

**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH  
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 29.10.2019

**CAUSE LIST - 2**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 320/BB/2019	For admission	Sec 7 of I&B Code 2016	M/s Sri M Visvevaraya Co-Operative Bank Ltd	G Sathyanarayana, PCA	M/s Right Engineers & Equipments India Pvt Ltd	

ADVOCATE FOR PETITIONER/s:

*Sathy*  
CA-G. SATHYANARAYANA  
94495-34815

ADVOCATE FOR RESPONDENT/s:

CS Vinod Sunder Raman  
9845884410

PCS for  
Respondent

*Umas*

**ORDER**

Heard Shri G. Sathyanarayana, learned PCA for the Petitioner and Shri Vinod Sunder Raman, learned PCS for the Respondent.

C.P.(IB)No.320/BB/2019 is <sup>admitted</sup> ~~admit~~ by separate order. Post the case for report of IRP on **02.12.2019.**

*Puja*

**MEMBER(T)**

Puja

**Verified**

**Court Officer**

*Vinod*

**MEMBER(J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P.(IB) No.320/BB/2019  
U/s 7 of IBC, 2016  
R/w Rule 4 of I&B (AAA) Rules, 2016

**In the matter of:**

**M/s. Sir M. Visvesvaraya  
Co-operative Bank Limited**  
No.109, Shankaramutt Road,  
Shankarpuram,  
Bengaluru- 560004.

- Petitioner/Financial Creditor

**Versus**

**M/s.Right Engineers and Equipment  
India Private Limited**  
No.25, D Cross,  
Bilekahalli Industrial Area,  
Banneraghatta Road,  
Bangalore- 560 076.

- Respondent/Corporate Debtor

**Date of Order: 29<sup>th</sup> October, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Shri G. Sathyanarayana  
For the Respondent : Shri Daliya Singh

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.320/BB/2019 is filed by M/s.Sir M. Visvesvaraya Co-operative Bank Limited (hereinafter referred to as 'Petitioner/Financial Creditor')U/s 7 of the IBC, 2016, R/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Right Engineers and Equipment



India Private Limited (hereinafter referred to as 'Corporate Debtor/Respondent') on the ground that it has committed default for total amount of Rs.14,47,89,162/- (Rupees Fourteen Crore Forty Seven Lakhs Eighty Nine Thousand One Hundred and Sixty Two Only) as on 30.06.2019.

2. Brief facts of the case, as mentioned in the Company Petition, are as follows:

(1) M/s. Sir M. Visvesvaraya Co-operative Bank Limited (Petitioner/Operational Creditor), is a co-operative bank having Registration No.JRB/Regn:3:4880/78-79-25.09.1978, incorporated on 15.04.1979 and having its registered office at No.109, Shankaramutt Road, Shankarpuram, Bengaluru-560004. It has obtained banking license from RBI with registration No.UBD:BG:BL:A.O.310-05.11.1998 and it is carrying on its operations since 1979, and it is one of the leading co-operative urban Banks in Karnataka.

(2) M/s. Right Engineers and Equipment India Private Limited ('Respondent/Corporate Debtor') is a Private Limited Company incorporated on 25.06.2008, as per Companies Act, 1956, having CIN:U29253KA2008PTC046899. The Company is engaged in the business of manufacture, design, invent, assemble, import and generally deal in all kinds of machinery etc.

(3) It is stated that the Petitioner/Financial Creditor has sanctioned financial assistance to the Respondent for its business, on its request as detailed below.

Date	Account Number	Purpose	Sanctioned Amount
17.10.2016	TLEMI/2	Business Purpose	10,40,00,000/-



	SCC/9	Business Purpose	4,40,00,000/-
	<b>Total</b>		<b>14,30,00,000/-</b>

On 17.10.2016, the Corporate Debtor has offered the security of unencumbered plant and machinery, furniture and fixtures and other equipment in the form of Hypothecation and mortgage of factory land and building situated at #66, Jigani Industrial Area 1<sup>st</sup>Phase, Bengaluru-562106, measuring 43087 sq. ft. with built area of 28838 sq. ft. and standing in the name of the company by way of Mortgage followed by the Memorandum of Deposit of Title Deeds. It has also offered the security of Stocks of raw materials, work in progress and finished goods and all receivables in the form of Hypothecation.

