IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II

CP (IB) 360/MB/2023

Under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

The Canara Bank Limited

A body Corporate under the Banking Companies Acquisition & Transfer of Undertakings Act, 1970 having its Head Office at 112, J.C. Road, Bangalore 560002.

...... Applicant/ Financial Creditor

Versus

Valecha Kachchh Toll Roads Limited, having its registered address at Valecha Chambers, 4th Floor, Plot No. B-6, New Link Road, Andheri West, Mumbai 400053.

..... Corporate Debtor

Order Delivered on :-09.10.2023

Coram:

Mr. Anil Raj Chellan	**Mr. Kuldip Kumar Kareer**
Member (Technical)	**Member (Judicial)**

Appearances:

For the Financial Creditor	:	Adv. Anup Khaintan i/b Anup Khaitan & Co.
For the Corporate Debtor	:	None present

ORDER

Per: - Anil Raj Chellan, Member Technical

1. This Company petition is filed by Canara Bank (hereinafter referred to as "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Valecha Kachchh Toll Roads Limited (hereinafter referred to as "Corporate Debtor") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy code, 2016 (hereinafter called "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs.583,87,37,147.11 (Rupees Five Hundred and Eighty-Three Crores Eighty Seven Lakhs Thirty Seven Thousand One Hundred Forty Seven & Paise Eleven Only) as on 30.07.2016.

The submissions of the Financial Creditor are as follows:

2. Canara Bank, a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970 sanctioned a loan of Rs.200 crores vide sanction letter dated

22.11.2011 for improvement, widening, operation and maintenance of road including widening of existing 2/4 lane road and also to 4 lane for some distance in the state of Gujarat on Build, Operate and Transfer basis. Thereafter, a Common Loan Agreement dated 13.12.2011 along with Indian Overseas Bank (IOB) was executed between the Financial Creditor and the Corporate Debtor setting out the terms and conditions governing the term loan. As per the repayment schedule annexed to the Common Rupee Loan Agreement, the loan together with interest was to be paid in quarterly instalments from the year 2014-15 to 2026-27. An inter-Creditor Agreement dated 13.12.2011 was also executed between the Financial Creditor and Co-Lender/IOB. Pursuant to the Common Rupee Loan Agreement and the securities created by the Corporate Debtor, the entire loan was disbursed to the Corporate Debtor.

3. An additional term loan of Rs. 15.35 crores (hereinafter called "Additional Loan") was sanctioned by the Financial Creditor vide Sanction Letter dated 18.12.2014 to fund additional interest during construction cost in respect of the project. A supplemental Common Rupee Loan Agreement was executed on 24.04.2015 between the Financial Creditor and Corporate Debtor. As per the Agreement, the Additional Loan together with interest was required to be repaid in quarterly instalments from FY 2016-17 to FY 2019-20.

4. On 24.04.2015, the Common Rupee Loan Agreement was amended to revise certain terms, inter alia, the repayment period of the Rupee Term Loan. After such revision, the Rupee Term Loan was payable from FY 2016-17 to FY 2026-27. Supplemental Inter Creditor Agreement was also executed between the Financial Creditor and IOB on the same day.

5. Since the Company defaulted in making payments under the Common Rupee Term Loan Agreement and Additional Rupee Loan Agreement (hereinafter collectively called "Loan Agreements), the Financial Creditor vide its letter dated 12.12.2022 recalled the entire loan and called upon the Corporate Debtor to pay the outstanding amounts within 10 days from the date of the notice. On default, the present application is filed.

6. A soft copy of the petition was stated to be sent by the Financial Creditor on 18.03.2023 and as per the affidavit of service, the Corporate Debtor received the petition by Courier service and thereafter by registered post on 03.07.2023. The Corporate Debtor neither entered appearance nor filed any reply to the petition.

Analysis and findings.

7. We have heard the counsel appearing for the Financial Creditor and perused the records.

8. It is seen from the loan documents executed by the Corporate Debtor and the charge registered with Registrar of Companies that financial assistance in the nature of term loans were granted by the Financial Creditor. The Financial Creditor has also annexed with the petition Statement of Accounts in respect of the Rupee Term Loan and Additional Rupee Term Loan together with Certificate under Section 2A (a) of the Bankers' Book of Evidence Act, 1981. The above documents establish existence of a debt / liability by the Corporate Debtor.

9. Once the debt is established, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the Financial Creditor to satisfy itself that a default has occurred. In the present case, the Financial Creditor has, in addition to the Report of default issued by National E-Governance Services Ltd, submitted certificate of registration of charge issued by ROC and record of default with Central Repository of Information on Large Credit, the credit information company, which constitute acceptable sources for evidencing a financial debt.

10. With respect to the period of limitation, it is observed that the repayment schedule for the Rupee Term Loan was revised on 24.04.2015 and thereupon the Rupee Term Loan is repayable in quarterly instalments from FY 2016-17 to FY 2026-27. The Additional Rupee Loan is repayable from FY 2016-17 to FY 2019-20. The repayment period for the Rupee Term Loan extends upto FY 2026-27 except for the fact that the loan was recalled on 12.12.2022. The Financial Creditor has also submitted Revival Letters dated 01.12.2014, 04.09.2017, 11.06.2020 and 22.02.2023, whereby the Corporate Debtor acknowledged its liability to repay the loan amount from time to time. Thus, it is very clear that the present petition has been filed well within the period of limitation prescribed under law.

11. As the factum of the debt and default are established, the Adjudicating Authority finds the present petition to be a fit case for admission under section 7 of the Code. It is ordered accordingly in the following terms:

ORDER

a. **The above Company Petition No. (IB) 360 (MB)/2023 is hereby admitted** and initiation of Corporate

Insolvency Resolution Process (CIRP) is ordered against Valecha Kachchh Toll Roads Limited.

b. This Bench hereby **appoints Mr. Avil Jerome Menezes, Registration No: IBBI/IPA-001/IPP00017 /2016-17/10041 as the Interim Resolution Professional having his address at Unit No. 2, Chakala, Andheri Kurla Road, Andheri East, Mumbai 400 093, email: - avil@caavil.com** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. Five Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

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

f. 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.

g. 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.

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 suspended directors and 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

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

Sd/-	**Sd/-**
ANIL RAJ CHELLAN	**KULDIP KUMAR KAREER**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**