

IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKT BENCH,

KOLKATA

C.P (IB) No.148/KB/2021

In the matter of

An application 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.

And

In the matter of:

Seri Equipment Finance Limited, having its registered office at 'Vishwakarma', 86C, Topsia Road, Kolkata, West Bengal.

... Financial Creditor

Versus

In the matter of:

Tattva Valuers Private Limited, having its registered office at Plot No. X-1, 2&3, Block –EP Sector- V, Saltlake City, Kolkata, West Bengal-7900091.

...Corporate Debtor

Date of hearing : 21/04/2022

Order Pronounced on : 15/06/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr.Rishav Banerjee, Adv.] For the Financial Creditor
2. Mr.Rajarshi Banerjee, Adv.]

1. Ms. Rishad Medora, Adv.] For the Corporate Debtor
2. Mr. Soumava Mukherjee, Adv.]

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition 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 has been filed by **Seri Equipment Finance Limited**, through its Vice President, authorised vide Board Resolution dated 12th March, 2021(Annexure-A) (hereinafter referred to as the Financial Creditor) for initiation of Corporate Insolvency Resolution Process in respect of **Tattva Valuers Private Limited**, having its registered office at Plot No. X-1, 2&3, Block –EP Sector- V, Saltlake City, Kolkata, West Bengal-7900091 (hereinafter referred to as the Corporate Debtor).
3. It is submitted that the Financial Creditor is a company within the meaning of the term in the Companies Act, 2013, and it has filed this petition under section 7 of the Insolvency and Bankruptcy Code, 2016, in order to commence corporate insolvency resolution process in respect of the Corporate Debtor as the Corporate Debtor is stated to have committed multiple defaults on its payment obligations towards the Financial Creditor, as detailed in the Form 1 of the petition and annexures thereto.
4. It is submitted that the **Tattva Valuers Private Limited**, the Corporate Debtor previously known as Quippo Valuers and Auctioneers Private Limited and originally incorporated as Henry Butcher International Valuers and Auctioneers Private Limited has its registered office at Plot No. X-1, 2&3, Block –EP Sector- V, Saltlake City, Kolkata, West Bengal-7900091.
5. It is submitted that the Financial Creditor had extended a cumulative loan of Rs.354,36,43,117/- to the Corporate Debtor in pursuance of the following financial contracts:-

- a. Rupee Facility Agreement for Rs.250,00,00,000/- dated 31st October, 2019, executed by and between the two aforesaid parties whereby the Financial Creditor had agreed to provide the Corporate Debtor a Fund based assistance for a maximum limit of Rs. 250,00,00,000/- with a sub-limit of non-fund based assistance in the form of revolving Letter of Credit for a maximum limit of Rs.250,00,00,000/- facility, and
- b. Rupee Facility Agreement for Rs.300,00,00,000/- dated 25th July, 2018, executed by and between the two aforesaid parties whereby the Financial Creditor had agreed to provide the Corporate debtor non fund based facility as a non-fund based assistance to the maximum extent/ limit of Rs.300,00,00,000/- in the form of a Letter of Credit for acquiring assets defined therein. This non-fund based facility was to be available to the Corporate Debtor in multiple tranches against the cost of each of the pertinent assets.

All disbursements under the aforesaid two Rupee Facility Agreement were contractually contemplated to be made to the Corporate Debtor in consideration of payment of interest at specified rate(s), along with other charges, by the Financial Creditor. In this connection a true copy of each of the two aforementioned loan contracts dated 31st October, 2019, and 25th July, 2018, have been annexed along with a true copy of the each of the individual sanction letters dated 23rd October, 2019, and 6th July,2018 issued respectively thereunder and a consolidated statement of accounts of the Financial Creditor pertaining to its transactions with the Corporate Debtor till date.(Annexure-F).

6. It is further submitted that the Corporate Debtor had availed four separate disbursements by the Financial Creditor in terms of the aforesaid Rupee Facility dated 25th July, 2018, and two separate disbursements by the Financial Creditor in terms of the aforesaid Rupee Facility Agreement dated 31st October, 2019, i.e. six disbursements non-fund based assistance through
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six separate Letters of Credit that the Financial Creditor had arranged to open through its own Scheduled bankers upon the request of the Corporate Debtor in accordance with the aforesaid loan contracts.

