.92 crore. It is stated that, to avail the OTS offer, the Respondent was to deposit 5% of the ledger outstanding as on 31.03.2018. Thereafter, upon formal sanction of OTS, the balance was to be paid within 6 months from date of sanction.

10. It is stated that the Respondent had acted on the said letter/offer from the Applicant and went on to accept the offer for the OTS for all the loan accounts aforementioned held with the Applicant Bank. The Respondent

had also remitted the margin money towards the OTS for all the accounts as per the conditions. It is stated that having availed the OTS offer, the present Application ought not to be admitted as there is no "default" in view of the ongoing OTS, which the Applicant is bound to accept, since the Respondent has unequivocally accepted the terms thereof and also acted upon it.

11. It is stated that the Respondent pursuant to the further round of discussion and deliberation, remitted more than 5% margin money as stipulated in the OTS offer. Initially, on 12.09.2018 and 20.09.2018, the Respondent remitted 5% margin money towards LAP Loan account and during the hearing of the case on 16.11.2018, the Respondent was prepared to provide the 5% margin money towards the other accounts as well.

12. It is stated that the Respondent once again had a meeting the officials of the Applicant bank and agreed to remit the balance by 30.11.2018, which it has done subsequently. Moreover, on 07.12.2018, the Respondent addressed a letter to the Applicant Bank intimating that it has paid more than 5% of the stipulated margin money (about Rs. 1.21 crore) towards the OTS Scheme proposed and is honoring its commitments.

13. It is stated that while the payments were being done in accordance with the scheme, the Respondent once again faced financial crunch. However, payments were made from time to time by the Respondent. It is stated that the Applicant also invoked the provisions of the SARFAESI Act, 2002 against the Respondent and has been pursuing the said proceedings in parallel. It is stated that the Applicant has also lodged an FIR in respect of the very same cause of action before the CBI which is under investigation, even after the Respondent has accepted the OTS and made the payments. It is alleged that the aim of the Applicant is merely to arm-twist the Respondent.

14. It is stated that apart from the above payments, the Respondent was constantly seeking out ways to go through with the process of settlement. It is stated that the Applicant in various hearings held before this Tribunal had by its own words admitted to the fact that matter is in due course of settlement and the same is also recorded in the daily orders dated 30.04.2019, 24.06.2019 and 03.12.2019. Meanwhile in due course of these repayments being done by the Respondents, the Applicant still went on to adopt unfair means and further proceeded to file a criminal complaint against the Respondent which is clear from the First Information Report

dated 04.05.2021. Further, on parallel lines the Applicant also went on to sell/auction some of the properties of the Respondent and recover a substantial portion of the alleged outstanding, even without reference of the same as evident from the sale certificates dated 31.12.2021 and 16.08.2022.

15. It is stated that these developments took place while the present application is pending on the file of this Tribunal. It is stated that, the Applicant has recovered substantial sums and the loan amounts have been substantially repaid, thus there is no default whatsoever. Moreover, even though the Applicant offered OTS by itself and the Respondent had accepted the terms and made part payments, the Applicant Bank unlawfully withheld the confirmation of OTS only to arm-twist the Respondent and take undue advantage of the Respondent. It is stated that if the OTS proposal is taken to be accepted, no dues are payable to the Applicant Bank at present and there is no "debt" as on date and there is also no question of any "default" for admitting the present application.

16. It is stated that, even on merits, the claim of the Applicant is entirely fallacious and that there is no “default” whatsoever on the part of the Respondent.

17. Heard the submissions made by the Learned Counsel for both the parties and perused the record.

18. In the present case, the Applicant has given Loan to the Respondent for a sum of Rs.14.94 Crores and the Corporate Debtor has committed default in repayment of the said loan. Thereafter, the Applicant / Financial Creditor agreed to the OTS proposal given by the Corporate Debtor and even as per the terms and conditions of the OTS, the Corporate Debtor is required to pay the OTS amount on or before 6 months from the date of sanction, however, the Corporate Debtor was unable to honor the said commitment since it faced financial crunch.

19. Further, after filing of the present application before this Tribunal, numerous opportunities were granted to the Corporate Debtor to settle the matter. The Corporate Debtor had again given an OTS proposal to the

Applicant / Financial Creditor, however on 11.03.2019, the Financial Creditor rejected the said OTS proposal of the Corporate Debtor.

20. The matter was last listed for hearing on 03.12.2019 and thereafter the matter was missed out from the cause list due to inadvertence. Thereafter, notice was served to the parties by the Registry on 01.04.2024 and the parties were directed to make final submission in the present case.

21. Even after a lapse of 4 years, the matter is not settled between the parties. During the course of hearing, the Corporate Debtor sought additional time to settle the matter. All these go on to show that the Corporate Debtor is unable to service its loan and hence it is a fit case to order for CIRP.

22. It has been held by the Hon'ble Supreme Court in **Innoventive Industries Ltd. v. ICICI Bank and another** (2018) 1 SCC 407 as well as in **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.** (2018) 1 SCC 353 after going through the Scheme of IBC, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, that in relation to

a Section 7 Application where there is an existence of a 'financial debt' and the default in excess of Rs.1,00,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. In the present case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Crore.

23. The Applicant / Financial Creditor has proved that there is a 'debt' and 'default' on the part of the Corporate Debtor and hence in term of Section 7(5) of IBC, 2016, the present application is required to be admitted and Corporate Insolvency Resolution Process as against the Corporate Debtor is required to be initiated.

24. Under these said circumstances, we admit this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

25. The Financial Creditor has proposed the name of **Mrs. Kavitha Surana** as the Interim Resolution Professional (IRP) who has also filed consent in Form – 2. However, upon verification from IBBI it is seen that she is not holding a valid AFA. Hence these circumstances, from the latest list provided by IBBI, we appoint **Mr. Pathukasahasram Raghunathan Raman** (E-mail id: ramann_pr@yahoo.co.in) with *Registration No: IBBI/IPA002/IPN00295/2017-18/10896 (AFA valid till 03.12.2024)* as the Interim Resolution Professional in respect of the Corporate Debtor. The IRP who is appointed shall 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

26. As a consequence of the Application being **admitted** in terms of Section 7(5) of the Code, the moratorium as envisaged under the 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 respondent 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 respondent 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 respondent 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 respondent.

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;

27. 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 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 arrangement 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.

28. 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.

29. The Financial Creditor is directed to pay a sum of **Rs.3,00,000 /-** (*Rupees Three lakhs only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

30. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional be also furnished with 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-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)