



**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH-IV**

**CP (IB) No. 843/MB-IV/2021**

Under Section 7 of the IBC, 2016

*In the matter of*

**Canara Bank**

**[PAN NO: AAACC6106G]**

... Financial Creditor

V/s.

**Bellona Estate Developers Limited**

**[CIN: U70200MH2007PLC166899]**

... Corporate Debtor

Order Pronounced on: **19.05.2023**

*Coram:*

**Mr. Prabhat Kumar**

Hon'ble Member (Technical)

**Mr. Kishore Vemulapalli**

Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Financial Creditor: Mr. Chetan Kapadia Senior Counsel a/w Mr. Rohan Agarwal a/w Mr. Ashish Mehta a/w Ms. Sneha Mahawar i/b Ethos Legal Alliance, Adv.

For the Corporate Debtor: Mr. Shyam Kapadia a/w Mr. Vikrant Zunjarrao & Mr. Sagar Vichare i/b Zunjarrao & Co., Adv.



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**ORDER**

*Per: Kishore Vemulapalli, Member (Judicial)*

1. This is an application being CP (IB) No.843/MB-IV/2021 filed by Canara Bank, the Financial Creditor/Applicant, on 14.07.2021 under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Bellona Estate Developers Limited, Corporate Debtor.

1.1. The financial creditor has claimed a default of Rs. 1,75,81,72,267.90/- (Rupees One Hundred Seventy Five Crores, Eighty One Lacs, Seventy Two Thousand, Two Hundred sixty Seven and Ninety Paise Only) as on 31.05.2021 and the default amount includes Term Liability Plus Equity Exposure Liability as per SDR mechanism. The date of default as stated in part IV on 01.08.2015. It is stated that the date of default has been arrived at basis the repayment schedule as stipulated in the sanction letter dated 22.03.2014, 29.03.2014 and 07.08.2015.

1.2. The Corporate Debtor is a limited company (company limited by shares) incorporated under the Companies Act, 1956 and is engaged in the business of acquire, develop and program real estate over the period of more than 10 years. The Corporate Debtor through its Directors approached the Financial Creditor for availing financial assistance for a business purpose.



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2. The Financial Creditor, Syndicate Bank (Since merged with Canara Bank) granted a Term Loan of Rs.80.00 Crores (Rupees Eighty Crore Only) to the Corporate Debtor on 22<sup>nd</sup> March 2014 under Lease Rental Discounting facility and disbursed the same on 29<sup>th</sup> March, 2014. The Composite Hypothecation Agreement was executed between the Financial Creditor and the Corporate Debtor for a Term Loan of RS 80 Crores (Eighty Crore Only). On this date, the Charge, Book Debts Agreement and a Guarantee Agreement was executed between the Financial Creditor and the Corporate Debtor for a Term Loan of Rs.80.00 Crores (Rupees Eighty Crore Only). On 29<sup>th</sup> March, 2014, the Charge Creation was executed with MCA21. On 11 September 2014, The Security Trustee Agreement between IDBI Trusteeship Services Limited and Corporate Debtor was made. On 1<sup>st</sup> August, 2015. The operation and conduct of the Corporate Debtors became irregular towards the repayment of the loan amount. On 28 October, 2015 as a consequence of the defaults made by the Corporate Debtors, the secured creditors were constrained to classify the debt as Non-Performing Assets (NPA).

2.1. Initially, the loan repayment was to be done in 87 monthly unequal instalments commencing from 1<sup>st</sup> April 2015; later on changed to commence from 1<sup>st</sup> August 2015; and further extended by 8 months to commence from 1<sup>st</sup> April, 2016. Interest to be served on monthly basis from very first month as and when debited to the term loan account. It is stated that the extensions of repayment period as per sanction letter 07.08.2015 was conditional on payment of Rs. 2,78,27,569.52, which the Corporate Debtor failed to pay. As a result, the sanction letter could not



be acted upon and as a result the repayment schedule as per sanction letter dated 29.03.2014 is to be followed which provided for repayment to commence from August 2015 in unequal monthly instalments along with the interest accrued in the account.

2.2. On 29th March 2016, The Corporate Debtor and Financial Creditor along with the Consortium Member Banks through its Directors signed the First Supplemental Agreement, Shareholders Agreement, Inter Creditor Agreement, Debtor Creditor Agreement and Undertaking. On 30th March, 2016, The Letter from the Corporate Debtor for resolution passed in the meeting held for allotment of equity shares to the lenders.

2.3. On 6th May, 2019, The Financial Creditor issued a Demand Notice to the Corporate Debtor demanding the repayment of the loan amount. On 26th July, 2019, The SARFAESI Notice was sent to the Corporate Debtor, Directors and Corporate Guarantors. On 18 December, 2019, The Letter from the Corporate Debtor for offer for closure of the loan disbursed to the company. On 6th January, 2020, The Financial Creditor issued a Demand Notice to the Corporate Debtor demanding the repayment of the loan amount if not paid then initiation of Insolvency proceedings against Corporate Debtors. On 16th January, 2020, The Corporate Debtor Replied to the Notice dated 6th January 2020. On 23 September, 2020, The Financial Creditor has filed Original Application in Debt Recovery Tribunal II Bangalore bearing O.A. No. 1488/2020.



