

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB)No.220/BB/2018
U/s.7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of

M/s. Phoenix ARC Private Limited

(Trustee of Phoenix Trust FY 16-23)

5th Floor, Dani Corporate Park,

158, C.S.T Road, Kalina,

Santacruz (E)

Mumbai – 400 098

- Petitioner

Versus

M/s. Base Corporation Limited

Flat No.S2, 2nd Floor,

No. 13, Lohan's Regent,

Sundermurthy Road,

Cox Town,

Bengaluru – 560 005

- Respondent/Corporate Debtor

Date of Order: 2nd August, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Ms. Swapa Easwaramoorthy

For the Respondent : Ms. Akshata Benegal



ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P.(IB)No.220/BB/2018 is filed by M/s. Phoenix ARC Private Limited (Petitioner/Financial Creditor), U/s. 7 of IBC, 2016, R/w. Rule 4 of I&B (AAA) Rules, 2016, by inter alia, seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Base Corporation Limited (Respondent/Corporate Debtor) on the ground that the Corporate Debtor has committed, default for an amount of Rs.530,62,67,571/- (Rupees Five Hundred and Thirty Crores Sixty Two Lakhs Sixty Seven Thousand Five Hundred and Seventy One only) which includes principal amount and interest.
2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:
 - (1) M/s. Phoenix ARC Private Limited (herein after referred as Petitioner/Operational Creditor) is a Company incorporated under the Companies Act, 1956, and is registered as an Asset Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
 - (2) M/s. Base Corporation Limited (herein after referred as Respondent/Corporate Debtor) was incorporated on 12.08.1987 under the Companies Act, 1956, having its registered office in Bengaluru. Its Authorized Share Capital of the Corporate Debtor is Rs.50,00,00,000/- (Rupees Fifty Crores only) and Paid-up Share Capital is Rs.49,94,83,400/- (Rupees Forty Nine Crores Ninety Four



Lakhs Eighty Three Thousand Four Hundred only). The main objections of the Respondent are the manufacturing, importing, exporting and trading of lead acid batteries. The Respondent has set up two acid battery manufacturing plants, one at Solan, Himachal Pradesh and another at Anegolu Village, Denkanikottai Taluk, Krishnagiri District, Tamil Nadu.

- (3) It is submitted that the setting up and expansion of the above-mentioned lead acid battery manufacturing plants, the Respondent had requested for financial assistance from the State Bank of Hyderabad and availed a Loan facility from the State Bank of Hyderabad vide Sanction Letter dated 10.10.2009 for Cash Credit (Hyp.) limit of Rs.30 Crores (Bill discounting as Sub limit of Rs.20 Crores) (Fund Based Working Capital Limit), Letter of Credit of Rs.10 Crores and Bank Guarantee of Rs.5 Crores (Non Fund Based Working Capital Limit), Agreement of Loan dated 13.10.2009 was executed.
- (4) The Respondent has also requested for financial assistance from several other banks and financial institutions too, for various forms of financial assistance. In pursuance to the same, since 2006, several banks and financial institutions had provided both fund-based as well as non-fund based working capital facilities and term loan facilities to the Respondent independently. Subsequently, all the Banks which were lending to the Respondent came together and extended their facilities, under the Multiple Banking Arrangement Scheme ("MBA Scheme") since 2009.

