

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 02
(IB)-243(PB)/2023

IN THE MATTER OF:

State Bank of India	Petitioner
v.		
Bareilly Highways Project Limited	Respondent

Order under Section 7 of Insolvency & Bankruptcy Code

Order delivered on 23.09.2024

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH KUMAR SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE AND VC)

PRESENT:-

For the Applicant	Mr. P. Nagesh, Sr. Adv. with Mr. Siddharth Sangal, Mr. Chirag Sharma & Mr. Akshay Sharma, Advs.
For the Respondent	Mr. Sunil Fernandes, Sr. Adv. (appearance not marked)

ORDER

The present petition is filed under Section 7 by the State Bank of India (**SBI / FC**). The Corporate Debtor (**CD**), a company incorporated under the Companies Act 1956 is a Special Purpose Vehicle (SPV) promoted by the consortium of M/s Era Infra Engineering Ltd. and M/s OJSC – SIBMOST.

2. Key dates and events for the adjudication of present Application are as follows:

- a. On 22.06.2010, CD entered into a Concession agreement with National Highways Authority of India (**NHAI**).

- b. On 16.12.2010, SBI and Union Bank of India granted a term loan of ₹1350 Crores to the CD on terms and conditions as stated in the Facility Agreement dated 16.12.2010.
- c. On 24.12.2010, CD entered into an Engineering, Procurement, and Construction (**EPC**) Agreement contract with Era Infra for timely execution of the above project.
- d. On 19.04.2011 ROC registered charge in favor of SBICAP Trustee Co. Ltd.
- e. On 30.03.2015, CD entered into a supplementary concession agreement with NHAI.
- f. On 08.03.2016, a consolidated facility agreement was entered into among CD, SBI and State Bank of Bikaner and Jaipur.
- g. On 26.07.2017 CD was declared as a Non Performing Associates by SBI in terms of RBI's policy.

3. In the mean while on 08.05.2018, a Section 7 petition being CP. No. 190/2017 filed by Union Bank of India against Era Infra Engineering Limited was admitted by this Tribunal. In the course of the execution of the Highway project, CD invoked arbitration clause (pre-termination) under concession agreement against NHAI for a claim of ₹3721.14 Crores. It is reported that this arbitration has been finally culminated and the Tribunal has reserved for orders.

4. The Financial Creditor (FC) in the present case SBI issued a loan recall notice on the CD demanding a payment of ₹2078.04 Crores on behalf of all the consortium lenders on 11.01.2019.

5. On 05.09.2018, CD invoked Pre Termination Arbitration under concession agreement against NHAI claiming a sum of ₹3721.1 Crores.

6. On 03.04.2019 the NHAI issued a termination notice to the CD in respect of the above project. FC/SBI along with IOB & IIFL filed OA No. 1026/2019 before DRT, New Delhi for recovery of ₹1516.53 Crores from CD as on 31.10.2019. FC also relies upon the balance sheets of the Corporate Debtor including for the FY 2020-2021 and 2021-2022, wherein debt has been acknowledged by the CD.

7. On 16.08.2021, CD invoked Post Termination Arbitration under concession agreement against NHAI claiming a sum of ₹6098.04 Crores.

8. In this background, in view of the admitted default by the CD in balance sheets, SBI/FC filed Section 7 petition for a default of ₹1409.72 Crores. It has been submitted that the date of default is 18.01.2019. This date is calculated from the date of loan recall notice dated 11.01.2019. In support of the debt and default, NESL certificate by way of an affidavit dated 27.10.2023 has been filed. Details of Disbursement is shown @ Pg. 1000-1004 of the petition.

9. Notice was issued by this Tribunal on 26.04.2023. Reply has been filed by CD on 29.08.2023, *inter alia* raising the following defense:-

- (i) *CD has invoked arbitration against NHAI for a total claim of ₹9819.18 Crores and the same is pending consideration before Ld. Sole Arbitrator.*

- (ii) *The claim of FC is only ₹1409 Crores and deducting that from arbitration claim, the CD will have a positive surplus of ₹8409 Crores.*
- (iii) *Personal Guarantee of promoters was invoked and the same is pending consideration before NCLT.*
- (iv) *SBI already filed its claim in the CIRP of Era Infra and the same was duly admitted by the RP.*
- (v) *No specific resolution or authorization letter is being annexed to the petition filed by SBI.*

10. FC filed rejoinder on 13.09.2023. FC filed an additional affidavit on 27.10.2023 to bring on record 'Form D' of NESL Certificate.

