



S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
24-04-2023 AT 10:30 AM

CP(IB) No.203/7/HDB/2022
u/s. 7 of IBC, 2016

IN THE MATTER OF:

State Bank of India

...Financial Creditor

VS

Gati Infrastructure Bhasmey Power Private Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced. Recorded vide separate sheets. In the result, this Company Petition is allowed and the Corporate Debtor is put under CIRP, as per the terms and conditions mentioned in the order.

Sd/-

Member (T)

Sd/-

Member (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH – 1

CP (IB) No. 203/7/HDB/2022

*Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with
Rule 4 of NCLT Rules, 2016.*

In the matter of

M/s.State Bank of India

Head Office at

State Bank Bhavan,

Madame Cama Road,

Nariman Point,

Mumbai- 400 021.

One of its Branches at

State Bank of India

Stressed Assets Management Branch-II

11th Floor, Jawahar Vyapar Bhawan,

1, Tolstoy Marg,

New Delhi-110001.

... Financial Creditor

Versus

M/s. Gati Infrastructure Bhasmey Pvt Ltd

Registered Office:

1-7-293, M.G.Road,

Secunderabad, Telangana,



Andhra Pradesh,
Hyderabad-500 003.

... Corporate Debtor
Date of Order: 24.04.2023

CORAM:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA,
HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

PARTIES/COUNSELS APPEARANCE:-

For the Financial Creditor: M/s.Sri & Associates, Advocates.

For the Corporate Debtor: Shri Nithish Bandari, Counsel

PER: BENCH

1. This Petition is filed by M/s. State Bank of India. (hereinafter referred to as "Financial Creditor") under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") against M/s. Gati Infrastructure Bhasmey Power Pvt Ltd. (hereinafter referred to as "Corporate Debtor"), alleging non-payment of Rs. 1,60,67,36,335.70/-.



2. The contentions put forth by the Financial Creditor are :

- 2.1 It is averred that financial creditor initially sanctioned credit facilities to the corporate debtor in 2011 which was restructured on 24.12.2014 and lastly restructured on 27.10.2015.
- 2.2 It is averred that the account of corporate debtor was declared as NPA as per the guidelines of the RBI on 25.09.2014, due to non-payment of interest and further at request of the corporate debtor the loan facilities were restructure by the financial creditor from time to time.
- 2.3 It is further averred that corporate debtor failed to follow the terms and conditions of the sanction letters and thus financial creditor issued a letter dated 10.11.2017, informing the corporate debtor that owing to the non-service of interest the account of corporate debtor is declared as NPA on 25.09.2014.
- 2.4 It is averred that corporate debtor vide its reply dated 05.07.2018 assured the financial creditor to resolve the debt and also will revive the asset.
- 2.5 Further on 03.10.2018, a legal notice was sent to the corporate debtor, personal guarantor and corporate guarantor asking them to pay a sum of Rs.80,58,79,344.94 plus accrued interest from 30.09.2018. Furthermore, a notice under Section 13(2) of the SARFAESI Act, was sent on 16.10.2018 demanding the aforementioned amount, to which the corporate debtor, personal guarantor and corporate guarantor replied on 19.12.2018.



2.6 Hence the corporate debtor vide letter proposed the One time settlement. Further despite the support granted to the corporate debtor by the financial creditor by facilitating restructuring of the loan facilities at its request, the corporate debtor failed to clear the dues of the financial creditor. Hence prayed to initiate CIRP against the corporate debtor.

3. Reply filed by the corporate debtor:

3.1 Corporate debtor denied the averments made by the financial creditor.

3.2 It is averred that Respondent was into the power project in the state of Sikkim. For the purpose of development and installation, approached IFCI Limited. Later on financial creditor and PTC India Financial agreed to fund the power project along with IFCI Limited.

3.3 It is averred that lenders and the respondent entered into a term loan agreement on 29.07.2011 with IFCI Limited. Out of total aggregate principal was divided as Rs.100 crores to the financial creditor, Rs.125 crores to PTC India Financial and Rs.61 Crores to IFCI Limited.

3.4 Later on due to increase in project cost, the respondent approached M/s. Power finance corporation(“PFC”) for addition funding of debt. In view of the same the PFC, vide letter dated 29.02.2016 revised the project cost to Rs.746.01 crores and sanctioned additional funding on account of cost over run to the tune of Rs.131.46 crores.



- 3.5 Further submitted that disbursement started from March, 2015 and all the lenders were disbursing the funds based on project progress and requirement on instruction of lead lenders.
- 3.6 It is averred that there are various discussions regarding disbursement with lead lenders through verbal discussion, during joint lenders meeting and through various communication requesting to resume the disbursement so that there would be no negative effect on the project. But the lenders has not taken any positive step and remained silent till today due to which the project suffered badly.
- 3.7 It is averred that though petitioner and other lenders failed in fulfilling the requirement of disbursement and on other hand started filing cases.
- 3.8 It is averred that OA No.539/2019 is filed before Hon'ble DRT-II, New Delhi and the outcome in OA and adjudication of counter claim would have been bearing on adjudication of the present Company Petition. Hence prayed to defer the matter till the Hon'ble DRT finally adjudicates the counter claim in the interest of justice.
- 3.9 It is further submitted that as per the amended common loan agreement dated 26.03.2015, the time given for repayment is 2030 and therefore present Company Petition filed before 2030 is premature and not maintainable under the provisions of the Code.



