

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

CP (IB) No.386/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

ICICI Bank Limited

[CIN: L65190GJ1994PLC021012]

...Financial Creditor

V/s

Vinergy International Private Limited

[CIN: U24110MH1991PTC059979]

...Corporate Debtor

Order Dated: 09.02.2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Ms. Tasneem Zariwala,
Advocates.

For the Respondent(s) : Mr. R.S. Kazi, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P.(IB) No.386/MB/C-IV/2021 filed by ICICI Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Vinergy International Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

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2. The Application is filed by Mr. Jignesh Shelani, authorised representative of Financial Creditor vide its Power of Attorney dated 27.11.2021, claiming total default amount of Rs.35,65,08,261.67 (Rupees thirty-five crore sixty-five lakh eight thousand two hundred sixty-one and sixty-seven paise only) as on 31.12.2021.
 3. The date of Default as mentioned in the Petition is 31.12.2020. Petition is filed on 13.01.2021. The date of NPA is 26.08.2016.
 4. The case of the Financial Creditor is as under:
 - a) The Corporate Debtor approached the Financial Creditor for availing Fund Base and Non-Fund Facilities.
 - b) The Financial Creditor has granted Fund Based and Non-Fund-Based Limits to the Corporate Debtor to a tune of Rs.40,75,00,000/ (Rupees forty crore seventy-five lakh only) vide its Sanction Letter dated 29.12.2007. For the of this Loan Facility various documents were executed between the Financial Creditor and the Corporate Debtor.
 - c) The said limit was renewed/revised from time to time. The Loan Facility was finally renewed/revised for an aggregate limit of Rs.23,00,00,000/- (Rupees twenty-three crore only). The Credit Facilities were granted vide sanction letter dated 28.12.2007 and lastly facilities were renewed/ enhanced vide Sanction Letter dated 24.02.2016.
 - d) The account of the Corporate Debtor was declared as NPA on 26.08.2016. The properties of the Corporate Debtor being Unit No.223, Arun Chambers. Tardeo was sold on 31st July 2018,

Industrial Unit No.005 admeasuring 727 sq.ft including a basement on the ground floor of the building known as Turf Estate along with one car parking space situated at Dr. E. Moses Marg Mumbai 400 011 was sold on 1st August 2018, 403, Arun Chambers, Tardeo and Unit No.005, Turf Estate, Mahalaxmi, Mumbai was sold on 14th August 2018 for Rs.2.55 crores and Office Premises No. A-1, A-2, A-3, on the First floor, admeasuring 3000, 3000 & 3417 sq. ft. (Built up area) of the Building known as "SHIV SAGAR ESTATE Dr. Annie Besant Road, Worli, Bombay - 400 018 was sold on 27th March 2019 for Rs.20 crores.

- e) After giving due credit of to the account of the Corporate Debtor, the outstanding amount of Rs. 35,65,08,261.67 as on 31.12.2020 is still due and payable by the Corporate Debtor. The date of default with respect to the Working Capital Loan is 29.08.2016, however the period of limitation has been extended owing to the amounts received by the Applicant from the sale of the secured assets of the Corporate Debtor and after giving due credit given to the account of the Corporate Debtor for it, the present Company Petition has been filed considering the balance outstanding amount.
- f) The working computation of the amount claimed to be in default and days of defaults in tabular form is as follows;

Sr. No.	Types of Facilities	Date of Sanction/ Amount Sanctioned	Date of Disbursement	Date of Default	Days of Default till 31.12.2020
1.	Cash Credit	Rs.250,000,000 on 29.12.2007	Disbursed on 29.12.2007	29.08.2016	1585 days

2.	Letter of Credit	Rs.150,000,000 on 29.12.2007	Disbursed on 30.05.2016	29.08.2016	1585 days
3.	Bank Guarantee	Rs/150,000,000 on 29.12.2007 (as an sub limit to Letter of Credit Facility)	Disbursed on 22.07.2016	29.08.2016	1585 days

- g) Since there is a delay of 504 days in filing the present company Petition, a separate Application under section 5 of the Limitation Act has been filed by the Financial Creditor to justify the said delay.
- h) The Financial Creditor has submitted the particulars of an order of court, tribunal or Arbitral Panel Adjudicating on the default if any which are as follows:
- i. Copy of order dated 18.11.2016 passed by the Hon'ble Bombay High Court along with the copy of the Consent Terms filed with the Hon'ble High Court in the Chamber Summons (L) 1747 of 2016. At pp 43-55 of the Petition;
 - ii. Copy of order dated 13.12.2016 passed by the Hon'ble High Court in Notice of Motion (L) 1747 of 2016. At pp 56-59 of the Petition;
 - iii. Copy of order dated 14.02.2017 passed by the Hon'ble High Court in Notice of Motion (L) 2649 of 2016. At pp 60-63 of the Petition;
 - iv. Copy of order dated 14.08.2018 passed by the Hon'ble Bombay High Court along with the copy of the Consent Terms filed with the Hon'ble High Court in Writ Petition (L) No. 2532 of 2018. At pp 64-71 of the Petition.

