



SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 31.10.2023, At 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition (IB) 398/7/HDB/2022
NAME OF THE COMPANY	Indore Dewas Tollways Ltd
NAME OF THE PETITIONER(S)	Union Bank of India
NAME OF THE RESPONDENT(S)	Indore Dewas Tollways Ltd
UNDER SECTION	7 of IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Company Petition (IB) 398/7/HDB/2022 is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – II

CP(IB) No.398/07/HDB/2022
U/s. 7 of IB Code, 2016

In the matter of:

M/s. Union Bank of India,
SAM Branch, 3rd Floor,
Andhra Bank Buildings, Koti,
Hyderabad – 500 068.

....the Petitioner

Vs

M/s. Indore Dewas Tollways Limited,
6-3-1090, B-1, TSR Towers,
Rajbhavan Road, Somajiguda,
Hyderabad – 500 082.

....the Respondent

Date of order: 31.10.2023

CORAM:

Hon'ble Sri Rajeev Bhardwaj, Member (Judicial)

Hon'ble Sri Sanjay Puri, Member (Technical)

Counsels present:

For the Applicant : Mr. V. Sethu Madhava Rao, Advocate

For the Respondent : Mr. Kailash Nath P S S, Advocate

Heard on : 05.10.2023

Per : Sanjay Puri

ORDER

1. This application is filed by the Petitioner M/s. Union Bank of India, against the Respondent M/s. Indore Dewas Tollways Limited,



seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Respondent for the default committed in discharging the debt that is due to the Petitioner.

The Application:

2. It is submitted that, the Petitioner (the Consortium Banks) sanctioned a total Term Loan of Rs.450.00 Crores to the Respondent, out of which, the share of the Petitioner is Rs.150.00 Crores and the Respondent executed a Common Loan Agreement dated 11.11.2010¹ promising to repay the Term Loan-I Facility in 42 quarterly instalments commencing from 01.04.2014 and ending on 31.07.2024 and also executed Supplementary Agreements dated 08.02.2011.²
3. It is further submitted that, the Respondent executed Hypothecation Deed dated 21.04.2011³ hypothecating the receivables and revenue from the project and also executed the Indenture of Mortgage dated 30.08.2011⁴ mortgaging its immovable property for the Term Loan-I facility of Rs.150 Crores sanctioned by the Petitioner. The Respondent was also executed the First Deed of Modification extending the said Mortgage to the Term Loan-II facility of Rs. 13.34 Crores and FITL Facility of Rs. 45.38 Crores sanctioned by the Petitioner, in addition to the facilities sanctioned by the members of the Consortium.
4. It is submitted that, at request of the Respondent, the Consortium Banks including the Petitioner, has restructured the liability in the Term Loan-I and the Irregular Portion in Term Loan- I was converted as FITL Facility of Rs.45.38 Crores, and sanctioned Term Loan II limit of Rs.40.00 Crores. The restructured Term Loan-I is repayable

¹ Pg 104-211 of the Application (Annexure-5)

² Pg 388-445 of the Application (Annexures- 15 to 18)

³ Pg 212-222 of the Application (Annexure-6)

⁴ Pg 446-521 of the Application (Annexure-19)



in 15 years commencing from 2015 and ending in 2029. The FITL is repayable in 10 years commencing from 2015 and ending 2024. The Term Loan-II is repayable in 3.7 years commencing from 2015 and ending in 2017 and accordingly, the Respondent executed second amendment agreement dated 29.06.2015 to the Common Loan Agreement dated 11.11.2010 with interest at Contractual rate.

5. It is submitted that, the Respondent acknowledged the debt vide Demand Notice dated 05.01.2022.⁵ The liability of the Petitioner and other consortium members is duly reflected in the annual balance sheet dated 31.03.2021 of the Respondent and was also duly reported to Information Utility Service provider.
6. It is submitted that, the Respondent's account was slipped into NPA on 29.12.2021 and is liable to pay a sum of Rs.192.18 Crores as on 29.11.2021. Hence, this application.

