IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT – 1

ITEM No.302
CP(IB) 264 of 2023

Order under 7 of IBC,2016

IN THE MATTER OF:
Bank of Baroda
V/s **........Applicant**
SE Transstadia Pvt. Ltd.

........Respondent

Order delivered on: 08/04/2024

Coram:
Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:
For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-	**-SD-**
SAMEER KAKAR **MEMBER (TECHNICAL)**	**SHAMMI KHAN** **MEMBER (JUDICIAL)**

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD

CP (IB)/264 (AHM)/2023

(An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s. SE Transstadia Private Limited***.

BANK OF BARODA
Head office at Baroda and its Assets Recovery
Branch at Zonal Stresses Asset Recovery Branch,
Meher Chambers, Ground Floor, Dr Sunderlal Behl
Marg, opposite Petrol Pump, Ballard Estate,
Mumbai- 400001

...Applicant/Financial Creditor

VERSUS

SE TRANSSTADIA PRIVATE LIMITED
CIN: U74990GJ2008PTC065269
The Arena, Near Kankaria Lake Gate No. 3,
Near Diwan Ballubhai School,
Kankaria, Ahmedabad, GJ 380022
hiren.vala@ekaworld.net

...Respondent/Corporate Debtor

Order pronounced on 08.04.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE

For the Applicant/FC : Mr. A. K. Mishra, Advocate
For the Respondent/CD :Mr. Jay Kansara, Advocate a.w. Ms. Nisha Ojha, Advocate, Ms. Adrita Bhuyan, Advocate

O R D E R

***(Per:* BENCH)**

1. This is an application filed on 11.09.2023 by **Bank of Baroda** (hereinafter referred to as "the Applicant/Financial Creditor") against **SE Transstadia Private Limited** (hereinafter referred to as "the Respondent/Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as **"IRP"**) and declare the moratorium for having defaulted payment of its outstanding dues **Rs.2,79,97,14,472.25/-** including interest as on 31.07.2023.

2. Perusal of of Part-I of the Form-1 indicates that the Applicant/Financial Creditor is a Bank. The registered office of the Financial Creditor is situated at Baroda Bhavan, RC Dutt Road, Alkapuri Vadodara, Gujarat-390 007.

3. The application is affirmed by Mr. Akhilesh Kumar Jain, Senior Manager and Authorized officer of the Financial Creditor, who is authorized under Authority letter dated 109.08.2023 placed at page-20 and marked as Annexure-A.

4. Perusal of Part-II of the Form-1 reveals that the Respondent/Corporate Debtor is one SE Transstadia Private Limited (CIN: U74990GJ2008PTC065269). The date of incorporation is 17.12.2008. The registered office of the Respondent/Corporate Debtor is situated at The Arena, Near Kankaria Lake Gate No. 3, Near Diwan Ballubhai School, Kankaria, Ahmedabad, GJ 380022.

5. Perusal of Part-III of the Form-1 reveals that the Applicant/Financial Creditor has nominated Mr. Sanjay

Garg, having Registration No. IBBI/IPA-001/IP-P 01865/ 2019-2020/12919 (Email: rp.sanjaygarg.gmail.com) to act as Interim Resolution Professional (**"IRP"**). He has filed his written communication annexed with the Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

6. Perusal of Part-IV of the Form-1 reveals that the Applicant/Financial Creditor has granted various credit facilities since the year 2014 to the Respondent/ Corporate Debtor and the total amount in default is claimed to be Rs.2,79,97,14,472.25/- including interest as on 31.07.2023. The date of default is mentioned as variable events, the first date of default is 02.06.2018 mentioned in un-amended petition and Second date of default is 29.09.2018 mentioned in amended petition.

7. It is stated that the Loan Recall Notice was issued by the Financial Creditor which is dated 15.06.2021 is annexed as **Annexure-K** page (576-580). The working for

computation of the amount is annexed as Annexure N1 and N2.