- (5) Thereafter, some of the banks which were providing working capital facilities to the Respondent, namely, the State Bank of Hyderabad, Axis Bank, IDBI Bank, erstwhile State Bank of Mysore, State Bank of India, Punjab National Bank, Bank of Maharashtra and Vijaya Bank, proposed to convert the facilities from under the Multiple Banking Arrangement Scheme into a Consortium Arrangement. The State Bank of Hyderabad was assigned as the lead Bank and the Security Agent for the purposes of the consortium documentation and for the creation of securities.
- (6) The State Bank of Hyderabad, under the said Working Capital Consortium Agreement dated 27.02.2013 had sanctioned Fund Based Facilities of 65 Crores and Non-fund based facilities of 10 Crores (total limit of 75 Crores). Accordingly, the Respondent was sanctioned Working Capital Consortium facilities amounting to Rs.450,00,00,000/- in terms of the Working Capital Consortium Agreement dated 27.02.2013. The said facility was later enhanced to Rs.4,75,00,00,000/-. The facilities were extended for meeting the working capital needs of the Respondent in addition to/in replacement of the existing facilities and other facilities.
- (7) Apart from the above, the Respondent, had approached some banks including the State Bank of Hyderabad, who were providing Term Loan facilities to the Respondent under the MBA Scheme, for grant of a term loan of Rs.270 crores for setting up Greenfield manufacturing plant at



Anegolu Village, Denkenikotta Taluk, Krishnagiri District, Tamilnadu (hereinafter "Hosur Unit"). Pursuant to such request, the State Bank of Hyderabad, State Bank of India, Axis Bank, Bank of India and Punjab National Bank (hereinafter "Term Loan Banks"), proposed to convert the facilities from the Multiple Banking Arrangement Scheme into a Consortium Arrangement. Even in this case, the State Bank of Hyderabad was assigned as the Lead Bank and the Security Agent for the purposes of the consortium documentation and for the creation of securities. In furtherance to the same, the State Bank of Hyderabad granted term loan facilities of Rs.50 crores to the Respondent. The Term Loan facilities extended in terms of loan agreements by the consortium of banks were also secured by way of the execution of security documents which are all dated 19.04.2013, detailed below and also by way of the execution of personal guarantees and Corporate guarantees.

a)	Common Loan Agreement dated 19.04.2013 between State Bank of Hyderabad and Respondent
b)	Letter of Authority dated 19.04.2013
c)	Security Agent Appointment Agreement dated 19.04.2013
d)	Inter-Creditor Agreement dated 19.04.2013
e)	Trust and Retention Account dated 19.04.2013
f)	Memorandum of confirmation of Pari-Passu agreement dated 19.04.2013
g)	Letter of Undertaking of Respondent for cost overrun/shortfall dated 19.04.2013
h)	Letter of Understanding of Respondent for non-declaration of dividend dated 19.04.2013



i)	Letter of Undertaking of Respondent for non-disposal of shareholdings dated 19.04.2013
j)	Letter of Undertaking of Respondent for non-receipt of commission dated 19.04.2013
k)	Letter of Undertaking of Respondent for non-withdrawal of unsecured loans/deposits dated 19.04.2013
l)	Letter of Undertaking regarding creation of Mortgage dated 19.04.2013
m)	Letter of Undertaking of Respondent for disclosure to Reserve Bank of India regarding credit facilities availed by Respondent dated 19.04.2013
n)	Assignment Agreement dated 19.04.2013 between Respondent term Loan Bank and State Bank of Hyderabad
o)	Deed of Hypothecation dated 19.04.2013
p)	Deed of Hypothecation dated 19.04.2013

(8) The Working Capital facilities were further extended by the consortium of banks, which were secured by way of the execution of security documents and also by way of the execution of personal guarantees and corporate guarantees. The following documents were extended in this regard.

- a) Letter of Sanction of Credit Facilities dated 25.06.2013
- b) Agreement of Loan for overall limit dated 25.06.2013
- c) Letter regarding the grant of individual limits within overall limit dated 25.06.2013
- d) Agreement of Hypothecation of Goods and Assets dated 25.06.2013.
- e) Undertaking of the Respondents dated 25.06.2013
- f) Memorandum of Deposit of Title Deeds dated 28.06.2013 and
- g) Letter dated 29.06.2013 confirming the deposit of title deeds.



