

**NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (Court I)
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH
NATIONAL COMPANY LAW TRIBUNAL, HELD AT ON 10.01.2022 at 10.30 AM
THROUGH VIDEO CONFERENCING**

**PRESENT: JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

**APPLICATION NUMBER :
PETITION NUMBER : IBA/870/2020
NAME OF THE PETITIONER(S) : State Bank of India
NAME OF THE RESPONDENTS : Ganga Foundations Pvt Ltd
UNDER SECTION : Sec 7 Rule 4 of IBC, 2016**

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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH
COURT- I, CHENNAI**

IBA/870/2020

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **Ganga Foundations Private Limited***

State Bank of India,
Stressed Assets Management Branch,
Rep. by Assistant General Manager,
Montieth Road,
Egmore, Chennai.

... Financial Creditor

-Vs-

Ganga Foundations Private Limited,
New No. 69, Old No.33,
Hemavathy Complex,
Paper Mills Road,
Perambur, Chennai – 600 011.

... Corporate Debtor

Order pronounced on 10th January, 2022

CORAM :

**JUSTICE RAMALINGAM SUDHAKAR (HON'BLE PRESIDENT)
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

For Operational Creditor : Mr. K.Chandrasekaran, Advocate

For Corporate Debtor : Mr. K.Moorthy, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

1. This is an Application filed by State Bank of India, Stressed Assets Management Branch for initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor viz., **Ganga Foundations Private Limited** under

Section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC, 2016).

2. From Part-I of the Application, it is observed that the Applicant is State Bank of India. From Part-II of the Application, it is seen that the Corporate Debtor is a private limited Company having CIN: U45201TN2004PTC054417 and was incorporated on 08.10.2004. The registered office of the Corporate Debtor is located at New No. 69, Old No.33, Hemavathy Complex, Paper Mills Road, Perambur, Chennai – 600 011.
3. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) is Ms. Kavitha Surana, Reg No. IBBI/IPA-002/IP-N00166/2017-18/10435, E-mail ID: kavitha@mksurana.com. Her Authorization for Assignment is valid up to 28.11.2022.
4. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.49,30,00,000/- which is due and payable by the Corporate Debtor towards the Dropline Overdraft Term Loan under Asset Backed Loan CRE and Dropline Overdraft Working Capital Demand Loan under Asset Backed Loan CRE.
5. The default amount has been mentioned as Rs.44,57,38,746.16 as on 18.03.2020. the Date of NPA is 30.04.2017. Necessary

certificate under Banker's Books of Evidence Act has been attached as Annexure-1.

6. Under Part-V of the Application, the Applicant has submitted the following as the security documents: -

1. Hypothecation of current assets of the Corporate Debtor including stocks of raw materials semi-finished and finished goods, consumable stores, book debts / receivables, etc - As on date reported to be NIL.

2. Hypothecated of the assets including charge on the current assets created out of the Bank finance including first charge on the monthly rent receivables from the Mall in schedule movable property, aggregating to more than Rs. 65 lakhs.

3. Collateral security by way of Equitable Mortgage of Immovable properties vide Memorandum of Deposit of Title Deeds and Doc Nos. 3304/2012 and 6666/2014, is annexed hereto as Annexure -1 and as described in Fact sheet.

4. Certificate of registration of charge dated 18.03.2020 issued by the Registrar of Companies by way of Master Data is annexed hereto as Annexure -1

7. It is also observed that the Financial Creditor has filed Original Application No.441/2018 on 17.07.2018 before the DRT-II Chennai and the same attached as Annexure-1. SARFAESI proceedings was initiated by the Applicant Bank under Section 13(2) of the SARFAESI Act on 12.05.2017.

8. To ascertain the default, the Financial Creditor has filed Commercial Credit Information Report (Trans Union CIBIL) which is annexed at page Nos. 172 to 197. The copy of record under Central Registry of Securitization Asset Reconstruction

and Security Interest of India is placed from page Nos. 198 to 205.

9. The Financial Creditor has filed the Income Tax Return Acknowledgement of the Corporate Debtor, for the Assessment Year 2018-2019 (year ended 31.03.2018) is placed at page No. 233 along with the copy of the balance sheet as on 31.03.2018 of the Corporate Debtor is placed from page Nos. 234 to 244.
10. Ld. Counsel for the Financial Creditor submitted that vide letter dated 24.07.2014, State Bank of India, SME Branch, Chennai has sanctioned Credit Facility to the Corporate Debtor aggregating to Rs.49.30 crores.
11. The said loan comprised two different loans:
 - a. Dropline Overdraft Term Loan under Asset Backed Loan CRE Rs.41.30 crores.
 - b. Dropline Overdraft Working Capital Demand Loan under Asset Backed Loan CRE Rs.8.00 crores.
12. The Financial Creditor states that the Corporate Debtor agreed to repay the Dropline Overdraft Term Loan with interest @ 3.70% above based rate including a tenor premium of 0.20% (base rate 10%) effective rate at that time is 13.70% with monthly rests. The said Term Loan was repayable in 96 monthly instalments, commencing from August, 2014 and the last instalment falling due on July 2022, interest on Term Loan

should be serviced as and when applied. The schedule of repayments is placed at page No. 7 of the Application.