8. It is stated that the Respondent Company has applied for financial assistance from the Applicant/Financial Creditor for purpose to build sports clubhouse as per the Concession Agreement with the Industries and Mines department of the Government of Gujarat represented by the Commissioner of Tourism. The Applicant/ Financial Creditor sanctioned Term Loan of Rs.176 Crore (Rupees One Hundred and Seventy Six Crore only), vide Sanction Ref: No. CFSBAL/ADV/11/334 dated 9th October 2013 which is annexed as **Annexure-C**. Applicant/Financial Creditor has upon inking of various security documents and agreements with the Respondent Company alongwith the Consortium of lenders consisting of the Petitioner agreed to sanction sum of Rs.351 Crore (Rupees Three Hundred and Fifty-One Crore).

9. That the Corporate Debtor required additional funds for the purpose of the project for which it approached the Petitioner for sanction of additional credit facilities. At the

request of which the Corporate Debtor, the Petitioner sanctioned a Fresh Term loan of Rs.18.80 Crore (Rupees Eighteen Crore Eighty Lakh only) bearing No. CFSBAL/ADV/SE-TS/2016-17/18 dated 2nd June, 2016 which is annexed as **Annexure-F**.

10. That the Petitioner states that, subsequently by its sanction letter dated 19th March 2018 reviewed the said Credit Facilities (Term Loan) of Rs.155.31 Crores (Rupees One Hundred Fifty Five Crore and Thirty One Lakh only) vide Sanction Ref: No. CFSBAL/RM7/2017-18/271 dated 19th March 2018 which is annexed as **Annexure-I**.

11. That, despite providing of the facility and, the Corporate Debtor failed and neglected to comply with the terms of the loan documents and also failed to pay the dues on the respective due dates of the various facilities. In view of the persistent default, the account of the Borrower has become irregular and on dated 31st December 2018 finally classified as a Non-Performing Asset "NPA" in the books of the Bank in terms of the guidelines issued by the Reserve Bank of India from time to time. The

Financial Creditor has reported the default to CRILC by its various information which is annexed as **Annexure-J-1 to J-2**.

12. That, despite the repeated requests, reminders, and follow-ups Corporate Debtor failed and neglected to regularize the account. In the above circumstances, the Petitioner recalled the loan invoked the guarantee vide its letter dated 15th June 2021 which is annexed as **Annexure-K** to pay Rs.155,26,34,645.29 (Rupees One Hundred Fifty Five Crore Twenty Six Lakh Thirty Four Thousand Six Hundred Forty Five and Twenty Nine Paise only) calculated as on 7th June 2021 the entire outstanding amount due in terms of the financial documents within a period of 7 days of this notice. However, the Corporate Debtor failed to pay the dues.

13. It is submitted that the Applicant/Financial Creditor is entitled to charge the interest on dues as per agreed terms of Loan Agreements and Sanction Letters, which is binding on the Respondent and which Respondent has agreed to pay to the Applicant/Financial Creditor NBFC.

14. It is stated by Applicant/Financial Creditor that the Application is not barred by law of limitation as Respondent/Corporate Debtor has acknowledged financial debt on multiple occasions by making payments and by proposing settlements after Loan Recall Notices were issued. Further the default has been committed by Respondent/Corporate Debtor in terms of 'Event of Default by not honoring repayment schedule, not honoring EMI etc.

15. Total financial debt due and payable from Respondent/ Corporate Debtor is **Rs.2,79,97,14,472.25/-** including interest as on 31.07.2023.

16. The Applicant/Financial Creditor has relied upon the following documents:

    i. Sanction Letters
    ii. Consortium Loan Agreements
    iii. First Supplementary Consortium Loan Agreements
    iv. Revival letters
    v. Loan Recall Notice
    vi. Computation of Claims

vii. Certificates of Registration of Charges

viii. Default available with Information Utility

ix. Loan Agreements

x. The Account Statement maintained with the bank of the Financial Creditor

17. The Applicant on 02.11.2023 filed Record of Default under Form D issued by the NeSL stating the date of Default as 02.12.2018.

