

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

**C.P. (IB) No. 1874/NCLT/MB/2019**

Under Section 7 of the I&B Code, 2016

In the matter of:

**Paramount Consultant & Corporate  
Advisors Private Limited**

...Financial Creditor / Applicant

V/s

**Prabhat Telecom (India) Limited**

...Corporate Debtor / Respondent

**Order Dated: 10<sup>th</sup> October 2019**

**Coram:** Hon'ble Member (Judicial): Mr V. P. Singh  
Hon'ble Member (Technical): Mr Rajesh Sharma

**For the Applicant:** Advocate Aziz Khan, Advocate Dimple Mojithia,  
Advocate Amogh Pradhan, Advocate Nihant Alimchandani and  
Advocate G. S. Sethi

**For the Respondent:** Advocate Jeet Gandhi

*Per: Rajesh Sharma, Member (Technical)*

**ORDER**

1. This is an Application being C.P. (IB) No. 1874/NCLT/MB/2019 filed by **Paramount Consultant & Corporate Advisors Private Limited**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Prabhat Telecom (India) Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application was filed claiming a total default of ₹1,26,95,424/- (Rupees One Crore Twenty Six Lakh Ninety Five Thousand Four Hundred and Twenty Four Only) including

interest. However, due to subsequent payments made by the Corporate Debtor to the Applicant, the Applicant has filed further Affidavit stating that the total default due as on 30.09.2019 is ₹20,63,397/- (Rupees Twenty Lakh Sixty Three Thousand Three Hundred and Ninety Seven Only). The Application is signed by Mr. Dharmin K. Desai, Managing Director, of the Financial Creditor duly authorised to file this Application vide Board Resolution dated 26.04.2019. The working for computation of amount outstanding is annexed to the Application.

3. The Applicant submitted that it had issued loan facility in the form of Inter Corporate Deposit for ₹1,00,00,000/- (Rupees One Crore Only) bearing interest at 36% p.a. to the Corporate Debtor through disbursement cheque dated 20.03.2017. It is submitted that the Inter Corporate Deposit was secured by Undertaking for Inter Corporate Deposit by Corporate Debtor, Demand Promissory Note, Undertaking and Comfort Letters from Director of Corporate Debtor and Deed of Guarantee all dated 17.03.2017; and Personal Security Cheque from Director of Corporate Debtor, Principal Repayment Cheque and Interest Repayment Cheque all dated 24.03.2017 further secured the Inter Corporate Deposit. The copy of documents mentioned supra are annexed to the Application.
4. The Applicant submitted that the Corporate Debtor had confirmed and acknowledged the said debt vide Inter Corporate Deposit Receipt dated 17.03.2017 and also through its letter dated 05.03.2018. Copy of the said receipt and letter are annexed to the Application.
5. The Applicant submitted that the Corporate Debtor defaulted in repayment of Inter Corporate Deposit and therefore the Applicant filed Section 7 Application under I&B Code, being CP No. 397 of 2018, before the National Company Law Tribunal, Mumbai Bench for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor. The Applicant submitted

that in pursuance of the said Application the Corporate Debtor and Applicant filed Consent Terms dated 15.05.2018 with the Hon'ble Bench and accordingly the said Application was disposed of as withdrawn on 15.05.2018 by Order of the Hon'ble Bench. The copy of the said consent terms and Order dated 15.05.2018 are annexed to the Application.

