

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

CP(IB) 271/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.11.2020**

Name of the Company: Acrow Construction Pvt Ltd & Ors
V/s
K G Corporation Ltd

Section 7 of the Insolvency and Bankruptcy Code,
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.


ORDER

(Through Video Conferencing)

Advocate, Mr. Tirth Nayak appeared on behalf of the applicant.

The order is pronounced in the open court, vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**


**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 9th day of November, 2020.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(IB) 271/7/NCLT/AHM/2019

In the matter of:

- | | | | |
|----|--|-----------------------|-------------------|
| 1. | M/s. ACROW CONSTRUCTION P. LTD
Gala No. 108, Everest Industrial Estate
Nr. 66 KVA Power Sub-station
Amlī
SILVASSA 396 230 (UT of DNH) | }
}
}
}
} | |
| 2. | M/s. ELOQUENT TRADERS P. LTD
8, Chamunda Darshan Building
Near Yogi Hospital, Kilwani Road
SILVASSA 396 230 | }
}
}
} | |
| 3. | M/s. GLEAN TRADING P. LTD
B2/202 Vraj Darshan
Opp. Panchayat Bhavan
Samarvani
SILVASSA 396 230 | }
}
}
}
} | APPLICANTS |
| 4. | M/s. TANVISH TRADING P. LTD
Office No. 127, 1 st Floor
Paras Centre A, Tata Road No. 2
Opera House
MUMBAI 400 004 | }
}
}
}
} | |
| 5. | M/s.VIGNAHARTA CORRUGATORS P.LTD
RM-81, Sudarshan Nagar
MIDC Phase II, Dombivli (E)
THANE 421 201 (Maharashtra) | }
}
}
} | |

Versus

M/s. K.G. Corporation Limited
(earlier known as Tayal Energy Ltd.
65, Krishna Nagar
Samarvani
SILVASSA 396 230

:

Respondent
[Corporate Debtor]

Shankar Singh

Shankar Singh

Order delivered on 9th November, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

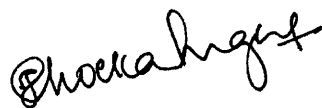
Appearance:

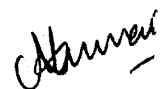
Petitioner : Mr. Tirth Nayak, Advocate
Respondent : Ms. Kuldeep Adesara, Advocate

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. Mrs. Saburi Satish Bhalekar, being authorised signatory, on behalf of the above five applicants, filed the instant petition under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.
2. That the applicants/financial creditors as shown in the cause title are registered private limited companies engaged in different kind of business.
3. The respondent/corporate debtor is a company incorporated under the Companies Act, 1956 on 04.06.2012, having identification No. U40100DN2005PLC000185 and having its registered office at Silvassa. That, Authorised share capital of the respondent company is Rs. 65,00,00,000/- and paid up share capital is Rs. 64,90.63,000/-.
4. The applicants have granted total amount of Rs. 10,03,95,000/- (Rupees ten crores three lacs ninety-five thousand only) to the corporate debtor on different dates as per the details given at Annexure 3 to the application (page



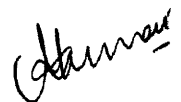


22). **As on 28.02.2019 an amount of Rs. 28,62,04,356/- (Rupees twenty-eight crores sixty-two lacs four thousand three hundred fifty-six only)** is due and payable by the corporate debtor.

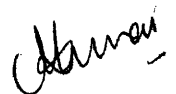
5. It is stated by the financial creditor that the instant Insolvency Resolution Application is filed under Section 7 of the IB Code, 2016 for the purpose of initiating corporate insolvency resolution process against the corporate debtor since it has lost its substratum and is unable to repay outstanding debt. That, the corporate debtor has already committed default of its debt towards the financial creditor by non-payment of instalment and/or interest of the loan, therefore, this petition.
6. The applicants have submitted copy of all the documents in support of their claim like; authorisation in favour of Mrs. Saburi Satish Bhalekar to submit the instant application (12-16), resolutions to submit application on behalf of financial creditors (17-21) computation sheet as on 28.02.2019 (22) complete copy of the financial contract reflecting all amendments and waivers (23-51), entries in the Bankers Book (52-56), other documents in order to establish the existence of financial debt (57-172) written communication from proposed IRP in form 2 etc.
7. The respondent filed affidavit in reply/objections on 17.07.2019 raising various objections not supported by any document. Subsequently respondent filed another affidavit on 12.11.2019 admitting the debt.

