SL No.115

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Special Bench (Video Conference)

CORAM: HON'BLE BHASKARA PANTULA MOHAN,–MEMBER (J)
CORAM: HON'BLE DR. BINOD KUMAR SINHA- MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 06.05.2022 AT 02:00 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No.324/7/HDB/2020
NAME OF THE COMPANY	A.L Sudarshan Constructions Company Ltd
NAME OF THE PETITIONER(S)	Syndicate Bank
NAME OF THE RESPONDENT(S)	A.L Sudarshan Constructions Company Ltd
UNDER SECTION	7 of IBC

ORDER

CP (IB) 324/7/HDB/2020 is admitted. Orders passed vide separate sheets.

MEMBER (T)

MEMBER (J)

Syamala

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No.324/7/HDB/2020
Under section 7 of the IB Code, 2016
Under rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M /s. A.L. SUDERSHAN CONSTRCUTIONS COMPANY LIMITED

Between:

Syndicate Bank
(Presently Canara Bank)
R.P. Road Branch,
P.B. No 10, No. 311-81,
R.P Road,
Secunderabad – 500003.

...Petitioner/
Financial Creditor

And

M/s. A.L. Sudershan Constructions Company Limited,
H.No.7-3-720, 3rd Floor, R.P. Road,
Secunderabad – 500 003.
Telangana State.

...Respondent/
Corporate Debtor

Date of Order: 06.05.2022

Coram: Shri Bhaskara Pantula Mohan, Member Judicial
Dr. Binod Kumar Sinha, Member Technical

Parties/Counsels present:

For the Financial Creditor: Mr. Dishit Bhattacharjee, Counsel

For the Corporate Debtor: Mr. R. Rajendra Prasad, Counsel

Per: Bench

ORDER

1) Under consideration is a Company Application filed by Canara Bank (in short "*Petitioner/Financial Creditor*") under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code, 2016) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. A.L. Sudershan Constructions Company Limited. (in short, "*Respondent/Corporate Debtor*").

2) Brief facts of the case as submitted by the Financial Creditor are as follows:

a) That the Corporate Debtor is a private limited company engaged in the business of Civil Engineers, Contractors, Surveyors, Designers, Consultants, Advisors etc., and in the course of their business, the Corporate Debtor had availed loan facilities from the Financial Creditor since 1990 and the facilities were renewed from time to time.

b) That the Corporate Debtor approached the Financial Creditor on 24.05.2005 for renewal of the following facilities –

FACILITY	**FOR AMOUNT (Rs. In Lakhs)**
OSL (short term) Loan Facility	400
SODH Loan Facility	595
Bank Guarantee	4000

c) The loan was sanctioned against hypothecation of Plant and Machinery, Raw Materials, Work-in-Progress, finished goods, book debts and other current assets including stores and spares and equitable mortgage of UREM of properties and various personal guarantees.

d) That the Corporate Debtor did not repay the dues in terms of the agreement, and committed default in discharge of the debt due under the loan facilities and hence, owing to such irregularities, the accounts of the Corporate were classified as non-performing asset (NPA) since 11.06.2006.

e) That even after repeated requests and demands by the Financial Creditor and issuance of notice in this regard, there was no response from the Corporate Debtor and on account of failure in making such payments, the Financial Creditor recalled the facilities availed by the Corporate Debtor.

f) That the Corporate Debtor had time and again acknowledged the liability owed to the Financial Creditor by issuing several written "Acknowledgement of Debt for all types of facilities by Borrower/Sureties".

g) That the Corporate Debtor further acknowledged the debt by proposing an OTS to the Financial Creditor for Rs.14 Crores vide letter No.1386/RPR/3018/ADV2018 dated 03.03.2018. In addition to that, the Corporate Debtor initiated another OTS, deposited a part amount of the OTS amounting to Rs.50 Lakhs with the Financial Creditor vide Challan No.799511 on

08.06.2017 by opening a no lien account as token amount. That, furthermore the Corporate Debtor kept initiating OTS proposals towards the Financial Creditor and these said OTS proposals were nowhere equivalent to the total outstanding debt amount.

h) Subsequently, the Corporate Debtor also sent multiple OTS requests to the Financial Creditor dated 13.07.2021, 03.08.2021, 31.12.2021, 04.01.2022 and 13.01.2022. That the Financial Creditor rejected all the above said OTS proposals as they were not financially viable.

i) The amount in claim as per instant Application is Rs. 239,51,53,055.83/-.

