

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
COURT-II  
KOLKATA**

**CP (IB) No. 64/KB/2022**

**I.A. (I.B.C) No. 624/KB/2022**

*A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.*

In the matter of:

**State Bank of India**

*...Financial Creditor*

*Versus*

**Ganpathi Hightech Communication Private Limited  
[CIN: U29248WB2007PTC119532]**

*...Corporate Debtor*

**Date of pronouncement: 03/08/2023**

**Coram:**

**Bidisha Banerjee** : **Member (Judicial)**

**Balraj Joshi** : **Member (Technical)**

**Appearances (through video conferencing):**

For the Financial Creditor : Mr. Uttiyo Mallick, Advocate

: Ms. Vedika Sureka, Advocate

**ORDER**

**Per Balraj Joshi, Member (Technical)**

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by State Bank of India, represented by **Shri Kaushik Das**, authorized *vide* a Letter of Authorization dated 10.08.2021<sup>1</sup> seeking to initiate Corporate Insolvency Resolution Process (“CIRP”)

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<sup>1</sup> Page 27 of the Petition

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against Ganpathi Hightech Communication Private Limited (“Corporate Debtor”).

3. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor. Part – III contains particulars of the proposed Interim Resolution Professional.
4. Part –IV of the Petition contains details of Financial debt for an amount of Rs. 36,57,13,618.78/- (Rupees Thirty-Six Crores Fifty-Seven Lakhs Thirteen Thousand Six Hundred Eighteen and Seventy-Eight Paise Only) including interest as on 31.08.2021.
5. The Corporate Debtor was incorporated on 12 October 2007, having CIN: U29248WB2007PTC119532, under the Companies Act, 1956. It’s registered office is at P-70, C.I.T Road Scheme- VI M, Kolkata-700054, West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 7 December, 2021 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in making a payment of a sum of Rs. 36,57,13,618.78/- (Rupees Thirty-Six Crores Fifty-Seven Lakhs Thirteen Thousand Six Hundred Eighteen and Seventy-Eight Paise Only) including interest as on 31.08.2021.

***Submission of learned Counsel appearing for the Financial Creditor***

7. The learned Counsel submitted that in or around the year 2011, the Corporate Debtor had approached the Financial Creditor for availing credit facilities amounting to Rs. 13 Crore. Accordingly, the Financial Creditor sanctioned the credit facilities of Cash Credit amounting to Rs. 8 Crore and Letter of Credit for Rs. 5 Crore vide Letter of Arrangement dated

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26.09.2011.<sup>2</sup> Subsequently an Agreement of Loan cum Hypothecation Agreement dated 26.09.2011<sup>3</sup> was executed between them with respect to a sanction limit of 13 Crore. Consent Clause<sup>4</sup> was also executed by the Corporate Debtor in favour of the Financial Creditor whereby it is stated by the Corporate Debtor that it agrees and gives consent for disclosure by the Financial Creditor of information and data relating to it, of the credit facility availed/to be availed by it, obligations assumed/to be assumed in relation thereto and default, if any, committed by it, in discharge thereof.

8. The Ld. Counsel submitted that in order to secure the said credit facilities, the Directors of the Corporate Debtor namely Sanjay Kumar Agarwal and Ayush Agarwal stood as personal guarantors vide two separate Deeds of Guarantee<sup>5</sup>, both dated 26.09.2011. One Anand Kumar Agarwal and Asha Agarwal also stood as personal guarantors and to that effect a Deed of Guarantee dated 26.09.2011<sup>6</sup> was executed.
9. Thereafter, Ekdant Ispat Pvt. Ltd. of which Mr. Ayush Agarwal is also a Director, in their board meeting held on 26.09.2011 accepted the terms and conditions of the loan granted by the Financial Creditor and resolved to extend its Corporate Guarantee to the Financial Creditor for the limits anctioned only to the extent of its immovable property vide a Deed of Guarantee dated 26.09.2011.<sup>7</sup>
10. The Ld. Counsel further submitted that the Corporate Debtor filed Form No. 8 dated 08.11.2011 with the RoC, West Bengal in order to secure the credit

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<sup>2</sup> Annexure-H, Pages 151 to 161 of the Petition

<sup>3</sup> Annexure-I, Pages 162 to 173 of the Petition

<sup>4</sup> Page 431-432 of the Petition

<sup>5</sup> Annexure-J, Pages 174-180 of the Petition; Annexure-K, Pages 181-188 of the Petition

<sup>6</sup> Annexure-L, Pages 189-195 of the Petition

<sup>7</sup> Annexure-M, Pages 196-202 of the Petition

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limit of Rs.13 Crore and such creation of 1<sup>st</sup> charge was acknowledged by the RoC, West Bengal.

