

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH
CP (IB) NO. 297 OF 2019**

**APPLICATION BY FINANCIAL CREDITOR (S) TO INITIATE CORPORATE
INSOLVENCY RESOLUTION PROCESS UNDER THE INSOLVENCY AND
BANKRUPTCY CODE, 2016.**

*(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)*

Axis Bank Limited

A Company incorporated under the
Companies Act 1956 having its
Registered Office at "Trishul" 3rd
Floor, Opp. Samartheshwar Temple,
Law Garden, Ellisbridge,
Ahmedabad, Gujarat - 380 006
Company.

.....Petitioner

Versus

Digicable Network (India) Limited

A Company incorporated under the
laws of India having its registered
office at A-Wing, 602 Everest
Grande Building, Opp. Ahura
Centre, Mahakali Caves Road,
Andheri (East) Mumbai,
Maharashtra 400093.

.....Corporate Debtor

Order delivered on : 04.12.2020

Coram :

SHRI H.V. SUBBA RAO, MEMBER (JUDICIAL)

SHRI SHYAM BABU GAUTAM, MEMBER (TECHNICAL)

Appearance :

For the Petitioner : Adv. Shweta Rankhambe a/w Shalaka
Waghmare i/by Anand Nandu

For the Respondent : Adv. Mr. Amir Arsiwala

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

The present Application is filed by the Applicant / Financial creditor 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 for initiating Corporate Insolvency Resolution Process of the Corporate Debtor on account of default in repayment of outstanding dues. Applicant had granted the following Financial Facilities to the tune of Rs. 129,23,00,000 (Rupees One Hundred Twenty Nine Crores and Twenty Three Lacs Only) to the Corporate Debtor:

- i. Cash Credit of Rs. 40,00,00,000/- (*Rupees Forth Crores Only*)
- ii. Term Loan I of Rs. 24,23,00,000/- (*Rupees Twenty Four Crores Twenty Three Lacs Only*)
- iii. Term Loan II of Rs. 25,00,00,000 (*Rupees Twenty Five Crores Only*)
- iv. Term Loan III of Rs. 40,00,00,000/- (*Rupees Forty Crores Only*)

On default committed by the Borrower in repaying the outstanding dues, the applicant, issued a Notice dated 12th December 2016 calling upon the Corporate Debtor and Guarantors by invoking the Guarantees executed in favour of the Applicant, jointly and severally, to pay the Applicant the outstanding amount of Rs. 115,44,28,525.87 (Rupees One Hundred Fifteen Crores Forty Four Lakhs Twenty Eight Thousand Five Hundred Twenty Five and Eighty Seven Paise Only) as on 30th September 2016 with further interest as mentioned therein.

On 13th December, 2018, the Applicant once again issued Notice to the Corporate Debtor and Guarantors seeking repayment of outstanding dues amounting to Rs. 156,48,90,823.12 (Rupees One Hundred Fifty Six Crore Forty Eight Lakh Ninety Thousand Eight Hundred Twenty Three and Twelve Paise Only) as on 13th December 2018 with further interest as mentioned therein.

Despite receipt of the abovementioned recall Notices, the Corporate Debtor and guarantors failed to repay the outstanding dues owed to the Applicant. In light of the above, on 7th January 2019 a Pledge Invocation Notice was issued by the Applicant to the Corporate Debtor and Guarantors stating therein that in case of failure to make repayment of outstanding dues, the Applicant would be constrained to enforce rights as Pledgee and Secured Lender for the equity shares pledged in favour of the Applicant including 33% held in Fastway Transmissions Pvt. Ltd. As security for the credit facilities availed.

In spite of the above, the Corporate Debtor has failed to repay the outstanding amounts due to the Applicant and hence, the Applicant is constrained to file the present Application for triggering Corporate Insolvency Resolution Process of the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016. Since the Registered office of the Corporate Debtor is situated in Mumbai, this Hon'ble Tribunal has territorial jurisdiction to entertain the present Application.

The C.D. has put up appearance through different counsels from time to time without choosing to file any reply. The respective counsels except taking adjournment from time to time on the ground of purported settlement, did not even file reply to the above Company Petition. In this context it is important to mention the following orders passed by this Tribunal from time to time in the above Company Petition, which proves that the C.D. has no substantial case to defend.

Order dated 29.03.2019

1. Both sides present. The counsel for the Corporate Debtor seeks time to file reply and is directed to file reply by serving a copy to the other side on or before 10.04.2019. Time granted. List this matter on 15.04.2019.

Order dated 27.06.2020

2. Both sides present. Counsel for the Corporate Debtor is directed to file their reply within two weeks. List this matter on 17.06.2019.