The Counter:

7. It is submitted that, the Petitioner is a Special Purpose Vehicle to undertake one infrastructure project for generating revenue through tolling operations which flows in the Escrow Account and the Account is managed/operated by the Petitioner, the lead Banker of the Consortium of lenders.
8. It is further submitted that, the Government of India had entrusted to National Highways Authority of India (NHAI) the development, maintenance and management of National Highway 3 including the section from Km. 577.550 to Km. 610.000 and Km. 0.000 to Km. 12.600 approximately 45.05 Kms. Accordingly, NHAI invited proposals by its Request for Qualifications dated 21.04.2008, against which, a Consortium of DLF Infra Holdings Limited and

⁵ Pg 795-797 of the Application (Annexure 38)



Gayatri Projects Limited participated in the bidding process with DLF Infra Holdings as the lead member of the said Consortium. The Consortium was awarded the Respondent as a Special Purpose Vehicle on 04.05.2010 and a Concession Agreement⁶ was executed on 17.05.2010 between the Respondent and NHAI.

9. The Respondent, NHAI and Escrow Bank (i.e. Union Bank), executed an Escrow Agreement dated 17.06.2011⁷ which, inter-alia, contained detailed stipulations in relation to the manner in which money had to be utilized from the Escrow Account opened under the Concession Agreement.
10. It is submitted that, the Respondent had issued a letter dated 30.05.2019⁸ to NHAI seeking compensation for damages, but no response from NHAI either to the aforesaid letter or to a letter dated 08.07.2019 wherein the Respondent was constrained to invoke arbitration under Clause 44.3 of the Concession Agreement vide its letter dated 21.08.2019.⁹
11. It is submitted that, since NHAI was not resolving the disputes out-of-court, the Respondent finally issued a letter dated 27.01.2020¹⁰ wherein it reminded NHAI to nominate its arbitrator in accordance with the Arbitration Agreement between the Parties.
12. It is submitted that, the Independent Engineer (appointed under the Concession Agreement) issued a letter dated 13.04.2020 to the Respondent calling to solve the defaults,¹¹ for which, the Respondent issued a detailed reply to NHAI vide its letter dated

⁶ Pg 22-163 of the Counter (Annexure-R1)

⁷ Pg 164-178 of the Counter (Annexure-R2)

⁸ Pg 179-193 of the Counter (Annexure-R3)

⁹ Pg 194-195 of the Counter (Annexure-R4)

¹⁰ Pg 197-198 of the Counter (Annexure-R6)

¹¹ Pg 204-214 of the Counter (Annexure-R8)



02.07.2020.¹² Also submitted that, since the NHAI was illegally throwing out the Respondent from the Project, the Respondent was constrained to issue a letter dated 24.08.2020 to NHAI calling to cure its defaults under Clause 37.2.1 of the Concession Agreement, failing which the Petitioner reserved its right to issue an "intention to terminate" notice.¹³ After issuance of the said letter dated 24.08.2020, the Respondent filed its Statement of Claim dated 29.08.2020 before the Arbitral Tribunal wherein it was sought a compensation of Rs.1,070.96 Crores plus interest and costs Against the NHAI.¹⁴

13. It is submitted that, the NHAI issued a letter dated 08.12.2020¹⁵ to the Respondent wherein it was agreed to resolve all disputes amicably and accordingly, the Respondent furnished a detailed settlement proposal vide its letter dated 07.01.2021 in which it offered two options, namely (a) a proposal to restructure its debt to facilitate premium payment and debt payment, and (b) a proposal to mutually foreclose the Concession Agreement.
14. It is submitted that, a joint application dated 06.04.2021 was filed before the Arbitral Tribunal seeking suspension of the ongoing arbitral process so as to facilitate a mutually beneficial settlement process and the same was allowed by the Arbitral Tribunal pursuant vide its order dated 07.04.2021.¹⁶
15. It is submitted that, the disputes between the Parties were referred to a Conciliation Committee of Independent Experts. Several meetings were held between the OTAR parties and before the Conciliation Committee wherein it was agreed that NHAI would

¹² Pg 243-256 of the Counter (Annexure-R11)

¹³ Pg 290-321 of the Counter (Annexure-R14)

¹⁴ Pg 322-516 of the Counter (Annexure-R15)

¹⁵ Pg 569 of the Counter (Annexure-R18)