11. The Corporate Guarantor on 08.11.2011 deposited the title deed with the Financial Creditor with intent to create an equitable mortgage of their immovable property as a security for the mortgaged debt due and payable to the Financial Creditor.
12. Subsequently, the Corporate Debtor in or about the year 2013, once again approached the Financial Creditor to avail credit facilities amounting to Rs. 11.50 Crores to which the Financial Creditor sanctioned the credit facilities in respect of Cash Credit for Rs. 8 Crores and Working Capital Term Loan for Rs. 3.5 Crores vide a Letter of Arrangement dated 18.05.2013. Pursuant to the sanction letter dated 18.05.2013, a supplemental agreement of Loan cum Hypothecation dated 18.05.2013 was executed by and between the Corporate Debtor and the Financial Creditor. Consent Clause was executed by the Corporate Debtor and the Personal Guarantors in favour of the Financial Creditor. The said credit facilities were repayable on demand.
13. The said credit facilities were again secured by Personal Guarantors namely Sanjay Kumar Agarwal, Ayush Agarwal, Anand Kumar Agarwal and Asha Agarwal vide separate Deeds of Guarantee dated 18.05.2013 and Corporate Guarantee was given by M/s Ekdant Ispat Pvt Ltd subsequent to a Board Meeting held by them on 18.05.2013 vide a Deed of Guarantee dated 18.05.2013.
14. The Corporate Debtor had again filed Form No. 8 dated 18.05.2013 with the RoC, West Bengal in order to secure the credit limit of Rs.13.50 Crore and such creation of 1<sup>st</sup> charge was acknowledged by the RoC, West Bengal.
15. The Corporate Debtor failed and neglected to maintain its accounts with the Financial Creditor and as a result, the accounts of the Corporate Debtor were

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declared as Non-Performing Assets on 28.10.2013 and 01.11.2013 respectively.

16. Thereafter a Demand Notice under Section 13(2) read with Section 13(3) of the SARFAESI Act, 2002 dated 13.11.2013 was issued by the Financial Creditor for repaying the dues but the Corporate Debtors took no steps to liquidate the outstanding dues failing which the Financial Creditor was constrained to take possession by a notice dated 08.01.2018 under Section 13(4) of the SARFAESI Act, 2002.
17. Subsequently, the Financial Creditor had once again issued a Demand Notice dated 18.12.2014 through its Advocate but the Corporate Debtor again did not take any steps for repaying the same.
18. Thereafter the Financial Creditor on 27.03.2015 filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 being O.A. No. 242 of 2015 which is still pending before the Learned DRT-III, Kolkata.
19. The Financial Creditor has placed the following documents on record which includes:
  - a. A copy of the Letter of Authorization alongwith the copy of the State Bank of India General Regulations, 1955 [**Annexure A @Pgs. 27-43 of the Company Petition**]
  - b. Copies of Memorandum of Deposit of Title Deeds and Memorandum related to Deposit of Title Deeds for creation of charge for Term Loan/Overall Limit [**Annexure E @Pgs. 49-135 of the Company Petition**]
  - c. Copies of Certificate of Registration of charge issued by Registrar of Companies (ROC) [**Annexure F @ Pgs. 136-147 of the Company Petition**]

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- d. Copies of the orders passed by the Ld.Debt Recovery Tribunal - III, Kolkata in O.A. No. 242 of 2015 (State Bank of India -vs- M/s. Ganpati Hightech Communication Pvt Ltd. & Ors [**Annexure G @ Pg. 148 to 150 of the Company Petition**]
- e. Copies of the Letter of Arrangement of credit facilities dated 26 September, 2011 and 18 May, 2013 issued by State Bank of India in favour of Ganpati Hightech Communication Private Limited [**Annexure H @ Pg. 151-161 of the Company Petition**] and [**Annexure N @ Pg. 203-215 of the Company Petition**]
- f. Copy of Agreement of Loan cum Hypothecation dated 26 September, 2011 and Supplemental Agreement of Loan cum Hypothecation dated 18 May, 2013 executed by Ganpati Hightech Communication Private Limited in favour of State Bank of India [**Annexure I @ Pg. 162-173 of the Company Petition**] and [**Annexure O @ Pg. 216-221 of the Company Petition**]
- g. Copies of Guarantee Agreements dated 26.09.2011 [**Annexure J @ Pgs. 174-180 of the Company Petition**]; [**Annexure K @ Pgs. 181-188 of the Company Petition**]; [**Annexure L @ Pgs. 189-195 of the Company Petition**] and [**Annexure M @ Pgs. 196-202 of the Company Petition**]
- h. Copies of Guarantee Agreements dated 18.05.2013 [**Annexure P @ Pgs. 222-228 of the Company Petition**]; [**Annexure Q @ Pgs. 229-235 of the Company Petition**]; [**Annexure R @ Pgs. 236-240 of the Company Petition**]; [**Annexure S @ Pgs. 241-247 of the Company Petition**] and [**Annexure S @ Pgs. 248-255 of the Company Petition**]
- i. A copy of letter of confirmation for extension of mortgage by deposit of title deeds covering enhanced limit and/or creation of

