IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.425/MB-IV/2021
Under Section 7 of the I&B Code, 2016

In the matter of:
State Bank of India
…Financial Creditor/Applicant
V/s
Chomu Mahla Toll Road Private Limited
[CIN: U45203MH2011PTC214747]
...Corporate Debtor/Respondent

Order Dated: 19.10.2022

Coram:

Mr. Manoj Kumar Dubey Hon'ble Member (Technical)	Mr. Kishore Vemulapalli Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)	:	Mr. Deep Roy a/w Ms. Radhika Raman and Mr. Dhaval Savla, Advocates.
For the Respondent(s)	:	None Present.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application being C.P. (IB) No. 425/MB/C-IV/2021 filed by State Bank of India, the Financial Creditor/Applicant, under

section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Chomu Mahla Toll Road Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

<u>The Brief Facts of the Case:-</u>

2. The Application is filed by Mr. K.L. Anil Kumar, Chief Manager and Case Officer, Cuffe Parade Branch of the Financial Creditor claiming Total Default of Rs.109,51,07,473/- (Rupees one hundred nine crores fifty-one lakh seven thousand four hundred seventy-three only) which includes:

   Principal Amount of Rs. 58,00,37,574/- (Rupees fifty-eight crore thirty-seven thousand five hundred seventy-four only)

   Interest Outstanding of Rs. 48,60,42,289/- (Rupees forty-eight crore sixty lakh forty-two thousand two hundred eighty-nine only)

   Penal Outstanding of Rs. 2,90,27,610/- (Rupees two crore ninety lakh twenty-seven thousand six hundred ten only)

3. The Date of Default as mentioned in the Petition is 05.03.2020. The Petition is filed on 02.05.2021.

4. <u>The Tabulation Chart of the claim amount is annexed at page 484 of the Petition, which are as under: -</u>

SBI Position as on 25.03.2021					**(Amount in Rs.)**
Facility	**Limit**	**O/s**	**Acc Intt**	**Penal Intt**	**Total Dues**
Term Loan Agreement dated 25th July 2012:	350,000,000	349,891,857	299,472,821	17,452,577	666,817,255
First Amendment Agreement dated 11th December 2015 to Term Loan Agreement dated 25th July 2012 & Term Loan Agreement dated 11th December 2015 –	78,500,000	77,792,521	65,553,551	3,879,427	147,225,499
Investment (e-SBP)*	-	24,200,000	-		24,200,000
Term Loan Agreement dated 25th July 2012:	125,000,000	124,873,196	98,768,440	6,325,967	229,967,603
First Amendment Agreement dated 11th December 2015 to Term Loan Agreement dated 25th July 2012 & Term Loan Agreement dated 11th December 2015 –	28,000,000	27,480,000	22,247,477	1,369,640	51,097,117
Investment (e-SBH)*	-	8,600,000	-		8,600,000
	581,500,000	**580,037,574**	**486,042,289**	**29,027,610**	**1,095,107,473**

* Equity investment as per Strategic Debt Restructuring

5. The Financial Creditor submits that, the erstwhile State Bank of Patiala had sanctioned a Term Loan of Rs.35,00,00,000/- (Rupees Thirty-Five Crores only) on 20th June 2012 which was further amended via Agreement dated 11th December, 2015. The erstwhile State Bank of Hyderabad had sanctioned a Term Loan of Rs.12,50,00,000/- (Rupees twelve crores and fifty lacs only) on 12th July 2012 in favour of the Corporate Debtor which was later on amended via Agreement dated 11th December, 2015.

6. Vide Gazette Notification No. GSR 159(E) and GSR 157(E) dated 22nd February 2017 and 1st April 2017, the State Bank of Patiala and

the State Bank of Hyderabad came to be merged with the State Bank of India.

