

NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH



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PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL  
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL

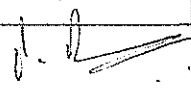

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 19.11.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.199/7/HDB/2019
NAME OF THE COMPANY	Aster Pvt Ltd
NAME OF THE PETITIONER(S)	IDBI Bank Ltd
NAME OF THE RESPONDENT(S)	Aster Pvt Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
VVSN Raju.	Advocate	9866446467	
K. Shreya		8897172671	

Counsel for Respondent(s):

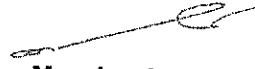
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
B. RAMACHANDER ADV	ADV	98795 19459	
K. PURNACHANDRABABU	ADV.	K.06 900. india@ ijon nit. com 98492 77 808	

**ORDER**

Orders passed vide separate orders.

Petition is admitted.

  
Member(T)

  
Member(J)

Pavani

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**CP (IB) No. 199/7/HDB/2019**

U/s 7 of IBC, 2016  
R/w Rule 4 of I & B (AAA) Rules, 2016

In the matter of:-

IDBI Bank Limited  
IDBI Tower, WTC Complex  
Cuffe Parade, Mumbai-400005

**And**

Special Corporate Branch  
5-989/1, II Floor, Chapel Road  
Hyderabad – 500001

... Petitioner/  
Financial Creditor

VERSUS

Aster Private Limited  
Plot No. 140 & 141/1, IDA Phase-II  
Cherlapally, Hyderabad – 500051

... Respondent/  
Corporate Debtor

**Date of order: 19.11.2019**

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)  
Hon'ble Shri Narender Kumar Bhola, Member (Technical)


Appearance:

For Petitioner: Shri V.V.S.N. Raju, along with Ms K. Shreya,  
Advocates

For Respondent: Shri B. Ramachander Rao along with Shri K.  
Purnachandra Rao, Advocates

Heard on: 21.10.2019 & 05.11.2019

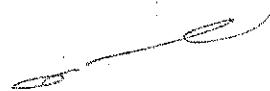




PER: SHRI RATAKONDA MURALI  
MEMBER (JUDICIAL)

1. Under consideration before us is the Petition filed under Section 7 of Insolvency & Bankruptcy Code, 2016 R/w Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by IDBI Bank Limited, which is the Financial Creditor stating that M/s Aster Private Limited, Corporate Debtor herein had defaulted in repaying a sum of Rs. 363,58,73,257.27, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional (IRP) as prescribed under the Code and Rules thereon.
2. The averments apropos to the Petition in brief are:-
  - (1) The Aster Private Limited, Corporate Debtor herein is a private limited Company, engaged in the business of Telecom Infrastructure and engineering, transmission and distribution services etc.
  - (2) The Corporate Debtor was sanctioned inter-alia various Credit Facilities (Loans) under diverse loans such as Term Loan, Fund Based and Non-Fund based aggregating to Rs. 482,74,00,000/-, pursuant to which security agreements were entered into and executed between Corporate Debtor, IDBI Bank Limited (Financial Creditor herein) and other Banks under Multiple Banking Arrangement (MBA) which consists of Punjab National Bank, State Bank of India, Oriental Bank of Commerce, ICICI Bank Ltd, Axis Bank Ltd and Kotak Mahindra Bank Ltd.



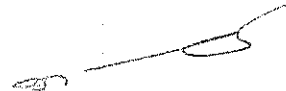




by Transunion CIBIL Commercial Credit Report dated 06.02.2019. It is stated that there exists a debt, default and the proof of default of debt. Further the Petition filed by the Financial Creditor is within the period of limitation. The financial Creditor suggested the name of Shri Naren Sheth as Interim Resolution Professional. Hence, requested the Tribunal to admit the Petition.