11. On 14.03.2024, FC filed additional affidavit bringing on record the proof of claim before the RP of Era Infra. This additional affidavit relates to issues raised by the CD viz. in relation to claim filed by the FC before the RP of Era Infra Engineering Ltd on 12.12.2018 and 31.08.2019.

12. During the course of hearing, it was pointed out by the Ld. Counsel for the CD that they had given one time settlement proposal to consortium of banks and they wanted the same to be considered primarily on the plea that the arbitral proceedings against the NHAI may result in their favour and upon the same all the debts of the FC could be extinguished. The first OTS proposal was given on 03.08.2024 that was rejected by the consortium of banks. CD upon rejection of proposal filed a Writ Petition No. WP (Civil) No. 11150/2024 titled as *Bareilly Highways Project Ltd. vs RBI & Ors.* The Hon'ble High Court of Delhi passed first order on 12.08.2024 & 13.08.2024 more particularly para 12 & 13 which read as under:-

“12. In view of peculiar facts and circumstances of the matter, the petitioner company is granted liberty to submit another ‘OTS’ with the lead banker i.e. respondent No. 2/SBI within a week and the matter may be considered thereafter by the Settlement Advisory Committee within two weeks after affording an opportunity of hearing to the petitioner company. This is without prejudice to rights and contention of the parties.

13. In view of the above, the learned NCLT may proceed as per law after four weeks.”

13. Further, another order was passed on 10.09.2024 in W.P. (Civil) No. 11150/2024, application no. 52872/2024 which was an application seeking extension of interim order and that was declined by the Single Judge of the Hon’ble High Court of Delhi and observed as follows:-

“8. Although, the pleas raised by the learned Senior Advocate for the petitioner have to be appreciated in the context that no decision should be taken in a hurried and apparently unprofessional manner, however, since the matter is pending before the NCLT, the said forum would be the appropriate one where such grievances be aired and redressed. Indeed, in such matters where the banks keep on calculating interests on compound interest and/or penal interests, the NPA amount becomes such that at times, it becomes difficult to seek a resolution under Section 12A of the IBC. However, this Court believes that the NCLT is not unaware of such unsavoury practices on the part of the financial institutions and the NCLT would be in a better position to consider and adjudicate upon the whole gamut of the issues raised herein.

9. In the said view of the matter, this Court is not inclined to give any further extension of the interim order passed vide order dated 12.08.2024. Accordingly, the present application is dismissed.

10. Nothing contained herein shall tantamount to an expression of opinion on the merits of the case.”

14. The order passed by Hon’ble High Court of Delhi takes note of a subsequent event in paragraph No. 3 that the OTS was

submitted on 20.08.2024 which was rejected on 06.09.2024. Order dated 10.09.2024 passed by the Hon'ble High Court in W.P. (c) 11150/2024, application no. 52872/2024, para 3 read as follows:-

“3. Briefly stated, the grievance of the petitioner is that pursuant to the directions of this Court dated 12.08.2024, though a proposal was submitted for OTS on 20.08.2024, the officials of the respondent No. 2/SBI again in a mechanical manner hurriedly convened a meeting through video conferencing on 03.09.2024 at 04:30 p.m., the intimation of which was given to him only at 11:45 a.m. It is submitted that although Mr. Nakul Bharana and Mr. Hem Singh appeared in the meeting through video conferencing, they were not asked any questions or queries; and that no introduction of the officials who were present in the meeting was even given to them and then abruptly a decision was taken on the same day rejecting the OTS, which was conveyed vide letter dated 06.09.2024.”

15. In this background, we have taken up the hearing in this matter. Now, there appears to be no impediment in proceeding with hearing in the matter.

16. Coming on the issue of debt and default, it is fairly stated across the bar by the CD that they have no serious objection to contention that the debt and default is an accepted fact. The argument of Mr. Fernandes, Ld. Sr. Counsel for the CD primarily revolves around the pending arbitration against National Highway Authority of India in a sum of ₹9819.18 Crores before the sole arbitrator and if that amount comes in the favour of CD, the entire debt in this case would be wiped out. Therefore, this Adjudicating Authority should adjudicate the matter in the light of this stand. This contention is based on the judgment of Hon'ble Supreme Court in the case of *Vidarbha Industries Power*

Limited vs Axis Bank Limited (2022) 8 SCC 352. However, the position in *Vidarbha* has been clarified in *M. Suresh Kumar Reddy vs Canara Bank & Ors.* Civil Appeal No. 7121 of 2022 primarily on the ground that the decision in *Vidarbha* was in view of the set of facts in that matter and cannot be taken to be view contrary to what has been laid in *Innovative Industries Ltd. Vs ICICI Bank Ltd & Anr.* (2018) 1 SCC 407. In the case of *Vidarbha* there was an order in favor of CD from the APTEL.

