

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT - II**

**CP (IB) 197/MB/2020**

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

*In the matter of*

**State Bank of India**

Having its Registered Office at State Bank  
Bhavan, Madame Cama Road, Nariman  
Point, Mumbai – 400021.

**..... Applicant/ Financial Creditor**

**Versus**

**Vindhyavasini Toll Infrastructure Private  
Limited**

Having its Registered Office at : Flat No.  
101, OG-III, Oberoi Garden, Thakur  
Village, Off Western Express Highway,  
Kandivali € , Mumbai – 400101.

**..... Corporate Debtor**

**Order Delivered on :- 09.02.2023**

**Coram:**

**Justice P.N Deshmukh : Hon'ble Member (Judicial)**

**Mr. Shyam Babu Gautam : Hon'ble Member (Technical)**

***Appearances:***

For the Financial Creditor: Mr. Arjun Sathees, Advocate

For the Respondent : None Appeared

## ORDER

*Per:- Justice P.N. Deshmukh, Member Judicial*

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Vindhyavasini Toll Infrastructure Private Limited, (“the Corporate Debtor”) alleging default in payment of a Financial Debt.

### The Submissions of the Financial Creditor are as follows: -

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of an **aggregate amount of Rs. 110.74/- Crores (Rupees One Hundred Ten Crores and Seventy Four Lakhs Only)** as on 30.11.2019. The date default is on 31.05.2013 and the date of Non Performing Asset was on 10.08.2013. The **Principal amount in due is Rs. 46.96/- Crores (Rupees Forty Six Crores and Ninety Six Lakhs Only)** as on 31.07.2013. The **interest and other charges** totalling to **Rs. 63.78/- Crores (Rupees Sixty Three Crores and Seventy Eight Lakhs Only)**.
3. The Corporate Debtor is a part of Vindhyavasini Group and is primarily involved in the business of construction, operation and maintenance of road and other infrastructure projects.
4. That one M/s Keti Toll Infrastructure Project was awarded the project for construction, operation, maintenance and handing over of four laning road from Jalna to Berala and Bypass Road in Deulgaon Raja, Maharashtra. The Financial Creditor sanctioned and disbursed various credit facilities in respect of the Projects to KETI. The same was also

formalised by execution of various agreements between the Applicant, Government of Maharashtra and KETI.

5. Subsequently, KETI failed to maintain financial discipline with respect to servicing of the said credit facilities and consequentially at the recommendation of the Financial Creditor, the project was transferred to the Corporate Debtor in the year 2012.
6. In pursuance of the project, the Financial Creditor sanctioned and disbursed Term Loan in the year 2012 to the Corporate Debtor vide Sanction Letter dated 21.12.2012 and Sanction Letter dated 20.04.2012. In order to formalize the said credit facility, the Corporate Debtor executed various documents including the Loan Agreement dated 08.08.2013 and Deed of Assignment dated 08.08.2013 in favour of the Financial Creditor.
7. The Corporate Debtor failed to maintain Financial discipline and defaulted in repayment of money on 31.05.2013. Due to continuous default on the part of the Corporate Debtor the account of the corporate debtor was categorised as NPA in the books of the Financial Creditor on 10.08.2013 as per RBI guidelines.
8. That since the Corporate Debtor failed to regularize its account and clear its outstanding dues and liabilities, the Financial Creditor issued Notice dated 20.10.2015 under section 13(2) of the SARFAESI Act, 2002 for recovery of outstanding dues. As the Corporate Debtor failed to respond in any manner to the said Notice, the Financial Creditor was constrained to issue Loan Recall Notice dated 05.11.2015 calling upon the Corporate Debtor to repay total sum of Rs. 61,75,64,295.08/- (Rupees Sixty One Crores Seventy Five Lacs Sixty Four Thousand Two Hundred Ninety Five and Paise Eight Only) as on 30.09.2015.

9. The Corporate Debtor has acknowledged and admitted its liability towards the outstanding debt payable to the Financial Creditor during the Limitation period multiple times as evidenced by way of Balance Sheet as on 31.03.2016, 31.03.2017 and 31.03.2018. Moreover, the Corporate Debtor approached the Financial Creditor with a Compromise Proposal for Rs. 250 Crores vide letter dated 16.05.2019 to settle the loan account of the Corporate Debtor and the other accounts of the Vindhyavasini Group and issued a Cheque of Rs. 25 Crores as upfront payment but after due consideration, it came to be rejected by the Financial Creditor. A Copy of the said Letter has been placed before this Bench. Subsequently, this Petition was filed on 02.01.2020
10. From the records available on record it is seen that vide Order dated 11.07.2022 passed by this Bench last and final opportunity was granted to the Corporate Debtor to file its reply failing which the right to file reply of the Corporate Debtor would be closed. In spite, of the said Order, the Corporate Debtor chose not to file its reply and also did not appear and hence the right to file reply of the Corporate Debtor was closed vide Order dated 14.10.2022.

### **FINDINGS**

11. We have heard the submissions of the Counsel appearing for the Financial Creditor. On perusal of the Petition and the documents annexed, it is evident that the Corporate Debtor had availed the said loan facilities from the Financial Creditor and had subsequently committed default in repaying the same. We note that the Corporate

Debtor had admitted their liability to repay in the Compromise Letter dated 16.05.2019.

12. In view of the said admission, the limitation period, in effect, stands extended from the date of such admission i.e. from 16.05.2019 onwards until 16.05.2022. Also, the Corporate Debtor has acknowledged and admitted its liability by way of Balance Sheet as on 31.03.2016, 31.03.2017 and 31.03.2018. The Hon'ble Supreme Court in catena of Judgements has held that an acknowledgement of the debt before expiry of the period of limitation shall extend the limitation period and also reference is hereby made on the judgement passed by Hon'ble Supreme Court in "*Asset Reconstruction Company Ltd. Vs. Bishal Jaiswal & Anr*" wherein Hon'ble Supreme Court took cognizance of the fact that the Balance Sheet would amount an acknowledgement of the debt. Therefore, we are of the opinion that the Financial Creditor has satisfactorily established the existence of debt.
13. Hence, it is seen from the records available that the Financial Creditor has established that the loan facilities were duly sanctioned and duly disbursed to the Corporate Debtor but there is no payment of Debt on the part of the Corporate Debtor. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the I&B Code.
14. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

## ORDER

a. **The above Company Petition No. (IB) – 197 of 2020 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Vindhyavasini Toll Infrastructure Private Limited.

b. This Bench hereby appoints Mr. Naren Sheth, Registration No: IBBI/IPA-001/IP-P00133/2017-18/10275 as the Interim Resolution Professional having address at 1014, Prasad Chambers, Tata Road No. 1, Opera House, Charni Road, Mumbai – 400 004 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. 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 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.

e. 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.

f. 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.

g. 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.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. 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.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

**Accordingly, this Petition is admitted.**

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

**Sd/-**

**SHYAM BABU GAUTAM  
(MEMBER TECHNICAL)**

**Sd/-**

**JUSTICE P.N. DESHMUKH  
(MEMBER JUDICIAL)**