

IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
Division Bench
Court - 1

ITEM No.134
CP(IB) 559 of 2019

Order under Section 7 IBC

IN THE MATTER OF:

State Bank of India
V/s
Sujoyot Infrastructure Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..22/12/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in the open court, vide separate sheet.



**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



**MADAN B GOSAVI
MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT 1**

CP (IB) 559 of 2019

An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of :

State Bank of India,
Stressed Assets Management Branch - Ahmedabad
2nd Param Siddhi Complex, Opp. V S Hospital, Ellis bridge,
Ahmedabad - 380006

...Applicant

Versus

M/• SUJYOT INFRASTRUCTURE PVT. LTD.
F-103, Sattelite Centre,
Near Mansi Cross Road,
Vastrapur, Ahmedabad- 380015

...Respondent

**Order Reserved on 17.11.2021
Order Pronounced on 22.12.2021**

**Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
AJAI DAS MEHROTRA, MEMBER (TECHNICAL)**

Appearance:

Learned Counsel Ms. Aishwarya Reddy appeared for Financial Creditor.

Ld. Counsel of Mr. Mohit Gupta appeared for the Corporate Debtor.



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ORDER**[Per: Bench]**

1. The instant application has been filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IB Code**") by Financial Creditor State Bank of India to initiate Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against the Corporate Debtor SUJYOT INFRASTRUCTURE PVT. LTD. for a default amount of Rs. 839,37,50,003.78/- and interest thereon. The date of default has been stated as 26.03.2019.

2. The applicant and several other banks had provided financial assistance to the company Sai Info Systems (India) who was in need of it to run its business, the applicant and others sanctioned various credit facilities. The applicant while providing various credit facilities presented their terms and conditions for sanctioned/restructured/revised/renewed and enhanced various credit facilities which were accepted by Sai Info Systems (India) and various documents in favour of applicant were also executed. The company has not operated its account in terms of the advance and the said company has failed and neglected to pay due interest and installments to the applicant and others in the consortium. The applicant submits that the respondent

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company being one of the guarantors for the Sai Info Systems (India) is liable for the various credit facilities and for the repayment of outstanding dues payable to the applicant and others as they have executed necessary Deed of Guarantees in favour of the applicant Bank.

3. The applicant submits that the respondent is liable to pay Rs. 839.37 crore as on 26.03.2019 as per bank rate of interest of 12.25% compounded to the Applicant Bank. The Applicant bank submits that despite repeated reminders being sent to the respondent company, the respondent company did not make payment of the applicant's rightful dues & thereby committed default in paying financial debt.
4. The applicant bank submits that it thus clear that the respondent company did not pay outstanding financial debt arising in the usual and ordinary course of business and be declared as insolvent & be admitted in CIRP.
5. The Corporate Debtor filed the reply to the present application and prayed for the dismissal of the present application. The Corporate Debtor submitted that the application is filed malafidely by the applicant bank in the breach of various applicable guidelines of the RBI and without joining of the



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necessary parties to the present application. The Corporate Debtor further submitted that no amount is due and payable and denies claim of Rs. 839,37,50,003.78/- as stated by the applicant.

6. The Corporate Debtor stated in part IV of the application filed by the applicant is against the rules and regulations under the Insolvency Code and the Adjudicating Authority rules. It is also stated by the respondent that the officer of the Bank Shri Amar Singh Parihar is not duly authorised by the Applicant Bank to file the present proceedings under section 7 of the Insolvency & Bankruptcy Code, 2016. The Corporate Debtor further stated the insolvency petition against the main borrower is filed in 2017 which was allowed therefore, an insolvency petition against the guarantor would result in duplication of claims and hence such a petition would not be maintainable. The Corporate Debtor also states that the application suffers from delay and laches and is time barred.
7. The Financial Creditor with reference to the objections raised by the Corporate Debtor filed Rebuttal to the objections whereby the Financial Creditor submitted affidavit verifying rebuttal documents with regard to A. R. Gupta & Associates letter dated 10.01.2017 on behalf of borrower company viz Sai Infosystems



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(India) Ltd., its Corporate Guarantor Sujyot Infrastructure Pvt. Ltd. (the Corporate Debtor in the instant petition) and others, in reply to show cause as to why they should not be declared as wilful Defaulters. The Hon'ble NCLT's passed order dated 22.08.2019 for liquidation of the main borrower company viz. Sai Infosystem (India) Limited.

The Financial Creditor further submitted, the Copy of Gazette of India published by authority regarding State Bank of India, Central Office's Notice dated 27th March 1987 on the Bank's Executive Committee of Central Board authorising, inter alia, all officers in Grades of SMGS-IV and above to exercise Signing Power, Certificate-cum-Valuation summary. The Financial Creditor also submitted State Bank of India corporate centre's letter dated 23rd May, 2014 advising that the appropriate authority has decided to classify the account of the borrower company Sai Info Systems ltd. as fraud also submitted RBI Circular on framework for dealing with loan frauds.

8. As per the written submissions submitted by the Corporate Debtor, the Corporate Debtor relies on the fact that the application is barred by law of limitation as it was filed after period of more than 6 years from the date of default. It is filed on 30.09.2019. The Corporate Debtor is relying on the ratio laid



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down in Hon'ble SC in Jignesh Shah case where in it is held that proceedings under the Insolvency and Bankruptcy Code are independent and parallel proceedings won't extend limitation and the application has to be filed within 3 years from the date of default. IBC proceedings cannot be used as a substitute for execution of decree and stated that the similar view has been taken in case HDFC Bank Ltd. Vs Bhagwan Das Auto Finance Ltd. Company Appeal (AT) (Insolvency) No. 1329 of 2019.

