



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.312/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

STCI Finance Limited

[CIN: U51900MH1994PLC078303]

...Financial Creditor/Applicant

V/s

Man Infraprojects Limited

[CIN: U70101MH2006PLC164930]

...Corporate Debtor/Respondent

Order Dated: 24.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) :

Mr. Shyam Kapadia a/w
Mr. Ayush Rajani (PCA) &
Ms. Khushboo Shah i/b
AKR Advisors, Advocates.

For the Respondent(s) :

Mr. Karl F. Tamboly a/w
Ms. Mitika Agrawal,
Advocates.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 312/MB/C-IV/2021 filed by STCI Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Man Infraprojects Limited, Corporate Debtor.
2. The Application is filed by Ms. Sabita Braganza, Assistant General Manager of the Financial Creditor duly authorised vide its Power of Attorney dated 16.01.2018, claiming total default of Rs.28,26,69,996/- (Rupees twenty-eight crore twenty-six lakh sixty-nine thousand nine hundred ninety-six only) as on 24.03.2021, which includes Interest at the rate of 13.75% and Penal Interest at the rate of 2.00%.
3. The Date of NPA is stated to be 31.03.2017 and the Date of Default is stated to be 02.12.2016 in the Part-IV of the Petition. The Date of Default as per record of default with Information Utility is stated to be 01.03.2017. The Petition is filed on 30.03.2021.
4. The case of the Financial Creditor is that the Financial Creditor has provided Corporate Loan of Rs.10,00,00,000/- and Short-Term Loan of Rs.7,00,00,000/- to the Corporate Debtor. For the purpose of the this, the Financial Creditor and the Corporate Debtor entered into the Loan Agreement on 01.12.2015. However, the Corporate Debtor failed to repay the dues when it became due.

5. The Financial Creditor submitted that in view of the Hon'ble Supreme Court decision dated 08.03.2021 Suo Motu Petition (Civil) No. 3 of 2020, the Present Petition is within the period of Limitation. The Financial Creditor has filed the Ledger Statement of the Corporate Debtor.
6. The Financial Creditor has filed the NeSL Report dated 26.03.2021 which shows the total outstanding amount of Rs.16,42,09,634/-. The Financial Creditor has also filed the Statement of Accounts of the Corporate Debtor as on 31.03.2016 which has been signed on 13.12.2016 in support of its contentions that the amount claimed as due is also reflecting in books of accounts of the Corporate Debtor.
7. The Corporate Debtor has filed its Affidavit-in-reply dated 08.02.2022 disputing the outstanding amount of Rs.28,26,69,996/- (Rupees twenty-eight crore twenty-six lakh sixty-nine thousand nine hundred ninety-six only) as claimed by the Financial Creditor. However, the Corporate Debtor has admitted the loans amounting to Rs.10,00,00,000/- and Rs.7,00,00,000/- and also showed its inability to pay the debt.

Findings/Observations:

8. We have heard the arguments of the Learned Counsel for both the sides.
9. After perusal of the material on record, this Bench is of considered view that the Financial Creditor has provided Corporate Loan of Rs.10,00,00,000/- and Short-Term Loan of Rs.7,00,00,000/- to the Corporate Debtor in term of the Loan Agreement on 01.12.2015. The

amount of Rs.10,00,00,000/- is also reflecting in Audited Financial Statement as on 31.03.2016 under Loan from Financial Institutions. Further, the Corporate Debtor has also admitted its liability in its Affidavit-in-reply dated 08.02.2022. Hence, there is no dispute as to existence of a debt and the default in payment thereof.

10. The Financial Creditor has relied upon the decision of Hon'ble Supreme Court dated 08.03.2021, Suo Motu Petition (Civil) No. 3 of 2020 to extend the period of limitation and pleaded that the Credit Facility became NPA on 31.03.2017 hence the present Application is within limitation. It is settled law that limitation runs from the Date of Default and not from the Date of declaration of account as NPA. Hence, the limitation has to be determined with reference to Date of Default only.
11. On perusal of the records, it is noticed that this Application has been filed on 30.03.2021 and the Date of NPA and Date of Default is stated to be 31.03.2017 and 02.12.2016 in the Part-IV of the Petition. Further, the Date of Default as per record of default with Information Utility is stated to be 01.03.2017. In view of this, the present Application having been filed on 30.03.2021 is barred by limitation in view of Date of Default as per Part-IV date as well as per IU Records. The Financial Creditor has already filed Financial Statement till 31.03.2016. Since this financial statement has been signed on 13.12.2016, it does not save the case of the Financial Creditor.
12. As the limitation period expires before 24.03.2020, the enlargement of period as granted by Hon'ble Supreme Court on account of Covid-19 is not applicable in the Present Petition filed by the Financial Creditor.

13. In view of this the Present Petition filed by the Financial Creditor for imitating CIRP against the Corporate Debtor is barred by law of limitation and hence is liable to be dismissed.

ORDER

14. This Application being C.P. (IB) No. 312/MB/C-IV/2021 filed by STCI Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Man Infraprojects Limited, Corporate Debtor is hereby **Rejected**.
15. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present Petition.

Sd/-
Prabhat Kumar
Member (Technical)
24.02.2023

Sd/-
Kishore Vemulapalli
Member (Judicial)