17. In the present case the position is in the nature of arbitral proceedings and no final order has been passed in the Arbitration proceedings. Adjudication by this Adjudicating Authority cannot be prevented by hypothetical assumption that the award might result in the favour of CD.

18. In any event it is clear that the order passed in *Vidarbha (Supra)* was only in light of the set of facts in that case, as the issue has now been resolved in an order dated 22.09.2022 passed in review petition and the Hon'ble Supreme Court has noted as under:-

“The elucidation in paragraph 90 and other paragraphs were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be as provision of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case. To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes.”

19. The same position has been further clarified by the Hon'ble Supreme Court on 11.05.2023 in the case of *M. Suresh Kumar Reddy v. Canara Bank & Ors., Civil Appeal No. 7121 of 2022.*

20. In this view of the matter, we find no justification to accept the plea that the pending arbitration proceedings should prevent the Adjudicating Authority from proceeding with the matter, more so when the debt and default is an admitted case of the Respondent. This answers issue point No. 1 & 2 raised by the CD.

21. The third issue of personal guarantee of promoters having been invoked and pending before the NCLT cannot be a ground to postpone the proceedings under Section 7 against the CD.

22. This issue has already been time and again resolved that the FC has a right to proceed against both the CD and the Personal Guarantors.

23. The fourth issue raised is that SBI/FC already filed the claim in the CIRP of Era Infra and was admitted by the RP. In this regard an additional affidavit dated 14.03.2024 has been filed by SBI that FC had provided separate credit facilities to M/s. Era Infra Engineering, which is independent from debt in matter to CD here and the relevant paragraphs of aforesaid additional affidavit are reproduced here under:-

4. THAT, the financial creditor had also provided separate credit facilities to the M/s Era Infra Engineering Ltd., independently. It is hereby clarified that the M/s Era Infra Engineering Ltd. is not the corporate guarantor of the credit facilities granted to the Corporate Debtor.

5. THAT, meanwhile, the Union Bank of India initiated proceedings under the IBC against the M/s Era Infra Engineering Ltd. by filing CP (IB) No. 190 (PB) of 2017 before the Hon. NCLT, New Delhi, which proceedings were admitted vide Admission Order dated 08.05.2018 and the interim resolution professional was appointed.

6. THAT, since the financial creditor-SBI had granted credit facilities to the M/s Era Infra Engineering Ltd. which was also a corporate guarantor for credit facilities granted by the SBI to one West Haryana Highway Project Pvt. Ltd., the SBI filed its Proof of Claim dated 12.12.2018 before the IRP in the CIRP of M/s Era Infra Engineering Ltd. True copy of the Proof of Claim dated 12.12.2018 is enclosed herewith as ANNEXURE: A.

7. THAT, subsequently, the financial creditor-SBI filed its modified Proof of Claim dated 31.08.2019 (*incorrectly/inadvertently dated 31.08.2018*) in the CIRP of M/s Era Infra Engineering Ltd. for a total amount of Rs. 1930,74,09,565.78, which included the claim of the SBI vis-à-vis the present Corporate Debtor: Bareilly Highways Pvt. Ltd., being SPV of M/s Era Infra Engineering Ltd., for an amount of Rs. 729,03,780,10.64. True copy of the Proof of Claim dated 31.08.2019 is enclosed herewith as ANNEXURE: B.

8. THAT, at the time of filing the present Section 7 IBC Application, since the earlier Proof of Claim dated 12.12.2018 appeared to be subsequent in time to the Proof of Claim dated 31.08.2019 (*incorrectly/inadvertently dated 31.08.2018*), the factum of filing of claim of the SBI vis-à-vis the present Corporate Debtor: Bareilly Highways Pvt. Ltd., being SPV of M/s Era Infra Engineering Ltd., for an amount of Rs. 729,03,780,10.64 in the CIRP of M/s Era Infra Engineering Ltd. could not be brought before this Hon. NCLT in the present Section 7 IBC Application, which CIRP of M/s Era Infra Engineering Ltd. is presently pending before the Hon. NCLT, Bench No. 5, New Delhi.

9. THAT, in the respectful submission of the financial creditor-SBI, at the time of filing of the present Section 7 IBC Application as also the present Addl. Affidavit, the total debt in default against the Corporate Debtor: Bareilly Highways Pvt. Ltd. is still outstanding.

