



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Special Bench)

Item No.-208
IB-820/PB/2022

IN THE MATTER OF:

Canara Bank

Vs.

M/s. CMI Ltd.

....Applicant

.....Respondent

SECTION

U/s 7 IBC

Order delivered on 28.07.2023

CORAM:

SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-820/PB/2022 stands **admitted.**

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N PRASAD)
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 820/PB/2022

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

CANARA BANK

Head office at:

112, J.C. Road, Bangalore, Karnataka-560002

Branch Office at:

Stressed Assets Management (SAM) Branch
C-34, 3rd Floor, DDA Shopping Complex,
Defence Colony, Opp. Moolchand Hospital,
New Delhi- 110024.

...Applicant/Financial Creditor

Versus

M/S CMI LIMITED

Registered Office at:

PD-II, Jhilmil Metro Station,
Jhilmil Industrial Area,
Delhi-110095

...Respondent/Corporate Debtor

Order Delivered on: 28.07.2023

CORAM:

SHRI P.S. N. PRASAD, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

Appearances:

For the Applicant: Mr. Santosh Kumar Rout, Mr. Abhishek Chakraborty, Advs.

For the Respondent: Mr. Sunil Fernandes, Ms. Shankari Mishra, Ms. Niharika Tanwar, Ms. Diksha Dadu, Advs.



ORDER

PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016, by Canara Bank (hereinafter referred to as ‘Financial Creditor’), represented by Mr. Rajesh Gulaty, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s CMI Limited (“Corporate Debtor”). The Financial Creditor was incorporated on 30.06.1906, having Identification No. U67190KA1906PLC001069.
2. The Corporate Debtor was incorporated on 22.06.1967, having CIN: L74899DL1967PLC018031 under the Companies Act, 1956. Its registered office is at PD-II, Jhilmil Metro Station, Jhilmil Industrial Area, Delhi-110095. Therefore, this Bench has jurisdiction to deal with this petition. The Authorised Share Capital of the Corporate Debtor is Rs. 175,00,00,000 (One Hundred and Seventy-Five Crores). The Paid-Up Capital of the Corporate Debtor is Rs. 16,02,74,570 (Sixteen Crores Two Lacs Seventy-Four Thousand Five Hundred and Seventy).
3. The present petition was filed on 15.11.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 1,64,86,26,471.07 (Rupees One Hundred and Sixty-Four Crores Eighty-Six Lacs Twenty-Six Thousand Four Hundred and Seventy-One and Seven Paise) as on 31.10.2022 (date of default).

Facts of the case as submitted by the learned Counsel appearing for the Financial Creditor: -

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:



- a) The Corporate Debtor started its business dealings with the erstwhile Syndicate Bank since 2008 by availing Fund Based and Non-Fund Based limits which was renewed/ enhanced from time to time by the Erstwhile Syndicate Bank (Enhanced in the year 2013, 2014, 2015). The Erstwhile Syndicate Bank further renewed the Credit Limits (FB and NFB Limits) of Rs. 150.00 Cr. of the Corporate Debtor vide its Sanction Letter dated 08.07.2019 which was accepted by the CD and its Directors/Guarantors.
- b) The Corporate Debtor submitted the certified true copy of the Board Resolution dated 30.09.2019 whereby the Board of Directors is authorized U/s 180(l)(c) of the Companies Act, 2013 to borrow monies from the financial institutions/Banks exceeding up to Rs. 1000 Crores.
- c) The Erstwhile Syndicate Bank merged with Canara Bank (Financial Creditor) on 01.04.2020. The Financial Creditor sanctioned Rs. 5.50 Crores vide Sanction letter dated 28.05.2020 bearing Ref No. 019/LCB/DEL/CMIL/2020 under "Canara Credit Support" Scheme. As per the terms and conditions of the Sanction Letter, the Corporate Debtor created 1st Charge over its respective Immovable Properties, running Pari-Passu in favour of the Financial Creditor and the Consortium Members and thus additional charge was created over the respective Immovable properties by way of Equitable Mortgage to secure the repayment of the amounts together with interest and other Bank Charges under the WCDL Covid 19 CCS.
- d) The Certified True copy of the Board Resolution dated 10.06.2020 submitted by the Corporate Debtor consenting to the terms and conditions of the Sanction Letter as well as authorizing Sh. Amit Jain (Chairman cum MD) to sign/execute necessary financial, loan and security documents in favour of the Financial Creditor.
- e) Pursuant to that, the Corporate Debtor and its Directors executed certain loan and security documents dated 16.06.2020 on behalf of the