7. It is stated submitted that the key details of the aforesaid six disbursements made by the Financial Creditor in favour of the Corporate Debtor as non-fund based financial assistance (Letter of Credit Facility) through the issuance/arrangement of Letters of Credit are tabulated as follows:

S.No.	Quantum of Non-Fund Based Disbursement (Debt granted via LC arrangement)	Date of Disbursement (i.e. Date of Issue of LC)	Financial Contract Under Which Disbursement was Made (Date of Corresponding Rupee Facility Agreement)
1.	Rs. 24,18,95,313	3 rd December, 2019	25 th July, 2018
2.	Rs.23,69,05,590	2 nd December, 2019	25 th July,2018
3.	Rs.28,28,00,250	4 th December, 2019	25 th July,2018
4.	Rs.27,61,98,600	2 nd December, 2019	25 th July,2018
5.	Rs.37,13,79,600	18 th March,2020	31 st October,2019
6.	Rs.28,95,67,029	18 th March,2020	31 st October,2019

Total:- Rs.169,87,46,381/- (Rupees One Hundred and Sixty Nine Crore Eighty Seven Lakh Forty Six Thousand Three Hundred and Eighty One only).

8. It is submitted that in this connection the pertinent documents evidencing each of the six aforesaid disbursements non fund based financial assistance in favour of the Corporate Debtor, including the bank statements and computer generated debit advice issued by the two pertinent scheduled bankers of the Financial Creditor with whom Letters of Credit were

individually opened are annexed as (Annexure-G colly.).

9. It is submitted that the Corporate Debtor has also availed fund based financial assistance (Loan Facility) by way of a term loan from the Financial Creditor under the aforesaid Rupee Loan Facility dated 31st October, 2019, which was extended via multiple tranches/disbursements.

The key details of each the aforesaid disbursements made by the Financial Creditor in favour of the Corporate Debtor as fund based financial assistance (Loan Facility) are tabulated as follows:

Sl.No.	Quantum of Fund Based Disbursement (Debt granted through Loan Facility) Under Rupee Facility Dated 31 st October, 2019	Date of Disbursement
1.	Rs.18,00,00,000	31.10.2019
2.	Rs.2,00,00,000	18.11.2019
3.	Rs.2,20,00,000	19.12.2019
4.	Rs.36,30,00,000	20.12.2019
5.	Rs. 34,50,00,000	06.01.2020
6.	Rs.90,00,00,000	15.01.2020

Total- Rs. 183,00,00,000 (Rupees One Hundred and Eighty Three Crore only)

In this connection the pertinent bank statements evidencing the disbursement of the entire aforesaid fund based financial assistance by the Financial Creditor in favour of the Corporate Debtor is annexed as (Annexure-H).

10. It is submitted that the Corporate Debtor had deliberately failed and /or neglected to meet its repayment obligations under the aforesaid loan contacts annexed hereinabove despite being reminded time and again.

11. The Financial Creditor sent a final demand notice to the Corporate Debtor by way of a letter dated 1st March, 2021, that was delivered to the Corporate Debtor on 31st March, 2021, calling upon the Corporate Debtor to pay it unpaid financial debt arising from financial assistance availed by it

under the aforementioned financial contracts dated 25th July, 2018 and 31st October, 2019. Even after the Corporate Debtor did not fulfill its clear, admitted obligation to pay its unpaid financial debt. A copy of the aforementioned final demand notice dated 1st March,2021, is annexed along with the Corporate Debtor's reply dated 6th March,2021, acknowledging that the amount demanded is payable by it to the Financial Creditor is annexed as (Annexure I Colly.)

12. It is further submitted that the total amount in default as on 31st March, 2021 is Rs.354,36,43,117/- and the date of default is **6th March, 2021**. It is submitted that the Corporate Debtor had explicitly acknowledged and admitted that a sum of Rs.306,55,10,112/- plus interest and charges thereon in accordance with various, aforesaid loan agreements between the Financial Creditor and Corporate Debtor, is due and payable by it to the Financial Creditor vide the aforesaid reply dated 6th March, 2021, of the Corporate Debtor to the aforesaid Demand Notice dated 1st March, 2021 issued by the Financial Creditor.