- (9) Thereafter, the Respondent again sought an enhancement of the aggregate Working Capital facilities, pursuant to which the consortium of banks enhanced the aggregate Working Capital facilities from the existing Rs.450 crores to Rs. 675 Crores in terms of a First Supplemental Working Capital Consortium Agreement dated 16.12.2013. The State Bank of Hyderabad was yet again nominated as the Lead Bank and Security Agent. The enhancement Working Capital facilities extended by the consortium of banks were also secured by way of execution of security documents, and also by way of the execution of personal guarantees and corporate guarantees.
- (10) As on 04.01.2014, the State Bank of Hyderabad had extended Rs. 105 Crores of fund based working capital facilities and Rs. 60 Crores of non-fund based working capital facilities, and Rs. 50 Crores of term loan facilities to the Respondent. The State Bank of Hyderabad entered into a memorandum of extension/ceding of second charge dated 12.12.2013 and 04.01.2014 with the Term Loan Banks and the Working Capital Lenders, agreeing to create a 2nd charge in favor of other banks in respect of assets/properties over which they had first charge on a reciprocal basis.
- (11) Subsequently, the Respondent was referred to the Corporate Debt Restructuring Forum (CDR) for a restructuring package. A restructuring package was approved vide Letter of approval dated 23.09.2014 issued by the Corporate Debt Restructuring Cell and in terms of which the various facilities availed by the Respondent were



restructured and the State Bank of Hyderabad was appointed as the Monitoring Institution thereunder. In pursuance to such restructuring a Master Restructuring Agreement dated 26.09.2014 was executed between the consortium of banks and the Respondent in terms of the Master Restructuring Agreement dated 26.09.2014, the Lenders had also appointed SBICAP Trustee Company Limited as Security Trustee.

In pursuance to the approval of the restructuring and the execution of the master Restructuring Agreement, the State Bank of Hyderabad approved facilities to the Respondent. Simultaneously, the following documents were executed.

- a. Debtor-Creditor Agreement dated 26.09.2014
- b. Trust and Retention Account Agreement dated 26.09.2014
- c. Security Trustee Agreement dated 26.09.2014
- d. Deed of Hypothecation dated 26.09.2014
- e. Declaration by the Respondent dated 26.09.2014

In terms of the CDR package vide LOA No. CDR(PNJ) No. 432/2014-15, the Respondent has also confirmed the security being offered to the Lenders in the month of October 2014.

- (12) In consideration of the restructured term loans sanctioned by the consortium, a Second Supplemental Working Capital Loan dated 18.11.2014 and Secured Supplemental Term Loan Consortium Agreement dated 18.11.2014 were executed along with a Letter of Authority to Lead Bank dated 18.11.2014, authorising State Bank of Hyderabad as Lead Bank, Other additional documents with third parties



for guarantee/warranty and /or security were executed to secure the restructured loan.

- (13) Subsequently, the Respondent requested State Bank of Hyderabad to amend the Master Restructuring Agreement by substitution and addition of certain clauses pursuant to which, CDR Forum was approached yet again for modification. Upon approval by the CDR Cell vide its Letter dated 30.01.2015, a Supplemental Master Restructuring Agreement dated 27.04.2015 were executed. Even subsequent to the restructuring of the facilities and despite repeated requests from the Assignor of the Applicant, that is, State Bank of Hyderabad, the Respondent has failed and neglected to repay the debts due to the Applicant or to regularize the loan accounts. In accordance with the directives and guidelines issued by the Reserve Bank of India relating to asset classifications, the account of the Respondent was classified as a non-performing asset by the State Bank of Hyderabad, on 30.11.2015.
- (14) It is submitted that the Applicant herein is the assignee of the State Bank of Hyderabad and has received assignment of the debt arising under the various financing documents together with all the underlying securities in terms of an Assignment Agreement dated 28.03.2016.
- (15) The Respondent failed and neglected to repay the debts due by it, as a result of which the restructuring failed, and consequently, the Respondent was exited from the CDR mechanism. A meeting was held on 26.10.2016 by CDR EG, approving exit of the respondent from CDR mechanism. The



decision of the CDR EG was communicated by the Applicant vide its letter dated 16.11.2016.

