

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT- II)

Item No. 202
CP(IB)-236/ND/2024

IN THE MATTER OF:

Canara Bank

Asset Recovery Management Branch-1
Arya Samaj Road, Karol Bagh, New Delhi-110005

**... Applicant/
Financial Creditor**

Versus

M/s SV Buildcon Pvt. Ltd.

592 A, Bijwasan, South West Delhi
New Delhi, Delhi-110061

**... Respondent/
Corporate Debtor**

Under Section: 7 of IBC, 2016

Order delivered on 30.07.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Hitesh Sachar

For the Respondent : Adv. Jagdeep Sharma, Adv. Kartikeya Sharma, Adv. Jugal Bagga, Adv. Sumit Kaushik, Adv. Charanjeet Khatana, Adv. Ritwik Sharma, Adv. C Chet Ram Kaushik

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

Indubitably the Respondent before us i.e. M/s SV Buildcon Pvt. Ltd. stood as Personal Guarantor qua the financial facilities extended by the Financial Creditor to M/s Suryansh Healthcare Pvt Ltd. The Part-IV of the application indicate the amount of debt and default in repayment of the same.

The Part-IV (1) & (2) of the application reads thus:-

PART – IV

PARTICULARS OF FINANCIAL DEBT

<p>I.</p>	<p>TOTAL AMOUNT OF DEBT GRANTED.</p>	<p>Vide loan application in the year 2013, the Principal borrower i.e., M/s Suryansh Healthcare Private Limited requested the Applicant Bank for grant of certain credit facilities for Setting up a full-fledged hospital 102 bedded hospital at Moradabad UP.</p> <p>Accordingly, the Applicant bank vide sanction letter dated 22.05.2013 bearing Ref. No. CBHK/SURYANSH/2013 sanctioned Term Loan of Rs.20,22,00,000 (Rupees Twenty Crores Twenty-Two Lakhs Only) under the hypothecation of plant, Machineries, Equipment's Computers, Printers, U.P.S., fittings, Fixtures and other Assets already acquired or to be acquired by the Principal Borrower and created equitable mortgage right of property bearing Khasra No. 150, measuring 6482.90 Syds approx, near Suryansh Golf Link, situated in revenue estate of Vill. Bhensiya, Main Rampur- Moradabad as a collateral security.</p> <p>Copy of Board Resolution dated 02.05.2013 is annexed here as Annexure-3</p> <p>Copy of the Common Hypothecation Agreement executed by Principal Borrower in favor of the Applicant Bank is annexed here as Annexure-4</p> <p>Copy of the said sanction letter dated 22.05.2013 issued by the Applicant Bank is annexed herewith as Annexure – 5</p> <p>Corporate Guarantor/ Debtor executed a Guarantee Agreement along with others guarantors towards the Term Loan facility advance in favor of Principal Borrower dated 14.06.2013. Copy of the said Guarantee Agreement dated 14.06.2013 is annexed here as Annexure-6</p>
	<p>DATE(S) OF DISBURSEMENT</p>	<p>That Applicant Bank on 21.06.2013 disbursed a sum of Rs.17,47,31,647/- (Rupees Seventeen Crore Forty-Seven Lakh Thirty-One Thousand Six Hundred Forty-Seven Only) out of the sanctioned Term Loan disbursed the aforesaid term loan facility as per the stage of Construction on the project land.</p> <p>With respect to the facilities, the Corporate Guarantor/ Debtor had created equitable mortgaged of the land bearing Khasra No.150, measuring 5422.50 sq. m situated in the Revenue Estate of Village Bhensia, Tehsil & District- Moradabad U.P executed the following documents in favour of the Applicant Bank:</p> <ol style="list-style-type: none"> 1. Copy of Board Resolution dated 02.05.2013. 2. NF 461: Letter Evidencing Deposit of Title Deeds executed by SV Buildcon Pvt. Ltd. i.e.,

		<p>Corporate Guarantor/ Debtor in favor of the Applicant Bank.</p> <ol style="list-style-type: none"> 3. Khatoni years 1412 to 1417 khata no.509 4. Original Sale deed dated 13.08.2008 executed by Yash s/o Shri Om Prakash in favour of M/s S.V. Buildcon Pvt. Ltd. 5. Original sale deed 03.05.2007 executed by Shyam Singh S/o Shri Badlu in favour of Shri Sitaram s/o Shri Agnoo Singh. 6. Original Sale deed 05.10.2007 executed by Shri Sitaram s/o Shri Agnoo singh in favour of Shri Yash s/o Shri Om Prakash. 7. Nil Encumbrance Certificate for the aforesaid immovable Properties dated 22.06.2013 <p>The copies of the above stated documents executed by Corporate Guarantor/ Debtor in favour of the Applicant Bank are annexed herewith as Annexure - 7 (Colly)</p>
2.	<p>Details of transactions on account of which debt fell due:</p>	<p>The Applicant Bank/Financial Creditor vide sanction letter dated 22.05.2013, sanctioned credit facilities to the tune of Rs. 20,22,00,000/- (Rupees Twenty Crores Twenty-Two Lakhs Only) to the Principal Borrower.</p> <p>That Applicant Bank on 21.06.2013 disbursed a sum of Rs.17,47,31,647/- (Rupees Seventeen Crore Forty-Seven Lakh Thirty-One Thousand Six Hundred Forty-Seven Only) out of the sanctioned Term Loan disbursed the aforesaid term loan facility as per the stage of Construction on the project land. It is pertinent to mention that the facility advanced to the Principal Borrower was duly secured by Hypothecation agreement of plant, Machineries, Equipment's Computers, Printers, U.P.S., fittings, Fixtures and other Assets already acquired or to be acquired by the Principal Borrower and created equitable mortgage right of property bearing Khasra No. 150, measuring 6482.90 Syds approx, near Suryansh Golf Link, situated in revenue estate of Vill. Bhensiya, Main Rampur- Moradabad as a collateral security.</p>

