

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO.5 MUMBAI BENCH**

1) CP No. 2995/IBC/MB/2019

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016

Small Industries Development bank of India
..... Financial Creditor Petitioner/Applicant

V/s.

E&G Global Estates Limited.
..... Corporate Debtor/Respondent.

**2) MA 3182/2019 in CP
2995/IBC/MB/2019**

G.S. Consto & Infra Pvt. Ltd. And Ors
....Applicants (Interveners)

V/s.

1. Small Industrial Development Bank of India,
Mumbai-400093;
2. E & G Global Estates Limited, Nasik 422005;
3. Mr. Avinash S. Sisode, Nasik-422005;
4. Mr. Ganesh Kashiram Ahire, Nasik-422013;
And Others

Order Pronounced on: 24.06.2020

Coram:

Hon'ble Suchitra Kanuparthi, Member (J)
Hon'ble Chandra Bhan Singh, Member (T)

For the Petitioner: Advocate Disha Pondai/b AKR Advisors LLP
Mr. Vidyasagar Thota DGM in SIDBI

For the Respondent: None present

Representative in MA 3182/2019: Advocate Anil kumarpatil
Shashank Vaisampayan
Rahul D. Oak
Siddhesh S. Shetye

Per: Chandra Bhan Singh, Member (T)

ORDER

1. The Petitioner/Applicant viz. 'Small Industries Development Bank of India' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 02.08.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'E&G Global Estates Limited' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be 6, New Shivsagar Society Gangapur College Link Road, Thatte Nagar Nashik MH 422005.
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹15,44,00,000/-, and the amount claimed to be in default is ₹3,85,15,033/-. The date of default is stated to be 10.08.2018. The loan account of the Corporate Debtor was declared as Non-Performing asset on 08.11.2018.

BRIEF HISTORY OF THE CASE IN CP No. 2995/IBC/MB/2019

3. The Financial Creditor has sanctioned certain financial facilities to the Corporate Debtor vide letter of intent dated 22.01.2016 sanctioning the term loan/ financial assistance to the tune of ₹15,44,00,000/-, comprising of Term Loan and Soft Loan. The loan amount was secured by hypothecation of Machinery & Equipments etc. The loan is secured

by the additional indenture of mortgage dated 02.02.2017. The loan documents and security documents are duly annexed to the petition.

4. The loan facilities were further secured by the personal guarantee given by Mr. Hiranman Madhavrao Patil, Mr. Dnyaneshwar Vana Chaudhari, Mr. Ganesh Kashiram Ahire and Mr. Avinash Vasant Sisode vide Deed of Guarantee dated 18.02.2016.

SUBMISSIONS BY THE FINANCIAL CREDITOR

5. The Financial Creditor submits that the loan was duly granted and disbursed pursuant to the Letter of Intent dated 22.01.2016 executed between the Financial Creditor and the Corporate Debtor. The relevant loan documents are produced on record.
6. It is submitted that the Corporate Debtor had approached Petitioner to avail loan facilities for the purpose of setting up of leisure resort "E&G Green Courts" that involves construction of the resort on a land admeasuring 67,470 sq. mtrs situated near Igatpuri in Trimbakeshwar Taluka.
7. The loan account of the Corporate Debtor was declared NPA on 08.11.2018 and the relevant NPA Certificate dated 31.07.2019 issued by the Financial Creditor has been produced on record.
8. The Financial Creditor has issued Legal recall notice dated 31.12.2018 to the Corporate Debtor and its guarantors. The Financial Creditor notice on 05.04.2019 has been issued upon Personal guarantors invoking guarantee rights under the Guarantee Agreements. The Petitioner mentions that since no response was received from the side of the Corporate Debtor, this petition has been filed.

9. The Financial Creditor submits that the financial statements of the Corporate Debtor have been produced on record. The Financial Creditor also annexed the master ledger to show the outstanding dues. The Financial Creditor has annexed a Certificate under section 2A of the Banker's Book Evidence Act, 1891. The Financial Creditor also annexed the CIBIL report dated 30.07.2019.
10. The Petitioner submits that the petition is complete in all respects, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.
11. After this Bench had heard the Counsel of the Petitioner and reserved its Order on 05.09.2019, an Intervener Application MA 3182/2019 was filed in this Petition. The Applicants in this MA who are, as claimed by them, are part owners of the Corporate Debtor's company, came forward to settle the dues of the Corporate Debtor. The draft consent terms were also filed before the Bench by the Intervener Applicant for the Corporate Debtor but the Intervener Applicant as well as the Corporate Debtor never honoured it.