Corporate Debtor. The Corporate Debtor approached the Financial Creditor for renewal of the credit facilities and the same was renewed by the Bank vide Sanction Letter dated 13.10.2020. The Corporate Debtor executed various loan and security documents dated 14.10.2020 acknowledging the renewal of the Credit facilities.

- f) The Corporate Debtor approached the Financial Creditor and requested vide letter dated 28.11.2020 for grant/sanction of Ad-Hoc Credit facility to meet the liquidity crunch arisen due to COVID - 19 pandemic. The Corporate Debtor submitted the certified true copy of the Board Resolution dated 12.02.2021 and Letter of Declaration submitted by the Company Secretary of the Corporate Debtor wherein a resolution U/s 179 of the Companies Act, 2013 authorizing the Corporate Debtor to avail the credit facilities from the Consortium of Banks to the extent of Rs. 339.97 Crores.
- g) The aforesaid facilities were sanctioned to the tune of Rs. 310 Crores, under Consortium Banking Arrangement since the Corporate Debtor was availing Credit facilities from multiple other lender Banks. Canara Bank was appointed as the Lead Bank as well as 'LENDERS AGENT' vide Lenders Agent Agreement dated 02.03.2021 executed by and between the Consortium Members, the Corporate Debtor and the Financial Creditor to facilitate interface between the members of the Consortium. Apart from the Consortium members, Rs. 29.97 Crores was sanctioned by the Acceding Lenders.
- h) The Corporate Debtor signed certain Joint Loan and Security documents pursuant to the Consortium Arrangements. That to further secure the Credit Facilities (FB and NFB limits), the Directors of the Corporate Debtor further signed and executed in favour of the Financial Creditor certain loaning and security documents. The Financial Creditor is having 1st Charge over all assets of the Corporate Debtor, running on Pari-Passu basis as a Working Capital Lender along with Members and Non - Member Lender Banks of the Consortium.



- i) Pursuant to the request letter dated 28.11.2020 of the Corporate Debtor, the Financial Creditor acceded to the said request and sanctioned Rs. 11 Crores vide Sanction letter dated 11.03.2021 bearing Ref No. 041/LCB/DEL/CMIL/2021 under GECL 2.0 Scheme. To secure, the repayment of the WCTL (GECL 2.0) Credit facilities, the Corporate Debtor offered/extended the securities (Both Movable Immovable Assets/properties) already hypothecated/charged/mortgaged with the Financial Creditor. The Corporate Debtor submitted the certified true copy of the Board Resolution dated 15.03.2021 submitted by the Corporate Debtor consenting to the terms and conditions of the Sanction Letter as well as authorizing Sh. Amit Jain (Chairman cum MD) to sign/execute necessary financial, loan and security documents in favour of the Financial Creditor. The loaning and security documents were executed in favour of the Financial Creditor.
- j) The Corporate Debtor failed to operate the account satisfactorily and committed breach of the terms and conditions of sanction. The interest, as and when it accrued, is not serviced since July, 2021. The said FB Credit Limits became N.P.A. on 18.10.2021.
- k) The Financial Creditor was therefore compelled to recall all the Credit facilities on 20.10.2021 by Regd. Letter to pay and deposit with the Financial Creditor the amount of Rs. 1,49,93,76,349/- due and outstanding as on 30.09.2021. As the Corporate Debtor did not respond to the recall notice nor made any payments due under the respective loan accounts, the Financial Creditor issued Demand Notice dated 19.01.2022 U/s 13(2) of the SARFAESI Act, 2002.
- l) That the only objection taken by the Corporate Debtor in its reply to the present application is on the basis of restructuring of the Corporate Debtor being a MSME which has been denied by the Financial Creditor vide its Rejoinder. The Corporate Debtor is well aware that the



restructuring proposal submitted by him was rejected by the majority of the Lender Banks in the Consortium.