24. We have considered the same. The present claim is based on the term loan granted by SBI and Consortium of banks as on 16.12.2010, in respect of which default has been made and the same is outstanding. As regards inclusion of claim of SBI in CIRP of Era Infra, there is no dispute to the fact that debt owed by the CD is outstanding as on date and will be resolved only upon payment which is not done even in CIRP of Era Infra. We therefore are inclined to reject this plea of the Respondent as well.

25. Next contention of the Respondent that no specific resolution or authority letter is filed by SBI has been responded in para 12 of the rejoinder dated 13.09.2023. We have perused the same and find no error in respect of authority to file the Petition under section 7.

26. Finally, Mr. Yadav, Ld. Sr. Counsel and Mr. Fernandes, Ld. Sr. Counsel wanted to point out that there are some newspaper report to the effect that the NARCL has proposed to buy debts the certain entities and the same has been reported in the press. On this, we refer to a decision of the Hon'ble NCLAT dated 05.03.2024 in Company Appeal (AT) (Insolvency) No. 396 of 2024 more particularly paragraph 7, 8, 9, 10 reads as under:-

7. From the facts, as noticed above, it is apparent that the consortium of lenders led by Indian Overseas Bank has expressed their agreement for restructuring of the debt which having more than 93% shares in the lending. It is the Indian Bank or one or other two banks who have not given their consent and they have been opposing restructuring. The

Corporate Debtor is a going concern. Learned Counsel for the Appellant has referred to Agenda Item No. 2 of the joint lenders meeting held on 29.01.2024, which is as follows:-

“2) In-principle Mandate on Transfer of Account to NARCL for Recovery: Shri Rajiv Ranjan Mallick AGM, IOB Defence Colony Branch informed that DFS is closely monitoring all the accounts above ₹500 crores and there have been several review meetings conducted by DFS to monitor the progress on this issue. He further informed that IOB has in principle agreed to transfer M/s Agson Global Pvt. Ltd. to NARCL and Subsequently SBI being the leader of NARCL had been enquiring on the progress on this matter during NARCL Review meeting. Therefore, this meeting has been called specifically to obtain the approval of mandates from all the member banks to take a call on In- Principle transferring this account to NARCL

IOB CRM reiterated that in the last JLM meeting it was requested that all the member banks will clear their stand in next JLM meeting on transferring this account to NARCL. Further Shri Rajiv Ranjan Mallick requested all the Member banks to confirm their stand on providing the mandate in favour of transferring the account to NARCL or non-approval as the case may be.

All the Banks then one by one conveyed their stand on transferring the account to NARCL. The details of which is as annexed below:-

Bank	Views on In-principle Transfer of Account to NARCL
IOB	• Agreeable
PNB	• Agreeable
Union Bank of India	• Agreeable to go with the majority • There should be Swiss Challenge
BOI	• Agreeable to go with the lead bank
UCO Bank	• Agreeable and recommended to HO, awaiting final approval

<i>Canara Bank</i>	• <i>Agreeable</i>
<i>SBI</i>	• <i>Agreeable</i>
<i>Central Bank of India</i>	• <i>Agreeable</i>
<i>BOB</i>	• <i>Agreeable to go with the majority</i>
<i>Indian Bank</i>	• <i>Agreeable</i> • <i>Alternate recovery process by the bank shall proceed</i>
<i>IDBI Bank</i>	• <i>Agreeable</i>

As decided by member banks in the last JLM dated 06.01.2024, IOB has conveyed NARCL to start the initial Due Diligence so that entire exercise can be completed in a time bound manner. IOB further informed that from the NARCL side BOBCAPS has been assigned the responsibility of doing the due diligence.

UCO Bank enquired that if there has already been any offer by NARCL to which IOB informed that NARCL will make any offer only after completing the due diligence process and whenever there will be any offer by NARCL it will comprehensively discussed and final decision will be taken by JLM.

Union Bank representative informed that their bank is undertaking the Asset tracing exercise which will be concluded soon. CRM of IOB thanked him for the efforts by their bank and stated that this is a value addition to the whole exercise and also requested them to share the report among the JLM/Member Banks.

Indian Bank, DGM informed that they had a crucial hearing on the next day in NCLT to which it was replied that all the banks are independent to follow recovery measure as per their own Bank's recovery policy.

SBI representative suggested for doing enterprise valuation as per their Bank's policy, which was agreed by the JLM that it may be explored in future.

Many other banks requested for Stock valuation or the stock audit report of the primary stocks. IOB confirmed that though the last stock audit is completed in the month of May 2023 and it is 08 Months old only but as per necessity the stock valuation/audit may be done.”

