

S.No.21

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
22-12-2023 AT 10:30AM**

CP(IB) No. 145/7/HDB/2023

u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India
Creditor VS

...Financial

Ranchi Expressways Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Learned Counsel Mr Ravi Charan Pentapati along with Niharika Agarwal present through Video Conference. Orders pronounced. In the result, CP is admitted and Insolvency Resolution Process is ordered against Corporate Debtor. Mr. Sanjay Kumar Mishra, is appointed as Resolution Professional and moratorium is declared against Personal Guarantor subject to the conditions mentioned in the order.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**BEFORE THE HON'BLE COMPANY LAW TRIBUNAL
HYDERABAD BRANCH, HYDERABAD**

CP NO. 145/7/HDB/2023

U/s. 7 of the Insolvency and Bankruptcy Code, 2016

**IN THE MATTER OF M/S RANCHI EXPRESSWAYS PRIVATE
LIMITED**

Between:

State Bank of India,
SAM Branch-II, D.No. 3-4-1013/A, 1st
floor, Commuter Amenity Centre (CAC)
TSRTC Bus station, Kachiguda,
Hyderabad- 500027.

...Applicant/
Financial Creditor

VERSES

M/s Ranchi Expressways Pvt Ltd.,
Rep by its Managing Director, Regd.
Office at Rd no. 36, Hitech City Road,
Jubilee Hills, Hyderabad- 500033,
Telangana, India.

...Corporate Debtor/
Corporate Debtor

Order pronounced on: 22.12.2023

Corum:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For applicant: B.Ravi Charan, Advocate

For Corporate Debtors: G. Sai Prasen, Advocate

PER BENDCH: ORDER

1. This is a petition filed under section 7 of Insolvency and Bankruptcy Code, 2016, by State Bank of India , herein after referred to as the financial creditor, to initiate corporate insolvency resolution process against the respondent, herein after referred to as the corporate debtor, alleging non-payment of an amount of Rs. 1,08,22,84,444.33 Crores together with interest said to be due and payable as on 31.05.2023 by the responded by admitting the present petition..

3. The averments of the Petition in brief are as follows:

3.1. It is averred that the respondent through its directors approached State Bank of Bikaner & Jaipur, for short, SBBJ, and State Bank of Patiala, for short, SBOP & State Bank of Travancore, for short SBT (now merged with SBI) for financial assistance pursuant thereto, the SBBJ & SBOP sanctioned overall Term Loan Facilities to the tune of Rs. 1191.60 Crores which was later reduced to Rs. 1151.60 Crores, as SBT cancelled its commitment. It is further, averred that out of the overall amount SBBJ sanctioned Term Loan of Rs.20 Crores vide Term Loan A/c No.61187784737 and sanction letter dt:10.10.2011, SBOP sanctioned Term Loan of Rs. 20 crores vide Term Loan A/c No. 65164493198 and sanction letter dt: 07.10.2011, SBT sanctioned Term Loan of Rs. 40 crores vide sanction letter dt: 07.10.2011.

3.2. It is further averred that the , Lenders agent and NHAI executed Substitution agreement and Escrow agreement on 28.02.2012 appointing Canara Bank as lenders agent giving authorization to represent the lenders. Along with the lenders and the borrower a security trustee agreement dated 31-10-2011 was executed appointing SBICAP Trustee Company Ltd as security trustee. Further, averred that sponsor support agreement executed by M/s Madhucon Projects Limited and M/s Madhucon Infra Limited dt:31.10.2011 for amounts Rs. 463.40 Crores which were increased to Rs. 503.40 crores.

3.3. It is averred that the aforementioned Common loan agreement, Security Trustee Agreement, consent and agreement dated 31-10-2011 was amended vide Amended dated: 24.02.2012 executed by the Corporate debtors borrower. It is averred that aforementioned term loan was agreed to be paid in instalments together with interest as per schedule in common loan agreement with effect from 31-03-2015.

3.4. It is averred that charge was created by CORPORATE DEBTOR with ROC IN Form No.8 on 08.02.2012 and Registered indenture of Mortgage on 19.01.2012 as a security. Further averred that Mr. Nama Nageswara Rao executed deed of guarantee on 08.11.2014 in favour of SBICAP Trustee Company Ltd and M/s Maducon Projects ltd, M/s Madhucon Granites ltd, M/s Madhucon Toll Highways Ltd had pledged their shares on 08.11.2014 and executed deeds of Indemnity cum undertaking on 15.12.2014.