- m) Minutes of the lender banks consortium Meeting dated 02.09.2022 clearly states that opinion of the respective members of the consortium was sought wherein except IDFC First Bank, none of the other member banks of the consortium approved the restructuring proposal submitted by the Corporate Debtor. In other words, the restructuring proposal dated 26.08.2022 was rejected by all the members of the consortium except IDFC First Bank. Therefore, in the absence of minimum lenders consent i.e., 75% in value and 60% in number as per the extant guidelines for resolution of stressed assets, the restructuring plan proposed by the Corporate Debtor stood rejected and the members banks decided that they will individually as well as jointly will go for recovery actions against the Corporate Debtor.

Facts of the case as submitted by the Learned Counsel appearing for the Corporate Debtor

5. The details of the submissions made by the Corporate Debtor are as follows:
- a) That the Corporate Debtor is registered as MSME under Ministry of Micro, Small & Medium Enterprises (MSME), Act, 2006 and is governed by the provisions of MSME Act.
 - b) The Financial Creditor by the inviolable mandate and postulate of RBI Circular bearing Reference No. RBI/2015-16/338FIDD.MSME & NFS.BC.No.21/ 06.02.31/ 2015-16 dated 17.03.2016, which was binding on the Financial Creditor by virtue of Sections 21 and 35A of Banking Regulation Act, 1949, is under an absolute legal and statutory obligation, inter alia, to sanction an appropriate Corrective Action Plan or profound financial restructuring, for which purpose their respective committees had to take suo motu cognizance of the predicament of the



Corporate Debtor so as to assuage the difficulties faced by the Corporate Debtor.

- c) The Financial Creditor foreseeing the scope of restructure and revival of the Corporate Debtor, on 21.09.2021, called for Lender meeting between the parties for discussing the revival of Corporate Debtor and restructure of the alleged loan. The Corporate Debtor through its authorized representative on 1.10.2021 floated a Resolution Plan.
- d) That the rejection of the Resolution Plan floated to the lender were never communicated to the Corporate Debtor. That the Financial Creditor in the midst of settlement and restructuring of Corporate Debtor on 18.10.2021 illegally declared the account of the Corporate Debtor as Non-Performing Assets ('NPA').
- e) That Mr. Amit Jain who is the Authorized representative acting in the best interest of the Corporate Debtor had requested for further opportunity of floating a resolution plan of the Corporate Debtor. The Financial Creditor called Lenders meeting dated 26.10.2021 on discussion of the Resolution Plan. The Financial Creditor without communicating the rejection grounds of the resolution plan floated by the Corporate Debtor had issued notice dated 27.10.2021 under Section 13(2) of SARFAESI Act, 2002.
- f) The Financial Creditor had issued 2nd Section 13(2) Notice dated 19.01.2022 under SARFAESI Act, 2002 to which the Corporate Debtor gave a detailed reply dated 17.03.2022 under Section 13(3A) of SARFAESI Act, 2002.
- g) That in the meantime, vide various meetings dated 03.03.2022, 24.05.2022, 18.06.2022, 27.07.2022 the Corporate Debtor had time to time requested for restructuring of the alleged loan of the Corporate Debtor.



h) That it is on various occasions including but not limited to 02.07.2022 and 26.08.2022, the Corporate Debtor had floated revised restructure of the alleged loan proposal to the Lender to which no reply till date has been received by the Corporate Debtor. Thereafter on 02.09.2022, the Financial Creditor held another Lenders Meeting with the Corporate Debtor.

