

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

IA (IB)/859/MB-IV/2024
In
RCP(IB)/01/MB-IV/2024
Connected with
CP(IB)/312/MB-IV/2021

Under Section 7 of the IBC, 2016

In the matter of

STCI Finance Limited

...Financial Creditor

v/s.

Man Infraprojects Limited.

...Corporate Debtor

Order Delivered on 22.03.2024.

Coram:

Ms. Anu Jagmohan Singh

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Mr. Rohan Rajadhyaksha a/w Ms.
Ferzana Behramkamdin & Mr.
Milind Parab i/b FZB and Associates,
Ld. Counsel.

For the Corporate Debtor:

Ms. Mitika Agrawal, Ld. Counsel .

ORDER

1. This is an application bearing RCP (IB) No. 312/MB/C-IV/2021 filed by STCI Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Man Infraprojects Limited, Corporate Debtor claiming total default of Rs.28,26,69,996/- (Rupees twenty-eight crore twenty-six lakh sixty-nine thousand nine hundred ninety-six only) as on 24.03.2021, which includes Interest at the rate of 13.75% and Penal Interest at the rate of 2.00%. The Date of NPA is stated to be 31.03.2017 and the Date of Default is stated to be 02.12.2016 in the Part-IV of the Petition. The Petition is filed on 30.03.2021.
2. On 24.02.2023, the Adjudicating Authority by way of the Impugned Order, had rejected the Application primarily on the grounds of limitation. The present applicant therefore preferred a Company Appeal (AT) (Ins) No. 623 of 2023 against the impugned order dated 24.02.2023 before National Company Law Appellate Tribunal under section 61(1) of IBC Code, 2016. The same was allowed on 07.11.2023 and the impugned order was set aside and the application u/s 7 is revived before the Adjudicating Authority. The relevant extract of the said order is reproduced below:

.... “ we are of the view that the Adjudicating Authority may decide the question of limitation afresh after hearing both

the parties. Appellant is given liberty to file Additional Affidavit bringing on record Additional documents on record after serving the copy of the Corporate Debtor. Respondent are also at liberty to file a reply to the said additional documents within further period of 2 weeks....”

3. In view of the Order passed by the Hon'ble NCLAT, the Applicant filed a Restoration Application No.39/2023 on 18.12.2023. Thereafter, the tribunal was pleased to restore the Company Petition and directed the registry to number the CP as RCP and list on 17.01.2024 for further consideration. The said matter was listed on various occasions and on 04.03.2024 as the matter was heard and **Reserved for Orders**.

Submissions on behalf of the Financial Creditor:

4. The Financial Creditor has provided Corporate Loan of Rs. 10,00,00,000/- and Short Term Loan of Rs.7,00,00,000/- to the Corporate Debtor. The Financial Creditor and the Corporate Debtor entered into the Loan Agreement on 01.12.2015. Various Loan Security documents were executed. However, the Corporate Debtor failed to repay the dues when it became due.
5. The Financial Creditor submits that , the last payment made in respect of loan Account-I and Loan Account -II were on 06.02.2018 and 07.02.2018 respectively, which extended the limitation period upto 07.02.2021. The Financial Creditor submitted that in view of the Hon'ble Supreme Court decision dated 08.03.2021 Suo Motu Petition (Civil) No. 3 of 2020, the Present Petition is within the period of Limitation. The Financial Creditor

has filed the Ledger Statement of the Corporate Debtor. The aforesaid payments were duly reflected in the statement of account/Ledger of the Corporate Debtor.

6. The Financial Creditor further submits, the Financial Creditor issued a demand notice dated 01.06.2017 under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("Statutory Demand Notice") calling upon Respondent/Corporate Debtor and Limited to make payment of entire outstanding amount of INR 10,36,88,556/- (Rupees Ten Crore Thirty-Six Lakh Eighty-Eight. Thousand Five Hundred and Fifty-Five Only).
7. The Financial Creditor further submits that the Corporate Debtor through several OTS proposals dated 23.03.2019, 07.10.2020 approached the Financial Creditor the said was rejected by the Financial Creditor. The OTS proposals are not part of the said Company Petition.

Submissions on behalf of the Corporate Debtor:

8. The Corporate Debtor has filed its Affidavit-in-reply to the Original Company Petition dated 08.02.2022 disputing the outstanding amount Rs.28,26,69,996/- (Rupees twenty-eight crore twenty-six lakh sixty-nine thousand nine hundred ninety-six only) as being highly inflated claimed by the Financial Creditor. However, the details of the Loans amounting to Rs. 10,00,00,000/- and Rs. 7,00,00,000/- are true and correct and admitted by the Corporate Debtor.

Interlocutory Application No 859/2024.