9. The Applicant Bank submits that the liability of Corporate Guarantor is co extensive with that of the principal borrower and it gets triggered the moment the principle borrower commits default in paying the debt when it gets due and payable by relying on Hon'ble SC judgement in the case of Laxmi Pat Surana vs Union of India and anr, civil appeal no. 2734 of 2020. The financial creditor also submits that the Corporate Debtor has furnished corporate guarantee therefore, the financial creditor has a right to file for CIRP of the Corporate Debtor as the liability of corporate guarantor is co extensive with that of principal borrower.
10. The submission made by the Respondent with regard to the period of limitation for filing this application, the applicant Bank is relying on the ratio of Dena Bank (now Bank of Baroda) vs C.



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Shivakumar Reddy and Anr, Civil Appeal No. 1650 of 2020, the Hon'ble Supreme Court held that the judgement and order/Decree of the DRT and the recovery certificate gave a fresh cause of action to the financial creditor to initiate a petition under section 7 of the IBC. The Apex Court further held that the financial creditor is entitled to initiate proceedings under section 7 of the code within 3 years from the date of issuance of the recovery certificate. Therefore, it is now a settled law that when the financial creditor has a recovery certificate issued in its favour post the adjudication of their application before the Debt Recovery Tribunal, then a fresh cause of action is initiated to file an application under section 7 of the Insolvency and Bankruptcy Code, 2016. Hence, in the light of the order dated 24.12.2018 of the Debt Recovery Tribunal as well as the recovery certificate dated 13.03.2019, the present petition is well within the period of limitation and financial creditor is entitled to make a claim against the Corporate Debtor.

11. The Applicant Bank submits that the objection raised by Corporate Debtor that the their application is time barred in the light of the judgement passed by the Supreme Court of India in Jignesh Shah and another vs. Unit of India and another, reported in (2019) 10SCC750 is not applicable. It is submitted



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that the said judgement has been passed on a very different set of facts from that of the present petition. In that case, the winding up petition was filed beyond the period of 3 years after the date of default and there was no discussion with respect to recovery proceedings pending therefore, the judgement is not applicable as it relates to different facts and issue.

12. In this case Debt Recovery Tribunal issued recovery certificate in favour of the financial creditor on 13.03.2018. This application is filed on 09.04.2019 and therefore, we hold that it is filed well within the period of limitation.

There is no dispute to the fact that the financial debt is more than 1 lakh (as per threshold limit of IBC) is due and payable by the Corporate Debtor & Corporate Debtor has committed default in paying the same. The application is filed within limitation we also hold that it is filed by properly authorised officer of the Bank.

13. In respect to the maintainability of the instant Application with regard to duplication of claim it is necessary to consider the decision of Hon'ble National Company Law Appellant Tribunal in the case of **State Bank of India Versus Athena Energy (CA (AT) (Ins.) No. 633 of 2020)** dated 24.11.2020 wherein it was



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held that CIRP can proceed against Principal Borrower as well as Guarantor.

14. Also as per provision section 60 (2) of the IBC, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal of the IBC. Thus, simultaneous application could be filed against the borrower and the guarantor and the same could also be maintained
15. The present application is defect-free and complies with the requirements of section 7 of the IB code. The consent of the resolution professional has been obtained to act as IRP who is eligible to be appointed as an IRP as no disciplinary proceedings are pending against him. Hence, we pass the following directions:

Order

- I. Corporate Debtor M/s Sujyot Infrastructure Private Limited is admitted in the Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.



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- II. We appoint **Mr. Parag Sheth**, registration no. **IBBI/IPA-002/IP-N00142/2017-2018/10381** under section 13(1) (c) of the IB Code as IRP.
- III. That the Moratorium under Section 14 of the Code shall come to effect from the date of the order till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub- Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.
- IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any Court of law and further prohibits a Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing (of by the Corporate Debtor) any of Corporate Debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



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- V. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.
- VI. That the supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.
- VII. The IRP so appointed shall make the Public announcement of the Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.
- VIII. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 &21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to



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extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with IRP, do not assist or co-operate, the IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

IX. The IRP shall be under a duty to protect and preserve the value of the property of the Corporate Debtor Company and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

X. We direct the Applicant to deposit a sum of Rs. 2,00,000/- with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016. The needful shall be done within one week from the date of receipt this of order by the Financial Creditor.

XI. The Registry is directed to communicate this order to the Petitioner-Financial Creditor, Corporate Debtor, and the



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Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after pronouncement of the order.

- XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.
- XIII. Copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP appointed herein, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records and also to RoC for updating the Master Data. RoC shall send compliance report to the Registrar, NCLT.
- XIV. This CP(IB) 559 of 2019 stands allowed and disposed-off.



AJAI DAS MEHROTRA
MEMBER (TECHNICAL)



MADAN B. GOSAVI
MEMBER (JUDICIAL)



Certified to be True Copy of the Original



Joint Registrar
NCLT, Ahmedabad Bench
Ahmedabad

Divya Sharma /LRA