7. The Financial Creditor submits that, the Term Loan Agreement executed by the Corporate Debtor with *inter-alia* the erstwhile State Bank of Patiala and the State Bank of Hyderabad, amongst a consortium of Banks. Whereas the term of the loan extended by the erstwhile State Bank of Patiala was 12.91 years, including a consortium period of 1.5 years and a moratorium period of 1.41 years, the term of the loan extended by the erstwhile State Bank of Hyderabad was 13 years, including a consortium period of 1.50 years and a moratorium period of 1.5 years. The interest payable under both the loans was 12.50% per annum (p.a.).

8. The Financial Creditor submits that, the terms of the Loan Agreements were encapsulated in a Term Loan Agreement dated 25th July 2012. Various security documents, including a Deed of Hypothecation, in favour of SBI alongwith other banks in the consortium, with ILF&S as the Security Head were executed. An Agreement of Pledge of Shares dated 26th July 2012, was also executed through which the shares held by Unity Infra Projects Limited were pledged in favour IL&FS Trust Company Ltd., as a security cover in favour of the consortium of Banks.

9. The Financial Creditor further submits that, in 2015, the Corporate Debtor again approached them for grant/sanction/enhancement of existing credit facilities. Therefore, the erstwhile State Bank of Patiala considered the request of the Corporate Debtor and had sanctioned a term loan of Rs. 7,85,00,000/-(Rupees seven crores eighty-five lacs only) on 28th August 2015. Similarly, the erstwhile State Bank of

Hyderabad had sanctioned a term loan of Rs.2,80,00,000/-(Rupees two crores eighty lacs only) on 30th September 2015.

10. The Financial Creditor submits that, a first Amendment to the Term Loan Agreement on 25th July 2012 and a second Term Loan Agreement came to be executed on 11th December, 2015. As in the previous instance, the Term Loan Agreement executed by the Corporate Debtor with *inter-alia* the erstwhile State Bank of Patiala and the State Bank of Hyderabad, amongst a consortium of Banks. Whereas the term of the loan extended by the erstwhile State Bank of Patiala was 11 years and 9 months, including the balance construction period and moratorium period, the loan extended by the erstwhile State Bank of Hyderabad was repayable in 40 unequal instalments. The interest payable under the loan extended by the State Bank of Patiala was 12.5% p.a. and that under the loan extended by the State Bank of Hyderabad was 12.20% p.a.

11. However, the Corporate Debtor was irregular in the discharge of the loan, and therefore, its account came to be declared as a Non-Performing Asset on 29th August 2016, as per RBI Guidelines. Counsel for the Financial Creditor submits that, the Corporate Debtor executed a Revival Letter on 11th June 2018 and acknowledged that a sum of Rs.266.25 crores extended by the consortium of Banks, including by the erstwhile State Bank of Patiala and the State Bank of Hyderabad, was due and outstanding to the Financial Creditor herein.

12. The Financial Creditor issued a Legal Demand Notice on 5th March 2020 thereby demanding for repayment of outstanding dues to the extent of Rs. 96,47,17,869/- as on 29.02.2020 along with pendente lite and future interest, cost, and expenses in account of the Corporate

Debtor. Despite receipt of said Demand Notice, the Corporate Debtor neither replied to the same, nor repaid the outstanding dues.

13. The Financial Creditor submits that, till date, the Corporate Debtor has neglected to pay the amount due and payable to the Financial Creditor and has failed to repay the default committed by it. As a consequence, the Corporate Debtor is now liable to pay a sum of Rs. 109,51,07,473/-.

14. The Financial Creditor filed Statement of Accounts which states that the amount claimed in the Petition is in consonance with the Account Statement. The Financial Creditor also filed CRILIC Report. The certificate u/s 2A(a) of Banker's Book Evidence Act, 1891 is annexed with the Petition.

Reply of the Corporate Debtor

15. The Director of the Corporate Debtor stated that 51% Shareholding of the Corporate Debtor is presently held by Public Sector Bank including the Applicant who hold more than 11% shares acquired under the Strategic Debt Restructuring Scheme formulated by RBI. Union Bank of India, United Bank of India and Oriental Bank of Commerce (since merged with Punjab National Bank) are the other major Shareholders. These four Banks amongst themselves hold 51% of Shares of Corporate Debtor.