Analysis and Findings

6. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.
8. In the present case, the Financial Creditor sanctioned Rs. 5.50 Crores to the Corporate Debtor under “Canara Credit Support” Scheme vide sanction letter dated 28.05.2020. Further, vide letter dated 28.11.2020, the Corporate Debtor requested the Financial Creditor for grant of Ad-Hoc Credit facility to meet the liquidity crunch arose during covid-19 pandemic. The said facilities were sanctioned by the Financial Creditor, inter alia, under the Consortium Banking arrangement to the tune of Rs. 310 Crores. Further, the Financial Creditor acceded to the said request and sanctioned Rs. 11 Crores to the Corporate Debtor. Hence, on the basis of documents placed before us such as Sanction letters dated 28.05.2020, 13.10.2020, 11.03.2021, issued by the Financial Creditor in the favor of the Corporate Debtor and also on the basis of Link Letter dated 16.06.2020 issued by the Corporate Debtor in the favor of Financial Creditor for the renewal of



working capital, we are satisfied that there has been disbursal of capital in favor of the corporate Debtor by the Financial Creditor. Therefore, one essential with respect to Section 7, that there has been a debt, stands substantiated.

9. Upon consideration of the Link Letters dated 16.06.2020, 14.10.2020 & 26.03.2021, pro-note and the renewal Letter dated 14.10.2020 issued by the Corporate Debtor in the favor of the Financial Creditor, and further considering the Working Capital Consortium Agreement entered into between the Corporate Debtor and the Financial Creditor along with other banks, it is concluded that the Corporate Debtor itself acknowledges the existence of debt. Additionally, the bank statement of the loan account of the Corporate Debtor signifies that there has been no repayment of the Financial Debt by the Corporate Debtor as claimed by the Financial Creditor. Therefore, another major essential of Section 7 i.e., default with respect to the debt stand substantiated.
10. Furthermore, the objection raised by the Corporate Debtor that the claim of the Financial Creditor is not maintainable since the Financial Creditor is under an obligation to consider the restructuring plan, however, the same was rejected by the Financial Creditor, does not hold any ground in the light of rules of CDR group. As per the said rules, the minimum lenders consent required for restructuring of the Corporate Debtor is 75 %, however, in the present case, amongst the several lender banks, only the IDFC First Bank consented to the restructuring proposal presented by the Corporate Debtor. Hence, the minimum number of lender's consent as required for restructuring is absent and hence, the said objection does not hold any ground.
11. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:



Section 3(12) of IBC defines Default. “*Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.*”

Section 5(7) of IBC defines Financial Creditor: “*Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.*”

Section 5(8) of IBC defines Financial Debt. “*Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*

- (a) Money borrowed against the payment of interest;*
- (b) Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as maybe prescribed;*
- (e) Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for*



calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;

(h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;

(i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”

12. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petitioner established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 15.11.2022, and even admittedly the debt owed to the Financial Creditor is an amount of Rs. Rs. 1,64,86,26,471.07 (Rupees One Hundred and Sixty-Four Crores Eighty-Six Lacs Twenty-Six Thousand Four Hundred and Seventy-One and Seven Paise) which meets the threshold of Rs. One Crore.

13. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/820(PB) 2022** filed by Canara Bank, the Financial Creditor, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s CMI Limited, the Corporate Debtor, stands **admitted** and CIRP of M/s CMI Limited is initiated.

14. That the petitioner in part-III of the petition has proposed the name of Mr. Deepak Maini as Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P00676/2017-18/11149. and email – id Deepak.maini@insolvencyservices.in is hereby appointed as an Interim



Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that the IRP has a valid AFA.

15. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

(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 IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.



16. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
17. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.
18. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Mr. Deepak Maini to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
19. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
20. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution



Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.

21. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
22. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
23. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./820 (PB)/2022 stands admitted.**
24. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(P.S. N. PRASAD)
MEMBER (JUDICIAL)