IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT – V

C.P. (I.B) No. 119/MB/2024

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

In the matter of

Janaseva Sahakari Bank Limited, Pune
Plot No. 14, S. No. I 12 A, Hadapsar Industrial Estate, Hadapsar, Pune, – 411013 (Maharashtra)

...Petitioner/Financial Creditor

Vs

M/s. RK Patil Infraprojects Private Limited
RMC Plant, R.K. House, Near Gavhan Phata, Panvel – Uran Road, Vahal, Panvel - 410206, (Maharashtra)

... Respondent/Corporate Debtor

Order Dated: 26.11.2024

Coram:

Ms. Reeta Kohli, Hon'ble Member (Judicial)
Ms. Madhu Sinha, Hon'ble Member (Technical)

Appearances:

For the Petitioner: Adv. Avinash R. Khanolkar (PH)
For the Corporate Debtor: Adv. Prachi Wazalwar (PH)

राष्ट्रीय कम्पनी विधी अधिकरण NATIONAL COMPANY LAW TRIBUNAL मुंबई न्यायपीठ MUMBAI BENCH

ORDER

Per: Reeta Kohli, Member (Judicial)

1. This Company Petition is filed by **Janaseva Sahakari Bank Limited, Pune** (hereinafter referred as "**Petitioner/Financial Creditor**") on 06.03.2024 seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as "**CIRP**") against **M/s. RK Patil Infraprojects Private Limited** (hereinafter called "**Corporate Debtor**") by invoking the provisions of **Section 7** of the Insolvency and Bankruptcy code, 2016 (hereinafter called "**Code**") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Financial Debt of **Rs. 24,23,48,147.70/-** and the Date of Default being **31.03.2021.**

2. **Facts of the Financial Creditor**

   I. The case of the Financial Creditor, i.e., Janaseva Sahakari Bank Limited, is that the Corporate Debtor availed Credit Facilities of Rs. 15,00,00,000/- from the Financial Creditor in the year 2020 in term of Cash Credit Facilities. The Term Loan was sanctioned on 22/06/2020 and the date of disbursement of the said Credit facility was 15/07/2020.

   II. As contented by the Financial Creditor, the account of the Corporate Debtor turned NPA on 31/03/2021 and thus, in view of the same, the Financial Creditor also stated the date of default to be 31/03/2021.

   III. The Financial Creditor submitted that a Notice under Section 13(2) of SARFAESI Act was issued against the Corporate Debtor on 27/10/2021. Further, the Financial Creditor, on 11/03/2022, issued a Notice to take possession of the security as given under Section 13(4) of the SARFAESI Act against the Corporate Debtor. However, despite the issuance of the aforementioned Notices, the Corporate Debtor made no payment with

respect to the outstanding amount due and payable to the Financial Creditor.

IV. As alleged by the Financial Creditor, the total outstanding amount due and payable by the Corporate Debtor is Rs. 24,23,48,147.70/-, wherein the Principal outstanding amount is Rs. 15,00,00,000/- and the outstanding Interest amount is Rs. 9,23,48,147.70/-

V. Thus, in the light of the abovementioned submissions, the Financial Creditor preferred the present Petition before this Hon'ble Tribunal seeking initiation of CIRP against the Corporate Debtor.

3. **Facts of the Corporate Debtor-**

I. The Corporate Debtor, at the very outset, denied all contents in the Petition filed by the Financial Creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016. As submitted, the Corporate Debtor is a sub-contractor of Constructora San Jose GVK Projects and Technical Services Private Limited ("GVK Company") who had work orders of reclamation work for land development works of the Navi Mumbai International Airport.

II. The Corporate Debtor submitted that the Financial Creditor has suppressed material facts from this Hon'ble Tribunal. As contended, the Financial Creditor has filed a certified copy of the Board Resolution; however, the said copy does not mention any date of issuance. Further, the authorized representative of the Financial Creditor lacks the requisite authority to depose on behalf of the Financial Creditor.

III. The Corporate Debtor also stated that the Financial Creditor had initiated proceeding no. 1186/2022-23 under Section 101 of Maharashtra Co-operative Societies Act, 1960 before the District Deputy Registrar, Thane. The said proceeding was dismissed by the District Deputy Registrar,

Thane, who denied issuance of recovery certificate against the Corporate Debtor.

IV. Further, the Corporate Debtor submitted that the Financial Creditor has already initiated action under the SARFAESI Act and obtained an order under Section 14 of SARFAESI Act from the District Magistrate, Raigad. However, these facts have been suppressed from this Hon'ble Tribunal.

V. The Corporate Debtor stated that it has filed Securitization Application (diary) no. 361/2023 along with miscellaneous application no. 114/2023 before the Debt Recovery Tribunal Mumbai, wherein the Financial Creditor has appeared. These facts have also been suppressed from this Hon'ble Tribunal.

VI. The Corporate Debtor submitted that it has not diverted the funds but the Financial Creditor classified the loan account of the Corporate Debtor as NPA without following the due process of law. All accounts of the Corporate Debtor were ceased by the Financial Creditor. As the Corporate Debtor had received a work order from GVK company for the reclamation works for land development of Navi Mumbai International Airport, while the Corporate Debtor completed the work order, the Financial Creditor ceased the account of the Corporate Debtor. Therefore, in view of the same, the Corporate Debtor could not pay the royalty as per CIDCO and Maharashtra regulations. Consequently, GVK company has not disbursed the payment of the Corporate Debtor.