3. Counter is filed by Corporate Debtor refuting the averments and contesting the averments made in the Petition as under.
  - (1) The preliminary objections raised is with regard to the maintainability of petition on the grounds that the Petition filed by Financial Creditor is without any valid authority and as such the Petition is incomplete. Further it is stated that the Petition is not accompanied with documents and records required under Section 7 of IBC, 2016 and copies of the entries in the Bankers Book in accordance with the Bankers Books of Evidence Act, 1891. The certificate under Bankers Books of Evidence Act, 1891 stated to have been enclosed at Sl. No. 122 of the index of the document is also missing.
  - (2) The Corporate Debtor cited various reasons which were beyond their control for the cause of financial distress and at the request of Corporate Debtor the Financial Creditor considered the proposal for debt restructuring package under CDR Mechanism but it could not achieve the operating results under the CDR Package due to various reasons such as non-release/non-timely availability of funds from the lenders, non-approval for sale of non-core assets by the









petition is admitted. Hence, prayed this Tribunal to dismiss the Petition.

(4) Rejoinder is filed by Petitioner reiterating the averments made in the Petition and replied to the objections raised by the Corporate Debtor in its counter.

(1) It is stated Mr. V.V.S. Ravindra is authorised vide resolution on 23.06.2017 to file the Petition on behalf of Petitioner. Further it is stated that due to clerical error, papers related to the Delegation of Powers and Certificate under Bankers Book of Evidence Act are missing in the copy of the Petition served on the Corporate Debtor which have been filed along with Rejoinder as Annexure-I and II respectively.

(2) It is stated that outstanding dues payable by the Corporate Debtor was Rs. 967,00,00,000/- and the One Time Settlement offered by the Corporate Debtor was Rs. 130 crores due to which it was rejected by the Financial Creditor. Though revised OTS proposal offered was Rs. 235 crores on 21.07.2018 but the revised OTS proposal was not found to be feasible for the Financial Creditors and was directed to revise the same for the third time. However, Corporate Debtor is yet to approach the banks with an enhanced offer.

5. We have heard the Counsel for Financial Creditor and also the Counsel for Corporate Debtor. The Financial Creditor has filed voluminous documents containing in 9 volumes in proof of existence of debt and further in proof of default. The Learned Counsel for Financial Creditor contended that the Petition is filed against Corporate Debtor under Section

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7 of IBC, 2016 to trigger Corporate Insolvency Resolution Process on the ground that Corporate Debtor committed default of an amount of Rs. 363,58,73,257.27. The contention of the Learned Counsel is that Corporate Debtor was granted inter-alia various credit facilities (herein after referred to as "loans") under diverse loan and security agreements entered into and executed between the Corporate Debtor and Financial Creditor/IDBI Bank Limited and other banks under Multiple Banking Arrangements / "MBA" consisting of Punjab National Bank, State Bank of India, Oriental Bank of Commerce, ICICI Bank Limited, Axis Bank and Kotak Mahindra Bank. The Corporate Debtor defaulted in honouring the commitments of Financial Creditor and other members of MBA. The Financial Creditor along with other member Banks under MBA, with a view to bring the Corporate Debtor out of the financial difficulties, have re-structured the debt under Corporate Debt Restructuring Agreement (CDR) and under the said Agreement, the Financial Creditor and other member Banks of MBA have converted part of their debt/liability into equity and entered into Share Holders Agreement with Corporate Debtor and promoters of Corporate debtor.

6. However, the Corporate Debtor defaulted in payment of interest and instalments of the Principal amount and therefore the loans were classified as Non-Performing Asset (NPA) by Financial Creditor on 31.01.2018 with effect from 01.03.2015 in its books of Account. The Counsel contended even bank guarantees issued by Financial Creditor were also invoked involving huge amounts. Thus, the Corporate

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Debtor defaulted an amount of Rs. 363,58,73,257.27 as on 01.02.2019.