8. Both the Learned Counsel for the parties have made respective submissions in support of their claim. From the facts which have been brought on record, it does appear that the majority of lenders having more than 90% share in the lending have expressed their agreement on for restructuring of the debt which could not be accomplished due to credit rating of the Corporate Debtor which is R5. We also notice that the High Court of Delhi on 16.01.2024 has already passed an order to the credit rating agency to have a relook at CRA Rating of RPF in view of inputs given by the lead bank which process is still on way. The minutes of meeting dated 29.01.2024 of joint lenders clearly minutes following decision:-

“all the member banks unanimously give their mandate to lead bank for in-principle transferring the account to NARCL.”

9. We have already noticed that the said decision was also taken on joint lenders meeting on 06.01.2024 and thereafter process has started. When all member banks unanimously have agreed in-principle to transfer the account to NARCL, we fail to see any necessity at this stage to continue the CIRP against the Corporate Debtor. When the Corporate Debtor is put in insolvency process, all steps to revive including the restructuring of the debt shall stand closed and defeated and there shall be no chance of revival of the Corporate Debtor. We have already noticed that Section 7 application filed by the Indian Bank is a lender who has only 2.47% share in the lending where majority of the lenders banks has not adopted the course which has been adopted by the Indian Bank. In the minutes of meeting dated 29.01.2024 of joint lenders, the stand of the Indian Bank has been noticed in following words:-

“Indian Bank, DGM informed that they had a crucial hearing on the next day in NCLT to which it was replied that all the banks are independent to follow recovery measure as per their own Bank’s recovery policy”.

10. The statement of the Indian Bank, as noted above, clearly indicates that the proceedings of Section 7 which was filed and being prosecuted by the Indian Bank was a recovery measure. In the facts of the present case, we are of the view that in the ends of justice be served in awaiting the decision of lenders regarding assignment for which in-principle approval has already been taken. When the lenders have decided in principle to assign their debt to NARCL, it is assignee who is to chalk future course of action regarding the Corporate Debtor.”

27. On this premise, Respondent sought for indulgence from this Adjudicating Authority to postpone the further proceedings on the premise that NARCL may buy own the debt and the situation may be changed.

28. In the present case admittedly the consortium of lenders have already declined the request for OTS and have decided to proceed in the matter with the consent of the other lenders. Further whether the NARCL will enter into the assignment of the debt, decision has not culminated in reality. Therefore, the case of the Hon’ble NCLAT where a joint decision has been taken by all the lenders makes a lot of difference.

29. If there was a decision already taken like in the case covered by Hon’ble NCLAT’s decision dated 05.03.2024 above, it probably would be a second case.

30. In the present case factually it is not so. Newspaper statements cannot be of any importance to us.

31. Therefore, we are satisfied that the present petition is maintainable and that the financial debt is due and there is a default in payment of debt.

Order

In light of the above facts and circumstances, it is, **hereby ordered** as follows:

1. The Application bearing C.P. (IB)-243/(PB)/2023 filed by State Bank of India, the Applicant/(FC), under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Bareilly Highways Project Limited, the Respondent/(CD), is hereby admitted.
2. As a consequence of the Application CP (IB)-243(PB)/2023 being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
3. The Applicant/(FC) has proposed the name of Mr. Sandeep Goel as the IRP. His email id is cmasandeepgoel@gmail.com. His registration number is IBBI/IPA-003/IP-N00073/2017-2018/10583. He has filed his written communication, (Page 1044, Volume 6 of the Application) as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Institute of Cost Accountants

of India. In addition, further necessary disclosures have been made by Mr. Sandeep Goel as per the requirement of the IBBI Regulations. Hence, we appoint Mr. Sandeep Goel as the IRP of the Corporate Debtor. We further direct Mr. Sandeep Goel to file his valid AFA within three days to this Adjudicating Authority.

4. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
5. During the CIRP period, the management of the CD shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard
6. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

7. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
8. The FC shall deposit a sum of Rs 10,00,000/- (Rupees Ten Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).
9. In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.
10. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
11. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
12. Subsequent to order being dictated in open Court, when the order was being typed and faired out prior to being uploaded, Mr. Siddharth Yadav, Ld. Sr. Counsel & Mr. Sunil Fernandes, Ld. Sr. Counsel appeared before us and mentioned on 03.10.2024, the order of Hon'ble High Court of Delhi dated 01.10.2024 in W.P. (C) 11150/2024 & CM APPL. 57743/2024 titled as Bareilly Highways Project vs. Reserve Bank of India and Ors., which reads as follows:-

