(9)

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

CP (IB)/9(CHE)2021

(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 **ARCHIT BUILDERS PRIVATE LIMITED**

IDBI BANK LIMITED
IDBI TOWER, WTC COMPLEX,
CUFFE PARADE, MUMBAI – 400 005

... Financial Creditor

-Vs-

ARCHIT BUILDERS PRIVATE LIMITED
THAMARAI NO.43, SCHOOL STREET,
KOYAMBEDU, CHENNAI – 600 107

...Corporate Debtor

Order Pronounced on ***13th July 2022***

CORAM:

Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : S.Sathiyanarayanan, Advocate
For Corporate Debtor : ex-parte

ORDER

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by one **IDBI BANK LIMITED** (hereinafter referred to as 'Financial Creditor') on 22.12.2020 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **ARCHIT BUILDERS**

PRIVATE LIMITED (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Financial Creditor is a Bank. The registered office address of the Financial Creditor as per the Application is stated to be situated at IDBI Tower, WTC Complex, Cuffe Parade, Mumbai – 400 005. Further, Part-I lays down the Authorized Representative of the Financial Creditor to be one Mr. Vijay Anand K.V.,Deputy General Manager and Branch Head of the Financial Creditor by virtue of a power of Attorney dated 30.09.2019 which is placed at Annexure No.IV in the Application typeset.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private limited company incorporated under the Companies Act, 1956 on 10.06.1998 with CIN: U45201TN1998PTC040643. The registered office of the Corporate Debtor as per the MCA master data is situated at Thamarai No.43, School Street, Koyambedu, Chennai –600 107.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Dr. Madurai Sundaram Sankar, Reg. No. IBBI/IPA-001/IP-P00770/2017-18/11315.

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a debt amount of Rs.3,58,78,612.80/- as on 08.12.2020 which is due and payable by the Corporate Debtor. The date of default as averred in Part-IV of the Application is 23.02.2018.

6. Part V of the application describes the particulars of Financial Debt, documents and the same is placed at Annexure –I and the list of documents between the Financial Creditor and the Corporate Debtor is reproduced hereunder:

Annexure – I

List of Financial Contract between the Applicant Financial Creditor and Corporate Debtor:

S.NO	DATE	DESCRIPTION
1.	03.07.2009	Sanction of Financial Assistance
2.	03.07.2009	Extract of Resolution passed at BoD meeting of M/s. Archit Builders Private Limited
3.	06.07.2009	Loan-cum-Hypothecation Agreement
4.	06.07.2009	Demand Promissory Note
5.	06.07.2009	Take Delivery Letter to DPN
6.	06.07.2009	Guarantee Agreement
7.	06.07.2009	Omnibus Counter Guarantee
8.	06.07.2009	Undertaking furnished by the Personal Guarantor
9.	06.07.2009	Undertaking to create mortgage
10.	07.07.2009	Declaration and undertaking of personal properties by Shri. V Sadhaasivam
11.	07.07.2009	Declaration and undertaking of personal properties by Shri. V Sadhaasivam & Smt. Ushadevi Sadhaasivam
12.	07.12.2009	Declaration and undertaking of personal properties by Smt. Ushadevi Sadhaasivam
13.	07.12.2009	Declaration and Undertaking of personal properties by Shri. N Ranganathan
14.	07.07.2009	General Power of Attorney
15.	29.03.2010	Memorandum of Deposit of Title Deed vide Doc No. 1169/2010
16.	29.03.2010	Memorandum of Deposit of Title Deed vide Doc No. 1083/2010
17.	31.03.2010	Memorandum of Deposit of Title Deed vide Doc No. 892/2010
18.	19.06.2010	Renewal cum Enhancement of Working Capital Facilities
19.	21.06.2010	Exact of Resolution passed at BoD meeting of M/s. Archit Builders Private Limited
20.	21.06.2010	Supplemental Loan-cum-Hypothecation Agreement

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21.	21.06.2010	Take Delivery Letter to DPN
22.	21.06.2010	Supplemental Guarantee Agreement
23.	21.06.2010	Omnibus Counter Guarantee
24.	21.06.2010	Undertaking furnished by the Personal Guarantor
25.	21.06.2010	Declaration and Undertaking (MoDT) by Shri. V Sadhaashivam
26.	21.06.2010	Declaration and Undertaking (MoDT) by Shri. V Sadhaashivam & Smt. Ushadevi Sadhaasivam
27.	21.06.2010	Declaration and Undertaking (MoDT) by Smt. Ushadevi Sadhaasivam
28.	21.06.2010	Declaration and Undertaking (MoDT) by Shri. N Ranganathan
29.	21.06.2010	General Power of Attorney
30.	21.06.2010	Entry No.133/2010
31.	21.07.2010	Demand Promissory Note
32.	03.09.2010	Enhancement in Credit Facilities
33.	03.09.2010	Exact of Resolution passed at Board meeting of M/s. Archit Builders Private Limited
34.	04.09.2010	Supplemental Loan-cum-Hypothecation Agreement
35.	04.09.2010	Supplemental Guarantee Agreement
36.	04.09.2010	Undertaking furnished by the Personal Guarantor
37.	20.09.2010	Supplemental Guarantee Agreement
38.	20.09.2010	Undertaking furnished by the Personal Guarantor
39.	27.10.2010	Enhancement in Credit Facilities
40.	27.10.2010	Exact of Resolution passed at Board meeting of M/s. Archit Builders Private Limited
41.	27.10.2010	Supplemental Loan-cum-Hypothecation Agreement
42.	27.10.2010	Demand Promissory Note
43.	27.10.2010	Take Delivery Letter to DPN
44.	27.10.2010	Supplemental Guarantee Agreement

