

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) 3026/MB/C-IV/2019

Under section 7 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

The Janata Sahakari Bank Limited

...Financial Creditor

Versus

**Beton Concrete Products Private
Limited**

[CIN: U65990MH1984PTC031901]

...Corporate Debtor

Order pronounced on: 28.04.2020

Coram:

Mr. Rajasekhar V. K. : Hon'ble Member (Judicial)
Mr. Ravikumar Duraisamy : Hon'ble Member (Technical)

Appearances:

For the Financial Creditor : Mr Avinash Rajan Khanolkar,
Advocate i/b Kanj & Co LLP,
Company Secretaries

For the Corporate Debtor : Mr Ashish R Pokerna, Director
of the Corporate Debtor, in
person

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. This is a Company Petition filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by The Janata Sahakari Bank Limited ("Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Beton Concrete Products Private Limited ("Corporate Debtor").
2. The Corporate Debtor is a private company limited by shares and incorporated on 20.01.1984 under the Companies Act, 1956, with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U65990MH1984PTC031901. Its registered office is Pasaydaan, No.412, N-3, CIDCO, Opp. CIDCO Garden, Aurangabad 431 003, within the State of Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.
3. The present petition was filed on 22.07.2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹4,75,20,981/- (Rupees four crore seventy-five lakh twenty thousand nine hundred and eighty-one only) as principal and ₹25,20,323/- (Rupees twenty-five lakh twenty thousand three hundred and twenty-three only) as interest as on 28.02.2019, which is the date of default.
4. The case of the Financial Creditor is as follows: -

- (a) The Financial Creditor had availed certain facilities in the form of Cash Credit, Temporary Overdraft and Term Loan on 16.08.2017. These loans were disbursed in various tranches between 18.08.2017 and 05.12.2018 (para 2 & 3 of Synopsis accompanying the Petition at page 1 thereof);
- (b) Following default, the loan accounts of the Corporate Debtor were classified as Non-Performing Assets (NPA) on 28.02.2019 in terms of the directions issued by the Reserve Bank of India (RBI) (para 5 at page 1 of Synopsis of the Petition);
- (c) The Financial Creditor recalled the entire facilities *vide* Recall Notice dated 29.06.2018, which has been placed at pp.155-159 of the Petition.
- (d) Symbolic possession of the properties was also taken on 20.06.2019 under the SARFAESI Act. Copy of the Notice taking symbolic possession has been placed at pp.160-161 of the petition.
5. Bank statements are also attached as **Exhibit '1'** at pages 3-8 of Additional Affidavit filed by the Financial Creditor. The total debt due and payable to the Financial Creditor is ₹5,00,41,304/- (Rupees five crore forty-one thousand three hundred and four only), as mentioned at page 30 of the Petition.
6. Mr Ashish Pokerna, Director of the Corporate Debtor appeared in person on behalf of the Corporate Debtor and made his submissions.
7. In its reply dated 27.11.2019, the Corporate Debtor has submitted as follows:-

- (a) The Corporate Debtor had paid all the instalments upto December 2018 and the reasons for non-payment of the term loan was due to the economic slowdown and severe drought in the area of business operations of the Corporate Debtor (para 5 at page 2 of the Reply);
- (b) The Financial Creditor did not give reasonable time to amicably resolve the matter which arose out of non-payment of three instalments of ₹5,08,000/- from December 2018 to February 2019 (para 6 at page 2-3 of the Reply);
- (c) The Corporate Debtor had, *vide* its letter dated 16.09.2019, offered to liquidate its assets with the prior consent of the Financial Creditor within a period of six months and repay all the outstanding dues amounting to ₹4,89,90.97 (para 8 at page 3 of the Reply);
- (d) The Financial Creditor, *vide* its letter dated 16.09.2019, stated that in order to consider the proposal of the Corporate Debtor, the Corporate Debtor must pay a sum of ₹1.56 crore within five days (para 10 at page 4 of the Reply).
8. We have heard the arguments of Mr Avinash R Khanolkar, Learned Counsel for the Financial Creditor and perused the records.
9. It is noted that from the affidavit in reply dated 27.11.2019 of the Corporate Debtor, that the Corporate Debtor admits the liability and is not in a position to repay the debt, which also establishes the existence of debt and default.
10. There is no dispute about the fact that the Corporate Debtor has availed of the facilities extended by the Financial Creditor. The reply

for the Corporate Debtor also makes it clear that it has defaulted in payment of instalments from December 2018/ January 2019 onwards.

11. On the assurance of Mr Ashish Pokerna, Director of the Corporate Debtor, and in the interest of settlement, the matter was adjourned on various dates to enable the Corporate Debtor to pursue a one-time settlement proposal with the Financial Creditor. On 17.12.2019, Mr Ashish Pokerna submitted that he would make arrangements to pay a sum of ₹1.00 crore by 01.01.2020. If possible, an attempt will be made to pay ₹1.52 crore.
12. However, when the matter was called on 01.01.2020, Mr Ashish Pokerna candidly submitted that it was not possible for him to arrange any sums of money to pay to the Financial Creditor. In view of this, it is clear that the Corporate Debtor is unable to make any payment towards its dues to the Financial Creditor and that it is a fit case for initiation of CIRP against the Corporate Debtor.
13. The application made by the Financial Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

14. The Financial Creditor has proposed the name of **Ms Anagha Anasingaraju**, Registration No. IBBI/IPA-002/IP-N00247/2017-18/10732, as the Interim Resolution Professional of the Corporate Debtor. She has filed her written communication in Form 2 as required under rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of her Certificate of Registration.
15. It is, accordingly, hereby ordered as follows: -
- (a) The petition bearing **CP(IB)-3026/MB/C-IV/2019** filed by **The Janata Sahakari Bank Limited**, the Financial Creditor, under section 7 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Beton Concrete Products Private Limited [CIN: U65990MH1984PTC031901]**, the Corporate Debtor, is **admitted**.
- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (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 of 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 right 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31

of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) **Ms Anagha Anasingaraju [Registration No.IBBI/IPA-002/IP-N00247/2017-18/10732]**, having address at No.1-2, Aishwarya Sankul, GA Kulkarni Path, Opp Joshi Railway Museum, Kothrud, Pune, 411 038 [email: rp.anagha@kanjcs.com, Mobile: 9881129990], is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out her functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to

the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the process of the CIRP in respect of the Corporate Debtor.
- (i) The Financial Creditor shall deposit a sum of ₹3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (j) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Ravikumar Duraisamy
Member (Technical)

28.04.2020

Sd/-

Rajasekhar V.K.
Member (Judicial)