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- equitable mortgage on additional property for securing the existing limits and/or enhanced limits and additional facilities dated 23 May,2013 [**Annexure U @ Pgs. 256-261 of the Company Petition**]
- j. A copy of loan recall notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 13 November,2013 [**Annexure EE @ Pgs. 439-447 of the Company Petition**]
- k. A copy of possession notice under Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002 dated 8 January,2015 [**Annexure FF @ Pgs. 448 to 458 of the Company Petition**]
- l. A copy of the demand notice dated 18 December,2014 [**Annexure GG @ Pgs. 459 to 465 of the Company Petition**]
20. The Financial Creditor has proposed the name of **Mr. Aditya Kumar Tibrewal**, registration number IBBI/IPA-001/IP-P00743/2017-2018/11249, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.
21. The Financial Creditor on 24.06.2022 had filed an I.A. being I.A (I.B.C) No. 624/KB/2022 under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 readwith Rule 11 of the National Company Law Tribunal Rules, 2016 for bringing on record the correct date of default which arises out of the final order/judgment dated 04.11.2019 passed by the Learned DRT-III, Kolkata. Being unaware about the said order, they had wrongfully mentioned the date of default as 13.11.2013 which should be 04.12.2019 in

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view of the final order/judgment dated 04.11.2019. By filing this IA, the Financial Creditor has prayed before this Hon'ble Tribunal that the date of default be allowed to be mentioned as 04.12.2019.

**Issues**

22. *Whether the final order/judgment dated 04.11.2019 would give rise to a fresh cause of action so as to bring this petition under the period of limitation?*
23. *Whether it will be justifiable to allow the Financial Creditor to place on record the final order/judgment dated 04.11.2019 at this stage of the proceedings?*

**Analysis and Findings**

24. None appeared for the Corporate Debtor despite giving several opportunities and therefore was accordingly set ex-parte vide order dated 30<sup>th</sup> March, 2023. Heard the learned Counsel appearing for the Financial Creditor and perused the records.
25. While referring the first issue, we refer to the judgment passed by the Hon'ble Supreme Court in **Dena Bank v C. Shivakumar Reddy & Anr.**<sup>8</sup>, relevant paragraphs of which are reproduced as hereunder:-

*"143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or*

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<sup>8</sup> 2021 SCC OnLine SC 543 decided on 04.08.2021

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*decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid.”*

26. Now referring to the second issue, para 91 of the judgment in **Dena Bank v C. Shivakumar Reddy & Anr. (supra)**, shall be taken into consideration, as reproduced hereunder:

*“91. On a careful reading of the provisions of the IBC and in particular the provisions of Section 7(2) to (5) of the IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed.”*

In view of the above judgment we allow the application being **I.A.(I.B.C)No.624/(KB)/2022** filed by the Applicant for mentioning the date of default as 04.12.2019. While perusing **page 322** of the present petition which is the Balance Sheet for the FY 2012-2013, it is reflected thereto under the head ‘Short Term Borrowings’ that the Corporate Debtor had acknowledged regarding Secured Loan availed from the Financial Creditor. Hence, it is clear that the petition has been filed within the period of limitation i.e., within three years from the date of default and it is established that there was a debt, which is more than the Threshold value given in Section 4 of the code and which the Corporate Debtor has defaulted to repay.

27. In view of the above observations, this Adjudicating Authority is satisfied that the instant petition is complete in all respects and should be *admitted*.

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28. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

- a. The application is complete as required in law. The disbursement of the debt for a time value of money is established & is clear that the Corporate Debtor has defaulted on repayment of loan in terms of the agreements entered into with the Financial creditor.
- b. The application bearing **CP (IB) No. 64/KB/2022** filed by State Bank of India, 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 *Ganpathi Hightech Communication Private Limited*, the Corporate Debtor, is **admitted**.
- c. There shall be a moratorium under section 14 of the IBC 2016.
- d. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- e. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- f. **Mr. Aditya Kumar Tibrewal**, registration number IBBI/IPA-001/IP-P00743/2017-2018/11249, **email: adityatibre@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of

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regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- g. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- h. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- i. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- j. The Financial Creditor shall deposit a sum of **Rs 300000/- (Rupees Three 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).

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- k. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- l. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
29. In view of the above observations, **I.A.(I.B.C.)No. 624/KB/2022** stands **disposed of**.
30. CP (IB) No. 64/KB/2022 to come up on 6/9/2023 for filing the periodical report.
31. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

  
(Baaraj Joshi)  
Member (Technical)

(Bidisha Banerjee)  
Member (Judicial)

This order is pronounced on the 3<sup>rd</sup> day of August, 2023.

(FA, LRA)