- (4) It is also stated, that on 17.10.2016, the Directors of the Corporate Debtor, Shri C.M. Nagaraj and Shri H.P. Arun Kumar offered their personal guarantees. However, after disbursement of loan, the Corporate Debtor did not repay the loan instalments including interest, which had the repayment period of 108 months and for Secured Cash Credit till 16<sup>th</sup> October, 2017 as detailed below:

<b>Account Number</b>	<b>Principal Outstanding as on 30.06.2019</b>	<b>Interest Outstanding as on 30.06.2019</b>	<b>Date of Default</b>
TLEMI/2	9,39,54,049	41,96,265	31.07.2018
SCC/9	4,40,00,000	26,38,848	31.07.2018
<b>Total</b>	<b>13,79,54,049</b>	<b>68,35,113</b>	

- (5) It is further stated that the Financial Creditor has issued notices calling for repayment of agreed instalment amounts from time to time for which the Corporate Debtor has not

responded. The Corporate Debtor neither responded nor regularised the loan and interest. The Financial Creditor has also issued a notice on 18<sup>th</sup> August, 2018 to the Corporate Debtor to repay the loan immediately on account of this default. However, the Corporate Debtor neither regularised its account nor responded the notice.

3. The Corporate Debtor has filed Memorandum of Reply dated 25.10.2019, by inter alia contending as follows:

(1) It is stated that the Corporate Debtor Company is having the main objective to manufacture, design, invent, assemble, re-engineering, buy, sell, export, import and generally deal in all kind of machinery, equipment, tools, mould, automation, products, material handling products, for all kind of users and to advice, act as consultant, agent, dealer, distributor, supervise, install and to generally carry out any works related to all kind of machinery, equipment, tools, moulds, automation, products, material handling products for all kinds of users. The Company mainly manufactures 'Cranes', which requires huge sum of Working Capital. And it was having good turnover and very good reputation and was one of the leaders in this field, and the monthly turnover at one time was as high as Rs.1.13 crore, during May 2015. With a view to further expand its business in the Financial Year 2014-15, the Company purchased land for its current factory premises and started the construction. However, the construction cost exceeded the estimated cost, and therefore, amounts from the revenue generated had to be utilised.

(2) It is stated that to meet the expenses and the cash crunch, the Respondent Company had to avail Term Loan of



Rs.10,40,00,000/- (Rupees Ten Crore Forty Lakhs Only) and Secured Cash Credit of Rs.4,40,00,000/- in the month of October, 2016. Owing to general sluggishness in the economy, there were considerable delays in recovering payments from the customers coupled with the increased expenses, caused the Respondent Company to face shortage of funds to meet the Working requirements. As a result, the Respondent Company could not utilize the 100% capacity and resultantly its business started declining, which can be seen by the Financial Statements of the Company.

- (3) It is also stated that as the Respondent Company was unable to meet the Working Capital requirements, the management of the Respondent Company decided to accept orders only from the Customers, who are ready to make the advance payment. This decision of the management, led to work orders being cancelled, who did not agree to make advance payment, thereby reduced the business further. It had tried making the payments of monthly instalments as per the terms of Loan Agreement. However, shortage of funds to meet the Working Capital hampered the business of the Company and hence it could not make the payments towards the loan repayment in a timely manner.
- (4) They have conceded that the debt and default as claimed by the petitioner in the instant petition. However, they have contended that there is no mala fide intention to defraud the Bank. It is the Respondent's Company's current financial and cash flow position that has forced the Respondent to commit a default in making



repayments. Therefore, there is objection to initiate CIRP against them as prayed for.