¹⁶ Pg 851 of the Counter (Annexure-R24)



release a one-time settlement amount to the Respondent. The Respondent was received a letter dated 25.04.2022¹⁷ wherein NHAI unceremoniously dismissed the Respondent's proposal on a completely frivolous ground. The Respondent apprehended that NHAI would now proceed to illegally terminate the Concession Agreement based on its so-called "intention to terminate" notice dated 20.11.2020, a 1.5 year old notice which was completely frivolous to begin with. The Respondent also apprehended that NHAI would not even serve a fresh notice, and rely upon a notice issued in November 2020 to terminate the agreement. These apprehensions turned true when NHAI, behind the back of the Respondent, issued a letter dated 25.04.2022 to the Petitioner wherein the Petitioner was given a so-called option of substitution under Clause 37.1.3 of the Concession Agreement that too, "on payment of due premium". The NHAI sought to the bypass the arbitral proceedings (wherein payment of Premium was an issue to be adjudicated upon) by calling upon the Petitioner to release the amount without even keeping the Respondent informed about the same.

16. It is submitted that, the NHAI was no longer interested to be bound by the terms of the Concession Agreement. Under these circumstances, the Respondent was compelled to issue a letter dated 05.05.2022 to NHAI expressing its intent to terminate the Concession Agreement on grounds of "Authority's Default" in accordance with the terms of the said Agreement.¹⁸ The Respondent received a letter dated 27.05.2022 from NHAI wherein NHAI Inter alia suspended the rights of the Respondent to undertake tolling operations.

¹⁷ Pg 853 of the Counter (Annexure-R26)

¹⁸ Pg 855-884 of the Counter (Annexure-R28)



17. It is submitted that, in light of NHAI's illegal attempts to appropriate toll revenues towards satisfaction of its counter claims (the legality and tenability of which were yet to be adjudicated by the Arbitral Tribunal), the Respondent was constrained to approach the Arbitral Tribunal seeking interim directions against NHAI vide an application dated 30.05.2022 filed under Section 17 of the Arbitration & Conciliation Act, 1996¹⁹ and the Arbitral Tribunal was pleased to pass an ad-interim order dated 30.05.2022²⁰ granting time to NHAI to file its reply. The NHAI filed a short reply dated 01.07.2022 in which it sought to justify its illegal attempts to appropriate the toll revenues in the Project.²¹
18. It is submitted that, the Arbitral Tribunal, vide its order dated 05.07.2022 was pleased to confine the interim relief (granted to the Petitioner) to only one of the prayers made in the Section 17 Application.²² Furthermore, the Arbitral Tribunal pursuant to its order dated 05.08.2022, passed detailed directions to the Parties qua collection of toll revenues and operation of the escrow account under the escrow agreement.²³
19. It is further submitted that, the events which had till now unfolded clearly established that NHAI was taking every step to terminate the Concession Agreement and not be bound by the terms therein. Moreover, NHAI had not taken steps to solve its defaults as had been notified by the Respondents in its letter dated 05.05.2022. Under these circumstances, the Respondent was constrained to terminate the Concession Agreement vide its letter dated 23.11.2022 without prejudice to its rights under law.²⁴

¹⁹ Pg 892-915 of the Counter (Annexure-R30)

²⁰ Pg 916 of the Counter (Annexure-R31)

²¹ Pg 917-934 of the Counter (Annexure-R32)

²² Pg 935-937 of the Counter (Annexure-R33)

²³ Pg 938-939 of the Counter (Annexure-R34)

²⁴ Pg 940-943 of the Counter (Annexure-R35)



20. It is submitted that, pursuant to its letter dated 26.12.2022, sought certain financial information from the Respondent for computation of Termination Payment based on the termination letter dated 16.12.2022 issued by the NHAI to the Respondent. NHAI completely overlooked the fact that the Respondent had already terminated the Concession Agreement and the termination payment payable to the Petitioner, was to be computed on the basis of "Authority Default" and not "Concessionaire Default".
21. It is submitted that, pursuant to its letter dated 10.01.2013, the Respondent vehemently disputed NHAI's illegal termination (vide its so-called termination letter dated 16.12.2022) and reiterated its stand on the Concession Agreement termination. The total Termination Payment payable to the Respondent under the Concession Agreement aggregated to Rs.637.02 Crores.²⁵ Pursuant to its letter dated 02.02.2023, the Respondent furnished a certification from its Chartered Accountant testifying the genuineness of computation of the Respondent's financial records.²⁶
22. It is submitted that, NHAI pursuant to its letter dated 06.02.2023, sought again to justify its act of terminating the Concession Agreement on grounds of "Concessionaire Default", even though the material on record clearly established that it was the NHAI default. Besides, NHAI again called for the financial records of the Respondent, though the said information had already been furnished by the Respondent to NHAI. NHAI issued a letter dated 09.02.2023 calling upon the Respondent to handover all assets of the Project to NHAI, even though NHAI had already taken over the assets long back.