16. The Corporate Debtor submitted that, when the road construction project which was the subject matter of finance provided by these four Banks was stuck mid-way, the Corporate Debtor one Garuda Construction & Engineering Private Limited and aforesaid four Banks holding 51% shareholding in the Corporate Debtor had entered into a

Tripartite Agreement on 01.11.2017 in terms of which funds to the extent of Rs. 22.00 crores were to be infused by the Garuda and funds to the extent of Rs. 15.00 crore were to be infused by the four lenders including the Applicant/ Financial Creditor herein to meet the deficit/ short-fall in completing the Project. Though Garuda infused funds to the extent of Rs.15.00 crores, the Financial Creditor herein failed to release the Applicant's pro-rata share and consequently the project could not be completed. Government of Rajasthan too failed to meet its commitments for supporting the project to the extent of Rs.18.00 crores and instead went ahead and cancelled the contract with the Corporate Debtor. The debt incurred by the Corporate Debtor could not be serviced and the accounts came to be classified as accounts in defaults. Garuda has already issued Notices to the Bank raising grievance over the non-release of funds.

17. The contract of Corporate Debtor with the Government of Rajasthan provided for arbitration clause to resolve the disputes. Since the project was completed to the extent of more than 80 to 85% of the sanctioned work, the Corporate Debtor is entitled to recover amount from the Government of Rajasthan by invoking arbitration clause. The amount that may be released through arbitration would be available for distribution amongst the Creditor of the Company.

18. The Corporate Debtor submits that, considering the stakes of Public Sector Institutions in the Company and considering the observations of the Hon'ble High Court of Bombay in its judgment dated 03.02.2011 while deciding Company Petition No. 892/2000 (Oman Intl. Bank S.A.O.G. Vs. Iridium India Telecom Limited), it would be worthwhile for the Financial Creditors including Applicant herein to first attempt to realise the amounts from Government of Rajasthan

before subjecting the Company to strict timeframes of formulation of a resolution plan since in the face bleak possibility of a resolution plan emerging in a vacuum, the Company would be forced into liquidation causing loss to all stakeholders.

19. The Corporate Debtor has no fund or cash balance even to meet the cost imposed by this Hon'ble Tribunal vide its order dated 11.01.2022.

Rejoinder of the Financial Creditor

20. Counsel for the Financial Creditor submits that, in its aforesaid reply, the Corporate Debtor has admitted to availing of financial debt from the Financial Creditor and the default committed by it in repayment of such financial debt. The Corporate Debtor, in paragraph 3 of the Reply clearly states that "The debt incurred by the company could not be serviced and the accounts came to be classified as account in default."

21. **Conversion of debt pursuant to the structured debt restructuring scheme:-**

a. The Corporate Debtor in its Reply has submitted that the Financial Creditor, pursuant to the Structured Debt Restructuring scheme formulated by the Reserve Bank of India (SDR), has acquired over 11% of the shareholding of the Corporate Debtor. In light of the above, the Corporate Debtor has alleged that pursuant to the SDR, the debt owed to the Financial Creditor has been converted into equity and thus the debt in question has been extinguished.

b. The Financial Creditor that such contention raised by the Corporate Debtor is baseless and devoid of any merit. It is pertinent to note that pursuant to the SDR, only a portion of the debt owed by the

Corporate Debtor to the Financial Creditor has been converted into equity in the form of 11% shareholding of the Corporate Debtor. The Financial Creditor, in the present Petition, has acknowledged the said conversion and has provided the status of the amounts outstanding and payable by the Corporate Debtor to the Financial Creditor as on March 31, 2021 [Ref: Exhibit-V on pg. no. 484 of the Petition]. This has also been acknowledged by the Corporate Debtor in its audited financial statement as on March 31, 2017 wherein it is suggested that the consortium of lenders, including the Financial Creditor, have converted only a portion of their debts aggregating to INR 18,10,00,000 (Indian Rupees Eighteen Crores Ten Lakhs Only) into equity. Further, the audited financial statements of the Corporate Debtor as on March 31, 2017 also recognize the long-term borrowings and loans availed from the Financial Creditor as a liability of the Corporate Debtor. A copy of the relevant portion of the financial statement of the Corporate Debtor as on March 31, 2017 is annexed in the Rejoinder.

c. In light of the above, it is abundantly clear and substantially established that the debt being pursued herein, and the amounts of default mentioned in the present Petition are the amounts due to the Financial Creditor under the various financial facilities granted to the Corporate Debtor that have not been converted into equity.