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5. The Financial Creditor has filed NeSL Report dated 13.03.2020 showing the default amount of Rs.40,20,642/- (Rupees forty lakh twenty thousand six hundred forty-two only) and the total outstanding of Rs.0.00 (Rupees zero only) as on 23.07.2016 which is at pp 73-79 of the Petition. The Financial Creditor has also filed the Certificate under section 2A (C) of the Banker's Book of Evidence Act, 1897 dated 09.03.2017 which is at pp 55-61 of the Additional Affidavit dated 02.11.2022.
 6. The Financial Creditor has filed Statement of Accounts of ICICI Bank as on 31.03.2014 which is at pp 2-54 of the Additional Affidavit dated 02.11.2022.
 7. The Corporate Debtor did not file reply in the matter after sufficient service of notice by the Financial Creditor. Vide order dated 27.10.2021, the Financial Creditor was directed to take out substituted service by way of publication in two daily leading newspapers. The matter was again listed on 22.11.2021 wherein the Corporate Debtor did not appear. On 06.01.2022 the Financial Creditor once again directed to take out substituted service by way of publication in two daily leading newspapers. The matter was further listed on 17.02.2022 wherein the Corporate Debtor again did not appear in the matter. Hence, in view of this, vide order dated 16.03.2022 the Corporate Debtor was set *ex parte* and the matter was listed for final hearing on 25.04.2022.
 8. The Financial Creditor had filed an Application being IA No. 1174 of 2021 for condoning the delay of 504 days in filing the present Company Petition. The Corporate Debtor appeared on 28.06.2022 and has replied to the said Application stating that:

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- a) The Corporate Debtor defaulted in its repayment obligations to the Financial Creditor; and
 - b) The Corporate Debtor is unable to meet its present obligations/debt towards its Financial Creditors.
9. Further, the Corporate Debtor in its to the said Application submits that since the IBC provides a window of opportunity for restructuring and reviving of financially stressed Corporate Debtors, the Corporate Debtor would have no objection of this Tribunal condones the delay in filing the present Company Petition.
 10. Hence, after hearing both the Financial Creditor and the Corporate Debtor, this Tribunal vide order dated 01.11.2022 had allowed the delay condonation Application filed by the Financial Creditor under section 5 of Limitation Act.

Findings:

11. We have heard the arguments of the Learned Counsel for Financial Creditor and perused the records.
12. It is observed by the Bench that the Financial Creditor has granted Fund Based and Non-Fund-Based Limits to the Corporate Debtor to a tune of Rs.40,75,00,000/ (Rupees forty crore seventy-five lakh only) vide its Sanction Letter dated 28.12.2001. For the of this Loan Facility various documents were executed between the Financial Creditor and the Corporate Debtor.
13. The Loan Facility was finally renewed/revised for an aggregate limit of Rs.23,00,00,000/- (Rupees twenty-three crore only) vide sanction letter dated 24.02.2016. However, the did not defaulted in payment of the loan

amount in breach of the terms & conditions agreed upon by the Financial Creditor and Corporate Debtor.

14. The Corporate Debtor has not filed its Affidavit in Reply. The Bench has given several opportunities to the Corporate Debtor to file the Reply in the matter. However, the Corporate Debtor chose not to file the Reply in the matter. However, as discussed above in paras 9 & 10; the Corporate Debtor has attended and given its no objection to condone the delay in filing this Petition; considering that IBC provides a window for Revival of stressed Corporate Debtors.
15. After perusal of the material on record, this Bench is of considered view that there is no reason to deny the Petition under section 7 filed by the Financial Creditor to initiate the CIRP against the Corporate Debtor as the Corporate Debtor himself has admitted its liability.
16. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor. Hence, the Application filed by the Financial Creditor is liable to be admitted.
17. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established.
18. The Applicant has proposed the name of Mr. Vishal Pawankumar Bidawatjika, a registered insolvency resolution professional having

Registration Number [IBBI/IPA-001/IP-P00125/2017-18/10267] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 386/MB-IV/2021 filed under Section 7 of I&B Code, 2016, filed by ICICI Bank Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Vinergy International Private 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
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- 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 appoints Mr. Vishal Pawankumar Bidawatjika, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00125/2017-18/10267], E-mail: finvishal@yahoo.co.in , 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.

- e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).
- f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or Whats App. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Manoj Kumar Dubey
Member (Technical)
09.02.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)