18. Reply was filed by the Respondent/Corporate Debtor on 12.12.2023 with the Tribunal. Reply has been affirmed by one Mr. Harit Vyas in the capacity of Assistant General Manager- Corporate Affairs and Finance and Authorized Signatory. The summary of the various objections is as under:-

    i. The Applicant/Financial Creditor fails to provide the details mandatorily sought for in Form- I of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is not a financial creditor.

ii. There are serious discrepancies in the Date of Default mentioned by the Petitioner.

iii. The certificate under bankers Book Evidence Act produced by the Financial Creditor at pages 650 to 655 are supposedly signed by an unnamed person with unspecified designation i.e. "Accountant/Branch Manager" without even mentioning the branch. For this reason alone, the Certificates are unreliable and ought to be disregarded.

iv. The Date of Default suffer from discrepancies such as the date of default mention in the petition is 29th September 2018 whereas in the record of Default of NeSl it is 2nd December 2018, also 29th September 2018 is neither the Date of Default as per the NeSl Certificate nor the date of Non-Performing Asset as per record of the Petition.

v. The claim of the Applicant/Financial Creditor is barred by limitation. It is submitted that the present Petition is not within the limitation period as per the Limitation Act, 1963 read with the provisions of the Code as the said Petition is not filed within 3 (three) years from the Date of Default. It is the case of the Financial Creditor that the purported Date of Default is 29th September, 2018 in the present Petition. Therefore, the period of limitation for the Petition started running as early as on 29th September, 2018. Considering this, it is evident that the captioned Petition is directly barred by the law of limitation.

vi. The Financial creditor has deducted penal interest even prior to the Date of Default. It is to submitted that depending upon the CRILIC Report dated 5th January, 2023 the account of the Corporate Debtor was defaulted on two occasions i.e. 31st January, 2017 and 2nd June, 2018. A bare perusal of the Customer Account Statement (Annexure N/3, Pg. 621) would reveal that the Petitioner had charged penal interest upon the Corporate Debtor on 30th November, 2017 i.e.

prior to the 1st date of default being 31st January, 2017.

19. Rejoinder to the reply was filed by the Petitioner/ Financial Creditor on 29.12.2023 with the Tribunal. Rejoinder has been affirmed by one Mr. Akhilesh Kumar Jain in the capacity of Senior Manager and Authorized Signatory. The summary of the various submissions is as under:-

    i. The Applicant stated that the Respondent Corporate Debtor has nowhere in their reply denied the existence of the Debt, the default on their part in repaying the debt, or the validity of the claim made by the Applicant. The Respondent/ Corporate Debtor has primarily raised the technical objections.

    ii. It is submitted by the Applicant that Mr. Akhilesh Jain, Senior manager of the Bank, was an employee of the erstwhile Vijaya Bank and possessed a power of Attorney dated back to March 6, 2008, granted by the authorized representative of the Board by virtue of the powers conferred upon the Bank by the Act and the Resolution No. C-15/91 dated February 26, 1991.

iii. It is submitted that the Respondent/Corporate Debtor has been in default of its payment obligations under the Loan Agreements and the said default is continuing in nature. It can be seen from the Statement of Account of Account No. 29100600001501 on Page No. 621 of Volume IV of the Petition, that the default was noted for the first time since 31st December 2017 and was reported to CRILC. Subsequently, the default was rectified by the subsequent payments received for debt servicing.

iv. The account of the Corporate Debtor remained irregular after 29th September 2018 and was finally classified as a Non-Performing Asset ("NPA") on 31st December 2018. The date of default to file the present petition is

29th September 2018. Further, it can be seen from the Statement of Account of Account No. 29100600001928 in Volume IV of the Petition, the default was noted for the first time in the month of December 2017. Subsequently, the default was rectified by subsequent payments received for debt servicing. However, there was an act of continuous event of default in payment of the principal and interest in their respective due dates in terms of the financial documents. The account of the Corporate Debtor remains irregular after 29th September 2018 and finally classified as NPA in terms of the guideline of the Reserve Bank of India as on 31st December 2018 and the date of default to file the present petition is 29th September 2018.