- 3.10 It is averred that the present petition is filed without any authority letter or General Power of Attorney, hence the petition is liable to be dismissed.
- 3.11 It is averred that the date of default is in the year 2014 and the petition filed in the year 2022 which is barred by limitation.
- 3.12 Thus prayed to dismiss the present Company Petition with exemplary costs which may deem fit and proper.
- 4. Rejoinder on behalf of the financial creditor in brief:**
- 4.1 It is averred that the contentions made by the corporate debtor are baseless and devoid of merits.
- 4.2 It is averred hat Hon'ble Tribunal vide order dated 21.07.2022 admitted the petition bearing CP(IB)No.335/95/HDB/2020 filed by PTC India Financial Services Ltd. Under Section 95, which shows the default of corporate debtor is already proven.
- 4.3 It is averred that the pendency of the OA or any other matter before DRT does not preclude this Adjudicating Authority to initiate CIRP proceedings against the corporate debtor under IBC.
- 4.4 It is averred that the present Application is filed by Mr.Vinod Kumar, who is working as Assistant General Manager(Class IV) with State Bank of India. Further submitted hat the Gazette Notification gives the authority to all officers in Grade of SMGS IV and above to sign all the documents, instruments, accounts, receipts, letter and advices etc.
- 4.5 Further the present petition is well within the limitation. The documents executed by the corporate debtor from 25.04.2014(date



of NPA) till 2022, which shows the corporate debtor acknowledged its debt and the present Application is well within limitation period. Thus prayed to admit the petition and initiate CIRP against the corporate debtor.

5. Written submissions filed by the financial creditor by reiterating the facts mentioned in the Petition and the rejoinder along with case laws.
6. Written submissions filed by the corporate debtor by reiterating the facts in the reply/counter and with case laws.
7. In the light of the above contentions the point emerges for consideration is:
 - (i) Whether financial claim by the Applicant is barred by limitation?
 - (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
8. We have heard Mr.PBA Srinivasan, Learned Counsel for Financial Creditor and Mr. Nitish Bandari, Learned Counsel for Corporate Debtor. Perused the record.
9. At the outset it may be stated that whether or not the respondent has raised the plea of limitation which is imperative for the Applicant to establish the debt claimed under the present Application is not barred by limitation and burden is on the Applicant to establish the same.
10. According to the Applicant on 24.02.2011 the financial creditor has sanctioned the term loan of Rs.100 cores to the corporate debtor and the



corporate debtor executed necessary loan and security documents and availed the credit facilities from the Applicant. It is stated that the account of the Applicant has become NPA on 25.09.2014 and at request of the corporate debtor credit facilities have been restructured on 29.10.2014 and again on 24.12.2014, 22.01.2015, 31.03.2015, 21.04.2015, 27.07.2015 and on 10.11.2017.

11. The financial creditor on 10.11.2017 in writing informed the corporate debtor the default in serving the interest and on 16.03.2018 the corporate debtor executed revival letter. Subsequently the corporate debtor requested for OTS of the outstanding loan. Therefore in the light of the above un disputed factual backdrop, revival letter dated 16.03.2018 being the letter of acknowledgment in writing gives a fresh 3 years period of limitation from 16.03.2018 and within 3 years of the extended period, i.e on 19.12.2018 the corporate debtor in its response to the notice issued under Section 13(2) of the SARFAESI , Act, 2002 admitted the liability. Likewise vide memo dated 30.07.2021 the corporate debtor sought OTS in respect of outstanding dues. Therefore the present Application having been filed on 29.07.2022 is well within the prescribed period of limitation.

The Point is answered accordingly.

Point No 2.

Whether the documentary evidence furnished with application show that a debt is due and payable and has not yet been paid by the corporate debtor?



12. Corporate debtor has not denied availing of the credit facilities and execution of documents from time to time in relation to the credit facilities availed by the corporate debtor from the financial creditor.
13. The revival letter dated 16.03.2018 categorically states availing of credit facilities from the financial creditor. The notices issued to the corporate debtor on 03.10.2018 admitting the payment of Rs.80,58,79,344.94 together with interest with effect from 30.09.2018 categorically establishes non-payment of debt of sum over Rs. One crore is due and payable by the corporate debtor. The OTS letter dated 30.07.2021 also categorically confirmed that the respondent had defaulted in repayment of the said financial debt.
14. Therefore, we have no hesitation to hold that the Financial Creditor has established that the Corporate Debtor herein had availed credit facilities of a sum over Rs.1 crore and had defaulted in repayment of the same. Thus, we are satisfied that existence of financial debt as well as its default are established by the applicant. We have also found that the application as failed is in order.
15. Therefore, this Adjudicating Authority **admits the Petition** under Section 7 of IBC declaring moratorium for the purposes referred to in Section 14 of IBC, with following directions:
 - A. The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against 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 or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor;

- B. 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.
- C. 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.
- D. That the order of moratorium shall have effect from the date of this order till the completion of 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, whichever is earlier.
- E. This Bench hereby appoints of Shri. Anshul Gupta as Interim Resolution Professional, having Reg. No. IBBI/IPA-002/IP-N00310/2017-2018/10899, whose address is : 410, 4th Floor, Blue Rose Industrial Estate, Near Metro Mall, Borivali East ,Mumbai City,Maharashtra ,400066 and Email: contactanshulgupta[at]gmail[dot]com. He has given his AFA which is valid till 03.11.2023 and Form -2.



- F. That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under Section 13 of Insolvency and Bankruptcy Code, 2016.
- G. The Financial Creditor is directed to send a Copy of this Order to the appointed Interim Resolution Professional and Registrar of Companies, Hyderabad for making appropriate remarks against Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.
- H. The Registry is directed to send a copy of this order to the Financial Creditor and Interim Resolution Professional appointed in this case.
- I. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- J. Accordingly, this Petition is admitted.

-SD-

Charan Singh
Member Technical

-SD-

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Pavani