- (16) In the meantime, in terms of an Assignment Agreement dated 28.03.2016, the State Bank of Hyderabad assigned the debt in respect of the Respondent, together with all the underlying securities, in favour of the Applicant herein. In terms of the said Assignment Agreement, the State Bank of Hyderabad has assigned all its right, title, interest and benefit under the security documents executed by the Respondent in its favour, in favour of the Applicant herein, as a result of which, the Applicant herein has stepped into the shoes of the State Bank of Hyderabad and has become solely entitled to receive repayments and enforce payment of all debts under the various financing documents.
- (17) As a consequences of the continued default on the part of the Respondent in payment of the outstanding amounts, the Applicant has issued a demand notice dated 18.04.2017 under Section 13(2) of the SARFAESI Act, as well as a consequent notices dated 04.10.2017 and 02.11.2017 under Section 13(4) of the SARFAESI Act for taking symbolic possession of lands measuring about 78.78 acres comprised in various survey number in Anegollu Village, Denkanikottai Taluk, Krishnagiri District, Tamil Nadu and lands measuring 57 Bighas and 12 Biswas situated in Moza Nagali Tehsil and District Solan, Himachal Pradesh respectively. The Applicant along with other banks of the consortium has initiated proceedings before the debt recovery Tribunal in Original Application, which is



registered as OA. No.698 of 2018 and the same is pending for further hearing.

(18) It is also submitted that the working capital and term loan facilities extended by the State Bank of Hyderabad, the right, title and interest relating to which facilities and the security interest pertaining thereto, have now been assigned in favour of the Applicant herein, all constitute a "Financial Debt", as contemplated under the provisions of the insolvency and Bankruptcy Code, owed by the Respondent Corporate Debtor to the Applicant Financial Creditor herein. As stated above, on account of the Respondent failing to repay the debt in terms of the financing documentation and the Respondent thereafter been exited from the CDR mechanism and thereafter being classified as an NPA as per RBI Regulations, and the Respondent having failed to repay the debt even as on date, a "default" as contemplated under the provisions of the IBC has occurred

3. The Company Petition has opposed by the Respondent/ Corporate Debtor, by filing the Statement of Objections dated 19.03.2019, by inter alia contending are as follows:

(1) It is submitted that the above Company Petition filed by the Petitioner is without merits and ought to be dismissed in limine. The Petitioner is not the duly authorized assignee of the debt in accordance with the procedure prescribed in the erstwhile CDR structure guidelines, and therefore, does not have the locus standi to file the above Petition. As per the said guidelines, in the event a member of the consortium assigns the debt to an asset reconstruction company, such



ARC is required to become a members of the CDR and must necessarily execute a fresh Master Restructure Agreement with the other members of the consortium and the borrower. However, the Petitioner has never executed a fresh Agreement with the Respondent and the other members of the consortium and was never a member of the CDR Cell.

- (2) However, due to various internal and external reasons, the Respondent's operations came under strain. In the circumstances, the Respondent requested the State Bank of Hyderabad and the other members of the consortium for debt restructuring of the facilities availed by the Respondent. Pursuant to this, and in view of the Respondent's commitment to improve its operations, the consortium referred the Respondent to the Corporate Debt Restructuring Forum, a non-statutory voluntary mechanism set up under the aegis of the Reserve Bank of India, for efficient restructuring of corporate debt.
- (3) The State Bank of Hyderabad, the Respondent and other members of the consortium, pursuant to receiving approval from the Corporate Debt Restructuring Cell, executed a Master Restructuring Agreement on 26.09.2014. The document produced with the Petition as Document No.13, purported to be the master Restructuring Agreement, is incomplete and at variance with the executed document provided to the Respondent by the consortium.
- (4) As per Agreement, the State Bank of Hyderabad was designated as the lead bank of the Consortium. The parties



agreed that the loans disbursed by the members of the consortium until the date of the agreement would be restructured as per Schedule III of the Agreement. The purpose of such restructure was to enable the Respondent to complete and operate its manufacturing unit in Hosur, Tamil Nadu, and rejuvenate and strengthen the business of the Respondent Company. As per the Agreement, the term of the Agreement for disbursement and repayment of the restructured loans described at Schedule III of the Agreement would be for 10 years i.e., until March 2024. From the inception of the Master Restructure Agreement, there was no coordination amongst the members of the consortium, and the consortium failed to comply with the terms of the Agreement.