2.4. The Corporate Debtor has from time to time in its audited financial statements admitted its liability and default in repayment of the financial debt to the Financial Creditor. The financial statements for the year ended on 31<sup>st</sup> March, 2018 acknowledges the outstanding loan from the Financial Creditor (earlier Syndicate Bank), the relevant portion is extracted below

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**Footnotes**

(A) According to the information and explanations given to us and based on the records of the Company examined by us, the company has defaulted in payment of interest, repayment of loans or borrowings to bank and Debenture Holder as mentioned herein:

Particulars (Name of the lenders)	Amount of default as at the balance sheet date (Rs.)	Period of Default
Union Bank of India	82,52,33,371	From FY 2015-16
Syndicate Bank of India	1,14,79,34,984	From FY 2015-16
Vijaya Bank	28,83,67,478	From FY 2015-16
Debenture Holders	1,61,95,39,727	From FY 2015-16

2.4.1. It is acknowledged in the financial statements for the year ended on 31<sup>st</sup> March, 2019 as follows –

**Footnotes**

(A) According to the information and explanations given to us and based on the records of the Company examined by us, the company has defaulted in payment of interest, repayment of loans or borrowings to bank and Debenture Holder as mentioned herein:

Particulars (Name of the lenders)	Amount of default as at the balance sheet date (Rs.)	Period of Default
Union Bank of India	90,33,24,310	From FY 2015-16
Syndicate Bank of India	1,31,50,73,570	From FY 2015-16
Vijaya Bank	33,44,53,316	From FY 2015-16
Debenture Holders	1,78,73,09,590	From FY 2015-16



2.5. The Corporate Debtor has paid a sum of Rs 9,62,46,896/- in total from the date of sanction out of which Rs.2,11,76,395/- was paid after the account turned NPA as against the total amount of Rs 17,70,5791/- till the date of NPA.

2.6. Therefore, since 2015-2016 to 2021-2022, the Corporate Debtor has been making unequivocal and unambiguous acknowledgments in its audited financial statements / balance sheets. I say that when an entry has been made in a balance sheet by a Corporate Debtor qua a creditor / its liability, the same establishes acknowledgment of liability thereby extending the limitation period under the provisions of Section 18 of the Limitation Act, 1963. This position has been confirmed by the Hon'ble the Supreme Court of India in its judgment passed in the matter of *Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal*, reported at (2021) 6 SCC 366.

3. The Corporate Debtor has filed reply dated 17.01.2022 stating that -

3.1. There is no financial contract in terms of Rule 3(1)(d) of the Application Adjudicating Authority Rules, 2016 – The CD has alleged that the FC has relied on sanctioned letters to establish a loan transaction. However, sanctioned letters cannot be construed as a financial contract in terms of Rule 3 of the Application to Adjudicating Authority Rules, 2016. It is further alleged that the sanctioned letters do not contemplate the exact repayment schedule or the tenure of the loan.



- 3.2. The FC has acted in breach of its obligations under the Debtor-Creditor Agreement and has failed to take all necessary steps to comply with approved restructuring scheme within a stipulated period.
- 3.3. The Joint Lenders Forum by its own conduct has extended the timelines of the strategic debt restructuring and is still in the process of negotiations for sale of the immovable properties of the CD. Hence, the terms of the Debtor-Creditor Agreement continued to be applicable and hence the date of default i.e. 01.08.2015 is illegal and in breach of terms and conditions of Debtor-Creditor Agreement. Further, the joint lender forum has taken over the possession of securities mortgage with the consortium Bank under Section 13(4) of SARFAESI Act, 2002.
- 3.4. The Financial Creditor has breached the terms of Inter Creditor Agreement dated 29.03.2016 (ICA) entered amongst consortium lender by taking unilateral action.
- 3.5. The FC has failed to comply with its obligations in giving timely approvals for conclusion of the sale transaction of CD's immovable property at Bangalore due to which the proposed investor/purchaser withdrew its offer. In view thereof, FC has not exercised its rights in good faith and has prevented closure of CD's loans which is against the principles of IBC. The FC has acted in a mala fide manner and cannot be permitted to initiate IBC proceedings against CD.



3.6. The financial debt has not become due and has not been crystalized. The CB alleges that the sanction letters merely contemplate a tentative repayment scheme. By way of partial conversion of the debt of CD into equity, FC cannot initiate IBC proceedings.

3.7. There is ambiguity in the debt due from CD. The CD has alleged that the FC in its Demand Notice dated 06.05.2019 had indicated that the total amount over due in the account of approximately Rs.70.17 Crores. However, the present CP has been filed claiming an amount of approximately Rs.175.81 Crores. The FC has with a malafide intention inflated the total claim amount in the present CP.

3.8. It is alleged by the CD that it is a solvent company and has taken all steps including extending necessary cooperation for recovery of its lender's dues. It is further alleged that even after offering repayment of more than 52% of the dues, the FC has sought to initiate IBC proceedings against CD. It has paid fully owed to the Standard & Chartered Bank; payment against settlement of debt owed to the Bank of Baroda is in process; proposal for settlement of debt owed to the Bank of Baroda is in process.

