

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT-I)
KOLKATA**

I.A. (IB) No. 318/KB/2022

and

CP (IB) No. 347/KB/2020

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

IL & FS Financial Services Limited
[CIN: U65990MH1995PLC093241]

...Financial Creditor

Versus

E Village Kendra Limited
[CIN: U67190WB2002PLC095455]

...Corporate Debtor

I.A. (IB) No. 318/KB/2022

In the matter of:

An application under rule 55 read with rule 11 of the National Company Law Appellate Rules, 2016.

In the matter of:

E- Village Kendra Limited
(formerly known as Sahaj E-Village Limited)

...Applicant

Versus

IL & FS Financial Services Limited

...Respondent

Order reserved on: 29 July 2022

Order pronounced on: 28 October 2022

Coram:

Shri Rohit Kapoor

:

Member (Judicial)

Shri Balraj Joshi

:

Member (Technical)

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Appearances (through video conferencing):

For the Financial Creditor : Mr. Soorjya Ganguli, Advocate
Ms. Kiran Sharma, Advocate

For the Corporate Debtor : Mr. Swatarup Banerjee, Advocate
Mr. Avishek Guha, Advocate
Mr. S. Haque, Advocate
Mr. Chitresh Saraogi, Advocate

COMMON ORDER

[I.A. (IB) No. 318/KB/2022 and CP (IB) No. 347/KB/2020]

Per Rohit Kapoor, Member (Judicial)

1. This Court convened through hybrid mode.

I.A. (IB) No. 318/KB/2022

2. This I.A. has been filed by E Village Kendra Limited praying for directions to place the Supplementary Affidavit on record.

Submissions of Mr. Swatarup Banerjee, learned Counsel appearing on behalf of the Applicant/Corporate Debtor

3. The learned Counsel submitted that there have been subsequent developments in the present matter. It is stated that IL & FS Group has approximately Rs.91,000 Crore in debt and is facing severe liquidity crisis. Further between July 2018 and September 2018, two of the subsidiaries of IL&FS Group are having trouble to repay the loans.

4. *Vide* an order dated 01 October 2018, the NCLT suspended the existing Board of Directors and reconstituted the same with six persons proposed by the Central Government and a chargesheet has been filed by the

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Serious Fraud Investigation Office against thirty parties for misreporting the Financial Statements of the IL&FS firms.

5. The learned Counsel therefore prayed for submission of a supplementary affidavit to bring these developments on record.

C.P. (IB) No. 347/KB/2020

6. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by IL&FS Financial Services Limited, represented by Mr. Baiju Mathew, authorized through a Board Resolution dated 16 October 2019 seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against E Village Kendra Limited [CIN: U67190WB2002PLC095455] (“Corporate Debtor”).
7. The Corporate Debtor was incorporated on 29 November 2002, having CIN: U67190WB2002PLC095455, under the Companies Act, 1956. It’s registered office is Tangra Industrial Estate II, 45, Radhanath Choudhury Road, Kolkata- 700015. Therefore, this Bench has jurisdiction to deal with this petition.
8. The present petition was filed on 10 January 2020 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 95,95,88,630/- (Rupees ninety-five crore ninety-five lakh eighty-eight thousand six hundred and thirty only) and Rs. 302,73,61,354/- (Rupees three hundred and two crore seventy-three lakh sixty one thousand three hundred and fifty four only) as on 22 November 2018.

Submission of learned Counsel appearing for the Financial Creditor

9. Mr. Soorjya Ganguly submitted that the Financial Creditor sanctioned two infrastructure term loans to the extent of Rs.90,00,00,000/- (Rupees Ninety Crore only) *vide* sanction letter 15 January 2018 and Loan

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Agreement dated 26 March 2018 and to the extent of Rs.2,80,00,000/- (Rupees Two Hundred and Eighty Crore only) *vide* sanction letter 24 March 2018 and Loan Agreement dated 26 March 2018.

10. The Corporate Debtor was liable to pay a sum of Rs.4,55,85,617/- (Rupees Four Crore Fifty Five Lakh Eighty Five Thousand Six Hundred and Seventeen only) on 22 November 2018 as interest for the period of 01 July 2018 to 30 September 2018 in respect to the facility letter dated 15 January 2019 and a sum of Rs. 14,18,21,918/- (Rupees Fourteen Crore Eighteen Lakh Twenty One Thousand Nine Hundred and Eighteen only) as interest for the period of 01 July 2018 to 30 September 2019 in respect to the facility letter dated 15 January 2018.
11. The Corporate Debtor was also required to pay a sum of Rs. 14,18,21,918/- (Rupees Fourteen Crore Eighteen Lakh Twenty-One Thousand Nine Hundred and Eighteen only) as interest for the period of July 1, 2018 to September 30, 2018 in respect of the facility letter dated March 24, 2017
12. A notice dated 22 November 2018 was issued to the Corporate Debtor by the Financial Creditor, for payment of dues, but the Corporate Debtor failed to comply with the said notice.
13. On November 23, 2018, the Applicant demanded payment of Rs. 95,95,88,630/- (Rupees ninety-five crore ninety-five lakh eighty eight thousand six hundred and thirty only) from the Corporate Debtor in relation to First Term Loan. [**Annexure M @ Pgs. 137-138 of the Application**] On November, 27, 2018, another notice was issued to the Corporate Debtor by the Applicant, whereby, the Applicant demanded payment of Rs. 302,73,61,354/- (Rupees three hundred and two crore seventy-three lakh sixty one thousand three hundred and fifty four only) with regard to Second Term Loan. [**Annexure N @ Pgs. 139-140 of the Application**].