7. The Learned Counsel contended that the Financial Creditor also issued recall notice on 20.09.2018 (addendum to recall notice on 04.10.2018) to the Corporate Debtor recalling of the amount overdue and outstanding together with interest. Therefore, this Application is filed by the Financial Creditor. The Financial Creditor had filed documents in 9 volumes along with Petition under Section 7 of IBC, 2016. The Financial Creditor relied on various documents executed by the Corporate Debtor from time to time including guarantee/mortgages. The Learned Counsel for Financial Creditor further contended that the Corporate Debtor did not challenge the amount due to Financial Creditor and also did not challenge the default committed by the Corporate Debtor. However, the Corporate Debtor raised certain technical objections which are not tenable and as such petition is liable to be admitted. Counsel contended that the Petition is in order and therefore it is liable to be admitted.
8. On the other hand, the Learned Counsel for Corporate Debtor would contend that the Petition cannot be admitted on the ground that the person who signed the petition on behalf of the Financial Creditor has no valid authority and is not authorised person and as such Petition is liable to be rejected. The Counsel contended that the Petition is filed on behalf of Financial Creditor without any valid authority and is therefore liable to be rejected. In this connection, the Learned Counsel for Financial Creditor relied on the decision of Hon'ble NCLAT in the case of Palogix Infrastructure Private Limited vs ICICI Bank Limited in





Company Appeal (AT) (Insol) No. 30, 37 & 54 of 2017 dated 20.09.2017) where in Hon'ble NCLAT held that Power of Attorney holders are not authorised to present an insolvency application under IBC. Counsel contended that Hon'ble NCLAT has made it clear in the decision cited above that the Power of Attorney Holder is not competent to file a Petition on behalf of a Financial Creditor or Operational Creditor or Corporate Applicant. The Financial Creditor being a juristic person can only act through an authorised representative. The Counsel contended that authorised representative is distinct from the Power of Attorney holder. Thus, the Learned Counsel contended that the Power of Attorney Holder is not competent to represent Financial Creditor and Petition is to be rejected on this ground.

9. The second contention raised by the Learned Counsel that present petition filed on behalf of Financial Creditor is incomplete as required documents/ records specified are not filed along with petition filed under Section 7 of IBC, 2016. The Counsel contended that Form-1 to be accompanied with documents and records required therein and as specified under IBBI (Insolvency Process for Corporate Persons) Regulations, 2016 and in the absence of said documents, the petition is incomplete and therefore the Petition is liable to be rejected. The Counsel contended that the documents filed in the Petition are inadmissible under Bankers Book of Evidence Act, 1891. The Counsel contended that Books of account including Bank records which are maintained in the daily course of business in electronic form or otherwise are relevant to be admissible. Counsel contended Section 4 of Bankers Book of Evidence Act deals with mode of proving such bank records. The





records to be accompanied by certificate, certifying the accuracy and reliability of the entries in the bank records. There must be a certificate by the Branch Manager. Then only it is admissible. The statement of account filed by the Financial Creditor is not in accordance with the Bankers Book of Evidence Act and therefore it is not binding on the Corporate Debtor. The Learned Counsel further contended that initiating proceedings under the IBC is not permissible where the intention is to recover the debt. Thus, the Learned Counsel contended the present petition is liable to be rejected. The Corporate Debtor in fact has not raised any dispute with regard to the quantum of debt due by it as claimed in the petition. Secondly, there is no dispute that Corporate Debtor committed default. The main contention of the Corporate Debtor is that Petition is incomplete and as such it cannot be admitted.

10. The Corporate Debtor in fact has not raised any dispute with regard to the quantum of debt due by it as claimed in the Petition. Secondly, there is no dispute that Corporate Debtor committed default. The main contention of the Corporate Debtor is that the Petition is incomplete and as such it cannot be admitted. The Learned Counsel for Financial Creditor in reply would contend that Shri V.V.S. Ravindra who signed on behalf of the Financial Creditor is an authorised person to file petition on behalf of Financial Creditor. The Financial Creditor filed Form-I for triggering CIRP against Corporate Debtor under Section 7 of IBC. It is signed by the General Manager, NPA Management Group. The Financial Creditor Bank in part-I Column-5 shown his name as the person who was authorized to submit petition on behalf of Financial Creditor. It is clearly mentioned in Form-I that he is the authorised to represent Financial






Creditor by virtue of delegation of powers with effect from 23.06.2017. The Financial Creditor has filed the copy of delegation of powers shown as Annexure-I to the rejoinder at page No.7.

