

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI**

IBA/453/2019

Under Section 7 r/w rule 4 of the IBC, 2016

In the matter of M/s. Siva Industries and Holdings Limited

M/s. IDBI Bank Limited

---Financial Creditor

V/s

M/s. Siva Industries and Holdings Limited

---Corporate Debtor

Order delivered on: 05.07.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

For the Financial Creditor : *Shri. Varun Srinivasan, Advocate*
For NVS & Associates

For the Corporate Debtor : *Shri. B.Dhanaraj, Advocate*

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Order dictated in the Open Court on 04.07.2019

It is the main Company Application filed by the Financial Creditor u/s. 7 of the Insolvency & Bankruptcy Code, 2016 (the Code) for initiation of Corporate Insolvency Process (CIRP) on the ground that this Corporate Debtor defaulted in repaying an amount of ₹130.30 Crores as on 31.12.2018 and failed to discharge duty of a Guarantor in respect to the loans given to Rudhra Pte Limited on

having the said company defaulted in repaying ₹79.45 Crores as on 01.10.2018.

2. As I have gone through this Company Application, it is evident that one M/s. Siva Ventures Limited on 17.09.2010 approached the Financial Creditor for working capital facilities and in pursuance of the said request, the Financial Creditor sanctioned fund-based limits in the form of Cash Credit (CC) to the extent of ₹35 Crores; non fund-based limit in the form of Letter of Credit to the extent of ₹25 Crores; a Bank Guarantee for an amount of ₹25 Crores as inner Letter of Credit Limit which was sanctioned and additional Treasury Limits (LER) for ₹2 Crores aggregating to ₹62 Crores disbursed on various dates as reflected in the statement of account of the company lying with the Creditor Bank.

3. In pursuance of the sanction on 15.03.2011, M/s. Siva Ventures Limited executed Facility Agreement, Deed of Hypothecation and Omnibus Counter Guarantee Agreement. The Financial Creditor on 08.03.2011 approved the modification of terms in the sanction as requested by M/s. Siva Ventures Limited. On

having M/s. Siva Ventures Limited again on 02.05.2011 approached the Financial Creditor for allocation of non-fund-based limit of ₹15 Crores and LER (Loan Equivalent Receipt) limit ₹4.5 Crores to Rudhra Energy Division (subsequently become M/s. Rudhra Pte Limited) over and above the original sanction already provided to M/s. Siva Ventures Limited. On 24.06.2011, M/s. Siva Ventures Limited filed an amended Deed of Hypothecation in favour of the Financial Creditor. In the meanwhile, since the M/s. Siva Ventures Limited merged with M/s Siva Industries and Holdings Limited (the Corporate Debtor) on 22.08.2013 with transfer of its liabilities to the Transferee Company, this Corporate Debtor has become liable to pay the loan facilities availed by the Transferor Company namely, M/s. Siva Ventures Limited (M/s. Siva Ventures Limited merged with M/s. Siva Industries & Holdings Limited with effect from 01.04.2011) by virtue of the Scheme approved by the Hon'ble High Court of Madras in CP/84 to 93/2013 on 22.08.2013. Subsequent to this, when this Corporate Debtor failed to service the debt, the Financial Creditor on 13.01.2015 issued Recall Notice (Ref.

No.IDBI/BKC/CBG/14-15/2265) demanding the Corporate Debtor to pay the outstanding amount in respect to the working capital facility aggregating to ₹62 Crores or else to regularize the loan account. Following the earlier Notice, this Financial Creditor gave another Recall Notice (Ref. No.NMG/BKC/SIHL/292) on 04.05.2017 rejecting the One Time Settlement (OTS) proposal for an amount of ₹48.68 Crores. As the account was not regularized even after Recall Notice was given by the Financial Creditor, this Petitioner/Financial Creditor has now proceeded against this Corporate Debtor in respect to the amount aforementioned.