Findings

8. Heard the counsels and perused the documents annexed to the application/reply and additional documents filed by both the parties.

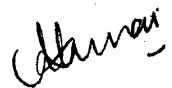


9. On perusal of the records it is found that as per demand promissory note (DP Note) executed between and financial creditors and corporate debtor are of different dates. As per the DP Notes the date of default of applicant No. 1 was on 30.09.2017, applicant No. 2 & 3 was on 31.12.2017, applicant No. 4 was on 30.09.2018 and for applicant No. 5 was on 31.12.2018. Therefore, the application filed by the financial creditors is very well within the limitation.
10. On perusal of the records it is found that the debt owed by the corporate debtor and the default committed by it in the repayment of the interest and/or principal of the loan amount has not been disputed by the corporate debtor in the objections filed by them against the instant application. Moreover, the financial stress faced by the corporate debtor has been duly highlighted and acknowledged in the said objections.
11. It is also found that no dispute qua debt and default coupled with the fact that during the pendency of the instant matter, the corporate debtor sought to settle the matter itself is evident of the fact that the corporate debtor has committed defaults in the repayment of debt which is due and payable by the corporate debtor. That the instant application under section 7 has been filed within the limitation of three years from the date of default in terms of provisions of Article 137 read with Section 18 and 19 of the Limitation Act, 1963.
12. Corporate Debtor did not disclose any bona fide defence based on substantial grounds for the claim made by the Financial Creditor before this Authority. The above said evidence is sufficient to substantiate the plea of the Applicants that a default has been committed by the



Corporate Debtor in payment of amount due and payable to the Applicant.


13. It is also a matter of record that the Applicants had granted financial assistance to the Corporate Debtor and the Corporate Debtor fully availed those facilities. Those facilities carry interest applicable from time to time as per the terms and conditions mentioned in the agreement. Therefore, the amount due to the Financial Creditor from the Corporate Debtor is a financial debt. In view of the Judgment of the **Hon'ble Supreme Court, in case of M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr., in Company Appeal (AT)(Insolvency) No. 1 & 2 of 2017**, this Adjudicating Authority has to satisfy whether a default has occurred; whether the Application is complete; and whether any disciplinary proceeding is pending against the proposed Insolvency Resolution Professional.
14. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the Corporate Debtor committed default in paying the financial debt to the Applicant. On perusal of record and as also discussed above, it is held that there is existence of default and that the application under Section 7(2) of the Code is also complete in all respect.
15. In the instant case, the documents produced by the Financial Creditor clearly establish the 'debt'. Section 13 (2) Notice issued by the Financial Creditor clearly indicates that entire debt was recalled. There is a default on the part of the Corporate Debtor in payment of the 'financial debt'.
16. There is no dispute in the case that the petitioner is the financial creditor. The application is also furnished in the prescribed form – 1 of the Rules and the prescribed fee has also been paid. Along with the application, the applicant has proposed the name of the Interim Resolution Professional

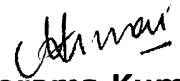


namely Mr. Naresh Sheth (nvsheth@mkindia.com, Mkindia58@gmail.com). Therefore, this Adjudicating Authority hereby appoint Naresh Sheth, 1014-1015, Prasad Chamber, Tata Road No. 2, Opera House (E), Mumbai 400 004 having IBBI registration No. IP/P00133-IBBI/IPA-001/IP-P00133/2017-18/10275. Form 2 along with the certificate of registration of the proposed interim resolution professional has been furnished by the applicant separately where declaration is made that no disciplinary proceedings are pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

17. In view of the above, the petitioner/financial creditor having fulfilled all the requirements of Section 7 of the Code, the instant petition deserves to be admitted.
18. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
 - (i) 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;
 - (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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);

- (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
19. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.
20. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
21. This Petition stands disposed of accordingly with no order as to costs.
22. Communicate a copy of this order to the Applicant/Financial Creditor, Respondent/Corporate Debtor and to the Interim Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

Nair