6. The Applicant submitted that as per the Consent Terms dated 15.05.2018 the Applicant and Corporate Debtor agreed to settle the matter for ₹58,45,036/- (Rupees Fifty Eight Lakh Forty Five Thousand and Thirty Six Only) and Corporate Debtor agreed to pay the debt amount in 12 instalments as per the Schedule attached to the consent terms. The Applicant submitted that the Corporate Debtor issued 12 Post Dated Cheques (PDCs) in favour of the Applicant however, the Corporate Debtor failed to make the agreed payment as the PDCs for the month of July, September and November 2018 got dishonoured due to "funds insufficient" and thereby the Corporate Debtor breached the terms and conditions of the consent terms. Therefore, the Applicant addressed various Instalment Default letters and emails to the Corporate Debtor. The Applicant also issued demand notice dated 27.12.2018 and 09.01.2019 calling upon the Corporate Debtor to make the outstanding payment. However, the Corporate Debtor neither paid the outstanding amount nor replied to the notices. The copy of dishonoured cheques along with return memos, copies of reminder letters and emails and demand notices are annexed to the Application.
7. The Applicant filed the present Application on 10.05.2019. The Applicant was directed to serve the Court Notice to Corporate Debtor vide our Order dated 10.06.2019. The Applicant filed its affidavit of service proving that the notice was duly served upon the Corporate Debtor on 21.06.2019. It is on record that the court notice was duly served upon the Corporate Debtor, but the Corporate Debtor chose not to file any objections in its defence. However, the Corporate Debtor has filed its written submissions.

8. We have heard the parties and perused the records.
9. On perusal of the documents submitted by the Applicant, it is evident that financial debt of more than Rupees One Lakhs is due and payable by the Corporate Debtor to the Applicant as on the date of filing of this Application.
10. It is further observed by this Bench that the Corporate Debtor has acknowledged the debt vide Inter Corporate Deposit Receipt dated 17.03.2017 and also through its letter dated 05.03.2018. Also, the Corporate Debtor in its written submissions has admitted the debt and its default. The Corporate Debtor has annexed Ledger Account of Applicant maintained in its Books of Accounts for the period 01.04.2019 to 26.08.2019 showing a debit balance of ₹10,43,976/- (Rupees Ten Lakh Forty Three Thousand Nine Hundred and Seventy Six Only). Further, the Counsel for Corporate Debtor at the time of hearing also offered to pay the outstanding amount of ₹10,43,976/- as per the Ledger Account. Therefore, an amount of more than ₹1,00,000/- is admitted to be due and payable and there is default by the Corporate Debtor in repayment of the loan amount. The Corporate Debtor has also breached the terms and conditions of the consent terms dated 15.05.2018.
11. The Inter Corporate Deposit of ₹1,00,00,000/- (Rupees One Crore Only) is loan granted by the Applicant to the Corporate Debtor as the same is given for the time value of money, the said loan facility thus amounts to financial debt within the meaning of section 5(8) of the I&B, Code 2016. Copy of Undertaking for Inter Corporate Deposit by Corporate Debtor, Demand Promissory Note, Deed of Guarantee and Certificate under the Bankers Book Evidence Act, 1981 dated 07.09.2019 are annexed to the Application. It is pertinent to mention that all the documents mentioned above establish financial debt.

12. The Application is complete and has been filed under the proper form. The Application is filed within limitation as the date of last payment made by the Corporate Debtor is 03.03.2019. Copy of the Letter dated 04.10.2019 from Union Bank of India reflecting payment of ₹4,39,169/- on 03.03.2019 is annexed to the Application.
13. The Applicant has proposed the name of Mr Rajendra Karanmal Bhuta, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00141/2017/18/10305] as **Interim Resolution Professional**, to carry out the functions of IRP along with his declaration in Form 2 that no disciplinary proceedings are pending against him, is annexed with the Application.
14. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

#### **ORDER**

This Application filed under Section 7 of I&B Code, 2016, filed by **Paramount Consultant & Corporate Advisors Private Limited**, Financial Creditor / Applicant, against **Prabhat Telecom (India) Limited**, Corporate Debtor for initiating corporate insolvency resolution process is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
  - 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints **Mr Rajendra Karanmal Bhuta**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P00141/2017/18/10305]** as Interim Resolution Professional to carry out the functions as mentioned under

I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

15. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

**RAJESH SHARMA**

Member (Technical)

Sd/-

**V. P. SINGH**

Member (Judicial)

10<sup>th</sup> October 2019