

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Video Conference

**CORAM: HON'BLE BHASKARA PANTULA MOHAN,--MEMBER (J)
CORAM: HON'BLE VEERA BRAHMA RAO AREKAPUDI-MEMBER (T)**

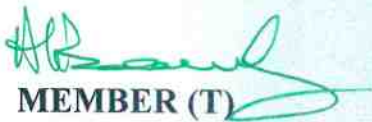
**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 21.04.2022 AT 02:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/383/2022 in CP (IB) No.320/7/HDB/2020
NAME OF THE COMPANY	GVK Industries Ltd
NAME OF THE PETITIONER(S)	Jammu & Kashmir Bank Ltd
NAME OF THE RESPONDENT(S)	GVK Industries Ltd
UNDER SECTION	7 of IBC

ORDER

Learned Counsels for both sides appeared via video conference.

Orders passed in **IA 383/2020 and CP (IB) No.320/7/HDB/2020**. Common Orders passed vide separate sheets.


MEMBER (T)

Syamala


MEMBER (J)

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

CP (IB) No.320/7/HDB/2020

&

IA No. 383 of 2022

In

CP (IB) No.320/7/HDB/2020

Under section 7 of the IB Code, 2016

Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of

M /s. GVK INDUSTRIES LIMITED

BETWEEN:

M/s Jammu and Kashmir Bank Ltd.
(Through its Authorised Representative)
Registered Office at M.A. Road, Srinagar,
Jammu & Kashmir – 190001.
Through its branch unit at:
JN Road, Hyderabad – 500001.

...Petitioner/
Financial Creditor

AND

M/s GVK Industries Ltd.
Paigah House 156-159, S.P. Road,
Secunderabad, Telangana – 500003.

...Respondent/
Corporate Debtor

Date of Order: 21.04.2022

Coram:

Shri Bhaskar Pantula Mohan, Member Judicial
Shri Veera Brahma Rao Arekapudi, Hon'ble Member Technical

Parties/Counsels present:

For the Petitioner: Mr. L. Aravind Reddy, Advocate.

For the Respondent: Ms. Rubaina Khatoon, Advocate



Per: Bench

ORDER

1. Under consideration is a Company Application filed by M/s Jammu and Kashmir Bank Ltd. (*Petitioner/Financial Creditor*) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. GVK Industries Ltd. under the Insolvency and Bankruptcy Code, 2016.
2. Brief facts of the case as submitted by the Financial Creditor are as follows:
 - a) The Jammu & Kashmir Bank Limited is a Company incorporated under the Jammu & Kashmir Corporation Act, Svt. 1977 and governed by the provisions of Banking Regulation Act, 1949. The Corporate Debtor i.e., GVK Industries Limited is a company incorporated and registered under Companies Act having its registered office in Telangana. In the year, 2003, the Corporate Debtor was sanctioned Rupee Terms Loans/Foreign Currency Term Loans/ External Commercial Borrowings by the lenders and Common Loan Agreement dated 20.11.2003, was executed among the Corporate Debtor.
 - b) Thereafter, in the year 2004, a Lender's Deed of Accession supplemental to an Inter-Creditor Agreement dated 20.11.2003, Novation Notice dated 09.02.2004, Amendatory Agreement to the Common Loan Agreement dated 21.04.2004 was entered.
 - c) Thereafter, in the year 2005, at request of the Corporate Debtor, the Financial Creditor sanctioned a Term Loan Facility to the tune of Rs. 50 Crores in favour of the Corporate Debtor for the purpose of replacement of the High Cost Rupee Term Loan (under its debt swap programme) against the securities mentioned in the Sanction letter dated 16.02.2005. Further, the interest rate was modified/reduced

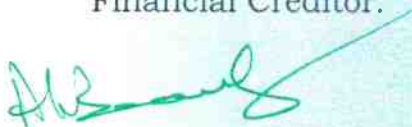


- to 8% vide a modified Sanction letter dated 28.05.2005. In view of the above, an Amendatory Agreement to the Common Loan Agreement was executed on 24.12.2005 amongst the Corporate Debtor, IDBI Bank (New Facility Agent) and the Lenders mentioned in Schedule 1 to the Amendatory Agreement dated 24.12.2005.
- d) In the year, 2007 a Deed of pledge of shares was entered into between GVK Power & Infrastructure Limited (Pledger), Corporate Debtor and the Western India Trustee & Executor Co. Limited (Security Trustee) on 06.12.2007. The aforesaid confirmation from the security trustee that 6,81,20,000 Equity shares of the Corporate Debtor held by GVK Power & Infrastructure Limited (representing 26% of paid up capital of GVK Industries Limited) have been pledged in favour of the security trustees- WITCO in demat form with IDBI Limited. Thereafter, a consortium meeting of Lenders was held on 11th July, 2007 wherein it was agreed by all the lenders to reschedule the repayments of the loan so as to commence the repayment from October, 2008 and at the request of the Corporate Debtor, the facility agent and the lender, the Schedules - 2&3 of the Common Loan Agreement dated 24.12.2005 were amended and again a Amendatory Agreement to the Common Loan Agreement dated 11.07.2008 was entered into by and between the Corporate Debtor, Lenders and IDBI Bank.
- e) Thereafter, in the year 2009, the Reserve Bank of India vide its circular dated 14.11.2008 allowed the Lenders including the Financial Creditor to restructure the credit facilities for their expansion project. Therefore, in view of the above and at the request of the Corporate Debtor, the Term Loan was rescheduled and the outstanding amount was made repayable in 42 quarterly instalments commencing from 01.10.2009. A fresh Funded Interest Term Loan of Rs. 2.66 Crores was sanctioned out of total FITL requirement of Rs. 41.40 Crores and an Additional Term Loan of Rs.