13. The Financial Creditor further submitted that the Dropline Overdraft Working Capital Demand Loan of Rs.8.00 crores has been discharged by the Corporate Debtor.
14. The Financial Creditor submits that the charges created by the Corporate Debtor in favour of the Financial Creditor were duly registered with the Registrar of Companies. The Search Report dated 27.03.2019 furnished to the Financial Creditor is placed on record.
15. The Financial Creditor submits that the account was classified as Non-Performing Asset (NPA) on 30.04.2017 and that in spite of repeated demands and several reminders made, the Corporate Debtor failed to repay the liability owed by them to the Financial Creditor under the aforesaid credit facilities.
16. The Applicant herein has issued a Demand Notice dated 12.05.2017 under Section 13(2) of the SARFAESI Act, however, the Corporate Debtor failed to discharge its liability. Thus, the Financial Creditor submits that the Corporate Debtor is liable to pay a sum of Rs.44,57,38,746.16 under the aforesaid loan facility as on 18.03.2020.
17. The Corporate Debtor has filed its Counter on 10.01.2022 and submits that the Corporate Debtor was sanctioned One

Time Settlement (OTS) by the Applicant Bank on 30.11.2020. In terms of the OTS, the Corporate Debtor has paid the first and second instalments on 24.12.2020 and 06.01.2021. However, the Corporate Debtor could not pay the balance amount of the OTS and requested the Applicant to extend the time.

18. The Applicant herein vide letter dated 20.05.2021 (copy of which is attached at page No. 11 by the Corporate Debtor in its Counter) has refused to extend the time limit.

19. Heard the submissions made by the Counsels for both parties. It is seen that the Applicant has sanctioned and disbursed the loan to the Corporate Debtor and has obtained various securities and registered charges. Since the Corporate Debtor has defaulted on the loan which is very clearly admitted by the Corporate Debtor in its Counter.

20. It is also seen that vide letter dated 20.05.2021, the Corporate Debtor has requested the Applicant Bank to extend time for making the balance payment. It is seen that both the date of NPA is 30.04.2017 and the date of filing this Application before this Tribunal is 14.08.2020. The debt in question is out of purview of limitation due to the following reasons: -

a. At page 237 the schedule of loan term borrowings of the Corporate Debtor is on 31.03.2018 is provided the same is extracted below:-

Long Term Borrowings

	2017-18	2016-17
Secured		
Term Loan from banks		
REPCO Bank Ltd	31,967,644.00	33,056,608.00
SBI Asset Backed Loan	332,114,526.27	337,230,696.63
SBI Project Loan - Maduravoyal	7,412,468.20	79,553,082.50
	371,494,638.47	449,840,387.13

- b. OTS was sanctioned vide letter dated 30.11.2020 and 27.11.2020 which was duly accepted by the Corporate Debtor. A sum of 10% was paid on 24.12.2020 and 30.12.2020 and first and second instalments was also on 06.01.2021 and 07.01.2021.
21. When the Corporate Debtor acknowledges loan of Rs.332,114,526.27 in its audited balance sheet as on 31.03.2018, when Application under Section 7 is filed on 14.08.2020 and when the OTS is accepted by the Corporate Debtor on 30.11.2020 and paid belatedly by December 2020, the debt in question is certainly within the limitation.
22. It is seen from the record that the default due is more than Rs.1 crore which is prior to the period when Section 10A of IBC was put into place.
23. Under these circumstances, this Tribunal is left with no other option to proceed with the present case and initiate the CIRP in relation to the Corporate Debtor.

24. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.
25. The Financial Creditor has proposed the name of **Ms. Kavitha Surana**, Reg No. IBBI/IPA-002/IP-N00166/2017-18/10435, E-mail ID: kavitha@mksurana.com as the Interim Resolution Professional (IRP) who has also filed her consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP is valid till 28.11.2022. The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15, 17, 18 of the Code and file her report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

26. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 the possession of the respondent.

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;

27. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(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.

28. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(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.

29. Based on the above terms, the Application stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date and shall continue till the time the same is specifically ordered to be lifted by this Adjudicating Authority. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall



also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
Justice RAMALINGAM SUDHAKAR
Hon'ble PRESIDENT

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