3.5. It is averred that the respondent executed revival letter on 11.04.2018 acknowledging the liability. It is averred that respondent defaulted in repaying outstanding loan amounts and interest accrued and the loan accounts have been classified as NPA on 21.03.2018.

3.6. It is averred that legal notice dated 24.04.2019 was issued to the Corporate debtor to repay the outstanding loan amounts together with interest and CORPORATE DEBTOR replied acknowledging debt on 08.05.2019.

3.7 It is averred that the present petition is within limitation and record of Default in Form D dated 03.06.2023 and the date of default is mentioned as 31.01.2018. Further, statements of accounts and copies of entries in bankers books are filed.

3.8. It is averred that CORPORATE DEBTOR has offered OTS to petitioner/Financial creditor in consortium meeting held on 16.11.2022 and subsequently even after filing the present petition on 03.10.2023 both were rejected as amounts offered were too low.

3.9 Petitioners relied upon Hon'ble Supreme Court decision in *Asset Reconstruction Company (India) Private Ltd Vs Bishal Jaiswal and anr Civil Appeal No.323 of 2021* regarding limitation aspect and considering Bankers books of Accounts and acknowledgement in writing.

3.10 Petitioners in their compliance memo filed dated 20.06.2023 where in the synopsis the date of first repayment is averred as 15.03.2017 which is as per CLA. Further, petitioner filed records of default in Form-D with NeSL and the same is AUTHENTICATED.

4. The averments in the counter filed by the respondent in brief are:

4.1. It is averred that the Corporate debtor is liable to pay amount less than Rs.108.22 crores. It is further averred that Respondent incurred an amount of Rs. 93.71 crores towards equity and unsecured loan for development of project and not accepted any amounts in the form of dividend, whereas, lenders and petitioners collected an amount of Rs. 381 crores from the projects towards the debt service.

4.2 It is averred that Respondent is a special purpose vehicle for construction of Four lane of Ranchi/Rargaon-MAHULAI from KM 114.000 to KM 277.500 of NH-33 in the state of Jharkhand on design built, finance, operate and transfer and entered into a concession agreement with NHAI dated 20.04.2011.

4.3 It is averred that Respondent entered into loan agreement with consortium of banks on 31.10.2011 where State Bank of India is the lead bank and Petitioner was the escrow agent.

4.4 It is averred that as per concession agreement CORPORATE DEBTOR completed project work upto Milestone-II as on 08.12.2016 but NHAI

cancelled concession agreement dated 20.04.2011 vide notice NHAI/BOT/11012/15/2004/129922, dated:30.01. 2019 and as a result additional costs are incurred above capital cost and approached arbitration Tribunal for the same.

4.5 It is averred that CORPORATE DEBTOR has not received capital towards payment of cost in construction of NH-33 from NHAI which resulted in NPA on 21.03.2018 and FC has not taken any steps to recover amounts.

4.6 It is averred that an OTS proposal is made by company on 22.07.2021 however the present petition as filed is beyond the prescribed period of limitation.

5. In the light of the above submissions the point that emerges for consideration by this Tribunal are:

- (I) Whether the financial debt claimed as due and payable by the respondent is barred by limitation. If so, whether the Company petition is maintainable?
- (II) Whether a financial debt of a sum over rupees one crore claimed as due and payable by the respondent to the Applicant exists? If so, whether the respondent has defaulted in repayment of the same?

6. We have heard Learned Counsel Shri P.Ravi Charan and Niharika Agarwal for the financial creditor and Learned Counsel Shri G. Vidya Sagar Ld. Sr. Counsel and Shri G.Sai Prasen, Advocate for the corporate debtor. Perused the record and the written submissions filed by the petitioner. The respondents did not choose to file written submissions.

Point.1

Whether the financial debt claimed as due and payable by the respondent is barred by limitation. If so, whether the Company petition is maintainable?