Order dated 21.06.2019

3. Both sides present. The counsel for the Corporate Debtor submits that the investor by name Mr. Dharmesh Pandya of London is prepared to invest an amount of about Rs. 100 crores into the Corporate Debtor and take over the company and in the mean while, in order to fulfil its statutory requirements under FEMA and a new company has also been incorporated on 17.06.2019 to facilitate the takeover of the Corporate Debtor. The investor has also filed an affidavit in token of his intention to invest in the Corporate Debtor. Although we granted time on several occasions to the Corporate Debtor, there has been a lot

of delays in settling the matter. However, when the time is again sought on the same ground, this court was not inclined to grant any further time, for the reason that the Corporate Debtor had made a proposal in the open court that in the event they do not settle the matter with the petitioner within a span of 3 weeks from this day, the petition can straight away be admitted without any further arguments. In view of the categorical admission made by the Corporate Debtor as regards to the debt and the default and further proposal that he made with the petitioner, the petition can be admitted if they do not settle the matter with the bank amicably, time is granted for a period of 3 weeks to afford a last chance to the Corporate Debtor. It is made very very clear to the corporate debtor that no further adjournments will be granted and if the petitioner does not report to the court that the matter has been amicably settled between the parties, the orders will be pronounced in the open court on the very same day forthwith. List this matter on 16.07.2019.

Order dated 05.08.2019

4. At request of the intervening party Prudent ARC limited, list this matter on 26.08.2019.

The respondent is directed to file their reply before the next date of hearing otherwise, the matter will be proceeded on merits.

Order dated 26.08.2019

5. A categorical statement made by the Corporate Debtor that an Investor i.e. Prudent ARC Limited is prepared to invest Rs. 100 Crores and prepared to settle the dues. On the said statement 3 weeks' time has been granted to make the payments. However, on 16.07.2019 an Investor Prudent ARC Limited had paid an amount of Rs. 5.00 Crore into the Financial Creditors Account hoping that settlement will take place and enable the investor to take over the debt. In view of the failure on the part of the Corporate Debtor to make payment the

investment of Rs. 5 Crores made by the said Prudent ARC Limited has to be repaid by the Applicant Bank. Counsel representing the Applicant bank submits that in the event the petition is admitted they shall refund the said amount of Rs. 5.00 Crores forthwith to the said Prudent ARC limited.

In view of the clear admission made by the Corporate Debtor towards debt and default, the Petition requires to be admitted. The matter is reserved for further detailed order.

Order dated 24.01.2020

6. This Application has already been heard and reserved for orders on 26.08.2019.

We are of the opinion that the application needs to be reheard. List this matter on 18.02.2020.

Order dated 18.11.2020

7. The matter is taken up through virtual hearing (VC).

Both sides are present. Reply was not filed by respondent in the main company petition despite taking so many adjournments and directions.

Mr. Amir Arsiwala, appearing for the respondent, except praying for time for filing reply did not advance any arguments. This Tribunal has already recorded in its order dated 26th August 2019 about the existence of debt and default and the conduct of C.D.

The C.D. despite availing number of adjournments has neither filed reply nor advanced any arguments. Therefore, it is very clear from the conduct of the C.D. that the C.D. has no arguable case in the above company petition. Therefore the main company petition is reserved for orders.

It is very clear from the above orders and the conduct of the Corporate Debtor that the Corporate Debtor is clearly admitting the debt and default in the above Company Petition and has no arguable defence. Even otherwise the Financial Creditor produced all the documents establishing the debt and default. The Financial Creditor also furnished the name of Mr. Sunil Kumar Chaudhari as the proposed Interim Resolution Professional along with his letter of

consent and also his undertaking that there are no disciplinary proceedings pending against him.

In the light of the above facts and circumstances this Tribunal has no hesitation in holding that the Financial Creditor has proved all the necessary legal ingredients for admitting the above Company Petition and the above Company Petition is liable to be admitted.

Basing on the oral representation made by the counsel appearing for the alleged proposed investor, I.A. 1631/2020 which was filed for stay of the Company Petition was listed on board on 18.11.2020.,

As observed from the record neither the soft copy nor hard copy of I.A. 1631/2020 is available with this tribunal. Even otherwise in view of the admitting the main Company Petition, I.A. 1631/2020 becomes infructuous and accordingly, stands disposed of.

Accordingly, we pass the following :

ORDER

- (a) The above Company Petition No. (IB) -297(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Digicable Network (India) Limited.
- (b) This Bench hereby appoints Mr. Sunil Kumar Choudhary, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01243/2018-2019/11895 having office at Ernst & Young LLP, 14th Floor, The Ruby, 29 Senapati Bapat Marg, Dadar, Mumbai, Maharashtra 400028, as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.
- (c) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest

created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- (d) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (e) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (f) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (g) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (h) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- (i) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is allowed.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
SHYAM BABU GAUTAM
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)