11. We have seen the resolution passed by circular by the Board of Directors of IDBI Bank Limited dated 23.06.2017. The delegation of powers are given to the following officials of banks:-
1. All Executive Directors
  2. All Chief General Managers (Grade "F")
  3. All General Managers (Grade "E")

Therefore, the powers are delegated to the General Manager to act on behalf of IDBI Limited. They are authorised to represent the bank to file cases before NCLT and NCLAT, DRT etc. The person who signed on behalf of Financial Creditor is not a power of Attorney Holder. He is authorised person to represent Financial Creditor. The powers are delegated to him by a board resolution of IDBI Bank. No doubt Hon'ble NCLAT has held in the decision cited by the Counsel for Corporate Debtor that Power of Attorney is not authorised person to file petition under Section 7, 9 or 10 of IBC. Here, Shri V.V.S. Ravindra is not acting on behalf of Financial Creditor as a power of attorney holder but he is acting as an authorised person of IDBI Bank. The copy of resolution passed by the board is filed. So, there is no substance in the contention of Learned Counsel for Corporate Debtor that the petition cannot be admitted on the ground that the General Manager is not competent to represent Financial Creditor.

12. The second contention raised by the Learned Counsel for Corporate Debtor that documents filed by Financial

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Creditor are inadmissible particularly, the accounts statement on the ground there is no certification of the documents in terms of provisions of Bankers Book Evidence Act.

13. The Learned Counsel for Financial Creditor has filed certificate under Bankers Book of Evidence Act shown at page no. 11 of rejoinder marked as Annexure-II. We have gone through the copy of statement of accounts pertaining to the Corporate Debtor which is a certified by the bank. These are computer generated copies and duly certified by the concerned bank personnel. SO the second contention raised by Counsel for Corporate Debtor cannot be sustained in view of the fact that Financial Creditor has filed bank statement duly certified by the bank manager.
14. It is the case of Financial Creditor that Corporate Debtor submitted OTS proposals from time to time dated 24.05.2018, 21.07.2018 and 23.04.2019. They are marked as Annexures 3, 4, 5 respectively. Thus, the contention of Learned Counsel for Financial Creditor that Corporate Debtor was given sufficient opportunity for overcoming the financial difficulties by allowing it to submit OTS proposal. It was ultimately not accepted. Thus, the Corporate Debtor never raised any dispute with regard to liability and also with regard to default committed.
15. We have seen the documents filed on behalf of Financial Creditor. All the documents are signed by the concerned personnel of the Bank and the documents are affixed with the stamp of the Bank. Thus, documents filed by the Financial Creditor are duly certified, so the documents can be looked into. Even otherwise, the Corporate Debtor is not



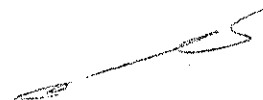




ORDER

19. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-
- (a) The 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
  - (b) 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.
  - (c) 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.
  - (d) That the order of moratorium shall have effect from 19.11.2019 till the completion of the Corporate Insolvency Resolution Process or until this Bench

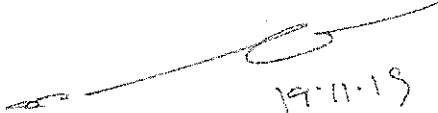
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approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

- (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) That this Bench hereby appoints Shri Naren Shah, #R/o 1014-1015, Prasad Chamber, Tata Road No.1, Opera House, Charni Road (East) Mumbai - 400004 having Registration No. IBBI/IPA-001/IP-PO0133/2017-18/10275 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.
- (g) Accordingly, this Petition is admitted.

  
19.11.19  
**NARENDER KUMAR BHOLA**  
**MEMBER (TECHNICAL)**

  
19.11.19  
**RATAKONDA MURALI**  
**MEMBER (JUDICIAL)**

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