

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH

Company Petition (IB)No.41/ALD/2019

(Under Section 7 of Insolvency and Bankruptcy Code,2016 read with Rule 4 of  
the Insolvency and Bankruptcy (Application to Adjudicating Authority)  
Rule,2016)

IN THE MATTER OF

CORPORATION BANK

.....Applicant/Financial Creditor

VERSUS

M/S EMMVEE INFRASTRUCTURES (INDIA) PVT.LTD.

.....Respondent/Corporate Debtor

ORDER DELIVERED ON :13.10.2020

CORAM:

Hon'ble Mr. Justice (Retd.) Rajesh Dayal Khare, Member, Judicial

For the Applicant/ Operational Creditor: Mr. Ankur Goyal, Adv

For the Respondent/ Corporate Debtor: Mr. Sarvesh Tiwari, Adv alongwith  
Mr. Saumitra Dwivedi, Adv

Per se: Mr. Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

Order

1. The present petition has been filed by the financial creditor (herein referred as "petitioner") i.e. "**Corporation Bank**" under Section 7 of the Insolvency & Bankruptcy Code,2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Corporate debtor i.e "**Emm Vee Infrastructures (India) Pvt. Ltd.**" on grounds of its inability to liquidate its financial debt.

2. As per averments made in the petition the Corporate Debtor vide its letter dated 17.08.2012 approached the applicant bank/Financial Creditor for grant of term loan facility of Rs.25 Crores (Rupees Twenty Five Crores Only), which was duly considered and sanctioned by the applicant bank/financial Creditor vide its credit sanction intimation dated 17.10.2012 through which term loan facility of 25 Crores was

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sanctioned to the Corporate Debtor for developing residential apartments/projects namely "Dwarika Heights" against overall margin of 55.30% per annum with monthly rests. The term loan facility was repayable in 11 equal quarterly instalments of Rs. 227.30 Lacs commencing from 30.09.2014 and all the terms and conditions of the sanction letter were accepted and acknowledged by the corporate Debtor as well as Sh. Vijay Pal Yadav and Smt. Sunita Yadav who had given their personal guarantees for repayment of the aforesaid facility together with stipulated interest availed by the Corporate Debtor. To secure the credit, the Corporate Debtor has offered its land and building including propose residential flats to be constructed with intention to create equitable mortgage in favour of financial Creditor.

3. Further, the Corporate Debtor again approach the financial Creditor for grant of fresh term loan facility for Rs. 12 Crores which was duly considered and sanctioned Financial Creditor vide its credit sanction dated 03.06.2013 as well as letter dated 14.06.2013 in which the term loan facility was repayable in 9 quarterly instalments of Rs. 133.34 lacs commencing from 31.03.2015 and all terms and conditions of the sanction letter were accepted and acknowledged by the corporate Debtor as well as Sh. Vijay Pal Yadav and Smt. Yadav in writing.

4. Further, it is also stated that, on the request of the Corporate Debtor as well as Sh. Vijay Pal Yadav and Smt. Sunita Yadav, the applicant vide its credit sanction intimation dated 27.06.2016 renewed both existing term loan facility against the same set of securities and these were also accepted and acknowledged by the Corporate Debtor.



5. It is also stated that after availing the credit facilities, the Corporate Debtor as well as Sri Vijay Pal Yadav and Smt. Sunita Yadav have failed to keep their accounts regular and hence the same were classified and declared as NPA on 03.09.2016 as per RBI guidelines. Accordingly, outstanding of both accounts were finally recalled by the Applicant by serving registered Demand Notice issued under Section 13(2) of the SARFAESI Act, 2002 upon the Corporate Debtor as well as Sri Vijay Pal Yadav and Smt. Sunita Yadav on 06.10.2016 requiring them to liquidate outstanding of their loan accounts amounting to Rs. 34,53,43,337 plus future rate of interest within 60 days from the date of notice, but neither any reply nor any amount was paid by the Corporate Debtor to the Financial Creditor and the account remain unliquidated till date. Thus, contended that the total sum of Rs. 62,32,54,445/- plus interest is due as outstanding against the Corporate Debtor.