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14. The learned Counsel submitted that the Corporate Debtor has acknowledged the debt availed by the Corporate Debtor, in Clause 4 of the Deed of Undertaking executed by the Corporate Debtor on 26 March 2018. [**Annexure J @ Pgs. 117-124 of the Company Petition**] and in Clause 1 of the deed of undertaking executed by the Corporate Debtor on 29 March 2017. [**Annexure K @ Pgs. 125-132 of the Company Petition**]
15. It is also relevant to state here that the Corporate Debtor has created charge on the MCA portal pursuant to Sections 77(1) and 78 of the Companies Act, 2013 and certificate of registration of charge dated May 29, 2018 has also been issued in respect of creation of charge [**Annexure X @ Pgs. 179-186 of the Company Petition**]. It is specifically pointed out that the Corporate Debtor has itself entered March 30, 2017 in the requisite field of “*Date of disbursement*” [**Pg183 of the Company Petition**], which evidences that the Corporate Debtor has acknowledged the receipt of money disbursed by the Applicant and thereafter, took further steps for creation of charge.
16. The Financial Creditor has placed the following documents on record:
- a. Copy of the bank statements annexed with the Supplementary Affidavit dated July 27, 2022 filed by the Financial Creditor evidencing disbursement of the amounts of the two term loan infrastructure facilities. [**Annexure A2@Pgs. 6 – 10 of the Supplementary Affidavit**]
 - b. A copy of the loan agreement dated March 26, 2018. [**Annexure G @ Pgs. 53-76 of the Company Petition**]
 - c. A copy of the loan agreement dated March 29, 2017. [**Annexure I @ Pgs. 91-116 of the Company Petition**]
 - d. A copy of the demand notice dated November 22, 2018. [**Annexure L @ Pgs. 133-136 of the Company Petition**]

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- e. A copy of the notice dated November 23, 2018. [**Annexure M @ Pgs. 137-138 of the Company Petition**]
- f. A copy of the notice dated November 27, 2018. [**Annexure N @ Pgs. 139-140 of the Company Petition**]
- g. A copy of the computation of the amount of default from the two term loan facilities. [**Annexure O @ Pgs. 141-147 of the Company Petition**]
- h. A copy of the deed of hypothecation dated May 17, 2018. [**Annexure P @ Pgs. 148-159 of the Company Petition**]
- i. A copy of a demand promissory note executed by the Corporate Debtor, whereby, they agreed to pay the Applicant the sum of Rs. 90,00,00,000/- (Rupees ninety crore only) with interest at the rate of 12.75% per annum. [**Annexure Q @ Pg. 160 of the Company Petition**]
- j. A copy of a demand promissory note executed by the Corporate Debtor, whereby, they agreed to pay the Applicant the sum of Rs. 280,00,00,000/- (Rupees two hundred and eighty crore only) with interest at the rate of 12.75% per annum. [**Annexure R @ Pg. 161 of the Company Petition**]
- k. A copy of the letter of awareness dated March 29, 2017 executed by SREI Infrastructure Finance Limited. [**Annexure S @ Pgs. 162-164 of the Company Petition**]
- l. A copy of the letter of awareness dated March 27, 2018 executed by SREI Infrastructure Finance Limited along with the extract from the resolution of the board of directors of SREI Infrastructure Finance Limited [**Annexure T @ Pgs. 165-166 of the Company Petition**]

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m. A copy of Certificate dated June 29, 2018 issued by the Central Registry of Securitization Asset Reconstruction and Security Interest of India with regard to creation of security interest in respect of the infrastructure term loans sanctioned in favor of the Corporate Debtor. [**Annexure V @ Pgs. 175-177 of the Company Petition**]

n. A copy of Certificate dated July 6, 2018 issued by the Central Registry of Securitization Asset Reconstruction and Security Interest of India with regard to creation of security interest in respect of the infrastructure term loans sanctioned in favor of the Corporate Debtor. [**Annexure W @ Pg. 178 of the Company Petition**]

17. The Corporate Debtor has defaulted in repayment of the Financial Debt by the Corporate Debtor.

18. The Financial Creditor has proposed the name of Mr. Bimal Kanti Choudhury, registration number IBBI/IPA-001/IP-P01028/2017-2018/11682, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Submission of learned Counsel appearing for the Corporate Debtor

19. The learned Counsel appearing on behalf of the Corporate Debtor submitted that:

a. The Company Petition is absolutely not maintainable in law against the corporate debtor. The Company Petition has been filed with incurable defects and with vague, incoherent facts without substantiating it with cogent and authentic documents. The

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Company Petition is incomplete and has been filed under improper format which is an incurable defect as per prevailing law. The debt amount and default of the Corporate Debtor has not been established by any authenticate documents and/or books of ledger and the applicant failed to provide any certificate under section 65B(4) of the Evidence Act 1872 to justify the veracity of the computer generated documents and/or books of ledger showing the defaults of the Corporate Debtor.