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45.	27.10.2010	Omnibus Counter Guarantee
46.	27.10.2010	Undertaking furnished by the Personal Guarantor
47.	27.10.2010	Declaration and Undertaking by Shri. V Sadhaashivam
48.	27.10.2010	Declaration and Undertaking (MoDT) by Shri. V Sadhaashivam & Smt. Ushadevi Sadhaasivam
49.	27.10.2010	Declaration and Undertaking (MoDT) by Smt. Ushadevi **Sadhaasivam**
50.	27.10.2010	Declaration and Undertaking (MoDT) by Shri. N Ranganathan
51.	27.10.2010	General Power of Attorney
52.	08.03.2012	Renewal cum Enhancement of Financial Assistance
53.	27.03.2012	Exact of Resolution passed at Board meeting of M/s. Archit Builders Private Limited
54.	27.03.2012	Demand Promissory Note
55.	27.03.2012	Supplemental Loan-cum-Hypothecation Agreement
56.	27.03.2012	Supplemental Guarantee Agreement
57.	27.03.2012	Omnibus Counter Guarantee
58.	27.03.2012	Undertaking furnished by the Personal Guarantor
59.	27.03.2012	Entry No.348/2012
60.	27.03.2012	Declaration and Undertaking (MoDT) by Shri. V Sadhaashivam & Smt. Ushadevi Sadhaasivam
61.	27.03.2012	Declaration and Undertaking (MoDT) by Shri. V Sadhaashivam
62.	27.03.2012	Declaration and Undertaking (MoDT) by Shri. N Ranganathan
63.	27.03.2012	Declaration and Undertaking (MoDT) by Smt. Ushadevi Sadhaasivam
64.	27.03.2012	General Power of Attorney
65.	31.03.2012	Renewal cum Enhancement of Financial Assistance (Modification in the terms of sanction)
66.	23.02.2015	Revival Letter
67.	27.06.2016	Revival Letter

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68.	31.03.2017	Revival Letter
69.	31.03.2017	Renewal cum reduction of WC limits
70.	31.03.2017	Continuing Security Letter
71.	23.02.2018	Notice Recalling Loans
72.	01.06.2018	Notice Invoking Personal Guarantees
73.	08.12.2020	Statement of Accounts along with Certificate under Bankers Book Evidence Act

For IDBI BANK LTD.
Authorised Signatory

7. It was submitted by the Learned Counsel for the Financial Creditor that the Corporate Debtor approached the Financial Creditor assistance to the tune of Rs.300 lakhs. The Applicant at the request of the Corporate Debtor sanctioned the following facilities on 03.07.2009:

FACILITY	**OVERALL LIMIT (RS.LAKHS)**
Term Loan	80.00
Working Capital limit (CC)	100.00
Working Capital limit (BG)	200.00
Total	**380.00**

8. It was averred in the application that the Corporate Debtor executed loan and security documents for the sanctioned facilities on 06.07.2009, 21.06.2010, 04.09.2010, 20.09.2010, 27.10.2010 and 27.03.2012.

9. It was further averred in the application that the term loan was closed. The working capital limits were modified on various occasions and currently stands as a fund based limit of Rs.230 lakhs.

10. It was further averred in the application that as on 08.12.2020, Rs.3,58,78,612.80/- is due from the Corporate Debtor. Following is the break up amount for the amount claimed:

Principal	Rs. 2,30,00,000.00/-
Interest	Rs.1,28,78,612.80/-
Total	**Rs.3,58,78,612.80/-**

11. It was further averred in the application that the above said loan accounts were classified as NPA on 22.10.2017. Further the date of occurrence of default for the purpose of IBC is considered to be 23.02.2018, the date of issuance of notice recalling the loan.

12. It was submitted by the learned counsel for the Financial Creditor that the interest calculation from the date of default is attached as Annexure –B of the typed set filed along with the application.

13. It was further averred in the application that the assets of the Guarantors were offered as security to the Applicant Financial Creditor. The details of the mortgaged assests is attached as Annexure A and the estimated value of the Mortgaged security is Rs.1,49,54,000/-.