3.9. It is alleged that the CP has been filed by FC with mala-fide intentions. Hence, this Hon'ble Tribunal may exercise its discretion in rejecting the present CP by relying on the provisions of Section 65 of the IBC.



4. The Financial Creditor has filed its rejoinder dated 18.04.2022 stating that:

4.1. The CD has admitted that by a letter dated 26.12.2013<sup>1</sup> it had sought financial assistance from the FC seeking a Term Loan of Rs.80 Crores.

4.2. By a sanction letter dated 22.03.2014<sup>2</sup>, sanctioned a Term Loan of Rs.80 Crores to the CD and this sanction letter expressly stipulated the repayment terms and schedule. This sanction letter further provided that the Term Loan could be converted into a lease rental discounting provided that the CD submits a Lease Rental Agreement to the FC on or before 31.12.2014.

4.3. Owing to the defaults committed by the CD, the Joint Lenders Forum of the CD decided to carry out a strategic debt restructuring of the loans of FC. However, the CD failed to comply with its terms and conditions under the strategic debt restructuring and therefore the FC is entitled to initiate the present proceedings.

5. This Bench heard the Counsel(s) and perused the material available on record.

5.1. This application was filed on 14.07.2021 stating date of default as 01.08.2015. During the hearing the Financial Creditor placed on record additional documents demonstrating that there exists acknowledgment of debt in view of admission of debt owed to the Applicant by the Corporate

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Debtor in the form of disclosure of such debt in its audited financial statements up to 31.03.2020. Besides this, First Supplemental Agreement was executed on 29th March 2016 by the Corporate Debtor along with the Shareholders Agreement, and Debtor Creditor Agreement. On 18 December, 2019, the Corporate Debtor sent a letter for offer for closure of the loan disbursed to the company. In view of this facts, this Bench finds that the present application is within the limitation period as the disclosure of debt owed to the Financial Creditor in the financial statement till 31.03.2020 is an admission of liability and further extends the limitation period as held by Hon'ble Supreme Court in case of *Dena Bank Vs. C. Shivakumar Reddy and Anr. (2021) ibclaw.in 69 SC*.

5.2. This Bench further notices that the Hon'ble Supreme Court in the case of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (2019) ibclaw.in 03 SC* held *Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests*. This Bench finds that an Inter Creditor Agreement was entered amongst the lenders of the Corporate Debtor under the restructuring however, such agreement does not restrict any of the signatory to the agreement from taking any action under the Code, as the proceedings under the Code for resolution of the Corporate Debtor are not adversary to the interest of the Corporate Debtor and hence, cannot be said to be in the nature of any legal action or proceeding against the Corporate Debtor. Accordingly, this Bench does not find any merit in the contention of Corporate Debtor.



5.3. This Bench finds that the Hon'ble Supreme Court in the case of M. Suresh Kumar Reddy Vs. Canara Bank & Ors (2023) ibclaw.in 67 SC held at para 13 that *Thus, it was clarified by the order in review that the decision in the case of Vidarbha Industries((2022 (8) SCC 352)) was in the setting of facts of the case before this Court. Hence, the decision in the case of Vidarbha Industries((2022 (8) SCC 352)) cannot be read and understood as taking a view which is contrary to the view taken in the cases of Innoventive Industries(( (2018) 1 SCC 407)) and E.S. Krishnamurthy(( (2022) 3 SCC 161)). The view taken in the case of Innoventive Industries(( (2018) 1 SCC 407)) still holds good.* It further held that *Even assuming that NCLT has the power to reject the application under Section 7 if there were good reasons todo so, in the facts of the case, the conduct of the appellant is such that no such good reason existed on the basis of which NCLT could have denied admission of the application under Section 7.* In the present case this Bench finds that the Corporate Debtor is in default to other lenders also though it is pleading that the settlement process with such lenders is in progress. This Bench further notes that the Corporate Debtor is pleading that the sale of mall complex will generate sufficient funds and allow it to settle the outstanding defaults. In view of this facts, this Bench does not feel that there exist exceptional circumstances to dismiss the petition.

5.4. As regards, contention that the lenders hold 51% of the capital of the Corporate Debtor which were acquired pursuant to restructuring of facilities, this Bench is of the view that this fact does not have any relevance to decide on an application under Section 7 of the Code.



5.5. Since, there exists a financial debt owed by the Corporate Debtor and there is a default in payment of such debt in excess of Rs.1 Crore, this Bench is of the considered view that the present application deserves to be allowed.

**ORDER**

6. The petition bearing CP (IB) No.843/MB-IV/2021 filed by Canara Bank, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the case of Bellona Estate Developers Limited, Corporate Debtor is admitted.

a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

- (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 (SARFAESI) Act, 2002;



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- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) 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;
- (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints Mr. Prashant Jain, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number IBBI/IPA-001/IP-P01368/2018-2019/12131 and email- prashj@hotmail.com. He is appointed as IRP for conducting



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CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational 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).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this



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regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

**Sd/-**

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**  
19.05.2023

**Sd/-**

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**