- (5) It is submitted that the consortium had committed to release the sanctioned limit by January 2015 to enable the Respondent to operate its manufacturing units. However, the consortium was unable to come to a consensus on release of the funds and refused to release the said amount stating that they required further documentation and security interest. As such, the entire process was delayed. In October 2015, the consortium had only released Rs.14,00,00,000 to the Respondent, from the sanctioned limit of Rs.2,21,00,00,000 as per the terms of the CDR Agreement. On the other hand, as per clause 6(v) of the Agreement, the promoters of the Respondent agreed to infuse approximately Rs.25,00,00,000 into the Respondent Company, before December 2015, in order to



avail the sanctioned limit of Rs.25,00,00,000. The Respondent completed the said infusion in time.

- (6) Despite the delay in disbursement of the sanctioned loan amounts, the Respondent continued to pay interest amounting to Rs.5,00,00,000 every month, and had paid a total of approximately Rs.55,00,00,000 to the consortium till date.
- (7) In view of the aforesaid issues in respect of the Respondents' business, the consortium was unable to coordinate and agree on release of funds. In fact, the State Bank of Hyderabad, being the lead bank, failed to mediate the consortium meetings in a productive manner. The consortium, having realized that the CDR structure had failed in respect of the Respondent, were hesitant and unwilling to release further funding, which is wholly contrary to the provisions of the Agreement, particularly Schedule III of the Agreement. Pursuant to the assignment of the debt by the State Bank of Hyderabad in favor of the Petitioner, the Petitioner and the Respondent entered into discussions where the Petitioner promised to arrange funding to enable revival of the Respondent's business. The Petitioner asked the Respondent's promoters to borrow money from private lenders to keep the business afloat to enable investments by potential investors brought in by the Petitioner. However, the issue remained unresolved.
- (8) It is submitted that, as per Clause 2.2 and Clause 10.10 of the Master Restructure Agreement, the said Agreement supersedes all prior documentation executed between the



members of the consortium and the Respondent. The members of the consortium, and the Petitioner by assignment, have waived their right to seek remedies in respect of all existing events of default relating to the members of the consortium and any and all rights, remedies and powers that may have arisen in connection therewith.

- (9) As state above, Schedule III of the above Agreement shows the schedule as per which the Petitioner will disburse funds and the Respondent will repay the entire monies due, in terms of the restructure of the loans. The Schedule provides that the payments will be made by the Respondent over a period of ten years i.e., until March 2024. It is reiterated that, as per the terms of the Mater Restructure Agreement, the loans advances to the Respondent by each member of the consortium were restructured in accordance with Schedule III to the Agreement. The consortium had further agreed to advance further loans to the Respondent to enable the Respondent to strengthen its business. However, the consortium delayed release of the said funds but demanded that the Respondent continue to pay interest in accordance with the Agreement.
- (10) Due to the failure by the consortium to comply with the terms of the Master Restructure Agreement, the bank did not release funds in time, the Respondent's cash flow reserve suffered a serious blow, and the Respondent's manufacturing plants became significantly affected and were shut down. Further, there was complete lack of



coordination and agreement amongst the members of the consortium and the Petitioner failed to mediate the same effectively. Consequently, the funds were not disbursed by the consortium in accordance with the Master Restructure Agreement, and the Respondent was put to great distress on this account.