7. While it is the case of the learned counsel for the petitioner that the subject financial debt is well within the period of limitation, Learned Counsel for the corporate debtor would contend that the default in this case since occurred on 21.03.2018 and as the present petitioner initiated legal proceedings beyond the prescribed period of limitation, the present petition which is filed on 12.06.2023 is barred by limitation.
8. Needless to say, that whether or not the opposite party raises the plea of limitation, the Petitioner shall establish that claim as made under present petition, is within the prescribed period of limitation and the *burden* to establish the same lies on the Petitioner.
9. In para no.7 of the preliminary counter, respondent had stated as “*the respondent has entered into a loan agreement with consortium of banks on 31.10.2011 wherein the State Bank India is the lead bank and petitioner herein was the escrow agent*”. Therefore, the respondent entering into loan agreement with consortium of banks on 31.10.2011 is not in dispute. It is also not in dispute that the consortium comprises 13 Banks including State Bank of Bikaner & Jaipur (SBBJ) and State Bank of Patiala (SBOP) which have later merged with State Bank of India, the petitioner herein.

10. The common loan agreement dated 31.10.2011 the due execution of which by the respondent is not in dispute, has been amended on 24.02.2012, wherein the respondent /corporate debtor had acknowledged the credit facilities it had already availed under the common loan agreement dated 31.10.2011. Subsequently, a deed of guarantee dated 08.11.2012 also has been executed by the respondent/corporate debtor in favour of all the lenders where under the respondent/corporate debtor had reiterated and also acknowledged availing the credit facilities under the common loan agreement dated 31.10.2011 and the amended the common loan agreement dated 24.02.2012. Thereafter, yet another amendment to the common loan agreement dated 31.10.2011 had been made on 27.06.2015, wherein corporate debtor while agreeing the due repayment of the credit facilities availed under the common loan agreement supra, also acknowledged its liability under the said agreement. A Revival letter dated 10.04.2018 also has been executed by the corporate debtor in favour of all the consortium of lenders duly acknowledging its liability under common loan agreement dated 31.10.2011. It is pertinent to state that the due execution of the above stated documents by the respondent is not in dispute.
11. Needless to say, that by virtue of aforesaid debt acknowledgements made by the respondent from time to time, the period of limitation in respect of the subject loan stands extended by 3 years effective from 10.04.2018, by virtue of section 18 of the Limitation Act.

12. While it was so, the respondent/corporate debtor in its balance sheet for the financial year ending 31.03.2021, under the head 'Long Term Borrowing' in unequivocal terms admitted that the aforementioned credit facilities are outstanding. In the explanation notes 14 of the said balance sheets it has been stated that "India Rupee Term Loans consists of Loans borrowed from a **Consortium of 13 bankers & One financial institution** as per common loan agreement was re-structured and the loan amount was payable as per master amendment to **common loan agreement** dated 28.03.2017. Interest is not provided during the financial year due to the Term Loan became NPA"

13. Again, in the same balance sheet under Note 14 it has been stated as follows:

" India Rupee Term Loans consists of Loans borrowed from a Consortium 13 bankers & One financial institution as per common loan agreement was re-structured and the loan amount was payable as per master amendment to common loan agreement dated 28.03.2017.

Interest is not provided during the financial year due to the Term Loan became NPA"

In Dena Bank vs c. Shiv Kumar Reddy and Anr , it was held that:

“It is well settled that entries in books of accounts and/or balance sheets of a Corporate debtor would amount to an acknowledgment under Section 18 of the Limitation Act In Asset Reconstruction Company (India) Limited v. Bishal Jaiswall and Anr. (supra) authored by Nariman, J. this Court quoted with approval the judgments, inter alia, of Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff ["Bengal Silk Mills"] and in Re Pandem Tea Co. Ltd., the judgment of the Delhi High Court in South Asia Industries (P) Ltd. v. General Krishna Shamsher Jung Bahadur Rana and the judgment of Karnataka High Court in Hegde Golay Ltd. v. State Bank of India 21 and held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt”.

122. In Hegde & Golay Limited v. State Bank of India reported in ILR 1987 Kar 2673, the Karnataka High Court held: “43. The acknowledgement of liability contained in the balance-sheet of a company furnishes a fresh starting point of limitation. It is not necessary, as the law stands in India, that the acknowledgement should be addressed and communicated to the creditor.”

123. In Reliance Asset Reconstruction Co. Ltd. v. Hotel Poonja International Pvt. Ltd. 22 , the Appellant had relied on two documents in the Paper Book, that is, (i) the Balance Sheet of the Corporate debtordated 16th August, 2017 and (ii) a letter dated 23rd April, 2019 issued by the Corporate debtorto contend that the proceedings under Section 7 of the IBC were not barred by limitation, as limitation would start running afresh for a period of three years from the respective dates of those documents in acknowledgment of liability.