- a) The present Interlocutory Application No 859/2024 is filed u/s 60(5) of the IBC r/w Rule 11 of the National Company Law Tribunal Rules, seeking the following prayers:
- i. That this Hon'ble Tribunal be pleased to order and direct the registry to take on file and record the vakalatnama signed by the applicant in favour of the present advocate i.e. Advocate Devanshu P. Desia in Company Petition No. 312/2021;
 - ii. That this Hon'ble tribunal be pleased order and declare that the earlier Advocates are discharged as Advocates of Applicant in Company Petition No.312/2021;
 - iii. Pending the hearing and final disposal of the present Application the further proceedings in Company Petition No. 312 of 2021 be kept in abeyance;
 - iv. For such other orders as this Hon'ble Tribunal may deem fit and necessary in the interest of justice;
- b) At the time of hearing the Advocate on Record submitted that she has appeared as Counsel for the Corporate Debtor in the main Company Petition and had filed reply to the main Company Petition No 312/2021. The Advocate on Record vehemently opposed for discharging them as counsel on the record and allowing the applicant to bring on record as counsel for the

Corporate Debtor in the main Company Petition.

- c) This bench is of the considered view that, the Interlocutory Application No 859/2024 is filed under section 7 of the Insolvency and Bankruptcy Code, 2016. While adjudicating a petition u/s7 the bench is required to examine the twin conditions of debt and default as prescribed under the said section . In the present case, after perusing all documents and the record of default of Information utility (NesL) and after hearing both the counsels whose vakalatnama is on records, the bench has given its decision on the petition u/s7 and passed the necessary orders. The bench also observes that there is no NOC from the counsel who is on record .It is the obligation of the inducting counsel to obtain NOC and file it before the registry which has not been done by the inducting counsel. Hence this court has no jurisdiction to discharge the existing counsel and take on record the new counsel.
- d) This bench is not required to adjudicate on disputes between the counsels, as this is not the correct forum to decide such disputes and hence, the bench refrains from adjudicating on the same.
- e) In view of the above this bench hereby *dismisses* the **Interlocutory Application No 859/2024** in **RCP No 01/2024** connected with **Company Petition No. 312/2021**.

Findings:

9. We have heard the arguments of Learned Counsel for Financial Creditor and the Corporate Debtor.

10. This bench notes that the last payment made in respect of loan Account-I and Loan Account -II were on 06.02.2018 and 07.02.2018 as reflected in the statement of account/ledger of the Respondent/Corporate Debtor which extended the limitation period upto 07.02.2021. The Petition is filed on 30.03.2021. The petition was supposed to be filed on or within 07.02.2021. However, considering the extension of period of limitation in view of the *suo moto* order due to the COVID 19 outbreak passed by the Hon'ble Supreme Court of India, the present petition is within limitation.

11. We take note of decision passed by Hon'ble NCLAT that there were other material which have been brought in this appeal including the One Time Settlement dated 23.03.2019, 07.07.2020 and 06.11.2020 which appellant sought liberty and the same was granted Based on the documents placed on record by Financial Creditor through its Additional Affidavit, it is clearly evident, that the Corporate Debtor has acknowledged its liability in respect of dues payable to the Financial Creditor through various OTS proposals 23.03.2019 and 07.10.2020 the Corporate Debtor has admitted its liability towards the outstanding amount . This tribunal is of the considered view that the OTS proposal and upfront part payment of debt by the Corporate Debtor falls within the definition of the ambit of 'acknowledgement of debt'. The plea raised by the Financial Creditor clearly states that there is an outstanding debt which is to be paid by the Corporate Debtor to the Financial Creditor.

12. Further, the Corporate Debtor in its Affidavit in reply has acknowledged its liability stating that “...*The Corporate Debtor is unable to conduct its*

business on account of various litigations between its management and/or Promoters and/or shareholders, etc. and therefore, he is unable to repay the aforesaid loans sanctioned by the Financial Creditor...”

13. The factum of existence of financial debt and its default stands proven on record. It has also been established that the petition is within time. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency Process be initiated in the matter of the Corporate Debtor.

14. As a result of the foregoing discussion, we deem it to be a fit case for admission under Section 7 of the Code. It is ordered accordingly in the following terms.

ORDER

15. The Petition bearing RCP (IB) No.01/MB-IV/2024 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by filed by STCI Finance Limited, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Man Infraprojects Limited, Corporate Debtor is **Admitted**.

- a) There shall be a moratorium under section 14 of the IBC, in regard to the following:

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- (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (iii) 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 (SARFAESI Act, 2002;
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

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- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints **Mr. Manoj Kumar Agarwal**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-001/IP-P00714/2017-2018/11222** and email- **ipmanoj.agarwal@gmail.com**. He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

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- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
22.03.2024.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)