SUBMISSIONS BY THE CORPORATE DEBTOR

12. The Corporate Debtor has nothing to say in its defence except the fact that there is possibility of amicable settlement between the parties.

MA 3182/2019

13. This **MA 3182 of 2019** has been filed on 19.09.2019 by M/s. G.S. Consto & Infra Pvt. Ltd. and its Promoters against the Corporate Debtor in C.P. 2995/2019. This Miscellaneous Application has been filed mainly with following two prayers:-

(a) The Order dated 06.09.2019 passed by this Bench in the Company Petition No.2995/2019 be recalled.

(b) The Applicant may be heard in CP 2995/2019 before taking a view on the Admission or otherwise of the petition.

14. Main contention of the Applicant in the MA is as follows:-

The Applicant No.1 is a Company engaged in business of construction and Applicant No.2 and 3 are owners of the Applicant 1 Company. The owners of the Applicant Company are also Directors of the Corporate Debtor Company.

- A. Respondent No.2 to 7 i.e. the Corporate Debtor and its Directors (the two Directors of the Corporate Debtor who in this Application are Applicants, are also Directors in the Corporate Debtor's company) has entered an MoU on 10.12.2018. The Applicants claims that by virtue of the said MoU, the applicants have purchased more than 40% shares of the Corporate Debtor in exchange of repaying outstanding loan amount and liabilities of the Corporate Debtor with SIDBI.
- B. The Applicants mentions that they are in possession of the property of the Corporate Debtor and are looking after all day to day expenses of the Corporate Debtor Company.
- C. The Applicants further mention that they had acquired 44% shares in the Corporate Debtor around November 2018 with an intention to acquire absolute, clear and marketable title of the property of the Corporate Debtor.

FINDINGS MA 3182/2019

The applicant M/s. G. S.Consto Infra Pvt. Ltd. (Applicant No.1) is owned, *inter alia*, by Mr. Shushil Govindrao Uttarwar and Mrs. Kalpana Shushil Uttarwar. The interesting aspect is that they are also the

Directors of the Corporate Debtor's Company as is evident from the Company Master Data maintained with RoC.

15. The Applicants themselves mentions that they have acquired 44% of shares in the Corporate Debtor in November 2018 and are in possession of the property of the corporate Debtor and looking after all the expenses of the Corporate Debtor till date. This clearly brings out that, in fact the party which is in possession of the Corporate Debtor's Company is the Applicants themselves in this case and have put an Application against the corporate debtor's company which they are in control of.

16. The edifice of the Applicants argument is based on the MoU dated 10.12.2018 as per which, the applicants were to have clear title of all the properties of the Corporate Debtor, which mainly are bungalows, studio apartments etc. However, the first charge the Corporate Debtor's Company is with SIDBI, the Financial Creditor in C.P. No. 2995/2019. This is very clear from the Agreement entered between SIDBI and the Corporate Debtor in the year 2016. The relevant Para as appearing in the Agreement signed between the Corporate Debtor and SIDBI is reproduced below: -