v. It is submitted that the Petition filed by the Financial Creditor is well within limitation. The Last Loan and security documents were executed on 3rd June 2017. In the affidavit in support of Form-1, we have clarified on the Limitation that the account was classified as NPA on 31st December 2018. The Respondent/Corporate Debtor has given his Revival Letter to the Applicant/Financial Creditor on 31st May 2019 along with the Board Resolution dated 27th May 2019 and the same was submitted under a covering letter dated 21st June 2019. The said Revival letter was signed by the Corporate Debtor and its Guarantors confirming the debt, which is an acknowledgement of debt within the meaning of section 18 of the Limitation Act, 1963. In view of such a signed Revival Letter by the Corporate Debtor and its guarantor, the limitation was extended by 3 years from the date of 21st June 2019, when such acknowledgement was communicated to the Financial Creditor. The Applicant issued a recall notice on 15th June 2021 and the Respondent/Corporate Debtor by another

Revival Letter dated 6th May 2022, (within 3 years) has acknowledged the debt again, whereby the limitation has been extended to a further period of 3 years i.e., 5th May 2025. The present Petition has been filed on 31st August 2023. Hence, the petition is well within limitation.

20. This Tribunal vide order dated 30.01.2024 allowed the IA 37 of 2024 filed with the prayer to make amendments in Form 1 and computation table filed by the Applicant. This order of the Tribunal was challenged before the Hon'ble NCLAT Principal Bench and Hon'ble NCLAT vide order dated 28.02.2024 upheld the order of this Tribunal dated 30.01.2024 and dismissed the appeal filed by the Corporate Debtor. An Amendment petition was filed by the Applicant on 15.02.2024 and necessary amendments were made.

21. Reply to the Amended Application was filed by the Respondent/Corporate Debtor on 12.03.2024 with the Tribunal. Reply has been affirmed by one Mr. Harit Vyas

in the capacity of Assistant General Manager- Corporate Affairs and Finance and Authorized Signatory. The summary of the various objections is as under:-

i. The Applicant/Financial Creditor fails to provide the details mandatorily sought for in Form- I of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is not a financial creditor.

ii. There are serious discrepancies in the Date of Default mentioned by the Petitioner.

iii. The Applicant has failed to provide the proof of Specified application fee paid at the time of the filling of the present application.

iv. That the Applicant had filed an additional affidavit along with the Application (starting Page- 10) carrying contention's and details which are nowhere referred in Form- I.

v. There is no provision to file separate affidavit alongwith Form- I under the Code.

vi. The certificate under bankers Book Evidence Act produced by the Financial Creditor at pages 650 to 655 are supposedly signed by an unnamed person with unspecified designation i.e. "Accountant/Branch Manager" without even mentioning the branch. For this reason alone, the Certificates are unreliable and ought to be disregarded.

vii. The Date of Default suffer from discrepancies such as the date of default mention in the petition is 29th September 2018 whereas in the record of Default of NeSl it is 2nd December 2018, also 29th September 2018 is neither the Date of Default as per the NeSl Certificate nor the date of Non-Performing Asset as per record of the Petition.

viii. The Petitioner has relied upon the CRILIC report generated on 5th January, 2023. As per this Report, the Account of the Respondent was "Moved to Default" firstly on 31st January, 2018. In a few months, the Account of Respondent was moved "Out of Default" on 29th May, 2018. Immediately 3 (three) days after this i.e. on 2nd June, 2018, the Account of the Respondent was once again stated as "Moved to Default". Considering the case of the Petitioner itself, the Respondent was admittedly in default neither on 31st January, 2018, 29th May, 2018 and nor on 2nd June, 2018. This is neither logical nor in line with the terms and conditions of the Agreements executed between the parties.