Reiterating the above, learned counsel for the Financial Creditor prayed to admit the instant Application.

3) Counsel for the Corporate Debtor filed counter stating as under:-

a) That the Bank filed an affidavit with petition dated 22.03.2018, before the Hon'ble City Civil Judge at Bangalore in Arbitration suit No. 5/2015, stating that Bank Guarantee's amounting to Rs.18,80,38,000/- were paid to National Highway Authority of India on 17.11.2008. The alleged acknowledgement letter dated 30.06.2008 shows that an amount of Rs.4,24,10,221/- was due as on 30.06.2008 towards B.G. It is evident from the above that the alleged acknowledgment letter dated 30.06.2008 does not correspond or relate to the alleged amount claimed in Part IV of the Application. The amount of BG disbursed as mentioned in Part IV of the Application is also false as per the claim before the Hon'ble City Civil Judge at Bangalore in Arbitration Suit No. 5/2015 dated 22.02.2018. Therefore, it is clear that the amount of Rs.40 crores disbursement as stated on Part IV of the Application is false and created to increase the amounts in the balance sheet.

b) That the Sanction letter dated 21.06.2005 / 19.07.2005 is Renewal of original sanction and as per the terms of the said sanction. The value of the properties as on the date of sanction is approximately Rs.14 crores and book value of the Machinery is Rs.25 Crores. The Mortgaged properties were sold away by mutual consent and the sale proceeds have been credited to Defendant No.1 Company and the same are reflected in the statement of account. But as per the Statement of accounts filed by the Financial Creditor, no such credits are reflected, except an amount of approximately Rs.1 crore. It is therefore clearly evident that the claim of the Financial Creditor Bank basing on the Statement of Account is false and invented, for the purpose of making a false claim.

c) That the Financial Creditor failed to file any document to show that there is a subsisting debt.

d) That the Corporate Debtor never made any false statements and is genuinely perusing the legal remedies and paid the Bank. In the year 2006, after the account was declared as N.P.A. the Corporate Debtor paid an amount of Rs.8 crores on

30.10.2006 to the Financial Creditor, by disposing the properties of the Directors which are not in the sanction letters, on the assurance that the account will be restructured, but the Financial Creditor having received the amount did not restructure the loan. At this stage, the pending works of the Corporate Debtor with the NHAI were also stopped by NHAI for their own reasons. As the Corporate Debtor has already invested huge money in the said work, vide letter dated 18.03.2008 requested NHAI to settle the amount but NHAI instead of admitting the fault in delaying the work has not paid the amounts towards the work already completed and invoked the Bank Guarantees increasing the liability. The Corporate Debtor has filed a claim against NHAI by invoking the Arbitration clause vide letter dated 31.05.2008 and on 24.03.2009 the Financial Creditor has sanctioned an OTS, wherein it was agreed that after selling the properties of the family members of the Directors, the balance amounts shall be paid from the amounts realized from the awards passed by the Arbitrators. As per the said sanction, the sale of the properties was successfully completed, but the award amounts did not materialize till date.

e) Though the Arbitration award with respect to Tumkur work was partly allowed in the year 2014, NHAI had gone on appeal before the City Civil Court Bangalore and after the same is dismissed, NHAI has carried the matter before the Hon'ble High Court of Karnataka and the same is pending till date.