4. Heard Shri G. Sathyanarayana, learned PCA for the Petitioner, and Shri Daliya Singh for the Respondent. We have carefully perused the pleadings of both the parties, and the extant provisions of the Code and the Rules made there under and the law on the issue.
5. Shri G. Sathyanarayana, learned PCA for the Petitioner, while pointing out various averments made in the petition and in synopsis, as briefly stated supra, has further submitted that the debt and default in question are not in dispute and the instant Company Petition is filed in accordance with law, and he also suggested a qualified Resolution Professional namely Shri Addanki Haresh, with Registration No. IBBI/IPA-001/IP-P01064/2017-18/11757, who has filed written Consent in Form-2 dated 08.08.2019 by declaring that there are no disciplinary proceedings pending against him with the Board or ICAI Insolvency Professional Agency and he is eligible to be appointed as an Interim Resolution Professional, in respect of the Corporate Debtor in accordance with the provisions of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Therefore, he urged the Adjudicating Authority to admit the case by initiating CIRP as prayed for.
6. So far as the law with regard to initiation of CIRP at the instance of Financial Creditors U/s 7 of Code is concerned, Hon'ble NCLAT dealt the issue, vide order dated 15<sup>th</sup> May, 2017 passed in Company Appeal (AT) (Insolvency) No.1 & 2/2017 in the case of M/s.Innoventive Industries Limited vs. ICICI Bank & Anr. under Paras 55 to 58 of the order, which are extracted below:

*"55. Process of initiation of Insolvency Resolution process by a financial creditor is provided in Section 7 of the I&B Code. As per sub-section (1) of Section 7 of the I&B Code, the trigger for*



*filing of an application by a financial creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the financial creditor shall make an application in prescribed form and manner and with prescribed documents, including:*

- i. "record of the default" recorded with the information utility or such other record or evidence of default as may be specified;*
- ii. The name of the resolution professional proposed to act as an interim resolution professional; and*
- iii. Any other information as may be specified by the Board.*

*56. The procedure once an application is filed by the financial creditor with the Adjudicating Authority is specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of the I&B Code:*

*"(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)."*

*57. Sub-section (5) of Section 7 of the I&B Code provides for admission or rejection of application of a financial creditor. Where the Adjudicating Authority is satisfied that.....the documents are complete or incomplete.*

*58. The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the financial creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the financial creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority's summary adjudication, though limited to 'ascertainment' and 'satisfaction'."*

The Hon'ble Supreme Court has also upheld the above judgement in Civil Appeal Nos.8337-8338 of 2017 vide judgment dated 31<sup>st</sup> August, 2017. The Hon'ble Supreme Court has adverted to Section 7, at para 28, which reads as under:

*"28. When it comes to financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to*



*rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

7. The facts and circumstances of the case as mentioned supra meets the parameters as enumerated under the extant provisions of Code and the law as stated supra. And the Debt and default in question are proved and the same was also admitted by the Respondent/Corporate Debtor. And the instant the instant application/petition is filed strictly in accordance with the extant provisions of the Code and also suggested a qualified Resolution Professional namely Shri Addanki Haresh, with Registration No. IBBI/IPA-001/IP-P01064/2017-18/11757, who also filed written Consent in Form-2 dated 08.08.2019 by declaring that there are no disciplinary proceedings pending against him with the Board or ICAI Insolvency Professional Agency and he is eligible to be appointed as an Interim Resolution Professional in respect of the Corporate Debtor in accordance with the provisions of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Therefore, we are of the considered opinion that said IRP is eligible to be appointed as IRP in this case. Hence, the instant Company Petition is fit case to admit by initiating CIRP appointing by IRP, and declaring moratorium etc. in respect of the Corporate Debtor.
8. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, U/s 7(5)(a) and other extant provisions of the IBC, 2016, we hereby admitted C.P.(IB)No.320/BB/2019 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of Respondent/Corporate Debtor with the following consequential directions:



- 1) **Shri Addanki Haresh**, bearing **Registration No. IBBI/IPA-001/IP-P01064/2017-18/11757**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/Corporate Debtor namely M/s.Right Engineers & Equipment India Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;
- 2) The following moratorium is declared prohibiting all of the following, namely:
  - a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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 Securitisation 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;
  - e) 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;
  - f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central



Government in consultation with any financial sector regulator;

- g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016 and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file progress reports to the Adjudicating Authority from time to time.
- 4) The Board of Directors and all the staff of Respondent/Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) Post the case for report of IRP on **02.12.2019**.

**(ASHUTOSH CHANDRA)**  
**MEMBER, TECHNICAL**

**(RAJESWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**

Puja