- (11) It is further submitted that the Corporate Debt Restructuring Scheme issued by the Reserve Bank of India, on the basis of which the Master Restructuring Agreement was executed, has been declared to be a failure and has, since, been withdrawn by the Reserve Bank of India in 2018. The Respondent has always been capable of repaying the monies due upon appropriate implementation of the Master Restructure Agreement. However, the same was never honored by the consortium.
- (12) In the circumstances, it is clear the Respondent has also demonstrated it bona fides to honor the Agreement subject to the consortium doing the same. The Respondent has never committed any default as per the terms of the Master Restructure Agreement, which supersedes all other loan documentation.
- (13) The Respondent repeatedly followed up with the Petitioner and the Consortium for disbursement of funds as per the Agreement. However, the consortium kept delaying the same demanding creation of further security interests and documentation. And these demands were made despite being completely aware of the status of the Respondent's business and the purpose of the Agreement, i.e., to



rejuvenate and strengthen the Respondent's business during a difficult period. The classification of the Respondent as a non-performing asset was arbitrary and completely beyond the control of the Respondent as the consortium refused to act in accordance with the Agreement.

(14) The total assets and liabilities, are Trade Payables Rs.76,85,25,375, Long-Term Borrowings Rs.8,96,79,64,612/-, Short Term Borrowings Rs.4,09,94, 22,820/-, Statutory dues Rs.15,57,16,689/- etc. The Respondent never defaulted in terms of the Master Restructure Agreement. The Petitioner issued notices on behalf of the entire consortium without proper compliance with the terms of the SARFAESI Act. Therefore, the Respondent urged the Adjudicating Authority to dismiss the Petition.

4. Heard Ms. Swapna Easwaramoorthy, learned Counsel for the Petitioner and Ms. Akshata Benegal, learned counsel for the Respondent. We have carefully perused the pleadings of the parties and extant provisions of the Code and the rules made thereunder and law on the subject.
5. The case is being listed for admission on various dates viz. 29.11.2018, 20.12.2018, 21.01.2019, 06.02.2019, 19.03.2019, 09.04.2019, 23.04.2019, 10.05.2019, 06.06.2019, 18.06.2019, 28.06.2019, 15.07.2019, 18.07.2019, 29.07.2019 and on 02.08.2019. Since the parties used to submit that they are exploring for the possible of settlement, the case is adjourned on all these dates at the request of parties. However, the

Respondent is not able to resolve the issue in question despite affording ample opportunity for the same. Therefore, there is no other alternative for the Adjudicating Authority except to decide the case for admission as per merits.

6. Ms. Swapna Easwaramoorthy, learned Counsel for the Petitioner, while pointing various contents of various documents filed along with Company Petition, has further submitted that the instant Petition is filed strictly in accordance with law and Debt and default in question is admittedly not in dispute and a qualified Resolution Professional namely, Shri Aashish Gupta, bearing IP Regn.No.IBBI/IPA-001/IP-P00687/2017-2018/11164 is suggested to appoint him as IRP. Therefore, the learned Counsel urged the Adjudicating Authority to admit the case by initiating CIRP in respect of Corporate Debtor with all consequential orders.
7. In the instant case, as detailed supra, it is not in dispute that Petitioner/Financial Creditor is the assignee of the State Bank of Hyderabad and State Bank of Hyderabad & other several Bank as stated supra had entered into various agreements viz., “Working Capital Consortium Arrangement”, “First Supplemental Working Capital Consortium Agreement”, “Master Restructuring Agreement”, “Second Supplemental Working Capital Loan Agreement”, “Supplemental Master Restructuring Agreement” has sanctioned a term loan of Rs.2,84,24,00,000/- to the Corporate Debtor, and it has defaulted in making repayment of the loan as per the agreements as stated supra. Consequently, default on the part of the Respondent in payment of the outstanding amounts, the Petitioner has issued a demand



notice dated 18.04.2017 under Section 13(2) of SARFAESI Act.