f) That the Financial Creditor in the year 2019 filed O.A. No.547 of 2019 and after the Corporate Debtor has filed its Written Statement, the Financial Creditor in the year 2020 knowing that the same will not sustain, withdrew the said OA.

g) That the Financial Creditor has invoked the provisions of the Insolvency and Bankruptcy Code, 2016 as a money recovery measure, without maintaining proper accounts statements. The Financial Creditor having failed to show the payments received from the Corporate Debtor in its Statement of Account, cannot use the same Statement of account as proof of Debt.

h) That the acts of the Financial Creditor attracts section 65 of the Insolvency and Bankruptcy Code, 2016 and therefore prayed to dismiss the Application filed by the Financial Creditor.

4) Counsel for the Applicant filed Rejoinder to the reply filed by the Respondent *inter-alia,* denying the allegations made in the reply and has further prayed to admit the instant Application.

5) Heard and perused the record.

6) It is the case of the Financial Creditor that it has provided various loan facilities to the Corporate Debtor from time to time and that as on date an amount of Rs. 239,51,53,055.83/- is in default. The only contention of the Corporate Debtor is that the Application herein has not accounted for the amounts received by way of sale of various assets of the Corporate Debtor and therefore the Application lacks

merit. In relation to the said contention, it is settled position of Law that an Applicant under Section 7 of IB Code, 2016 cannot be rejected by the Adjudicating Authority on the ground of existence of dispute about the quantum of claim. It is for the Resolution Professional so appointed to decide the quantum of claim and not this Adjudicating Authority. No doubt, this Authority must look into the amount of the undisputed claim to find out whether after the adjustment of disputed amount, the claim amount shall become lower than the threshold stipulated in Section 4 of the IB Code, 2016. In the instant case, the petition was filed by the Corporate Debtor on 15.07.2020, and even if the amount as alleged against the sale of the assets is considered as non-accounted for by the Applicant, the claim in the instant petition is way higher than the said un-accounted amount. Thus the instant Application easily surpasses the Section 4 threshold limit of Rs. 1 Crore. Under the provisions of the Code, this Adjudicating Authority is required only to adjudicate if there is any 'financial debt' and 'default' in repayment of the same and if the same surpasses the pecuniary jurisdiction or threshold limit as stipulated u/s 4 of the Code. It is pertinent herein to note that the Hon'ble Supreme Court, while deciding the matter in the case of INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR., in Civil Appeal Nos. 8337-8338 of 2017, held as under:

"..............*The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is* *incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

7) After hearing both sides and perusing record, we are of the view that in the instant case there is a 'financial debt' and there has been a 'default' in repayment of the same and the said default is far more than Rs. 1 Crore. Thus, this Adjudicating Authority is satisfied that the Financial Creditor has proved its case by placing evidence that default has occurred for which the Corporate Debtor was liable to pay. Hence, the contentions of the Corporate Debtor are overruled.

8) Further the Financial Creditor has fulfilled all the stipulations as required under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the Petitioner/Financial Creditor, this Adjudicating Authority is inclined to admit the instant Application.

9) Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.

10) The Financial Creditor proposed the name of Mr. Kalavakolanu Murali Krishna Prasad Interim Resolution Professional and he has given here written consent in Form 2. Accordingly, this Tribunal appoints Kalavakolanu Murali Krishna Prasad, having Registration No. IBBI/IPA-001/IP-P00967/2017-2018/11588 e-mail id: kmprasad123@gmail.com as Interim Resolution Professional. He is directed to file Authorization for Assignment within three days from the date of this order.

11) The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

12) We direct the Financial Creditor/Petitioner to pay a sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.

13) The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-

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 or 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 rights 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
iv. *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. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

14) The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements. or other arrangement

as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.

15) The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

16) The Petitioner/Financial Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

17) The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

18) The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.

19) Accordingly, this Petition is admitted.

Dr. Binod Kumar Sinha
Member Technical

Bhaskara Pantula Mohan
Member Judicial

Santi/SKRathi