



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Petition No.: IB 1641(PB)/2018, IA 6034(PB)/2021**

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**IN THE MATTER OF:**

**M/s UNION BANK OF INDIA**

**...Financial Creditor / Applicant**

**VERSUS**

**M/s ANSAL API INFRASTRUCTURE LIMITED**

**...Corporate Debtor / Respondent**

**Pronounced on: 19.12.2022**

**CORAM:**

**SHRI RAMALINGAM SUDHAKAR**

**HON'BLE PRESIDENT**

**SHRI AVINASH K SRIVASTAVA**

**HON'BLE MEMBER (TECHNICAL)**

For the Applicant : Mr. Samarendra Kumar, Adv.

For the Respondent : Mr. Arvind Kumar Gupta, Ms. Henna George,  
Ms. Shivani Sharma, Adv.

**MEMO OF PARTIES**

**M/s UNION BANK OF INDIA**

*(Corporation Bank has amalgamated with Union Bank of India and the amalgamated entity is known as Union Bank of India)*

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Having its Registered Office at:

Union Bank Bhawan,  
Vidhan Bhawan Marg,  
Nariman Point, Mumbai-21.

And its branch office at:

Ground Floor, 104, Bharat House,  
M S Marg, Fort, Mumbai

Through its Authorized Representative

Sh. Vijaykumar B Sherkhane

**... Financial Creditor / Applicant**

**VERSUS**

**M/s ANSAL API INFRASTRUCTURE LIMITED**

CIN: U45200DL2008PLC179003

Having its registered office at:

Half Basement no. 1, Sandhya Deep Building 15,  
East of Kailash, New Delhi South Delhi 110065.

**Also at:**

115, Ansal Bhawan,  
16 Kasturba Gandhi Marg,  
New Delhi 110001

**Also at:**

Sushant Golf City,  
Lucknow, U.P.- 226002

**...Corporate Debtor / Respondent**

**Also Corporate Debtor through:-**

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**1. SUSHIL ANSAL**

S/o Sh. C.L. Ansal  
26, Firoz Shah Road, New Delhi - 110001

... Director

**2. PRANAV ANSAL**

S/o Sh. Sushil Ansal  
26, Firoz Shah Road, New Delhi - 110001

... Director

**ORDER**

**PER- AVINASH K SRIVASTAVA MEMBER (TECHNICAL)**

1. This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by M/s Corporation Bank, seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against M/s Ansal API Infrastructure Limited [CIN: U45200DL2008PLC179003] ("**Corporate Debtor**").
2. The Corporate Debtor was incorporated on 03.06.2008, under the Companies Act, 1956. Its registered office is Half Basement no. 1, Sandhya Deep Building 15, East of Kailash, New Delhi South Delhi 110065. Therefore, this Bench has jurisdiction to deal with this petition.
3. It is pertinent to note that during the pendency of the present Application, Corporation Bank had amalgamated with Union Bank of India in accordance with law and the amalgamated entity is now known as Union Bank of India (hereinafter referred to as **Applicant**). In order to give effect to the same, an amended memo was filed vide IA 5424/2021



and the same has been taken on record by this Adjudicating Authority vide its order dated 10.12.2021.


4. The present petition was filed on 31.10.2018 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 11,98,39,698/- (Rupees Eleven Crores Ninety-Eight Lacs Thirty-Nine Thousand Six Hundred Ninety – Eight only) as on 31.10.2018, out of which Rs. 10,20,60,066 (Rupees Ten Crores Twenty Lacs Sixty Thousand and sixty-six only) is the principal amount and Rs. 1,77,79,632 (Rupees One Crore Seventy-Seven Lacs Seventy-Nine Thousand Six Hundred and Thirty-Two only) is the interest amount.

5. Ld. Counsel for the Applicant submits that:

5.1 The nature of the Corporate Debtor is that of a Special Purpose Vehicle (SPV) which was formed to design, develop, finance, construct, maintain, and transfer common urban infrastructure facilities within the hitech township proposed under the development agreements and Component 1 agreement in accordance with the Hitech Township Policy of Government of Uttar Pradesh, at Village Mujaffarnagar Ghuswal, Pargana Bijnaur, Lucknow.

5.2 The Corporate Debtor approached PMDO Lenders (Pooled Municipal Debt Obligation) for a loan and the PMDO sanctioned a

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term loan to the Corporate Debtor aggregating to Rs. 393.40 Crores vide a sanction letter dated 23.06.2011.

5.3 In addition to the sanction letter, the following agreements were also executed amongst the parties on 05.07.2011, which were amended from time to time:

- a. Common Loan Agreement (CLA) dated 05.07.2011 was executed between the Corporate Debtor and the PMDO Lenders (Consortium of Banks) and IL&FS Urban Infrastructure Managers Ltd. ("IUIML") was appointed as the '**Asset Manager**' (hereinafter referred to as '**Asset Manager**') for the said term loan.
- b. Security Trustee Agreement dated 05.07.2011 was executed between the Corporate Debtor, the PMDO Lenders, the Asset Manager and Vistara ITCL, whereby Vistara ITCL was appointed as '**Security Trustee**' (hereinafter referred to as '**Security Trustee**') to the said Term Loan.
- c. Trust and Retention Account Agreement was executed on 05.07.2011 between the Corporate Debtor, the PMDO Lenders, the Asset Manager, the Security Trustee and the designated Bank / Escrow Agent (Oriental Bank of Commerce now PNB), in terms of which Vistara ITCL has also been appointed as the '**TRA Agent**' to the said term Loan facility.

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- 5.4 Subsequently in 2017, at the request of the Corporate Debtor, the repayment obligations were rescheduled by the PMDO lenders under the flexible structuring scheme. The Asset Manager, vide sanction letter dated 17.03.2017 communicated the terms of sanction for restructuring of the Term Loan to the Corporate Debtor.
- 5.5 However, due to failure and non-compliance of the contractual obligations by the Corporate Debtor, the loan account of Corporate Debtor was classified as Non-Performing Asset (NPA) on 29.05.2017 as per the prudential norms of the Reserve Bank of India. Consequent thereupon a Demand Notice under Section 13(2) of SARFAESI Act, 2002 dated 01.03.2018 was issued on behalf all the PMDO Lenders and the present petition was filed by the Applicant on 31.10.2018.
- 5.6 Further, the Corporate Debtor, during the pendency of present proceedings, submitted various OTS proposals dated 18.11.2019, 09.12.2019, 29.12.2020 and 02.04.2022 with the Applicant, though all of them were rejected as being unfavorable.
6. Replying to the averments of the Ld. Counsel for the Applicant, the Ld. Counsel for the Corporate Debtor submits the following:

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- 6.1 No independent financial assistance from Applicant has been availed.
- 6.2 The terms and conditions are specified in the Memorandum of Agreement dated 13<sup>th</sup> October 2006 ("PMDO MOA"). The said PMDO MOA was amended and restated vide Amended and Restated Memorandum of Agreement dated 2<sup>nd</sup> July, 2010 and 9<sup>th</sup> May 2011.
- 6.3 It is a settled law that an Agreement has to be read as a whole and holistically and not piecemeal, therefore, the loan agreement has to be read along with PMDO Agreement for its true meaning and intent.
- 6.4 As per the Amended and Restated PMDO MOA, IL&FS Urban Infrastructure Managers Limited was appointed as the Asset Manager (*Pg 235 of the Petition*), and has to manage, operate and monitor the PMDO Facility (*Pg 244/249 of the Petition*) on terms set out in the said Amended and Restated PMDO MOA for and on behalf of the participants.
- 6.5 Common Loan Agreement was executed, whereby Vistra ITCL, acted as Security Trustee (*Pg 239/256 of the Petition*) and Oriental Bank of Commerce acted as an **Escrow Agent**.
- 6.6 The Company did not avail any independent financial assistance from the Petitioner as per the agreements executed in this regard.

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Hence, the Petitioner individually cannot claim that there is debt due towards it which entitles it to file the captioned Petition.

- 6.7 Therefore, there is no debt due towards the Petitioner, in law or in fact and consequently, there is no default. The Petitioner is thus, not a financial creditor as per the provisions of the Code and has no authority whatsoever to file the captioned petition.
- 6.8 Without prejudice to the legal rights and contentions and the basic contention that no amount is due and payable directly to the Applicant, the Company is ready and willing and making earnest efforts to discuss and settle the disputes, if any, amicably. The Company has already submitted a settlement proposal to Asset Manager/PMDO, which is pending consideration. Correspondence exchanged between the parties in this regard is annexed with the reply as 'Annexure A'. Accordingly, the alleged dues of the Applicant, if any, shall be paid in terms of the said settlement proposal.
- 6.9 Pertinently, all the decisions of PMDO are taken jointly in Credit Committee of the Lenders and no single bank such as the Applicant Bank with such a small share of 3.64% of the total loan can take the decision of its own and initiate coercive proceedings against the Corporate Debtor.

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6.10 No independent action for recovery can be initiated by the Applicant.

It may be noted that Enforcement Action (*Pg 817 of the Petition*) means any action taken or proposed to be taken by the Asset Manager.

6.11 In case of any default, any action against the Corporate Debtor can also be initiated by the Security Trustee who shall act as a representative of the PMDO Lenders on a direction by the majority Lenders in consultation with the Asset Manager (*Pg 257 of the Petition*).

6.12 Further, in the Event of Default (*Pg 892 of the Petition*), the Security Trustee may on receipt of written instructions from the Asset Manager (subject to the approval of the Credit Committee) by notice in writing to the borrower, recall the outstanding amount of the facility and other dues payable with regard to the said facility, invoke the security and exercise any or all rights available to it under the facility. The Security Trustee is further entitled to take action under the heading 'Additional Remedies' at Pg 900 of the Petition.

6.13 Thus, no independent action for recovery can be initiated by the participant Banks/NBFCs/Fl's, which had funded PMDO, against the Corporate Debtor, including the Applicant herein.

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6.14 There is no privity of contract between the Applicant Bank and the Corporate Debtor. The Common Loan Agreement (*Pg 236 of the Petition*) means the agreements to be executed between the Borrower and the Asset Manager.

6.15 Further, the definition of 'Term Loan(s)' at Pg 239 of the Petition shall mean loan(s) sanctioned under the PMDO facility by the Credit Committee on behalf of the Lenders. Thus, there is no privity of contract with Corporation Bank. Without prejudice, even if assumed that there is privity of contract, even then enforcement cannot be taken without the permission of the Asset Manager.

6.16 As aforesaid, in the instant case, the settlement proposal is already pending consideration before IUIML.

6.17 Accordingly, in light of aforesaid facts and legal submissions, the captioned petition deserves to be dismissed.

7 After hearing the learned Counsels appearing for Applicant and Corporate Debtor and on perusal of the records, we find that:

7.1 The present case is a case of lending by IL&FS Urban Infrastructure Managers Limited ("IUIML"), an Asset Manager by collecting funds from 15 Banks/Financial Institutions to the tune of Rs. 393.40 Crores and providing the same to the Corporate Debtor, under Pooled Municipal Debt Obligation (PMDO), an arrangement

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administered by a Credit Committee and the Applicant in the present case is one amongst these 15 Banks.

7.2 It is seen that the Loan was sanctioned to the Corporate Debtor by the Asset Manager on behalf of the PMDO Lenders and not the Applicant directly. During the course of arguments, it was brought to the notice of this Adjudicating Authority that the monies pertaining to the repayment of loan by the Corporate Debtor were to be deposited in a pool, and thereafter the Asset Manager would distribute this amount amongst the PMDO Lenders on a *pro-rata* basis.

7.3 On a conjoint reading of the agreements that have been executed between the parties namely Corporate Debtor, PMDO Lenders (comprising of 15 Banks/Financial Institutions), Asset Manager, Security Trustee / TRA Agent and Escrow Bank, we find that there was no direct disbursement of loan by the Applicant to the Corporate Debtor.

7.4 Further, as per the agreements executed between the parties, the Asset Manager or the Security Trustee or the PMDO Lenders (a consortium of Banks) shall be the appropriate party to move an application under section 7 of the IBC, 2016. Even the alleged SARFAESI Notice relied upon by the Applicant at Pg 1167 of the Petition has been issued by the Security Trustee.

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- 7.5 There is a debt that is due on the part of the Corporate Debtor, but the Applicant failed to prove that it is due *qua* the Applicant Bank.
- 7.6 As per the records, there was neither a direct disbursement of the loan by the Applicant to the Corporate Debtor, nor there are any agreements executed directly between the Applicant and the Corporate Debtor. Hence, the Applicant does not qualify as a Financial Creditor as per Section 5(7) of the IBC, 2016, which defines that a "**Financial Creditor** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to".
- 8 In light of the above facts and circumstances, we are not inclined to admit this Petition.

9 **Order:**

Accordingly, the present petition bearing CP No. **IB 1641(PB)/2018** is **dismissed**, **IA 6034(PB)/2021** also stands **disposed of**. No order as to cost.

File be consigned to records.

**(RAMALINGAM SUDHAKAR)**  
**PRESIDENT**

**(AVINASH K SRIVASTAVA)**  
**MEMBER, TECHNICAL**