6. In reply to the above, the counsel for the Corporate Debtor has submitted that the first date of default by the borrower is 08.08.2014, hence the present proceedings is time barred and thus not maintainable and also stated that the respondent will repay the dues of the Financial Creditor after the completion of the projects in light of the order passed by RERA Authority.

7. Rebutting the same, the counsel for the Financial Creditor stated that the Corporate Debtor itself have signed the acknowledgment of debt on 27.04.2016 and 28.04.2016 therefore, a fresh limitation starts from 28.04.2016 and thus the application filed is well within limitation and the Corporate Debtor has accepted the debt and default, thus the petition needs to be admitted.

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8. Mere plain reading of the provision shows that in order to make an application under Section 7 (1) the financial creditor / petitioner is required to establish:

i.) Whether there is duly established financial debt.

ii.) Whether there is default in payment by the corporate debtor.

iii.) Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional.

9. In the present matter, this Adjudicating Authority finds the debt and default is admitted by the corporate debtor in Para 22 in their reply stating "*...the respondent will repay the dues of the financial creditor after the completion of the projects in light of the order passed by RERA Authority*". Thus it is well established that there is the existence of debt and default on behalf of the corporate debtor.

10. In regard to the petition being time barred, this Adjudicating Authority is of the view that the corporate debtor has acknowledged the debt on 28.04.2016, the letter acknowledgement is annexed as Annexure 22 of the petition as well as the accounts of the corporate debtor was declared NPA on 30.09.2016 and the present petition was filed before this Adjudicating Authority on 11.01.2019, thus it is found well within limitation, within three years from the date of acknowledgment of debt.



11. Referring to the decision of Hon'ble Supreme court in **Innoventive Industries Ltd. v. ICICI Bank ,(2017)205 Comp Cas 57(SC)** it was **held that**

***“..... The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete.....”***

12. This Adjudicating Authority finds that the petitioner succeeded in establishing that there is a debt and existence of default on behalf of corporate debtor and the application is complete in all respect. It is seen that the amount in default is in excess of the minimum threshold limit fixed under IBC.

13. Further, as the date of default is 28.04.2016, it is much prior to the amendment made in Insolvency and Bankruptcy Code on 05<sup>th</sup> of June, 2020 whereby Sec 10A was inserted, thus the amendment made will not have any effect in the present petition.

14. Considering the facts and circumstances of the case, this adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent Company. Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith stating:

*(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

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*(b)transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

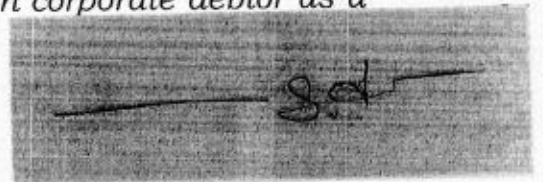
*(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*

*(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.*

*Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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 or a similar grant or right during moratorium period.]*

*2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a*



*going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.]*

*(3) The provisions of sub-section (1) shall not apply to —*

*(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*

*(b) a surety in a contract of guarantee to a corporate debtor.*

*(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:*

*Provided that where at any time during the corporate insolvency resolution process period, if the 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, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*

15. The Financial Creditor has proposed the name of **Mr. Manish Agarwal Registration Number IBBI/IPA-002/IP-N00223/2017-2018/10904** for appointment as Interim Resolution Professional (IRP). Further IRP has filed a declaration in form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. We accordingly confirm his appointment as the IRP. He shall take such other and further steps

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as are required under the statute, more specifically in terms of Sec 15,17 and 18 of the Code and file his report.

16.The registry is directed to communicate this order to Financial Creditor, as well as to Corporate Debtor and to IRP.

17.Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

18.Progress Report to be filed before the Registry of this Bench..



**JUSTICE RAJESH DAYAL KHARE**  
**MEMBER (J)**

**Date:13.10.2020**

Swati Gupta  
(LRA)