The Petitioner along with other Banks of the Consortium has filed Original Application (O.A.No.698/2018) before DRT, Bangalore and the matter is pending further hearing.

8. So far as the law with regard to initiation of CIRP is concerned, Hon'ble NCLAT vide order dated 15th May, 2017, passed in Company Appeal (AT) (Insolvency) No.1 & 2/2017 has dealt the issue of admission of a case filed under Section 7 of the Code, under Paras 55 to 58, which are extracted below:

“55. Process of initiation of Insolvency Resolution process by a financial creditor is provided in Section 7 of the I&B Code. As per sub-section (1) of Section 7 of the I&B Code, the trigger for filing of an application by a financial creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the financial creditor shall make an application in prescribed form and manner and with prescribed documents, including:

- i. “record of the default” recorded with the information utility or such other record or evidence of default as may be specified;*
- ii. The name of the resolution professional proposed to act as an interim resolution professional; and*
- iii. Any other information as may be specified by the Board.*

56. The procedure once an application is filed by the financial creditor with the Adjudicating Authority is specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of the I&B Code:

“(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a

default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).”

57. Sub-section (5) of Section 7 of the I&B Code provides for admission or rejection of application of a financial creditor. Where the Adjudicating Authority is satisfied that-.....the documents are complete or incomplete.

58. The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the financial creditor. In other words, the statue mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the financial creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority’s summary adjudication, though limited to ‘ascertainment’ and ‘satisfaction’.”

The Hon’ble Supreme Court has also upheld the above judgement in Civil Appeal Nos. 8337-8338 of 2017 in case of *Innovative Industries Limited vs. ICICI Bank & Anr.* vide judgement dated 31st August, 2017. The Hon’ble Supreme Court has adverted to the Section 7, at para 28, which reads as under:

“28. When it comes to financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the

proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default

in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

9. In the light of provisions of Section 7 of Code, and law as declared by the Hon'ble NCLAT and Hon'ble Supreme Court as extracted above, the Adjudicating Authority has to examine the instant case as to whether Application/Petition filed is complete with supported evidence: debt and default established; whether suggested a qualified Resolution Professional to appoint as Interim Resolution Professional etc.



10. By perusal of the Application/Petition and the documents filed in support of the Application/Petition, it is found that the instant Company Petition is filed in accordance with law and the Corporate Debtor has not paid the debt due and Shri Aashish Gupta, bearing IP Regn.No. IBBI/IPA-001/IP-P00687/2017-2018/11164 has filed his Written consent in Form 2 dated 27.09.2018, under Rule 9 of I&B(AAA) Rules, 2016, by inter declaring that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor and that there are no disciplinary proceedings are pending against him with the Board or ICAI; he is currently serving as an Interim Resolution Professional/ Resolution Professional/ liquidator in NIL Proceedings.

Therefore, we are satisfied that the debt and default in question are established and the IRP suggested is prima facie eligible to be appointed as such and thus it is a fit case to admit the case by initiating CIRP, imposing moratorium etc.

11. In view of the above facts and circumstances of case, and by exercising powers conferred on this Adjudicating Authority, U/s 7(5)(a) and other extant provisions of IBC, 2016, the following orders are passed:-

1. C.P.(IB)No.220/BB/2018 is hereby admitted by initiating Corporate Insolvency Resolution Process in respect of M/s. Base Corporation Limited, the Corporate Debtor;
2. Shri Aashish Gupta, bearing Registration No. IBBI/IPA-001/IP-P00687/2017-2018/11164 is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency & Bankruptcy Code, 2016 and the rules framed by the IBBI from time to time.;



3. The following moratorium is declared prohibiting all of the following, namely:
- 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 Securitisation 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 Corporate Debtor;
 - e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
 - f) 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 as also not applicable to surety.
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;



4. The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Adjudicating Authority from time to time.
5. The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
6. Post the case for report of the IRP on **16th September, 2019.**



(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi