

**IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD**  
**SPECIAL BENCH**  
**COURT - 1**

ITEM No.2  
C.P.(IB)/39(AHM)2021

**Order under Section 7 IBC**

**IN THE MATTER OF:**

Axis Bank Ltd  
V/s  
Cengres Tiles Ltd

.....Applicant

.....Respondent

**Order delivered on ..27/04/2022**

**Coram:**

Madan B. Gosavi, Hon'ble Member(J)

**PRESENT:**


For the Applicant :  
For the Respondent :

**ORDER**

The matters were heard almost in the month of March but orders could not be pronounced because Technical Member was not available. Technical Member will not be available for another couple of weeks, hence, matter cannot be kept pending for pronouncement because hearing was concluded almost a month ago. Hence orders are pronounced invoking Rules 151 of NCLT Rules,2016 with consent of other Member.

-SD-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

  
**MADAN B GOSAVI**  
**MEMBER (JUDICIAL)**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-I**

**CP(IB)/39/NCLT/AHM.2021**

**In the matter of :**

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

**In the matter between:**

**AXIS BANK LIMITED**

**Having registered office at:**

“Trishul”, 3<sup>rd</sup> Floor,  
Opposite Samartheshwar Temple,  
Near Law Garden, Ellisbridge,  
Ahmedabad-380006.

AND

**Having Branch office at:**

Structured Assets Group at Corporate Office,  
Axis House, 7<sup>th</sup> Floor, C-2,  
Wadia Internaitonal Centre,  
Panduring Budhkar Margm  
Worli, Mumbai-400025.

**....Financial Creditor**

**Versus**

**M/s. CENGRES TILES LIMITED**

**Having registered address at:**

D/401, Ganesh Meridian,  
Opp. Amiraj Farm, Near Gujarat High Court,  
S.G. Highway, Ahmedabad-380060

**....Corporate Debtor**

Order Reserved On : 29.03.2022

Order Pronounced On : 27.04.2022



**Coram: MADAN B. GOSAVI, MEMBER (J)**  
**KAUSHALENDRA KUMAR SINGH, MEMBER (T)**

**PRESENTS:**

For the Financial Creditor: Ld. Adv. Mr. Raju Kothari

For the Corporate Debtor : Ld. PCS Mr. Kunjal Dalal

**ORDER**

**[Per: BENCH]**

1. This instant Company Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) by Axis Bank Limited - the Financial Creditor against M/s. Cengres Tiles Limited - the Corporate Debtor for initiating the Corporate Insolvency Resolution Process (hereinafter referred to as **"CIRP"**) against the Corporate Debtor on the ground that the Corporate Debtor committed the default in paying the financial debt of Rs. 19,07,49,223/- (Rupees Nineteen Crore Seven Lakh Forty-Nine Thousand Two Hundred-Twenty Three). The date of default is stated to be 11.12.2019.
2. The Financial Creditor has submitted that the Corporate Debtor approached the Financial Creditor for financial assistance, and the Financial Creditor has sanctioned the loan (credit facilities) of Rupees 20.00 Crores under the

consortium with State Bank of India (hereinafter referred to as **"SBI"**) on 10.03.2014 and the Corporate Debtor signed a Joint Deed of Hypothecation for securing the aforesaid credit facilities in favour of the Financial Creditor and the SBI on 28.03.2014. The mortgage Deed was also signed by the Corporate Debtor in favour of Financial Creditor and SBI 10.06.2014. For securing the aforesaid credit facilities, (i) Shree Parth Shah (ii) Shri Rakesh C. Patel and (iii) Shri Ashish C. Patel (iv) Shri Arvind D. Patel, (v) Shri Vijay D. Minar and (vi) Shri Chirag M. Patel, have also given their personal guarantee for making the payment in default to make the payment by the Corporate Debtor.

3. The Financial Creditor further submitted that the Corporate Debtor approached the Financial Creditor for enhancement of credit facilities. The Financial Creditor vide sanction letter dated 08.11.2014. and modified sanction letter dated 10.09.2015 enhanced the credit facility to Rupees 25 Crores approximately. For ready reference, we reproduce the original sanction credit facility as well as enhanced credit facility hereunder:-



**A.** The Credit facilities as per the Sanction letter dated 10.03.2014 :-

(Rs. in crores)

Type of Facility	Sanctioned limits with SBI	Sanctioned Limits with Axis	Overall Assessment under consortium
<b>Fund Based</b>			
Cash Credit limit	24.00	11.00	35.00
Term Loans	25.81	0.00	28.81
Corporate Loan	5.00	5.00	10.00
<b>Total Fund Based (A)</b>	<b>54.81</b>	<b>16.00</b>	<b>70.81</b>
<b>Non-Fund Based</b>			
Letter of Credit Limit	2.00	4.00	6.00
Bank Guarantee Limit	6.00	0.00	6.00
LER	0.58	(0.32)	0.58
<b>Total Non-Fund Based (B)</b>	<b>8.58</b>	<b>4.00</b>	<b>12.58</b>
<b>Total Limits (A+B)</b>	<b>63.39</b>	<b>20.00</b>	<b>83.39</b>

**B.** The enhanced Credit facilities as per the Sanction letter dated 08.11.2014:-

(Rs. in crores)

Particulars	Existing Limit	Increase/d ecrease	Revised Limit	Total Limits sanctioned under the consortium with SBI
<b>Fund Based</b>				
Cash Credit limit	11.00	0.00	11.00	35.00
Term Loans (existing)*	0.00	0.00	0.00	19.70
Term Loan (fresh)	0.00	+5.00	5.00	11.00
Corporate Loan	5.00	0.00	5.00	10.00
<b>Total Fund Based (A)</b>	<b>16.00</b>	<b>+5.00</b>	<b>21.00</b>	<b>75.70</b>
<b>Non-Fund Based</b>				
One time capex LC (as a sub-limit of fresh TL)	0.00	+(5.00)	(5.00)	(11.00)
Buyer's Credit (as a sub-limit of fresh TL)	0.00	+(5.00)	(5.00)	(11.00)
Letter of Credit Limit	4.00	+0.00	4.00	6.00
Bank Guarantee limit	0.00	0.00	0.00	6.00
LER	(0.32)**	+0.00	(0.32)	0.58
<b>Total Non-Fund Based (B)</b>	<b>4.00</b>	<b>0.00</b>	<b>4.00</b>	<b>12.58</b>
<b>Total Limits (A+B)</b>	<b>20.00</b>	<b>+5.00</b>	<b>25.00</b>	<b>88.28</b>

The Corporate Debtor has also executed the supplementary Joint Deed of Hypothecation and the Supplementary Term

Loan Consortium Agreement in favour of the Financial Creditor and SBI on 26.12.2014. Thereafter, the aforesaid credit facilities were renewed on terms and conditions of the sanction letter dated 27.01.2016, 30.05.2017, and 22.11.2018. The Financial Creditor has reduced the credit facilities vide sanction letter dated 22.11.2018. For ready reference, we reproduce the reduced credit facilities as per sanction letter dated 22.11.2018 as under:-

(Rs. In crores)

	<b>Existing</b>	<b>Proposed</b>	<b>Inc/(Dec)</b>	<b>Total with SBI under consortium</b>
<b>Fund Based Facility</b>	<b>Axis</b>	<b>Axis</b>		
Cash Credit	11.00	11.00		40.00
Term Loan (at run down liability)	3.50	1.93		40.00
Term Loan (at run down liability)	4.24	2.84		6.23
<b>Total Fund Based</b>	<b>18.74</b>	<b>15.77</b>		<b>46.23</b>
<b>Non-Fund Based Facility</b>				
Inland/ Foreign LC	4.00	2.00		4.00
Bank Guarantee (on standalone basis)	Nil	Nil		6.00
Bank Guarantee (sub limit of LC limit)	(4.00)	(2.00)		(2.00)
SBLC limit (as sub limit of LC limit)	(2.00)	(2.00)		(2.00)
LER (on standalone basi)	Nil	Nil		0.25
<b>Total Non-Fund Based</b>	<b>4.00</b>	<b>2.00</b>		<b>10.25</b>
<b>Grand Total</b>	<b>22.74</b>	<b>17.77</b>		<b>56.48</b>

4. It is also stated by the Financial Creditor that due to the non-payment of due instalments/loan amount by the Corporate Debtor, the Financial Creditor classified the accounts of the Corporate Debtor as N.P.A on 11.12.2019.

Thereafter the Financial Creditor issued a recall notice dated 17.06.2020 for the payment of Rs. 17,46,77,948/- as on 11.06.2020 to the Financial Creditor. In meantime, the Financial Creditor sent the document of aforesaid credit facilities to the securitization branch at Mumbai and the same was also intimated to the Corporate Debtor as well as guarantor vide letter dated 15.02.2020.

5. It is also stated that even after the recall notice dated 17.06.2020, the Corporate Debtor failed to pay the outstanding amount. Thereafter, the Financial Creditor issued a notice under Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor for the payment of Rs. 17,77,23,481/- on 31.07.2020 and in the said notice the Financial Creditor has also stated that Bank Guarantee limit be converted into Bank Guarantee against 100% cash margin or return the original Bank Guarantee within a period of seven days from this notice. But, the Corporate Debtor has failed to pay the outstanding amount. The Financial Creditor has filed the present petition for initiation of the CIRP against the Corporate Debtor.



6. The Corporate Debtor filed its reply on 22.11.2021 before this Adjudicating Authority wherein the Corporate Debtor has opposed the present petition and stated that one original application bearing OA No. 435 of 2020 has already been filed before the Debt Recovery Tribunal ("DRT") and is pending for adjudication. Hence, this CIRP proceeding is not justified.
7. It is also submitted by the Corporate Debtor that against the proceeding of DRT, one Special Civil Application No. R/SCA/4625/2021 has been filed before the Hon'ble Gujarat High Court for setting aside the proceeding initiated by the Financial Creditor as well as the DRT proceeding initiated by the SBI which is a lead Bank of consortium. Thereby, the Corporate Debtor is praying for postponing the admission of the CIRP against the Corporate Debtor till the disposal of the aforesaid Special Civil Application.
8. The Corporate Debtor further submitted that Financial Creditor is not authorized to file this present petition as the financial debt was granted vide sanction letters dated 10.03.2014, 08.11.2014, 27.01.2016, 30.05.2017, and 22.11.2018. The SBI is the lead Bank of consortium

pursuant to the inter-se agreement between SBI and the Financial Creditor dated 16.12.2014. Hence, the SBI is only entitled to file the present petition or initiate any recovery proceeding under the law.

9. The Corporate Debtor further contended that there is no default in terms of Section 3 of the IBC, 2016 on the ground that the total loan/credit facilities granted to the Corporate Debtor is Rs. 20.00 Crores. However, the default amount as claimed by the Financial Creditor is Rs. 19,07,49,233/- and the Financial Creditor has suppressed the material fact that the lead bank of the consortium i.e., SBI already issued the possession notice dated 22.12.2020 and has already taken the possession on the properties of the Corporate Debtor more than the sanctioned amount of both the Banks i.e., Rs. 93.61 Crores. Thereby, there is no outstanding amount/default on the part of the Corporate Debtor.
10. The Corporate Debtor has further stated that the present petition is defective as in Form 1 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 pursuant to the said Rules, column 1 of part IV of the said Form 1 requires Financial Creditor to disclose the

estimated value of securities as per creditors. The Petitioner has on page 7 of the application stated that the value of security comprising of current assets of the Corporate Debtor is not available. It is also stated that the affidavit in support of the present petition is not as per the prescribed Form as per Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016.

11. We have heard the Learned Counsels for both sides and perused the material on record. It is noted that the credit facility was sanctioned by the Financial Creditor vide sanction letter dated 08.11.2014 and same was enhanced from Rs. 20 Crores to Rs. 25 Crores vide sanction letter dated 10.09.2015 and the aforesaid loan/sanction amount was provided to the Corporate Debtor under the consortium with SBI which is a lead Bank for the aforesaid sanction credit facilities. The Corporate Debtor contends that one OA bearing No. 435/2020 has been filed by the SBI before the DRT, and the Corporate Debtor has filed one Special Civil Application before the Hon'ble Gujarat High Court for quashing the aforesaid DRT proceeding, and this present petition, the prayer of the Corporate Debtor to postpone the

admission of this present petition till final disposal of aforesaid Special Civil Application, is not proper. This Adjudicating Authority is entitled to admit the present petition as per provisions of Section 7 of the IBC, 2016. Moreover, neither any stay nor any such directions have been given by the Hon'ble High Court of Gujarat to stay the proceeding.

12. The contention of the Corporate Debtor that the Financial Creditor is not entitled to file this present application against the Corporate Debtor as the loan/corporate facilities were sanctioned by the Financial Creditor with the consortium of SBI which is only entitled to file the proceeding before this Adjudicating Authority. Further, the contention of the Corporate Debtor that the S.B.I has already taken the possession the properties of the Corporate Debtor more than the sanctioned amount by both the Banks (Financial Creditor and S.B.I) of Rs. 93.61 Crores. The aforesaid both the contentions of the Corporate Debtor is baseless though the S.B.I is a lead Bank under the consortium of sanctioned credit facilities but Financial Creditor has independently sanctioned the loan/credit facilities to the Corporate Debtor

and is entitled to initiate the proceeding under Section 7(1) of the IBC, 2016 and it is an admitted fact that the claim amount is still pending to be paid by the Corporate Debtor. For ready reference, we reproduce Section 7(1) of the IBC, 2016 as under:


*“7. Initiation of corporate insolvency resolution process by financial creditor.*

*(1) A financial creditor either by itself or jointly with 2 [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred....”*

13. Moreover, the S.B.I is a lead Bank under the consortium but the Financial Creditor is equally entitled to initiate the proceeding against the Corporate Debtor. It is also not a disputed fact that the loan was disbursed to the Corporate Debtor by the Financial Creditor. Though, S.B.I has taken possession of the properties of the Corporate Debtor under the SARFAESI Act, 2002 but if any proceeding initiated either by the Financial Creditor or by the lead Bank i.e., S.B.I. under SARFAESI Act, 2002 does not bar to initiate the proceeding under 7 of the IBC, 2016.
14. It is also noted that the present petition is duly supported by the affidavit of the authorized person of the Financial

Creditor and all the requisite information for initiating the CIRP against the Corporate Debtor under Section 7 of IBC, 2016 has been disclosed by the Financial Creditor. Hence, the contention of the Corporate Debtor that the present petition is defective is not valid.

15. It is observed that the credit facilities were sanctioned to the Corporate Debtor by the Financial Creditor and due to non-payment of the outstanding amount, the accounts of the Corporate Debtor was classified as N.P.A on 11.12.2019 and thereafter recall notice dated 17.06.2020 of Rs. 17,46,77,948/- was issued to the Corporate Debtor as well as guarantors of the Corporate Debtor but the Corporate Debtor failed to pay the outstanding amount/regularised the N.P.A account. Moreover, the Financial Creditor has also issued the notice under 13(2) of the SARFAESI Act, 2002 for the payment of the aforesaid outstanding amount on 31.07.2020 but the Corporate Debtor failed to pay the outstanding amount within the stipulated time under the aforesaid notice. In view of the above, it clearly establishes that there is a debt and default has been committed by the Corporate Debtor.



16. This application is otherwise complete and defect-free and meets the threshold limit as prescribed under Section 4 of the IBC, 2016. The present petition is well within the limitation as the present petition was filed on 09.03.2021 and the date of default is stated to be 09.12.2019.
17. The Financial Creditor has proposed the name of Insolvency Professional Shri Navin Kanjwani, having Registration No. IBBI/IPA-002/IP-N00347/2017-2018/10997 and e-mail Id: [navinskanjwani@yahoo.co.in](mailto:navinskanjwani@yahoo.co.in) for appointment as an Interim Resolution Professional (in short “**IRP**”) against whom no disciplinary proceedings are pending. Hence, we pass the following orders:

**ORDER**

- I. The Corporate Debtor M/s. Cengres Tiles Limited is admitted in the Corporate Insolvency Resolution Process under Section 7 of Insolvency and Bankruptcy Code, 2016.
- II. We appoint Shri Navin Kanjwani, having Registration No. IBBI/IPA-002/IP-N00347/2017-2018/10997 and E-mail Id: [navinskanjwani@yahoo.co.in](mailto:navinskanjwani@yahoo.co.in), and having address at 1, New Maharaj Park, Maa Cinema Road, Kubernagar,

Ahmedabad, Gujarat-382340 under section 13(1) (c) of the IB Code as IRP as proposed by the Financial Creditor.

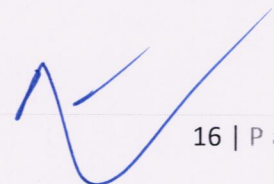
- III. The Moratorium under Section 14 of the Code shall come to effect from the date of this order till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.
- IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any Court of law and further prohibits Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing of any of Corporate Debtor 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 the SARFAESI Act, 2002 the recovery of any property by an owner or lessor

where such property is occupied by or in the possession of the Corporate Debtor.

- V. Further, litigation or application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.
- VI. The supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended, or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.
- VII. The IRP so appointed shall make a Public announcement of the Corporate Insolvency Resolution Process (CIRP) immediately as specified under Section 13 of the Code and by calling for submissions of the claim under Section 15 of the Code.
- VIII. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17, 18, 20 & 21 of the Code. It is

further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with the IRP, do not assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- X. We direct the Financial Creditor / Applicant to pay the IRP a sum of **Rs. 1,00,000/- (Rs. One lakh)** as fees & expenses till the COC decides about his fees/expenses.



XI. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after pronouncement of the order.

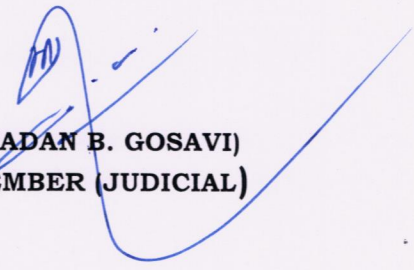
The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

18. Accordingly, CP (IB) No. 39 of 2021 is allowed.

19. Signed on this, the 27 day of April, 2022.

-SD-

**(KAUSHALENDRA KUMAR SINGH)**  
**MEMBER (TECHNICAL)**

  
**(MADAN B. GOSAVI)**  
**MEMBER (JUDICIAL)**

RB/Sen