²⁵ Pg 953-958 of the Counter (Annexure-R38)

²⁶ Pg 959-962 of the Counter (Annexure-R39)



23. It is submitted that, fresh and irreconcilable disputes had arisen between the Parties in relation to the termination of the Concession Agreement. Under these circumstances of the case, had not been referred for adjudication before the Arbitral Tribunal which was seized of matters only in relation to the damages and counter-claims of the Parties. Under these circumstances, the Respondent was constrained to again invoke arbitration to resolve the fresh disputes pursuant to its letter dated 14.02.2023. However, in this letter, the Respondent urged NHAI to agree to refer these matters to the same Arbitral Tribunal instead of constitution of a new arbitral tribunal.
24. It is submitted that, the Respondent had initiated arbitration process against National Highway Authority of India (NHAI), claiming a sum of Rs.1,076 crores plus interest on account of termination of the Concessionaire Agreement. That when the matter had come up for hearing on 10.01.2023 before the Arbitral Tribunal, the Learned Arbitrators were pleased to defer the proceedings until there is a consent for expanding the mandate for completion of the proceedings by six months and it was also informed that the balance fees shall be payable to the Arbitrators by 28.02.2023.
25. It is further submitted that, in pursuance of the said order dated 28.02.2023, the Applicant company vide email dated March 11, 2023 informed all the Member Banks along with the Lead Bank i.e., Union Bank of India that a Consortium meeting is to be conducted on March 13, 2023. The Consortium meeting was duly conducted and vide email dated April 11, 2023, the Applicant had requested the Respondent to disburse the monies agreed which amount to Rs.1,12,70,410 towards Operational Expenses and



Rs.1,04,01,300/- budget for the FY 2023-24. It is submitted that the Respondent vide email dated April 19, 2023 had sent the MOM.²⁷

26. It is submitted that, while things stood thus, with reference to the Concession Agreement dated 17.05.2010, NHAI had stated vide letter dated 04.05.2023²⁸ that the Lead Bank i.e., the Applicant herein, had denied withdrawals in favour of NHAI from the Escrow Account NHAI in the said letter requested the Applicant to redeposit Rs.1,86,87,12,747/- to NHAI's Account within 7 days to enable NHAI to undertake repair/ maintenance work, recovery of 50% IE Payment, Due additional concession Fee etc., by the Respondent has not been complying. That vide this letter NHAI had directed the Applicant to immediately re-deposit the money disbursed to the Concessionaire along with payment of NHAI's due amount. Thus, from the above letter it is apparent that the Lenders, including the Applicant Bank, have withdrawn the money from the Escrow Agreement, without any notice to NHAI or the Respondent herein.
27. It is submitted that, the Applicant has not responded to the above request of the Respondent, and as such, there is no progress in the arbitration proceedings. The Applicant on one hand has drained the escrow account and is impeding the progress of the arbitration proceedings, and on the other hand, is dragging the Respondent herein before this Tribunal for insolvency resolution.
28. It is also submitted that, the default of the Respondent has been induced by the Applicant, and as such, the Applicant cannot claim that the Respondent is in default, especially when the Applicant is responsible for stalling the arbitration proceedings. The

²⁷ Pg 975-982 of the Counter (Annexure-R44)

²⁸ Pg 983-1031 of the Counter (Annexure-R45)



Respondent has a fair chance of succeeding in the arbitration proceedings and same is being harmed by the Applicant herein.

29. It is submitted that, the aforesaid facts, therefore, establish that the Respondent company" inability to service its debt obligations to the Petitioner has been occasioned for reasons attributable to NHAI and the Applicant. This fact is well known to the Petitioner, which is itself a signatory to the Escrow Agreement. In fact, the Respondent company is taking all steps to recover monies from NHAI which amounts shall far exceed the amount which is allegedly payable to the Petitioner.