Clause no.	As per Letter of Intent No.288/DCS – E&G (SMILE) dated 22.01.2016	Present Modification
Primary Security S.No. (i).	<p>First charge by way of equitable mortgage in favour of SIDBI of all immovable properties of the borrower, both present and future, situate at Kharoli Village, trimbakeshwar Taluka, Nashik District bearing GAT No. 65, 66/1&2, 86, 93, 94, 101 and 104 (PART) admeasuring 52539 SqMtrs out of 53529 Sqmtrs owned by E & G Global Estates Ltd., (out of the total layout of 67470 Sqmtrs) together with all the buildings and structure thereon that includes.</p> <p>a. A Type 2BHK villas No. 1 to 34 and 37, 38 and 40 to 46 each admeasuring 68.10 Sqmtrs (built-up) total admeasuring 2928.30 SqMtrs.</p> <p>b. B Type 4BHK suit villas No. 1 to 10 each admeasuring 139.80 SqMtrs (built-up) total admeasuring</p>	<p>First charge by way of simple mortgage in favour of SIDBI of all immovable properties of the borrower, both present and future, situate at Kharoli Village, trimbakeshwar Taluka, Nashik District bearing GAT No.65, 66/1&2, 86, 93, 94, 101 and 104 (PART) admeasuring 52469 SqMtrs out of 53459 Sqmtrs owned by E & G Global Estates Ltd., (out of the total layout of 67470 Sqmtrs) together with all the buildings and structure thereon that includes.</p> <p>a. A Type 2BHK villas No. 1 to 34 and 37, 38 and 40 to 46 each admeasuring 68.10 Sqmtrs (built-up) total admeasuring 2928.30 SqMtrs.</p> <p>b. B Type 4BHK suit villas No. I to 10 each admeasuring 139.80 SqMtrs (built-up)total admeasuring</p>
	<p>1398.00 sq Mfrs.</p> <p>c. C Type studio apartments villas No. 2 to 7 and 9 to 20 each admeasuring 32.974 Sqmtrs (built-up) total admeasuring 593.532 SqMtrs.</p>	<p>1398.00 sqMtrs.</p> <p>c. C Type studio apartments villas No. 2 to 7 and 9 to 20 each admeasuring 32.974 Sqmtrs (built-up) total admeasuring 593.532 SqMtrs.</p> <p>d. Restaurant /club</p>

	d. Restaurant /club house building admeasuring 132.25 SqMtrs (built-up), conference room admeasuring 286.22 sqmtrs (built-up), Rest rooms admeasuring 56.46 sqmtrs (built-up), servant room admeasuring 22.25 sqmtrs (built-up).	house building admeasuring 132.25 SqMtrs (built-up), conference room admeasuring 286.22 sqmtrs (built-up), Rest rooms admeasuring 56.46 sqmtrs (built-up), servant room admeasuring 22.25 sqmtrs (built-up).
9 (a) Collateral Security S.No.2	First charge by way of equitable mortgage in favour of SIDBI of all immovable properties of the borrower, both present and future, situate in Plot Scheme 'Green Field' having Plot Nos. 3 to 13, at Zharwad Village, trimbakeshwar Taluka, Nashik District bearing GAT No. 1/1 (Part) admeasuring 8013.54 Sqmtrs (out of total layout of 12923.77 SqMtrs) together with all the buildings and structure thereon.	First charge by way of simple mortgage in favour of SIDBI of all immovable properties of the borrower, both present and future, situate in Plot Scheme 'Green Field' having Plot Nos. 3 to 12, at Zharwad Village, trimbakeshwar Taluka, Nashik District bearing GAT No. 1/1 (Part) admeasuring 6721.14 Sqmtrs (out of total layout of 12923.77 SqMtrs) together with all the buildings and structure thereon.

Therefore, the contention of the Applicants that they have not been provided absolute, clear and marketable title of the property of the Corporate Debtor does not hold any ground because, much before that, in February 2016, the first charge of all immoveable properties of the Corporate Debtor, both present and future was mortgaged in favour of SIDBI.

17. Even while signing the Memorandum of Understanding, the Applicants were fully aware that this MoU, as far as transfer of share etc. is concerned, is of no significance as the MoU had a condition precedent which is clearly enumerated at para 4 of the MoU attached with this Application.
18. Therefore, this whole MoU for transfer of shares were to come into effect only after written consent of SIDBI. Since this written consent of SIDBI which holds first charge on moveable and immovable property was never given, therefore, this MoU is of no significance and does not hold any legal ground and, therefore, cannot be considered under any circumstances as a binding document. In any case, legally, any Memorandum of Understanding is a mere understanding and does not hold much legal ground.
19. It should not be lost sight off that the owners of the Applicant Company are also the Directors in the Corporate Debtor's Company as is evident from the submissions of the Applicant and as per the Master Data of the MCA. It should also not be lost sight off that all through when the main CP No.2995/2019 against E&G Global Estates Ltd. (Corporate Debtor) was being heard by this Bench, the Applicants, even though being Directors of the debtor Company, never appeared before the Bench, though it is on record that the Petition was sent to the Corporate Debtor on 07.08.2019 and Petitioner (SIDBI) had filed proof of service to that effect. Here it is also worthwhile to note that, by the own submission of the Applicant in MA 3182/2019, the day to day functioning of the Corporate Debtor Company is in the hands of Applicants. Therefore, even when they were in possession of the property of Corporate Debtor and had effective control, they (the Applicants) never thought it proper to

appear before the Bench when admission of the CP 2995/2019 was being taken up by the Bench. It is only after it was reserved for Order on 05.09.2019 that these Applicants got active, knowing fully well that upon admission of the Petition and commencement of CIRP, the control of the Company would go away from the Corporate Debtor's hands which effectively the Applicants were controlling.