22. **Cancellation of the contract by the Government of Rajasthan**

a. The Corporate Debtor has submitted that the road construction project which was awarded to the Corporate Debtor by the Government of Rajasthan ("Employer") which is also the subject matter of the debt due to the Financial Creditor was terminated by the Employer vide its notice dated December 19, 2019.

b. In light of the aforementioned contention of the Corporate Debtor, the Financial Creditor hereby states that such submission by the Corporate Debtor does not have any bearing on the liability of the Corporate Debtor to repay the financial debt to the Financial Creditor as per the terms and conditions of grant of such financial debt and the default committed in repayment of such financial debt, being independent obligation of the Corporate Debtor, which is the subject matter of the present Petition.

23. **Arbitration proceedings for recovery of amount due from the Government of Rajasthan**

a. Further, the Corporate Debtor has submitted that in light of such wrongful termination by the Employer, the Corporate Debtor is entitled to recover the amounts for the works done by the Corporate Debtor by initiating arbitration proceedings against the Employer. In light of such recovery, the Corporate Debtor has suggested that such amounts shall be utilized for repayment to the creditors of the Corporate Debtor. This submission by the Corporate Debtor is immaterial and cannot be considered. The initiation of such proceedings does not have any effect on the debt owed by the Corporate Debtor to the Financial Creditor.

Findings:

24. We have carefully gone through the pleadings available on records and considered the arguments of both the sides.

25. The case was first listed on 25.08.2021, when Mr. Sanjiv Punalekar, was appeared on behalf of the Corporate Debtor and sought time to file reply. Despite sufficient opportunities being granted, the

Corporate Debtor failed to file reply. Thereafter, on 11.01.2022, again the Counsel requested time for filing reply. This Bench was not satisfied on the conduct of the Corporate Debtor and imposed a cost of Rs.1.00 lakh. The Corporate Debtor had filed reply on 16.02.2022 and showed his inability to deposit the costs as imposed vide order dated 11.01.2022 due to unavailability of funds. Therefore, the reply filed by the Corporate Debtor is not considered in view of non-compliance of the order dated 11.01.2022.

26. It is evident from the records that the Financial Creditor along with other consortium lender Banks had granted/ sanctioned various credit facilities which were renewed/ restructured/ enhanced from time to time in favour of the Corporate Debtor. The Corporate Debtor availed the credit facilities but failed to repay the dues as a result of which the accounts of the Corporate Debtor were classified as Non-Performing Asset as per RBI prudential norms. Furthermore, on 11.06.2018, the Corporate executed a Revival Letter acknowledging that a sum of Rs.266.55 Crores is due and payable to the Financial Creditor/Creditor. The Petition was filed on 12.05.2021 and the Corporate Debtor executed revival letter on 11.06.2018. Thus, the Petition was filed well within the period of limitation prescribed under section 18 of the Limitation Act, 1963 i.e. three years.

27. Considering the above facts, we opine that the nature of debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor.

28. The Applicant has proposed the name of Mr. Naren Sheth, a registered insolvency resolution professional having Registration

Number [IBBI/IPA-001/IP-P00133/2017-18/10275] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

This Application being C.P. (IB) No. 425/NCLT/MB/C-IV/2021 filed under Section 7 of I&B Code, 2016, filed by State Bank of India**,** Financial Creditor/ Applicant against Chomu Mahla Toll Road Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

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 possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

   a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
   b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

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

VI. That this Bench appoints Mr. Naren Sheth, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00133/2017-18/10275], Email: nvsheth@mkindia.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

e) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).

f) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

g) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

Manoj Kumar Dubey
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)

19.10.2022