That it has been observed by applicant bank, that there has been default in payment of the equated monthly installments by Principal Borrower which the Principal Borrower failed to regularize despite repeated request by the Applicant Bank. After repeated reminders by the applicant bank, Principal Borrower assured the Applicant Bank to clear the entire liability and requested for the No Objection Certificate (NOC) on the mortgage Property to clear dues of the Applicant Bank vide letter dated 16.06.2015. And the same is issued by the Applicant Bank vide letter dated 25.08.2015 for all the mortgaged property for a period of Six months with a condition to clear the entire liability.

That as there was default in the repayment of the said enhanced facility, the account of the Principal Borrower slipped into Non-Performing Asset (NPA) on 29.09.2015 as per the guidelines and directions issued by the Reserve Bank of India.

Accordingly, on 29.09.2015 the total amount due and payable by Principal Borrower to the Applicant Bank/Financial Creditor was Rs.18,84,54,298/- (Rupees Eighteen Crore Eighty-Four Lakh Fifty-Four Thousand Two Hundred Ninety-Eight Only).

However, despite the said notice there was no repayment made by Corporate Guarantor/ Debtor towards the outstanding debt.

That on 01.02.2016, the Applicant Bank issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, against the Principal Borrower and the Corporate Guarantor/ Debtor.

Copy of the Notice dated 01.02.2016 under Section 13(2) of the SARFAESI Act, 2002, issued by the Applicant Bank against the Principal Borrower and the Corporate Guarantor/ Debtor is annexed hereto as Annexure - 3

Financial statements from 2015-2016 till date duly evidencing the outstanding liabilities of the Principal Borrower towards the Applicant Bank are annexed

		<p>hereto as Annexure -4(Colly).</p> <p>As the Corporate Debtor being the Corporate Guarantor failed to pay the outstanding dues, the Financial Creditor/Applicant Bank filed Original Application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993, against the Principal Borrower and Corporate Guarantor on 02.06.2018 and the same is pending.</p>
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2. Ld. Counsel for the Corporate Guarantor opposed the application by espousing:-

- a) the application is barred by limitation;
- b) out of principal amount of Rs. 28 crores, an amount of Rs. 20.05 Cr has already been paid to the financial creditor;
- c) there is dispute regarding the amount of debt repayable by the Principal Borrower/Corporate Guarantor. The O.A. Bearing No. 412 of 2016 filed by the Financial Creditor is pending before DRT-II.

3. As far as first proposition is concerned, the Ld. Counsel for the Financial Creditor could draw our attention to Annexure R-6 to the reply filed by the Corporate Debtor and submitted that admittedly after 22.03.2017, the borrower had repaid certain amount of debt, thus it amounted to acknowledgement by it within three years i.e. before expiry of the period of limitation. After having referred to the letter dated 24.02.2023, he submitted that he also made reference to letter dated 21.02.2024 placed on record as Annexure-R-15 of the reply. Making reference to Para 9 of the letter addressed by the SS Realtech Pvt. Ltd. and the Principal Borrower, he submitted that till

2019, the Principal Borrower paid from its sources an amount of Rs. 14.81 Cr. against the term loans disbursed to both the companies i.e. the Principal Borrower and M/s SS Realtech Pvt. Ltd. Para 9 of the letter dated 21.02.2023 reads thus:-

“9. When the above said term loans become NPA in the year 2015, we gave an OTS proposal to the Canara Bank of Rs. 23.80 Cr. and bank gave counteroffer of Rs. 29.10 Cr. on 22.03.2017. That till the time the canrent loan was already repaid finally but despite the facts the bank appropriated the rent forcibly without our consent and also appropriated the rent against this loan in which the can-rent property was never mortgaged and was let out to DMRC. That till 2019 we paid from our sources Rs. 14.81 Cr. against the term loans, disbursed in both the companies amounting to Rs. 25.48 Cr.”

4. As can be seen letter dated 24.02.2023 written by the Principal Borrower to the General Manager of the Financial Creditor, the Principal Borrower could offer settlement to the Financial Creditor on 30.12.2020, 01.03.2021, 13.07.2021, 29.11.2021, 16.12.2021, 03.02.2022, 30.04.2022, 02.07.2022 and 02.08.2022. Thus apparently, there was repayment of amount of debt and acknowledgement of the same before expiry of the period of limitation i.e. 3 years.