20. It is in this background that this Application was filed on 19.09.2019 under Diary No.6719 which was subsequently converted into M.A. 3182 of 2019.
21. Subsequent to the Petition CP No.2995/2019 Reserved for Orders, the chronology of Hearing and the brief of Order taken in the Hearings is as under: -

Sl. No.	Date of Hearing	Diary/MA CP2995/2019	Gist of Order
1	25.09.2019	MA/Diary 6719/2019	At the request of the Applicant, matter adjourned to 09.10.2019.
2	09.10.2019	MA/Diary 6719/2019	The Counsel for the Petitioner (SIDBI) and the Counsel for the Intervener (Applicant) were present and Petitioner mentions that there is likelihood of settlement and they have received a sum of Rs.50 lakhs out of the total claims of Rs. 4.5 crore. Matter was adjourned to 04.11.2019.
3.	04.11.2019	MA 3182/2019	The Representative of the Applicant present and submit that they have already submitted the

			proposal to SIDBI. The counsel for SIDBI agrees for adjournment to 19.11.2019.
4.	19.11.2019	MA 3182/2019	<p>Counsel for the Petitioner present. Counsel for the Applicant in the Intervening application is also present. It is submitted that the Intervening Applicant is ready to settle the due of the Bank which is around Rs. 3,73,15,033.</p> <p>Counsel for the Petitioner Bank submits that the Petitioner wants immediate payment of Rs. 3,73,15,033/-, else, the Petition be heard and orders may be passed.</p> <p>Matter adjourned to 26.11.2019.</p>
5.	26.11.2019	MA 3182/2019	At the request of the Counsel for the Respondent in the Intervention Application and for filing the Consent Terms, list this matter on 09.12.2019.
6.	09.12.2019	MA 3182/ 2019	Counsel for the Petitioner is absent. Counsel for the Corporate Debtor and intervener present. Listing of the matter adjourned to 16.12.2019.
7.	16.12.2019	MA 3182/ 2019	It is reported that the Draft Consent terms are ready, but it has to be decided by the legal team of the

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CP No. 2995/IBC/MB/2019

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MA 3182/2019 in CP No. 2995/IBC/MB/2019

			Petitioner. Matter adjourned to 19.12.2019.
8.	19.12.2019	MA 3182/ 2019	The Petitioner insists for the admission of the Petition unless the overdue amount of Rs.2.75 crores is paid by the Corporate Debtor immediately. Counsel for Corporate Debtor seeks time to take instructions. Matter adjourned to 08.01.2020.
9.	08.01.2020	MA 3182/ 2019	Petitioner side is directed to decide on the settlement within 2 weeks. Matter adjourned to 29.01.2020 for withdrawal
10.	29.01.2020	MA 3182/ 2019	Corporate Debtor submits that the investor-in-waiting requires some more time to invest funds and seeks more time. Matter adjourned to 06.02.2020
11.	06.02.2020	MA 3182/ 2019 and also the main CP 2995/2019	The Bench sought clarification from the Petitioner i.e. Financial Creditor, (SIDBI) and matter adjourned to 12.02.2020.
12.	12.02.2020	MA 3182/ 2019 and also the main CP 2995/2019	Heard both the sides, i.e. the Intervener in 3182 of 2019 and the Petitioner in CP 2995/2019. After hearing, the Judgment is Reserved for Orders.