- b. As per RBI notification dated 24 April 2009, it was directed whenever Banks submit any data stored in their computer systems as evidence under Bankers' Books Evidence Act, 1891 to a court of law, the data must be accompanied by a certificate prescribed under section 2A(a) and (b) of the Bankers' Books Evidence Act, 1891 and in the absence of such statutory certificate, the court would not be obliged to admit the document in evidence without any further proof, in the present case the Financial Creditor being a Non-Banking Financial Corporation has submitted data stored in it's computer systems as evidence under as Evidence to a court of law, the data must have been accompanied by a certificate prescribed under Section 65B(4) of the Evidence Act 1872 and in the absence of such statutory certificate, the court cannot admit the document in evidence without any further proof.
- c. He further referred to section 7(3) of the Code that the Financial Creditor has to prove the default recorded with information utility or evidence of default and the Financial Creditor has failed to establish and provide legitimate evidence of default with a certificate under section 65B(4) of the Evidence Act, 1872.
- d. The learned Counsel placed reliance on Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Others; (2020) 7 SCC 1.

Rejoinder of the learned Counsel in reply to the Corporate Debtor

20. The learned Counsel submitted that it is to be noted that the Corporate Debtor failed to appreciate the fact that said Regulation was inserted by *Notification No. IBBI/2020-21/GN/REG066, dated November 13, 2020* and was made effective from the said date only, and therefore the Corporate Debtor made an attempt to mislead this Hon'ble Tribunal, if possible. In this connection, it is to be noted that the application under section 7 of the IBC was filed on January 27, 2020, when the said Regulation was not applicable.
21. In this connection, it is relevant to rely upon the law laid down by Hon'ble Supreme Court of India in the matter of *Asset Reconstruction Company (India) Limited v. Tulip Star Hotels Limited & Ors. [Civil Appeal Nos. 84-85 of 2020] dated August 1, 2022*, wherein it has been specifically held that an application to the Adjudicating Authority under section 7 of the Code, in the prescribed form, cannot, be compared with the plaint in a suit, and cannot be judged by the same standards, as a plaint in a suit, or any other pleadings in a court of law. Therefore, since the proceedings under the provisions of IBC are summary in nature, the Financial Creditor has submitted all the requisite documents and/or information in order to prove the existence of financial debt and default.

Analysis and Findings

22. Heard the learned Counsel appearing for the Financial Creditor and the learned Counsel appearing for the Corporate Debtor and perused the record.
23. The main defence raised by the Corporate Debtor is that the Financial Creditor has failed to provide any certificate under section 65B(4) of the Evidence Act 1872.

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24. Keeping aside the documents in question, the Financial Creditor has filed Loan Agreements dated 29 March 2017 and 26 March 2018 wherein the Corporate Debtor is a party to the said agreements. Hence, it is clear that there is debt between the Financial Creditor and Corporate Debtor.
25. The Financial Creditor has filed several documents to substantiate its contention that there is a debt which exists between the Financial Creditor and the Corporate Debtor. The Financial Creditor has filed a supplementary affidavit which is in substance is sufficient to corroborate the pleadings and the debt and default of the Corporate Debtor.
26. The Corporate Debtor has only objected to the admission of the calculation sheet submitted by the Financial Creditor, but has not objected to the fact that the Corporate Debtor was not in default. From the Bank Statements filed in the Supplementary Affidavit, it is clear that the Corporate Debtor has defaulted in payment of the debt.
27. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time
28. Further, the IA filed by the Corporate Debtor seeking permission to file a supplementary affidavit to bring on record the default of the Financial Creditor cannot be accepted specially at this stage, when the burden of proof for due payment is on the Corporate Debtor, no good can come from washing the dirty linen of the Financial Creditor instead. Hence, the I.A. is liable to be dismissed.
29. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

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- a. The application bearing *CP (IB) No. 347/KB/2020* filed by IL & FS Financial Services Limited, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against *E Village Kendra Limited*, the Corporate Debtor, is *admitted*.
- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority 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.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Bimal Kanti Choudhury**, registration number IBBI/IPA-001/IP-P01028/2017-2018/11682, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

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- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three 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).
- j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

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k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

30. In view of the above observations, **I.A. 318/KB/2022 is dismissed.**

31. **CP (IB) No. 347/KB/2020** to come up on **15.11.2022** for filing the periodical report.

32. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on 28 October 2022.

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