3.71 Crores was sanctioned to part finance the cost of overrun of the expansion project amounting to Rs. 51.79 crores. The aforesaid credit facilities were restructure and granted vide a Sanction letter dated 20.03.2009, the interest rate was further modified vide a modified sanction letter dated 12.10.2010. In view of the above, an Amendatory Agreement to the Common Loan Agreement dated 13.05.2009 was entered into by and between the Corporate Debtor, Lenders and IDBI Bank.

- f) Further, in the year 2014, at request of the Corporate Debtor, the Financial Creditor sanctioned an additional Term Loan of Rs. 16.10 Crores for the purposes of meeting its temporary mismatch in cash flows. The said additional Term Loan was sanctioned vide a Sanction letter dated 26.02.2014 and a Loan Agreement dated 19.03.2014 and an amended Loan Agreement was executed between the Corporate Debtor and the Financial Creditor.
- g) Thereafter, an Amendatory agreement to the Common Loan Agreement was exercised on 26.09.2014.
- h) Pursuant to availing the Credit Facilities by the Corporate Debtor, the credit facility Accounts of the Corporate Debtor became and continues to be irregular. The Financial Creditor did not receive any payment from the Corporate Debtor, hence, the Financial Creditor was left with no other alternative but to declare the account of the Corporate Debtor as NPA and thus, the account of the Corporate Debtor was declared as NPA on 31.07.2015 as per the norms and guidelines issued by the Reserve Bank of India in this regard. Furthermore, the Last payments were received from the Corporate Debtor on 23.01.2017 & 10.08.2017 respectively.
- i) As per the statement of accounts maintained by the Financial Creditor there is an outstanding amount of Rs. 42,02,36,113.00 as on 28.02.2020 which is duly payable by Corporate Debtor to the Financial Creditor.



3. Counsel for Respondent filed counter stating as under:-

- a) That any application filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 must be made in a manner as provided under Section 7(3) of the Code. According to Section 7(3) (a) of the Code, the Applicant is required to file the application along with a record of default as maintained with the information utility or any such evidences of default.
- b) That the present Company Petition is barred by limitation and thus, not maintainable. The Respondent was issued a Loan Recall Notice dated 04.10.2019 by the Applicant wherein the Applicant has categorically admitted that the Loan Account was declared as an NPA on 31.07.2015 as per the prudential Norms for Income Recognition, Asset Classification and Provisioning – Pertaining to Advances issued by the Reserve Bank of India. In this regard, reliance is being placed on the order of Hon'ble NCLAT in the case of *jagdish Prasad Sarada Vs. Allahabad Bank (2020SCC Online NCLAT 621)* whereas the Applicant was not given the benefit of Section 19 of the Limitation Act for computation of the period of limitation and it was held that the date of default would strictly be construed as the date of declaration of the account as NPA.
- c) That the Applicant has concealed the fact that the Loan Recall Notice dated 28.11.2018 has already been issued to the Respondent demanding a payment of Rs. 20.90 crores, to which the Respondent issued a befitting reply denying all the allegation and claims made by the Applicant on 29.01.2019.
- d) That the present Company Petition has been filed Applicant solely as a means of arm-twisting and using this Adjudicating Authority as a means of recovery of amounts in priority to the other lenders of the consortium.
- e) That the Financial Creditor has surpassed the provisions of the Inter-creditor Agreement dated 20.11.2003 and the arrangement



made thereunder by filing the instant Company Petition without the consent of other lenders of the Consortium. It is pertinent to state that Clause 5.1.1 of the Inter-creditor Agreement specifically provides for coordinated approach of the lenders in initiating action against the Corporate Debtor under their respective Financing Agreement.