30. It is submitted that, the Respondent had strived hard to support the O & M and legal fees till now from other sources, however as on date all the other sources have been exhausted and the Respondent company is not in a position to support any further. Further, the requests to the lead bank which is the Applicant herein, to immediately release the pending payments and the legal fees on top priority in order to put the Arbitration proceedings back in process and without release of these funds the Respondent would be put to irreparable loss which cannot be compensated in any manner. Hence, the present Application deserves to be dismissed.

The Decision

31. We have reviewed the application and meticulously and conscientiously considered the Respondent's submissions. On one hand, the Respondent asserts its financial strength and commitment to meeting all its debt obligations, including those owed to the Petitioner. However, on the other hand, the Respondent concedes to a cashflow deficit that has resulted in a default in debt repayment. The Respondent attributes this shortfall



to the inability to generate adequate revenues and cost overruns, which, according to the Respondent, are the responsibility of NHAI.

32. The Respondent has also initiated arbitration proceedings against NHAI in an attempt to recover over Rs.1000 crores after terminating its contract with them. NHAI, in turn, has rejected the Respondent's claim and is seeking Rs.556.05 crores from the Respondent. Currently, the arbitration process is at a standstill due to the non-payment of arbitrator's fees. The Respondent places blame on the Applicant and NHAI for this situation, stating that the Petitioner, who also serves as the Respondent's bankers, have "drained the escrow account and are impeding the progress of the arbitration proceedings."
33. After carefully considering the Respondent's position, we are convinced that, given the existing circumstances, and without delving into the issue of responsibility for this situation, there is no foreseeable prospect of the Respondent remaining financially solvent. The concession agreement has been terminated, the Respondent's right to collect toll revenue has been suspended, their claim against NHAI has been countered by NHAI, and efforts at conciliation have proved unsuccessful. Arbitration proceedings have also come to a halt. In light of these circumstances, it is only natural for the Financial Creditor to lose confidence in the current management and initiate section 7 proceedings.
34. Under Section 7 of the IBC, we must only assess the existence of a debt exceeding the threshold limit, the default (outside the section 10A period), and that the application is not time-barred. While mitigating circumstances are important, and we have carefully considered them, they cannot hinder a Section 7 application whose objective is to achieve a resolution promptly within the IBC



framework. Especially when these mitigating circumstances have led to a deadlock that are not only impeding the operations of the Corporate Debtor but also contributing to its deteriorating financial health.

35. In the present case, the debt of Rs.194,24,55,662.20 is undisputed by the Corporate Debtor, as is the default, which occurred on 05.01.2022, as indicated in Part-IV of Form-I, the document through which the application has been submitted. The application is not subject to the provisions of Section 10A, nor is it time-barred. Therefore, we have no reservations in accepting this application under Section 7 of the IBC.
36. Hence, in view of the admitted debt and default, the application is allowed with the following directions:

ORDER

- a) The Application is admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.
- b) The Applicant has proposed the name of Mr. Madhu Sudhanarao Mallipaddi as the Interim Resolution Professional (hereinafter referred to as the "IRP"). Accordingly, this Adjudicating Authority appoints Mr. Madhu Sudhanarao Mallipaddi, Registration Number: IBBI/IPA-001/IP-P-02633/2022-2023/14081 valid upto 23 June 2024 as per the IBBI IPs Registered List, R/o. 502, H.No. 8-3-966/16, KOR Residency, Nagarjuna Nagar, Srinagar Colony, Behind State Bank of India, Hyderabad – 500073, E-mail ID: madhumallipaddi@gmail.com as the Interim Resolution



Professional. The IRP is directed to file Authorization for Assignment within three days from the date of this order.

- c) The IRP is directed to take charge of the management of the Corporate Debtor, immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the date of receipt of this order, and call for submissions of claim in the manner as prescribed.
- d) Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:
- 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 or 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 rights 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.



- v. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances 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, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.
- e) The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any 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. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to 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.
- f) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code, 2016. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 for discharging his functions under Section 20 of the Code, 2016.



- g) The Corporate Applicant as well as the Registry is directed to send the copy of this Order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016.
- h) The Registry is directed to communicate this Order to the Corporate Applicant.
- i) The Registry shall also communicate this Order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.
37. Accordingly, this **CP(IB) No.398/7/HDB/2022** is allowed.

Sd/-

**(SANJAY PURI)
MEMBER (TECHNICAL)**

Sd/-

**(RAJEEV BHARDWAJ)
MEMBER (JUDICIAL)**

VL