13. It is submitted that the break-up of the aforementioned total amount claimed to be in default into its constituent parts of showing the particular liability of the Corporate Debtor individually arising out of each event of disbursement, the date(s) on which default occurred and days of default is provided in the chart below:-

Sl.No.	Amount claimed to be in Default (With date of corresponding Rupee Facility Agreement under which connected disbursement was made)	Days of Default calculated upto 31 st March, 2021
1.	Rs. 1,66,79,801(Agreement dated 25 th July, 2018)	484
2.	Rs. 28,62,52,402(Agreement dated 25 th July, 2018)	485
3.	Rs. 19,18,70,039(Agreement dated 25 th July, 2018)	483
4.	Rs. 26,37,41,817(Agreement dated 25 th July, 2018)	485

	July, 2018)	
5.	Rs. 43,29,81,017 (Agreement dated 31 st October, 2019)	378
6.	Rs.33,76,04,640(Agreement dated 31 st October, 2019)	378
7.	Rs. 13,950,767 (Agreement dated 31 st October, 2019)	274
8.	Rs.46,134,977(Agreement dated 31 st October, 2019)	182
9.	Rs.183,04,14,297(Agreement dated 31 st October, 2019) (Principal + Interest)	152
10.	Rs.124,001,361 (Agreement dated 31 st October, 2019) (Over Dues Charges)	Nil

14. The Financial Creditor has held various securities, which have been enumerated in in Part-V of the petition. The Financial Creditor has also annexed various other documents in order to prove the existence of financial debt, the amount and date of default.

15. The petition of the Financial Creditor is supported by an affidavit of Vice President of the Financial Creditor, who has been authorised vide resolution of the company of the Financial Creditor dated 12th March, 2021.

16. The Financial Creditor has supported its claim with the loan agreements dated 31st October, 2019 and 25th July, 2018 and other documents evidencing each of the six disbursement of non-fund based financial assistance in favour of the Corporate Debtor, including the Bank statements and computer generated debit advice issued by the two pertinent scheduled bankers of the Financial Creditors with whom Letters of credit were individually opened. All the relevant documents have been placed on record by the Financial Creditor.

17. On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.

18. **In the reply affidavit** filed by the Corporate Debtor through its

authorised signatory. It is submitted that Form-1 filed by the Financial Creditor is incomplete and not in accordance with provisions of the Code, particularly Section 7 and Section 215, it is contrary to the requirement. It is further submitted in the reply that the Financial Creditor has failed to provide in Part IV of Form-1 the computation of the purported default including details such as principal, interest etc. It is submitted that the amounts claimed to be in default under Form-1 widely vary from the records of default annexed with the petition. It is further submitted that it is mandatory to file the record of default as available with the information utility and the same has to be at part V of Form-1 which the financial creditor has failed to provide. It is submitted that the Financial Creditor has filed the report stated to be record of default maintained by a Credit Information Company namely CIBIL, but the said report cannot be relied upon by the Financial Creditor for the reason that it does not substantiate the amounts claimed to be in default by the Financial Creditor and that the said report itself contains a disclaimer to the authenticity of its contents.

19. It is submitted by the Corporate Debtor that the Financial Creditor has not filed the accounts statements certified under Bankers Book Evidence Act, 1891 and that without certification, the accounts statement cannot be relied upon.

20. It is submitted that the Corporate Debtor is willing to safeguard interest of the lenders, all other stakeholders and employees of the Corporate Debtor. The Corporate Debtor is an operating company employing many people and that the initiation of Corporate Insolvency Resolution Process will not be in the interest of any of the stakeholders, thus petition is liable to be dismissed.

21. It is submitted that the petition has been filed for the purpose of recovery as against resolution and that the legal position is well settled that proceedings under the Code are resolution oriented and not for the purposes of recovery.

22. Ld. Counsel for the Corporate Debtor submitted that the petition filed by the Financial Creditor is not legally tenable and is liable to be dismissed.

23. The Financial Creditor has proposed the name of **Mr. Rakesh Kumar Agarwal**, to act as an IRP having Registration No. **IBBI/IPA-001/IP-P00443/2017-2018/10786**, who has consented vide his affidavit and Form-2, and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.

24. The petition is complete in all respects.

25. After hearing Ld. Counsel for the parties and going through pleadings along with their respective annexures filed by the respective parties, we are satisfied that the Financial Creditor has been able to prove its financial debt due and outstanding and payable by the Corporate Debtor. In the reply also, there is hardly any defence taken by the Corporate Debtor and the vague grounds on which the petition has been challenged cannot be accepted. We are, therefore, satisfied that this petition against the Corporate Debtor has to be admitted and we, therefore, pass the following orders:-

ORDERS

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- a) 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;
 - b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c) 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);
 - d) 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) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Rakesh Kumar Agarwal, IRP** registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP-P00443/2017-18/10786**, hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective

Resolution Applicant within 105 days from the insolvency commencement date.

- xi) The Financial Creditor/Applicant is directed to deposit **Rs 5,00,000/- (Rupees Five lacs Only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 03/08/2022 for the filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 15th day of June, 2022

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