ORDER
01.10.2024

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CM APPL. 54882/2024

1. This application has been moved on behalf of the petitioner seeking certain directions.
2. Learned counsel for the respondents/bank is present through VC on advance notice, and he submits that the petition moved by the financial creditors, has been admitted by the NCLT¹ on 23.09.2024 and after hearing all the parties including the learned counsel for the petitioner, Insolvency Resolution Professional (IRP) Mr. Sandeep Goyal has since been appointed. He requests time to place on record the certified copy of the order passed by the NCLT.
3. Let the same be placed on record.
4. Since it is stated that no date of hearing has been fixed by the NCLT, renotify on 08.10.2024 in the 'Supplementary List'.
5. In the meanwhile, the respondents shall consider the OTS submitted by the petitioner and shall pass a reasoned order thereupon.
6. Till then, no coercive process shall be initiated against the petitioner.
7. A copy of this order be given *dasti* to the learned counsel for the petitioner.

In view of the above development/order of the Hon'ble High court of Delhi, the implementation of this admission order u/s. 7 IBC will be kept in abeyance and will be subject to subsequent orders of Hon'ble High Court of Delhi.

-sd-

(RAMALINGAM SUDHAKAR)
PRESIDENT

-sd-

(AVINASH KUMAR SRIVASTAVA)
MEMBER (TECHNICAL)

23.09.2024
Ritu Sharma

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1930 of 2024

&

I.A. No. 7495 of 2024

[Arising out of Order dated 23.09.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi, Principal Bench), in (IB)-
243(PB)/2023]

IN THE MATTER OF:

Nakul Bharana

S/o Sh. Dheeraj Singh Bharana,
R/o C- 146, First Floor,
Sarvodya Enclave,
New Delhi- 110016.

...Appellant

Versus

1. National Asset Reconstruction Company Limited

8th Floor, Birla Centurion, Unit No.1,
794, Pandurang Bhudhkar Marg,
Worli, Mumbai, Maharashtra – 400030.
Email id: kapil.soni@nacl.co.in

...Respondent No. 1

2. Bareilly Highways Project Limited

Under Corporate Insolvency Resolution
Professional
Through its Interim Resolution Professional,
Mr. Sandeep Goyal,
410, Pratap Bhawan, 5 Bahadur Shah Zafar
New Delhi – 110002.
Email Id: cmasandeepgoel@gmail.com
Registration No.: IBBI/IPA-003/IP-N00073/2017-
2018/10583

...Respondent No. 2

Present:

For Appellant : **Mr. Krishnendu Dutta, Sr. Advocate with Ms. Prachi Darji, Ms. Divya Verma, Ms. Ritika Gussain and Mr. Manav Goyal, Advocates.**

For Respondents : **Mr. Niranjan Reddy, Sr. Advocate with Ms. Smriti Churiwal, Mr. Vishesh Kalra, Mr. Jaiveer Kant and Ms. Anoushka Deo, Advocates for R-1.**

For Intervenor : Mr. Arijit Prasad, Sr. Advocate with Ms. Nishtha Kaura, Advocates.

ORDER

ASHOK BHUSHAN, J.

This appeal by a suspended director of the corporate debtor has been filed challenging the order dated 23.09.2024 passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Principal Bench) admitting a Section 7 application filed by the State Bank of India (SBI) against the Corporate Debtor, Bareilly Highways Project Ltd.

2. Brief facts necessary to be noticed for deciding the appeal are:

- i. The corporate debtor was constituted a Special Purpose Vehicle (SPV) for carrying out National Highway Project to construct, operate and maintain the four laning of Bareilly Sitapur Section of National Highway – 24 from kilometre 262 to kilometre 413 in the state of Uttar Pradesh.
- ii. State Bank of India by a sanction letter dated 15.11.2010 sanctioned financial facilities to the corporate debtor.
- iii. Lenders on 16.12.2010 agreed to extend corporate debtor a loan aggregating to ₹1,350 Crore.
- iv. Facility Agreement dated 16.12.2010 was entered which was modified by the SBI subsequently.
- v. Loan account of the corporate debtor was classified as Non-Performing Asset (NPA) on 26.07.2017.

- vi. Section 7 application were also filed against the Era Engineering Ltd. (Era) the holding company of the corporate debtor.
- vii. National Highways Authority of India (NHAI) issued termination notice to the corporate debtor on 03.05.2019.
- viii. Corporate debtor submitted a settlement proposal to the lenders in the year 2020, which was not accepted.
- ix. SBI filed an application under Section 7 on 15.04.2023 against the corporate debtor for a default of ₹1409.72 Crore.
- x. Date of default was mentioned as 18.01.2019. Notice was issued by NCLT to the corporate debtor. A reply was filed before the Adjudicating Authority, the corporate debtor pleaded that it has given One-Time Settlement (OTS) proposal to the consortium of bank, which was rejected by the consortium of banks. A Writ Petition was also filed by the corporate debtor being **Writ Petition (Civil) No.11150/2024, 'Bareilly Highways Project Ltd.' Vs. 'Reserve Bank of India & Ors.'**, where liberty was granted to the corporate debtor to submit OTS with the lead bank.
- xi. Adjudicating Authority after hearing the parties returned a finding that debt and default is proved, Adjudicating Authority directed for admission of Section 7 application by order dated 23.09.2024.
- xii. Appellant, the suspended director of the corporate debtor, challenging the order dated 23.09.2024 filed this appeal.