14. The Learned Counsel for the Respondent had filed a counter wherein it was stated that the respondent has decided to go for one time settlement with the applicant bank. Despite the difficult situation, respondent offered one time settlement and made upfront payment of Rs.15 lakhs on 25.01.2021 and Rs.10 lakhs on 12.7.2021. Even in the representation forwarded to the applicant bank, the respondent has categorically stated its willingness to sell all the properties mortgaged with the bank for setting the existing liabilities. Thereafter the OTS proposal was failed.

15. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record. At the outset, it is relevant to point out the proceedings of this Tribunal dated 24.06.2022 wherein it was recorded that there

was no representation for the Respondent on 10.03.2022 and 11.04.2022. Since the Respondent has not appeared before this Tribunal, the Respondent is called absent and set ex-parte.

16. Despite being given ample and adequate opportunity to the Respondent, the Respondent failed to turned up and hence in the interest of justice, we are decided to hear the matter on merits. This Tribunal after comprehensively hearing the said matter is of the view that, the debt and default had been proven beyond reasonable doubt.

17. Further it can be seen from the additional affidavit filed by the Respondent that on 31.03.2017 the Corporate Debtor executed a Revival Letter acknowledging the debt and subsistence of the loan and security documents in favour of the Applicant Bank. It is an admitted and undisputed fact that the Corporate Debtor by acknowledging its liability, requested for One Time Settlement (OTS) vide its letter dated 25.01.2021 and further paid an upfront payment of Rs.15 lakhs for consideration of its OTS proposal and the said OTS proposal was accepted by the Bank vide Letter of Acceptance dated 08.03.2021.

18. Consequent to the failure of the Corporate Debtor to honour the terms of repayment of the OTS settlement, the Applicant Bank revoked the offer of settlement vide the OTS Revocation Letter dated 03.04.2021.

19. The Corporate Debtor had admitted the outstanding amount in the audited financial statements for financial year 2019-2020 which reflected the default made by the Corporate Debtor. Further it is also required to be noted that the Hon'ble Supreme Court in the matter of **Asset Reconstruction Company (India) Limited -Vs- Bishal Jaiswal & Anr.**in *Civil Appeal No.323 OF 2021* has categorically held that the entries made in the balance sheet would amount to acknowledgment of debt. The date of default is 23.02.2018. Therefore, the Application is well within the period of limitation.

20. With regard to the limitation aspect it is pertinent to mention the Hon'ble Supreme Court Judgement in the matter of **Dena Bank(now Bank of Baroda) vs C.Shivakumar Reddy and Anr.** wherein it was held in para 141 of the Judgement as follows:

> 126. The finding of the NCLAT that there was nothing on record to suggest that the 'Corporate Debtor' acknowledged the debt within three years and agreed to pay debt is not sustainable in law, in view of the Statement of Accounts/Balance sheets/Financial Statements for the years 2016-2017 and 2017-2018 and the offer of One Time Settlement referred to above including in particular, the offer

of One Time Settlement made on 3rd March, 2017.

127. Section 18 of the Limitation Act speaks of an Acknowledgment in writing of liability, signed by the party against whom such property or right is claimed. Even if the writing containing the acknowledgment is undated, evidence might be given of the time when it was signed. The explanation clarifies that an acknowledgment may be sufficient even though it is accompanied by refusal to pay, deliver, perform or permit to enjoy or is coupled with claim to set off, or is addressed to a person other than a person entitled to the property or right. 'Signed' is to be construed to mean signed personally or by an authorised agent....

...141. Section 18 of the Limitation Act cannot also be construed with pedantic rigidity in relation to proceedings under the IBC. This Court sees no reason why an offer of One Time Settlement of a live claim, made within the period of limitation, should not also be construed as an acknowledgment to attract Section 18 of the Limitation Act. In Gaurav Hargovindbhai Dave (supra) cited by Mr. Shivshankar, this Court had no occasion to consider any proposal for one time settlement. Be that as it may, the Balance Sheets and Financial Statements of the Corporate Debtor for 2016-2017, as observed above, constitute acknowledgement of liability which extended the limitation by three years, apart from the fact that a Certificate of Recovery was issued in favour of the Appellant Bank in May 2017. The NCLT rightly admitted the application by its order dated 21st March, 2019.

21. Apropos, the Hon'ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited,** where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records

provided by the financial creditor to satisfy itself that the default has occurred.

> 28. When it comes to a 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.
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> 30. 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.

22. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

23. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under 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;

24. However during the pendency of moratorium period in terms of Section 14(2) 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.

25. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(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.

26. The Financial Creditor has proposed the name of **Dr.Madurai Sundaram Sankar (Email id:m.s.sankar@outlook.com), Reg. No. IBBI/IPA-001/IP-P00770/2017-18/11315** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 13.12.2022.

27. **Dr.Madurai Sundaram Sankar** is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. 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 IBC, 2016. 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.

29. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

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 above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI 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.

31. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

32. Post this CP/IB/9/CHE/2021 for hearing on **02.09.2022.**

-Sd- -Sd-

SAMEER KAKAR MEMBER (TECHNICAL)

Justice (Retd) S.RAMATHILAGAM MEMBER (JUDICIAL)

Sriram Ananth.V