ix. On 3rd June, 2017, a first Consortium Loan Agreement was executed and clause 8.1 of the Agreement provides that shall be committed in payment of fresh Loan on the Due Dates and such Default shall be committed in payment of fresh loan on the Due dates and such Defaults continues for a period of 60 Days. This is clearly different from the original Loan Agreement.

x. Date of NPA is not in accordance with RBI circulars, that is 31st December 2018. It is submitted that the Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances issued by Reserve Bank of India ("RBI/Regulatory

Authority") as applicable to Commercial Banks provides that a non-performing asset shall be that where Interest and / or instalment of principal remains overdue for a period of more than 90 days in respect of a Term Loan. That for classifying any account as a Non-Performing Asset, the first credential is occurrence of default, and pursuant thereto non-payment of interest and/or instalment of principal remaining overdue for a more than 90 days (about 3 months) in respect of such loan. It is submitted that this period is needed after the date of default to make the account liable to be classified as NPA as per the Prudential RBI Norms and Guidelines.

xi. It is therefore clear that the Petitioner has not provided a correct and consistent Date of Default, which keeps changing and does not align with the Loan Agreements. The NPA date on the other hand, also does not align with the Date of Default nor is in accordance with the RBI Norms and Guidelines. It is therefore submitted that the

Petition is completely without the force of law and ought to be rejected.

xii. The claim of the Applicant/Financial Creditor is barred by limitation. It is submitted that the present Petition is not within the limitation period as per the Limitation Act, 1963 read with the provisions of the Code as the said Petition is not filed within 3 (three) years from the Date of Default. It is the case of the Financial Creditor that the purported Date of Default is 29th September, 2018 in the present Petition. Therefore, the period of limitation for the Petition started running as early as on 29th September, 2018. Considering this, it is evident that the captioned Petition is directly barred by the law of limitation.

xiii. The Financial creditor has deducted penal interest even prior to the Date of Default. It is to submitted that depending upon the CRILIC Report dated 5th January, 2023 the account of the Corporate Debtor was defaulted on two occasions i.e. 31st

January, 2017 and 2nd June, 2018. A bare perusal of the Customer Account Statement (Annexure N/3, Pg. 621) would reveal that the Petitioner had charged penal interest upon the Corporate Debtor on 30th November, 2017 i.e. prior to the 1st date of default being 31st January, 2017.

22. An Additional affidavit was filed by the Respondent on 12.03.2024 with the Tribunal. Affidavit has been affirmed by affirmed by one Mr. Harit Vyas in the capacity of Assistanat General Manager- Corporate Affairs and Finance and Authorized Signatory. The summary of the various submissions is as under:-

   i. The Respondent stated that they have approached the Secretary of Tourism, Government of Gujarat with the proposal of revival of the TransStadia Public Private Partnership **("PPP")** project. The Government of Gujarat through its Commissioner of Tourism issued a support letter dated

20.12.2023 informing the Respondent that the revival proposal is under active consideration. Subsequently, on 23.12.2023 Respondent informed the Petitioner that the government of Gujarat has agreed to take the proposal for investment in the project of TransStandia forward. After which the Joint Lenders Meetings were held were the same was informed to the lenders.

ii. On 07.03.2024 the representatives of the Consortium lenders had a discussion with the Principal Secretary Tourism, Sachivalaya, Ghandinagar. Wherein the Principal Secretary informed all the lenders that the revival proposal submitted by the Respondent has garnered favorable reception from both Tourism and Sports Department. The Secretary also informed that the government is considering the readily available infrastructure for the Olympic Vision as construction of new infrastructure will require huge cost.

23. Another Additional affidavit was filed by the Respondent on 20.03.2024 with the Tribunal. Wherein, the Respondent submitted that on 20.03.2024 alternate OTS Proposal has been given to the Applicant Bank for Rs.108/- Crores to be paid within span of three to six months.