VII. It was also stated by the Corporate Debtor that there are some internal issues going on between the CIDCO and GVK Company with respect to the disbursement of payment of the work order of the reclamation of works for the land development works of Navi Mumbai International Airport. Further, the Corporate Debtor also issued a Demand Notice/ Request Letter dated 02/12/2022 to the GVK Company but despite the same, the

outstanding amount owed to the Corporate Debtor has still not been paid by GVK Company.

VIII. The Corporate Debtor also contended that the Financial Creditor has wrongly calculated the amount in default as mentioned in para 2 of part IV of the present Petition. The demand promissory note dated 15/07/2018, hypothecation deed dated 12/10/2018, acknowledgement of debt, agreement, personal guarantee form dated 12/10/2018, and cash credit agreement dated 11/09/2018 have been disputed by the Corporate Debtor in various legal proceedings. Further, the Corporate Debtor alleged that the aforementioned documents produced by the Financial Creditor contain numerous blank spaces and have been manipulated.

IX. In light of the above submissions, the Corporate Debtor prays that the application filed by the Financial Creditor be dismissed.

4. <u>Findings-</u>

I. In view of the submissions made by the Learned Counsels of both the parties and on the strength of pleadings advanced by respective Counsels and documents placed on record, it is evident that an amount of Rs. 24,23,48,147.70/- is pending on part of the Corporate Debtor and thus, the present Petition has been preferred by the Financial Creditor before the Hon'ble Tribunal.

II. On perusal of the reply submitted by the Respondent and also in view of the arguments advanced, it is evident that there is a dispute concerning the outstanding amount due and payable to the Financial Creditor. The Corporate Debtor has contended that the Financial Creditor has wrongly calculated the amount in default and has disputed various documents including the demand promissory note, hypothecation deed, acknowledgement of debt, agreement, personal guarantee form, and cash credit agreement. The Corporate Debtor has also alleged that these

documents contain numerous blank spaces and have been manipulated. Furthermore, the Corporate Debtor has submitted that it has not diverted any funds but rather the Financial Creditor classified the loan account as NPA without following due process of law. The Corporate Debtor's contentions are based on the fact that the Financial Creditor ceased its accounts and thus, this led to non-payment from GVK Company for the completed work order related to Navi Mumbai International Airport as the Corporate Debtor could not pay the requisite royalty as per the CIDCO and Maharashtra regulations.

III. However, the following facts deserves to be taken note of:

i. The Credit Facilities of Rs. 15,00,00,000/- were sanctioned on 22/06/2020 and disbursed on 15/07/2020

ii. The account was classified as NPA on 31/03/2021

iii. Notice under Section 13(2) of SARFAESI Act was issued on 27/10/2021

iv. Notice under Section 13(4) of SARFAESI Act was issued on 11/03/2022

v. The Corporate Debtor has failed to make any payment despite these notices

IV. Therefore, in view of the abovestated facts, it is evident that the Corporate Debtor has contended that the documents relied upon by the Financial Creditor contain numerous blank spaces and have been manipulated but the Corporate Debtor has nowhere denied the 'debt' and 'default' on its part. Though an attempt has been made by the Corporate Debtor to justify the non-payment of the pending amount by stating that the Financial Creditor ceased its accounts and the Corporate Debtor could not pay the requisite royalty as per the CIDCO and Maharashtra regulations, thus, this led to non-payment from GVK Company for the completed work order related to Navi Mumbai International Airport. Otherwise, also, the Record of Default

with the Information Utility (Annexed as **"ANNEXURE – 18"** to the present Petition) clearly display an amount of Rs. 24,23,48,147.70/- as the Default Amount on part of the Corporate Debtor. Thus, in view of the fact that there is an accepted 'debt' and 'default' and there is a Record of Default present with the Information Utility, this Bench is left with no other option but to admit the present Petition.

V. Keeping in view of the totality of the circumstances of the present case and in view of the fact that there is a clear default in payment of the credit facilities, and the fact that the present Petition has been filed by the Financial Creditor well within the limitation period, it is a fit case for admission. Furthermore, the amounts stated to be due in this case is well above the threshold limit as stipulated under Section 4(1) of IBC and in view of the settled law wherein the Hon'ble Supreme Court has been pleased to hold in the matter of ***M/s. Innoventive Industries Ltd. vs. ICICI Bank 2018 (1) SCC 407***

> *"28. 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."*

VI. Thus, present company petition is hereby **admitted** to CIRP by passing the following order.

ORDER

a. The above Company Petition No. 119/IBC/MB/2024 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. RK Patil Infraprojects Private Limited.**

b. The Petitioner has proposed the name of **Shri. Rajesh Shah**, bearing Registration No. IBBI/IPA-002/IP-N00592/2018-2019/11881, with place of residence at 635/84, Siddharth Vijaynagar Colony, Sadashiv Peth, Pune, Maharashtra - 411030, as Interim Resolution Professional. The IRP proposed by the Petitioner, is hereby appointed as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Petitioner shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.

d. That this Bench hereby declare moratorium in terms of Section 14 of Insolvency and Bankruptcy Code, 2016 prohibiting 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; 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. That the order of moratorium shall have effect from the date of pronouncement 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.

f. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

g. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the Corporate Debtor will vest in the IRP/RP. The board of directors of the Corporate Debtor shall stand suspended. The members of the suspended board of directors and the employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, C.P. No. 119/IBC/MB/2024 is **admitted**.

l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

MADHU SINHA

Member (Technical)

/Jhanvi/

Sd/-

REETA KOHLI

Member (Judicial)

Certified True Copy
Copy issued "free of cost"
On 02/12/2024

02/12/2024

Deputy Registrar
National Company Law Tribunal Mumbai Bench