22. The chronology of events in CP(IB)-2995/(MB)/2019 and MA-3182/2019 in CP(IB)-2995/(MB)/2019 brings out clearly three facts:-
- A. The first Order of the Bench dated 05.09.2019 by which the Admission of CP 2995/2019 was Reserved for Order was re-opened at the request of the Applicant in MA 3182/2019. In the hearing on 09.10.2019 the Petitioner and the Intervener Applicant in MA 3182/2019 both were present and mentions that there is likelihood of settlement. These facts again corroborate the fact that the Orders of Admission which was reserved on 05.09.2019 has been re-opened for settlement.
 - B. The Representative of the prospective investor in MA 3182/2019 and also the corporate debtor company submitted the proposal to SIDBI for settlement of their Debt as is evident from the hearing of this MA on 04.11.2019. Pursuant to the hearing of the matter in MA 3182/2019, the Intervening Applicant agreed to settle the dues of SIDBI of about Rs.3.73 crore in instalments starting from 06.12.2019 and ending on 05.05.2020. As is evident from the Order of this Bench dated 19.11.2019 when the Applicant in MA 3182/2019 was ready to settle the dues of SIDBI. It is also very clear from the draft Consent Terms filed on that date where the Applicant viz. M/s. G. S. Consto & Infra Pvt. Ltd. & Ors. on behalf of the Corporate Debtor, i.e. M/s. E & G Global Estates Limited, had undertaken before this Bench to pay the agreed settlement amount to Financial Creditor, i.e. SIDBI, a total sum of Rs.3.73 crore. This matter, as is evident from the above chronology of events in the MA 3182/2019, continued to be heard by this Bench after the draft settlement on several occasions. However, the Applicant in MA 3182/2019 never paid the amount as per the draft settlement agreement. It is for this reason that

when this MA 3182/2019 was heard on 19.12.2019, the AGM of the Petitioner Bank became so exasperated that he insisted before the Bench to admit the Petition otherwise, he mentioned, the overdue amount be paid immediately to the Bank. However, the Counsel for the Intervening Applicant as well as that of the Corporate Debtor continued defaulting on the draft settlement agreement. The Bench finally heard the Petitioner and the Counsel in MA 3182/2019 and Reserved its Order in MA 3182/2019 and also on the Admission of the Petition.

- C. In view of the above, it becomes very clear that the Orders dated 06.09.2019 regarding Admission of CP 2995/2019 for Admitting and commencing Corporate Insolvency Resolution Process (CIRP) was not pronounced by the Bench and it was opened up again for re-hearing based on the Intervening Applicant who had filed MA 3182/2019. This application from 25.09.2019 till the time the hearing was closed on 12.02.2020, when the Order was "Reserved", the Bench had heard this MA for settlement. This Bench also notes that this Applicant is, in fact as owner, is in full control of the Corporate Debtor Company. The Applicant in MA 3182/2019 was not only Heard by this Bench, but the Applicant was given ample time to arrive at a settlement of financial debt of the Petitioner. However, this Bench has no doubt in its mind that the Applicant used this period only to delay the Admission of the Petition and commencement of CIRP. All through, the Applicant did not have any intention of arriving at a settlement with the Financial Creditor.
23. In view of this, this Bench "**Dismisses**" **MA 3182/2019** in CP (IB)-2995(MB)/2019 after giving the Applicants ample time to settle the dues of SIDBI as agreed by them during hearing.

Findings of the Bench in the main CP.(IB)-2995(MB)/2019

24. Ongoing through the submissions made by the Learned Counsel and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. The Corporate Debtor has acknowledged the disbursement of loan and its liability to repay on several occasions. However, the Corporate Debtor failed to pay. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
25. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3(12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case.
26. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.
27. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

28. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Gajesh Labhchand Jain, having Registration No. IBBI/IPA-001/IP-P01697/2019-2020/12588, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
29. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
30. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
31. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the CIRP and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date if need be.

In Brief the Bench Orders the following:

32. This Bench "**Dismisses**" MA 3182/2019 in CP (IB)-2995(MB)/2019 after giving the Applicants ample time to settle the dues of SIDBI as agreed by them during hearing. This Bench also holds that the conduct of the Applicant in this MA has resulted into the delay in the Admission of the Petition in CP (IB)-2995(MB)/2019 and commencement of CIRP against the Corporate Debtor.
33. The Petition CP.(IB)-2995(MB)/2019 is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
34. Ordered Accordingly.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)
Date: 24.06.2020

Sd/-

SUCHITRA KANUPARTHI
MEMBER (JUDICIAL)