Thus, limitation period in this case stood extended by three years by virtue of the acknowledgments, supra, as such, the Present Company Petition, which was filed on 12.06.2023 is therefore, well within the period of prescribed period of limitation.

14. That a part as can be seen from the minutes of the meeting of joint lender forum held on 16.11.2022 a copy of which has been filed by the petitioner at page 193 of volume-1 of Company petition, under item ‘Discussion on

the OTS Proposal submitted by the Company on 12.09.2022, it was stated that;

‘Sri K. Balakrishna, AGM, Canara Bank informed that the company had submitted an improved OTS offer for an amount of Rs.288 Crs towards settlement of consortium dues against the previous offer of Rs. 186 Crs. The said offer amount comes to around 27,81% of the Book liability.

It was further informed that prima facie the offer amount is low as compared to the amount offered by NHAI during the meeting held on 26.12.2018 regarding One Time Settlement Company was advised to improve the OTS offer substantially.

Company officials informed that since past 3 years company has been submitting the OTS offer and had been improving their offer on each occasion. Latest revised offer was submitted in September, 2022 with substantial improvement from Rs.186.00 crores to Rs.288.00 crores.

Though the company is facing the difficulties, considering the cordial relationship with the Banks, the company had further substantially improved the OTS amount from Rs.186.00 Cr to Rs. 288.00 Cr towards full and final settlement towards all consortium lenders dues. The said OTS amount will be paid within a period of 9 months. The company requested the lenders to accept the same and accord in-principle approval to enable the company to arrange for necessary funds.’

In *Dena Bank vs c.Shiv Kumar Reddy and Anr* , supra, it was held that:

‘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’.

15. Therefore, viewed from all the angles the present application filed which was on 12.06.2023 is well within the limitation.

The point answered accordingly.

16. Point2.

Whether a financial debt of a sum over rupees one crore claimed as due and payable by the respondent to the Applicant exists? If so, whether the respondent has defaulted in repayment of the same?

17.As already stated, barring the plea of limitation no other plea worth has been raised by the respondent. The respondent never denied the subject debt, and in fact prayed for One Time Settlement of its dues with the lender banks. Therefore, we have no hesitation in holding that the Petitioner successfully established existence of a financial debt exceeding rupees one crore due and payable by the respondent and also its default.

The point is answered accordingly.

18. Hence, in view of the reasons stated as above, the Adjudicating Authority is satisfied that the petitioner has established existence of financial debt of a sum exceeding rupees one crore due and payable by the respondent besides its default. The petition is also found to be in order.

19. Hon'ble Supreme Court of India, in Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407,

paras 28 and 30 has explained the ambit of Section 7IBC, and held that,

“the adjudicating authority only has to determine whether a “default” has occurred i.e. Whether the “debt” (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a “default” has occurred, it has to admit the application unless it is incomplete.

20. Hon’ble Supreme Court of India, in M. Suresh Kumar Reddy Vs Canara Bank & Ors CIVIL APPEAL NO. 7121 OF 2022 , clarified by the order in review that the decision in the case of Vidarbha Industries was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innovative Industries and E.S. Krishnamurthy . The view taken in the case of *Innoventive Industries still holds good*’. (Emphasis is ours)

21. Therefore, this is fit case to admit the petition. Accordingly, this Company Petition under Section 7 of IBC, 2016, is hereby admitted, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

- (a) The Bench hereby prohibits 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; transferring ,

encumbering, alienating or disposing of by the Corporate debtor any of its 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor;

- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from the date of this order till the completion of the 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, whichever is earlier.
- (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) That this Bench hereby appoints Shri Sanjay Kumar Mishra, having registration no. IBBI/IPA-001/IP-P01047/2017-2018/11730 with e-mail ipsanjaymishra[at]rediffmail[dot]com, , as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

- (g) Proposed IRP filed Form-2 on 02.06.2023. Authorisation for assignment is valid upto 19.11.2024. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.
- (h) The petitioner is directed to pay a sum of Rs.1,00,000/- to the interim resolution professional to meet out the initial CIRP expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI regulation, 2016.
- (i) The Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate debtor on website of Ministry of Corporate Affairs as being under CIRP.
- (j) Registry is directed to send a copy of this order to the Financial Creditor and IRP appointed in this case.
- (k) Accordingly, petition is admitted.
- (l) The Financial Creditor is directed to communicate this order to the IRP appointed in this case.
- (m) The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.

-sd-

Charan Singh
Member Technical

-sd-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Ch.Bhargavi/Pavani