

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

CP/1144/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 **M/s. TAVAS Construction Private Limited**

Indian Bank

... Financial Creditor

-vs-

M/s. TAVAS Construction Private Limited

... Corporate Debtor

Coram:

R. VARADHARAJAN,
Member (Judicial)

ANIL KUMAR B,
Member (Technical)

For Financial Creditor : M. Praveen Kumar, Advocate
For Corporate Debtor : Pushpa Menon & Vivek Menon, Advocates

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

Order pronounced on 11th of March, 2020

1. This Application has been filed by **Indian Bank** (hereinafter referred to as 'Financial Creditor') 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, against **M/s. TAVAS Construction 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. Heard the Learned Counsel for the Financial Creditor and Corporate Debtor and perused the documents filed by the parties.

3. The Financial Creditor has claimed the total amount of Rs.36,97,15,541.50p as outstanding against the Corporate Debtor as on 06.09.2018. Clause 2 of Part-IV

of the Application discloses the loan amount due to the Financial Creditor by the Corporate Debtor.

4. The brief facts of the case of the Financial Creditor is that the Corporate Debtor who is engaged in the business of construction of buildings both residential and commercial including that of the infrastructure facilities such as highways, ports, railways, roads and all other works connected therewith, has approached the Financial Creditor in the year 2008 for grant of financial facilities for its business purpose.

5. Originally, on 18.11.2008 the Financial Creditor has sanctioned the following facilities to the Corporate Debtor:-

- i) Secured OD – Rs.20 Crores
- ii) Term Loan- R.20 Lakhs and
- iii) Import LIC (Sub limit under term loan)- Rs.20 Crore.

6. The Financial Creditor states that subsequent to the availing of the above loans and execution of security documents in favour of Financial Creditor, the Corporate Debtor approached the Financial Creditor for renewal and enhancement of facilities from time to time, and accordingly, the Financial Creditor renewed/enhanced the Secured OD and the Term Loan on 17.12.2009, 20.07.2011, 26.07.2012, 04.02.2014, 27.03.2015, and finally an amount of Rs.36.45 Crores were reviewed/renewed on 12.04.2017 to the Corporate Debtor. Copy of Sanction Letter dated 12.04.2017 is placed at pages 34 and 36 of the typed set filed with the Application.

7. In order to secure the said review/renewal of facilities by the Financial Creditor on 12.04.2017, the Corporate Debtor executed the following documents in favour of the Financial Creditor, on 12.04.2017:-

- i) The Single/Joint Demand Promissory Note for a sum of Rs.36.45 Crores ,

- ii) The Disposal of Proceeds Letter,
- iii) Agreement of Hypothecation of movables,
- iv) Letter of Continuity and
- v) Acknowledgement of Debtor cum-Security.

8. Besides above, on behalf of the Corporate Debtor, Personal Guarantees and Corporate Guarantees were executed by various persons namely R. Ramesh, D. Kaviprasad, N. Ravichandran, M/s. True Value Homes (India) Private Limited, M/s. TVH Infrastructure & Developers Private Limited (Provisional), M/s. Tarendra Infrastructure Chennai Private Limited and M/s. Sarvaga Housing Private Limited (Provisional) in favour of the Financial Creditor. Copies of the documents executed by the Corporate Debtor are placed at pages 37 to 85 of the typed set filed with the Application.

9. It is averred that after availing the above credit facilities and executing various security documents in favour of the Financial Creditor, the Corporate Debtor has

committed default in repayment of the amounts to the Financial Creditor and the operation of loan account started to be highly irregular and asymmetrical. Since the Corporate Debtor had defaulted in repayment of the dues, the account was classified as Non-Performing Asset (NPA) on 31.03.2018.

10. Subsequently, the Financial Creditor has initiated proceedings under SARFAESI Act, 2002 by issuing Demand Notice under Section 13(2) of the SARFAESI Act on 19.04.2018 demanding the outstanding amounts due as on 31.03.2018. Copy of Demand Notice dated 19.04.2018 is placed at pages 86 to 91 of the typed set filed with the Application.