24. We have heard the counsels from both sides and have perused the records. The Observations of the Tribunal are follow as under:-

   i. The Corporate Debtor availed of Two Term Loans Rs. 174 Crores and 18.80 Crores. ("Exhibit-C to I" pages 25-573 of Form-1). In view of the default account classified as Non-Performing Assets (NPA) by the Applicant/Financial Creditor on 31st December 2018. The Applicant issued a recall notice on 15th June, 2021 and subsequently initiated proceedings under the Insolvency and Bankruptcy Code. 2016.

   ii. That the Certificate of Registration of Charge by the ROC is created for the 2 Loans dated a single charge is created on 28.07.2014 which was lastly modified on 03.06.2017.

iii. The Disbursement of both loan facilities by Financial Creditor to Corporate Debtor for the purpose to build sports clubhouse as per the Concession Agreement with the industries and Mines department of the Government of Gujarat represented by the Commissioner of Tourism which is not denied by the Corporate Debtor and the disbursement is proved by the Financial Creditor.

iv. It can be seen from the Statement of Account of Account No. 29100600001501 on Page No. 621 of Volume D of the Section 7 Application, that the default was noted for the first time from 31st December 2017 and was reported to CRILC. Subsequently, the default was rectified by the subsequent payments received for debt servicing. However, there was an act of continuous event of default in payment on the due dates. The account of the Original Borrower remained irregular after 29th

September, 2018 and was finally classified as a Non-Performing Asset (-NPA) on 31st December, 2018. The date of default to file the present petition is 29th September, 2018. Similar is the case of the Term Loan Account No. 29100600001928 at Page No. 630G in Volume D of the Application. The account of CD remained irregular after 29th September 2018 and was finally classified as NPA in terms of the guidelines of the Reserve Bank of India as on 31st December, 2018 and the date of default to file the present Petition is 29th September, 2018.

v. Upon default of Corporate Debtor the loan recall notice was issued by Financial Creditor on dated 15.06.2021 is annexed as Annexure-K page (576-580).

vi. The Last Loan and security documents were executed on 3rd June 2017. Applicant have clarified in the Limitation clause that the account was classified as NPA on 31st December 2018. The under the covering letter dated 21st June 2019 CD has forwarded Revival Letter to the Applicant/Financial Creditor on 31st May 2019 along with the Board Resolution of the Original Borrower and Corporate Debtor dated 27th May, 2019. The Applicant issued a Recall Notice on 15th June 2021. Corporate Debtor by another Revival Letter dated 6th May, 2022. Whereby the limitation has been extended to a further period of 3 years i.e., 5th May 2025. Hence, the present application is well within limitation.

vii. Further, the Respondent on 20.03.2024 submitted OTS to the Applicant Bank for Rs.108/- Crores to be paid within span of three to six months.

25. Therefore, the present application is complete in terms of Section 7 (5) of the Code. The Applicant/Financial Creditor is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. The outstanding financial debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not

covered under the period exempted under Section 10A of IBC, 2016.

26. Further, the Hon'ble Supreme Court in the case of ***Innoventive Industries Limited v. ICICI Bank Limited***, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

> *28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the*

records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

27. Hence, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of

corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

28. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under: -

(i) The Respondent/Corporate Debtor- **M/s. SE Transstadia Private Limited** is admitted in the Corporate Insolvency Resolution Process under section 7 of the IBC, 2016.

(ii) As a consequence, thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.

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 the possession of the corporate debtor.

e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.

(iii) 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

(iv) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.

(v) As proposed by the Financial Creditor, we appoint **Mr. Sanjay Garg,** having Registration No. IBBI/IPA-001/IP-P01865/2019-2020/12919 (Email: rp.sanjaygarg.gmail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional **("IRP")** of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(vi) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. 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 appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.

(viii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

(ix) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

(x) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.

(xi) The Financial Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.

(xii) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

26. Accordingly, **CP(IB)/264(AHM)2023** stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-	-SD-
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Sandeep-LRA