xiii. When the appeal came for consideration, it was submitted by the appellant that appellant has submitted the proposal on 08.10.2024 of ₹550 Crore. Noticing the said submissions, interim order was passed by this Tribunal on 15.10.2024. Order dated 15.10.2024 is as follows:

“1. Counsel for the Appellant submits that after the Interim Order granted by the High Court was vacated, the Appellant has submitted the proposal on 08.10.2024 for Rs. 550 Crores which is much more than Reserve Price of Rs. 300 Crores for which Notice has been issued on 30.09.2024 for assigning the debt.

2. Learned Sr. Counsel Mr. P. Nagesh appearing for the Bank seeks time to obtain instructions with regard to proposal on 08.10.2024. A week’s time is allowed to Mr. P. Nagesh Counsel appearing for State Bank of India.

*List this Appeal again on **25th October, 2024.***

It is submitted that Publication has not yet been made.

In the meantime, till the next date no further steps shall be taken in pursuance of the Impugned Order dated 23.09.2024.”

xiv. Appeal was taken by this Tribunal from time to time, where appellant prayed for time to bring settlement with the financial creditor on record.

In order dated 09.12.2024 following was observed:

“1. Affidavit has been filed on behalf of the appellant on 12.11.2024. Ld. Counsel for the appellant submits that appellant has approached all lenders and meeting has been fixed for settlement. Counsel for the appellant submits that the as per the news published in the ‘Business Standard’ the National Assets Reconstruction Company emerge as front runner to acquire non-performing loan of Rs.1773 crores of the corporate debtors. It is submitted that appellant is ready to settle with all the banks including NARCL, if it is assigned. Counsel for the State Bank of India submits that no assignment has yet been made by the State Bank of India.

2. We are of the view that in event any settlement takes place with all banks the route open to the appellant is to file application under Section 12A of IBC. The Counsel for the appellant submits that the appeal be taken in the first week of January to inform the court about the settlement so that appropriate directions be issued for proceeding under Section 12A.

3. List this appeal on 13.01.2025.

4. We make it clear that this will be the last opportunity for the appellant to inform court about settlement, if any. 5. Interim order to continue.”

xv. There being assignment by the SBI in favour of NARCL, substitution was permitted of NARCL. By order dated 13.01.2025, appeal was heard. Appellant sought further adjournments on 07.03.2025 and as last opportunity interim order was continued till 12.03.2025. On 12.03.2025, learned counsel for both the parties submitted that no settlement has been taken with the financial creditors. Hearing was closed on 12.03.2025.

3. We have heard learned Sr. counsel, Mr. Krishnendu Dutta appearing for the appellant as well as learned Sr. counsel, Mr. Niranjan Reddy appearing for the respondent.

4. Learned counsel appearing for the appellant had submitted that corporate debtor has invoked arbitration against the NHAI. The corporate debtor has been making efforts to clear the dues of the lenders with regard to which various OTS proposal was given from time to time. Corporate debtor has also invoked the Post Termination Arbitration Agreement against the NHAI on 16.08.2021 and appellant shall be able to clear the dues of the lender after receiving the amount as granted in the arbitration proceeding. The

resolution plan of the holding company Era has already been approved on 11.06.2024.

5. Learned counsel for the respondent refuting the submission of the counsel for the appellant submits that no arguments have been raised by the appellant with regard to debt and default, which is an admitted fact. It is submitted that the fact that appellant has taken several opportunities from this Tribunal to settle the dues of the financial creditors in which he failed, clearly proves the debt and default on the part of the appellant. In Section 7 proceeding, the Adjudicating Authority has to consider the debt and default and debt and default being proved, no error can be said to have been committed by the Adjudicating Authority in admitting Section 7 application. The appellant has taken various opportunities and has prolonged the hearing of the appeal after obtaining an interim order due to which the Corporate Insolvency Resolution Process (CIRP) against the corporate debtor could not proceed any further. Learned counsel for the respondent has also referred to the judgment of the Hon'ble Supreme Court dated 11.05.2023 in the matter of '**M. Suresh Kumar Reddy**' Vs. '**Canara Bank & Ors.**', in **Civil Appeal No.7121/2022**, in support of his submission that the debt and default being proved, Adjudicating Authority has to admit Section 7 application.