- f) As per the provisions of the Inter-creditor Agreement read with Article 11.1.1 and 11.1.2 of the Common Loan Agreement dated 20.11.2003, the non-payment of principal or interest of the loan amount by the Borrower constitutes Group A default, that when a lender seeks to initiate action against the borrower, the consent of the required 66.7% of lenders must be taken to initiate such action.
- g) That due to non-availability of natural gas and alternate fuel, the Respondent was unsuccessful in running the power plant and has been on the look-out for prospective buyers. Consequently, the Project could not be operated resulting in low or nil revenue for the Respondent.
- h) That the lack of fuel for the Power/Project resulting in non-operational and nil or low revenue led to non-performance of Respondent's obligations under the Common Loan Agreements.
- i) That the non-availability of natural gas constitutes a Force Majeure event and therefore, in light of Section 56 of the Indian Contract Act, the Respondent is not liable to perform its obligations to the extent of such obligations which affected on account of Force Majeure.
- j) That the natural gas supply from GAIL for Phase I, since July 6, 2014 due to fire in the supply pipeline, and later resumed on 20 October, 2014. In the period ending 31st December, 2014, the Phase I of the project had achieved 37% PLF (generation) for the third quarter of the FY 2014-15. However, the plant was available on alternate fuel (Naphtha) and received full capacity charges during the quarter ended December 31, 2014 year from APPCC. During the



period, the Respondent incurred net loss of Rs. 49.87 crore and cash loss of Rs. 4.51 crore on a turnover of Rs. 186.42 crore. The Respondent also commissioned the Phase II on alternate fuel (HSD) and has been declaring the plant availability since November 2013. The Company is eligible for capacity charges based on the availability declaration on alternate fuel. However, the same is disputed by APDISCOMS and the matter is currently pending with CERC for adjudication.

- k) Upon facing such hardships, the IDBI Bank (hereinafter referred to as "**Lead Bank**") advised the Respondent to additional fund i.e., Liquidity Support funds to service the then existing debts which lead to a significant increase in the current outstanding amount.
 - l) As mentioned in superseding paragraphs, the Respondent herein issued a Reply dated 29.01.2019 to the Loan Recall Notice disputing the allegations and claims made therein. That the Applicant, being fully aware that their claim is time barred, is engaging in arm-twisting litigations to recover amounts.
 - m) That in the case of *Jagadish Sarada Vs Allahabad Bank (supra)* the Hon'ble NCLAT has stated that any subsequent payments made after the account being declared as an NPA will not be considered for purpose of calculations of limitation from the date of default. Further, the present Company Petition does not meet the requirements under Section 7(3) of the Code.
4. Counsel for the Respondent filed Rejoinder, inter-alia stating as under:-
- a. That in relation to the limitation, it is stated that the Applicant herein has given OTS offer and also signed balance sheets and other such documents acknowledging debt, therefore made an admission of debt and consequently, a cause of action shall cease to exist 3 years from publication of the last document acknowledging liability.



- b. That the Applicant has received OTS offer from the Corporate Debtor on 07.02.2018, hence, the instant Application is well within the Limitation.
5. Heard. Perused the record.
6. After hearing both sides and perusing record, we are of the view that in the instant case there is a financial debt and there has been a default in repayment of the same and that this Adjudicating Authority is satisfied that the financial Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. It is also seen that the Applicant herein has not denied its liability and has only contented to reject the instant Application on ground of limitation. In relation to the same, it is seen that the Corporate Debtor has been acknowledging its debt from time to time, same is evident from the OTS letter dated 07.02.2018, placed along with counter. Hence, the contentions of the Corporate Debtor are overruled. Further, it is pertinent herein to note that the Hon'ble Supreme Court, while deciding the matter in the case of *INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR.*, in Civil Appeal Nos. 8337-8338 of 2017, held as under:
- ".....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 subsection (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. Further the Financial Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the



Petitioner/Financial Creditor, this Adjudicating Authority is inclined to admit the instant Application.

8. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.
9. The Financial Creditor earlier proposed the name of Mr. Anurag Gupta as Interim Resolution Professional. However, vide IA No. 383 of 2022 has sought to consider Mr. Mukesh Verma as the proposed IRP. Accordingly, this Adjudicating Authority hereby appoints Mr. Mukesh Verma, having Registration No. IBBI/IPA-001/IP-P01665/2019-2020/12522 e-mail id: ip.mukeshverma@gmail.com as Interim Resolution Professional. He is directed to file fresh Authorization for Assignment within three days from the date of this order.
10. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.
11. We direct the Financial Creditor/Petitioner to pay sum of Rs. 2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.
12. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-

- i. *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 or law, tribunal arbitration panel or other authority;*



- ii. *Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal rights or beneficial interest therein;*
 - iii. *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 (54 of 2002);*
 - iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
 - v. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*
13. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any 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. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to 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.
14. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19



and for discharging his functions under Section 20 of the I&B Code, 2016.

15. The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
16. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
17. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.
18. Accordingly, this Petition is admitted and IA No. 383 of 2022 stands disposed of.



Veera Brahma Rao Arekapudi
Member Technical



Bhaskara Pantula Mohan
Member Judicial