4. As to second account is concerned, a company called Rudhra Minerals Pte Limited on 27.01.2010 approached the Financial Creditor for working capital facility for an amount of USD 50 million in the nature of stand-by Letter of Credit, on perusal of the said request, this Financial Creditor has issued the letter of sanction, thereafter to avail the loan, the Corporate Debtor on 02.08.2010 executed Corporate Guarantee Agreement for USD50 million on the terms and conditions mentioned in the Guarantee Agreement. This

loan was renewed on 12.09.2011 by Rudhra Minerals Pte Limited (the Principal Borrower). Again, the Financial Creditor with the consent of Rudhra Minerals Pte Limited modified the renewal of financial assistance on 18.10.2011. Again, the Financial Creditor on 22.01.2014 reduced the Letter of Credit Limit from USD 50 million to USD 35 million. In this process, the Corporate Debtor on 11.02.2015, issued a Continuing Security Letter to the Financial Creditor with respect to re-structured sanction viz. No.2174/ICG/RMPL/2013-13 for reduction of stand-by Letter of Credit Limit from USD 50 million to USD 35 million. Thereafter on 16.03.2015 and 15.07.2016 sanction limits were modified.

5. To prove this debt is not barred by limitation, the Financial Credit has placed acknowledgement of loan on 03.12.201, 09.10.2014, and 05.01.2015. To show that the acknowledgement of loan is within three years before filing of this case, the Financial Credit has today filed a document along with additional affidavit reflecting that Rudhra Minerals Pte Limited acknowledged this debt on 31.03.2017.

6. As Rudhra Minerals Pte Limited failed to maintain the financial discipline and committed default with respect to the facilities sanctioned, this Financial Credit on 04.01.2017 issued a Demand Notice demanding Rudhra Minerals Pte Limited to repay the defaulted amount of USD 11 million. As the repayment has not come to the Financial Creditor Bank, it has again on 10.04.2017 issued Recall Notice to Rudhra Minerals Pte Limited for recovery of the outstanding dues. On having Rudhra Minerals Pte Limited defaulted in repaying the loan amount and this Corporate Debtor having stood as Guarantor to repay the loan availed by Rudhra Minerals Pte Limited in the event of Rudhra Minerals Pte Limited failed to repay the loan as per the terms and conditions, this Financial Creditor on 30.05.2017 has given Demand Notice to the Corporate Debtor saying that since this Corporate Debtor executed Guarantee Agreement dated 02.08.2010 and issued Continuing Security Letter dated 11.02.2015 stating that in the event of any default, notwithstanding any security or securities comprised in any instruments executed/to be executed by the Borrower in favour of

IDBI Bank, the Corporate Debtor would discharge the loan taken by Rudhra Minerals Pte Limited, the financial creditor demanded this Corporate Debtor to pay forthwith a sum aggregating to ₹61,64,31,723.25 along with processing fee of USD 28015 as per the details given in the letter dated 10.04.2017.

7. But whereas this Corporate Debtor having failed to discharge its liability on both Accounts, this Financial Creditor filed this comprehensive application including two accounts (i) earlier given to Siva Ventures Limited (subsequently merged with Siva Energy – the Corporate Debtor) and Rudhra Minerals Pte Limited (the Principal Borrower) seeking initiation of CIRP.

8. As against this petition, the Corporate Debtor Counsel having not disputed existence of debt and default, this Bench being satisfied that the Petitioner has proved existence of debt and default, I am of the view that this case is fit for admission whereby this Bench hereby **admits this petition** by appointing Mr. Savan Godiawala, as Interim Resolution Professional (IRP) looking at the

consent given by the Insolvency Professional with directions as follows:

- I. That Moratorium is hereby declared prohibiting all of the following actions, namely,
 - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.



- II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from **04.07.2019** till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints Mr. Mr. Savan Godiawala, having Reg. No: [IBBI/IPA-001/IP-P000239/2017-18/10468] "Deloitte Touche Tohmastu India LLP", 19th Floor, Shapath-V, S.G. Road, Ahmedabad, Gujarat-380015 as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

9. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-SD-

(B. S.V. PRAKASH KUMAR)
MEMBER (Judicial)

TJS/KNP