6. We have considered the submissions of the counsel for the parties and perused the record.

7. There is no dispute between the parties regarding financial facilities extended by the SBI. The amount disbursed by the SBI to the corporate

debtor. The accounts were declared NPA by the financial creditor on 26.07.2017. Loan recall notice was issued by the SBI on 11.01.2019 and on behalf of the all the consortium lenders demanding a payment of amounts of ₹2078.04 Crore. Section 7 application was filed by the SBI for a default of ₹1049.72 Crore. Before the Adjudicating Authority itself, the corporate debtor pleaded that corporate debtor has submitted one-time proposal before the lenders. During the course of the hearing of Section 7 application, OTS proposal dated 03.08.2024 was given which was rejected by the consortium of bank, which facts have been noticed in paragraph 12 of the judgment of the Tribunal which is to the following effect:

“12. During the course of hearing, it was pointed out by the Ld. Counsel for the CD that they had given one time settlement proposal to consortium of banks and they wanted the same to be considered primarily on the plea that the arbitral proceedings against the NHAI may result in their favour and upon the same all the debts of the FC could be extinguished. The first OTS proposal was given on 03.08.2024 that was rejected by the consortium of banks. CD upon rejection of proposal filed a Writ Petition No. WP (Civil) No. 11150/2024 titled as Bareilly Highways Project Ltd. vs RBI & Ors. The Hon’ble High Court of Delhi passed first order on 12.08.2024 & 13.08.2024 more particularly para 12 & 13 which read as under:-

“12. In view of peculiar facts and circumstances of the matter, the petitioner company is granted liberty to submit another ‘OTS’ with the lead banker i.e. respondent No. 2/SBI within a week and the matter may be considered thereafter by the Settlement Advisory Committee within two weeks after affording an opportunity of hearing to the petitioner company. This is without prejudice to rights and contention of the parties.

13. In view of the above, the learned NCLT may proceed as per law after four weeks.”

8. Adjudicating Authority has also noticed the submissions on behalf of the corporate debtor that they have not serious objection to the contention that the debt and default is an accepted fact. Para 16 of the judgment is as follows:

“16. Coming on the issue of debt and default, it is fairly stated across the bar by the CD that they have no serious objection to contention that the debt and default is an accepted fact. The argument of Mr. Fernandes, Ld. Sr. Counsel for the CD primarily revolves around the pending arbitration against National Highway Authority of India in a sum of ₹9819.18 Crores before the sole arbitrator and if that amount comes in the favour of CD, the entire debt in this case would be wiped out. Therefore, this Adjudicating Authority should adjudicate the matter in the light of this stand. This contention is based on the judgment of Hon’ble Supreme Court in the case of Vidarbha Industries Power Limited vs Axis Bank Limited (2022) 8 SCC 352. However, the position in Vidarbha has been clarified in M. Suresh Kumar Reddy vs Canara Bank & Ors. Civil Appeal No. 7121 of 2022 primarily on the ground that the decision in Vidarbha was in view of the set of facts in that matter and cannot be taken to be view contrary to what has been laid in Innovative Industries Ld. Vs ICICI Bank Ltd & Anr. (2018) 1 SCC 407. In the case of Vidarbha there was an order in favor of CD from the APTEL.”

9. We have already noticed the proceedings in this appeal. Before this Tribunal the appellant pleaded that they have given OTS proposal to the financial creditors. In order dated 25.10.2024, we have noticed the submissions of the counsel for the SBI that SBI has not accepted the proposal. Even after 25.10.2024, appellant took time to bring settlement on record in which appellant miserably failed. The sequence of the event in the appeal as noted above clearly proves that debt and default is an admitted fact. From the facts brought on the record, it is clear that corporate debtor is unable to

clear its debt and it is fit case where insolvency resolution process against the corporate debtor be proceeded.

10. We, thus do not find any error in the order of the Adjudicating Authority admitting Section 7 application. There is no merit in the appeal, appeal deserves to be dismissed. We had passed an interim order on 15.10.2024, we direct that the period from 15.10.2024 till date be excluded from the CIRP process. The RP shall proceed with the CIRP process in accordance with the law.

Subject to above, appeal is dismissed. Pending IAs, if any, are disposed of.

**[Justice Ashok Bhushan]
Chairperson**

**[Arun Baroka]
Member (Technical)**

NEW DELHI

24th March, 2025

himanshu