5. Ld. Counsel for the Applicant/FC could also refer to balance sheet for the period ending 31.03.2016. It is seen from Page 224 of the paper book/balance sheet that the Principal Borrower had acknowledged the liability to repay the amount of debt. Apparently there had been acknowledgement of amount of debt from time to time before expiry of the period of limitation.

6. In the wake, the plea of delay raised by Ld. Counsel for the Corporate Guarantor is accepted. As far as the second plea raised by Ld. Counsel is concerned, in terms of the provisions of Section 238 of IBC, 2016 the proceedings under IBC have overriding effect over the proceedings under the SARFAESI Act thus pendency of the O.A. No. 412/2016 cannot come in way of maintainability of the present proceedings. Besides even otherwise also, the object of the original application filed before DRT is recovery of debt while that of the present proceeding is to put the Corporate Debtor back to its feet and rescue it. Mr. Jagdeep Sharma could also raise the issue of the amount of debt. We may not be oblivious of the fact that in present proceedings we do not record any finding on actual liability of the Principal Borrower from the Corporate Debtor what we need to see is only as to whether the threshold limit is satisfied or not.

7. During the hearing, Ld. Counsel submitted that out of the principal amount of Rs. 28 Cr. an amount of Rs. 20,50,000,00/- has been paid thus admittedly the defaulted amount is more than Rs. 1 Cr. In the wake, the plea regarding dispute in the remaining amount of debt can be no ground to nix the captioned application as admittedly the amount defaulted to be paid is over and above threshold limit of 1 crore.

8. It would not be to our context that to note that in the case of Laxmi Pat Surana vs. Union Bank of India & Anr. (Civil Appeal No. 2734 of 2020), Hon'ble Supreme Court ruled that the proceeding under Section 7 of IBC, 2016 can also be instituted against the Corporate Guarantor. To espouse the liability of

the Respondent to pay the defaulted amount, the Ld. Counsel for the Applicant could draw our attention to Annexure A-6 of the application. Annexure A-6 is Deed of Guarantee in terms of which the Corporate Guarantor has liability to repay the amount of debt. The relevant excerpt of the Guarantee Agreement reads thus:-

समस्त स भवधत्त दयताए शामिल हैं ।
This AGREEMENT WITNESSETH that in consideration of the premises the Guarantor both hereby agree to indemnify the Bank against all loss and to pay and satisfy to the Bank on demand the "General Balance" due from the Borrower and the expression "General Balance" shall be deemed to include all and every sum and sums of money and the amount of interest at such rates as charged from time to time and claimed by the Bank, which are now or shall at any time to be owing to the Bank in any of its offices on any account whatsoever whether the "Borrower" solely or from the Borrower jointly with any other or others in Partnership or otherwise whether as principal or surety or otherwise and whether such liabilities have matured or not and whether they are absolute or contingent including all liabilities in respect of advances, guarantees, letter of credit, cheques, Hundies, Bills, Notes, Drafts and other negotiable instruments, drawn, accepted, endorsed or guaranteed by the Borrower and in respect of interest at the rate agreed upon with monthly/quarterly rest, commission and banking charges and in respect of all costs, charges and expenses which the Bank may incur in paying any rent, rate, taxes, duties, calls, instalments, legal and other professional charges or other outgoings whether for the insurances, repair, maintenance, management, realization or otherwise in respect of any property, movable or immovable or any chattels actionable claims or scrip securities or title deeds pledged, mortgaged or assigned to or deposited with the bank as security for the due payment and discharge of Borrower's liability to the Bank.

9. Apparently the Principal Borrower/Corporate Debtor had defaulted to pay the amount and the account of corporate guarantee was declared NPA in the year 2015. In view of the aforementioned, the requirement of the provisions of Section 7 (3) & (5) of IBC, 2016 is satisfied and **we are left with no option but to admit the present application.**

10. **In the backdrop, moratorium as provided under Section 14 of IBC, 2016 is declared qua the CD and** as a necessary consequence thereof the following prohibitions are imposed, which must be followed by all and sundry:

- (a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.

11. As proposed by the Petitioner, Mr. Vivek Parti, having Registration No. IBBI/IPA-001/IP-P00813/2017-2018/11376 and e-mail: v_parti@yahoo.com, is appointed as IRP, subject to the condition that no disciplinary proceeding is pending against him and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order.

12. It is further ordered that Mr. Vivek Parti shall take charge of the CIRP of the Corporate Debtor with immediate effect and would take steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 read with extend provisions of IBBI (Insolvency Resolution of Corporate Persons) Regulations, 2016.”

13. The Petitioner is directed to deposit Rs. 2,00,000/- only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

14. A copy of this Order shall immediately be communicated by the Registry/Court Officer of this Tribunal to the Petitioner /Financial Creditor, the Respondent/Corporate Debtor and the IRP mentioned above.

15. In addition, a copy of this Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Ashima/Ruchita