11. In addition, the Financial Creditor has filed the statement of accounts from 01.04.2015 to 30.09.2016 in support of their contentions, which is placed at pages 128 to 132 of the typed set filed with the Application. Further, the Financial Creditor has filed the certificate of

registration for modification of charge dated 29.12.2009 issued under Section 76 (b) of the Companies Act, 2013, copy of which is placed at page 133 of the typed set filed with the Application.

12. A perusal of the proceedings reveals that after receipt of the notice, the Corporate Debtor entered appearance through its Counsel. On 16.11.2018 this Authority directed the Corporate Debtor to file Reply within two weeks and the matter was posted to 14.12.2018. On 14.12.2018, the Corporate Debtor did not choose to file the Reply, instead the Learned Counsel for the Corporate Debtor has stated that another Application has been filed by the Financial Creditor which is pending before the Double Bench wherein 10% of the OTS amount was to be paid as upfront payment and out of which part amount has already been paid and prayed for time to settle the matter with the Financial Creditor. Therefore, the case was adjourned from time to time for reporting settlement.

On 05.02.2019, the Counsel for the Corporate Debtor has submitted that Rs.2 Crores would be paid on or before 15.02.2019 and by end of February, 2019, the Corporate Debtor would pay Rs.2 Crores more to make 10% of the OTS amount and therefore, at the request of the Counsel for the Corporate Debtor, the case was adjourned to 07.03.2019. On 07.03.2019, it was represented by the Counsel for the Financial Creditor that Rs.1 Crore alone was paid by the Corporate Debtor towards OTS. Therefore, this Authority extended the time and directed the Corporate Debtor to deposit the total sum of Rs.3 Crores on or before 31.03.2019 and the balance of Rs.1 Crore by first week of April, 2019, failing which, both the parties were directed to make final submissions on the next date of hearing i.e. 09.04.2019.

On 09.04.2019, the Counsel for the Corporate Debtor has brought two Cheques dated 19.04.2019 for an amount of Rs.2 Crores for the consideration of OTS and same was handed over to the Counsel for the Financial



Creditor and the case was adjourned to 24.04.2019. However, on 24.04.2019 it was reported that the two Cheques given by the Corporate Debtor has got bounced on presenting the same before Bank, and therefore, this Authority directed the Corporate Debtor to bring the Demand Drafts in lieu of the two Cheques.

On 04.06.2019 the Counsel for the Corporate Debtor has brought one Demand Draft dated 03.06.2019 for a sum of Rs.50 Lakhs and same was handed over to the Counsel for the Financial Creditor and at the request of the Counsel for the Corporate Debtor the case was adjourned to 20.06.2019. On 20.06.2019, the Counsel for the Corporate Debtor represented that Rs.4 Crores has been deposited towards the OTS and the same was confirmed by the Counsel for the Financial Creditor. Thereafter, at the request of the Counsel for the Corporate Debtor, the case has been adjourned from time to time, however, the Corporate Debtor neither chose to report settlement nor to argue the case on merits, and

hence, this Authority after hearing the Counsel for the Financial Creditor was constrained to reserve the case for order, on 25.02.2020.

13. We have carefully considered the submissions made by the Counsel for the Financial Creditor as well as the pleadings and the documents as filed before this Tribunal. The Counsel for the Financial Creditor has brought to the notice of this Authority the offer for settlement that has been made by the Corporate Debtor towards OTS and subsequent payments thereon made by the Corporate Debtor towards the outstanding loan amount, during the pendency of this Application, and submitted that, that itself amounts to the Acknowledgement of debt/ liability of the Financial Creditor by the Corporate Debtor.

14. Further, as consistently held by the Hon'ble Supreme Court both in ***Innoventive Industries Ltd. -Vs- ICICI Bank and another (2018) 1 SCC 407*** as well as

Mobilox Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd. (2018) 1 SCC 353 after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP).

15. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application, as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

16. The Financial Creditor has proposed the name of **Mr. S.R. Krishnan**, having Registration Number IBBI/IPA-001/IIP-P00909/2017 - 2018/11509, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of

the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP, who is appointed as the IRP to 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 Sections 15,17,18 of the I&B Code, 2016 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

17. 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 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 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 Corporate Debtor.”

18. 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 such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.”

19. 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.”

20. Based on the above terms, the Application stands **admitted** in terms of Section 7 of the I&B Code, 2016 and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order

forthwith by the Registry, who will also communicate the initiation of CIR Process in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)