

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, NEW DELHI

C.P. NO.IB-1367(PB)/2018

IN THE MATTER OF:

ICICI Bank Ltd

....Petitioner

Vs.

C & C Constructions Ltd.

....Respondent

SECTION: Under Section 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on: 14.02.2019

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

SHRI PRADEEP R. SETHI
Hon'ble Member (Technical)

PRESENTS:

For Petitioner : Mr. Susmit Pushkar, Mr.Srijan Singh,Adv.
For Respondent : Mr. Virendra Ganda, Sr. Adv with Ms.
Shivambika Sinha, Mr. Ayanbed Mitra, Ms.
Ankita Sinha, Adv.

ORDER
M.M.KUMAR, PRESIDENT

The Petitioner claiming to be financial creditor has filed the instant Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating



Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent C & C Constructions Limited (for brevity the 'corporate debtor').

2. The Corporate Debtor – C & C Constructions Limited was incorporated on 16.07.1996 under the provisions of the Companies Act, 1956. The identification number of the Corporate Debtor given is CIN L45201DL1996PLC080401.

3. It is submitted by the Petitioner that it had sanctioned Working Capital Facilities by executing various Credit Arrangement Letters (for brevity "CAL") and the same was renewed, amended and restructured from time to time. The first CAL was executed on 31.03.2008 (**Annexure F (Colly)**) and was last renewed on 28.03.2017 (**Annexure – P**). Facility Agreements for the financial facilities executed between the Financial Creditor and the corporate debtor along with the CALs executed from time to time and restructuring agreements as reflected in Part-IV of the petition is placed on record (**Annexure – F (Colly) to Annexure – Q**).



4. Petitioner- financial creditor has also placed on record the copies of the entries and statements of the corporate debtor as maintained by the financial creditor regarding the outstanding amount pertaining to the abovementioned financial facilities supported by a certificate under the Bankers Books Evidence Act, 1891 (**Annexure- U**).

5. Further the Petitioner states that as per the terms and conditions of the financial facilities executed between the Petitioner- financial creditor and the Respondent- corporate debtor, the default occurred continuously from April 2017 when the quarterly instalments and monthly interest became due. The account of the corporate debtor as maintained by the financial creditor was declared as a Non- Performing Asset on 31.03.2017.

6. It is further submitted by the petitioner- financial creditor that it had issued a notice of demand dated 05.09.2018 (**Annexure - S**) for invocation of guarantee and reservation of rights to the Corporate Debtor, Guarantors and Security Providers, revoking

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the relief provided to the corporate debtor by restructuring the Working Capital Facilities and CALs.

7. The precise case of the Petitioners is that the total amount in default due and payable by the corporate debtor as on 31.08.2018 is Rs. 42,60,37,983.17/- inclusive of outstanding dues to the tune of Rs. 21,05,62,989.13/- for cash credit facility, Rs. 10,09,36,403.08/- for overdraft and Rs. 11,45,38,590.96/- for devolved letter of credit. A tabular computation of the amount in default for respective facilities is placed on record **(Annexure- Q)**.

8. The Financial Creditor has proposed the name of Mr. Navneet Kumar Gupta as the Insolvency Professional with the address 5th Floor, Caddie Commercial Towers, Aerocity, Near Airport, New Delhi- 110037 and Mobile No. 9711470807. His email id given is navneetkgupta@gmail.com His registration number is IBBI/IPA-001/IP-P00001/2016-17/10009. He has filed his written communication as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating



Authority) Rules, 2016 along with the certificate of registration
(Annexure – E).

9. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt along with the dates of disbursement. In Column 2 of Part-IV of the petition the Financial Creditor has given the details of the amount claimed in default and the date of the default.

10. In Part V of the Petition the Financial Creditor has mentioned the particulars of the documents and records that substantiate that amount disbursed which includes the Deeds of Hypothecation, Personal Guarantees for securing the facilities, details of the Charge created on various properties, assets and stocks held as security, Declarations and Pledge Agreements and other relevant documents that show the default on part of the respondent- corporate debtor.

11. A reply to the petition has been filed by one Mr. Gurjeet Singh Johar, being the Director and the Authorized representative of the Respondent- Corporate Debtor, who has



been given authority vide power of attorney dated 04.05.2017 and Board Resolution dated 27.10.2017 and also a Rejoinder to the Reply has been filed by the Petitioner-Financial Creditor.

12. In the Reply the Respondent-Corporate Debtor has raised objection to the petition and has stated the said amount of debt is incorrect and false as the petitioner- financial creditor has inflated the amount of debt. Further the respondent has also questioned the power of attorney dated 04.05.2017.

The petitioners have denied the assertion of the corporate debtor and have submitted that the respondent – corporate debtor has admitted a part of the debt due in its Balance Sheet for the financial year ending on 31.03.2018 to the tune of Rs. 1,90,40,809/- (**Annexure- D(Colly)**). Further they have placed reliance on para 30 of the Judgement of Hon'ble Supreme Court *in M/s Innoventive Industries Limited v. ICICI Bank Limited and Ors reported in 2018(1) SCC 407* where it was held that the only pre-requisite for admission of an Application filed under Section 7 of the Code is that there exists a default and the debt is due. Also the power of attorney followed by the Board Resolution (**Annexure – B page no. 55**) of the financial



creditor authorizing Mr. Rishi Thakur to file the present petition.

13. The respondent – corporate debtor has raised another defence stating that the government instrumentalities owe it far exceeding amount as claimed and there are various pending Arbitration proceedings of the corporate debtor. Further the corporate debtor has also placed on record a press release dated 05.09.2016 of the NITI Aayog in this regard.

The petitioner- financial creditor has vehemently denied the averment made and has submitted that the claimed amount in the arbitration proceedings is between the corporate debtor and third parties and the same have no relation to the transactions between the Petitioner- financial creditor and the respondent- corporate debtor. Further it is submitted that the NITI Ayog press release is not law within Article 13 of the Constitution and also it is not relevant to the issue in the present case.

14. The objection concerning the efforts for restructuring is in the realm of conjectures & surmises. The account of the corporate



debtor had become NPA on 31.03.2017 and there is huge amount due and payable within the meaning of Section 3(12) which is over Rs. 42 Crores as on 31.08.2018. A reference has also been made to the pending Arbitration proceedings with the assertion that the amount in Arbitral Award is likely to exceed far more than the claimed amount. Again the assertion is based on wishful thinking and if the wishes were horses everybody would like to ride. Therefore it is no answer to the claim due and payable as on 01.04.2017. The claim made by the financial creditor satisfies the requirement of law as laid down in ***M/s Innoventive Industries Limited (supra)***. The petition is complete in all respects as it complies with Rule 4 of the IBBI (Application to Adjudicatory) Rules, 2016 and also all other conditions. The IRP has made all proper declarations in accordance with Rule 9 of the IBBI (Application to Adjudicatory) Rules, 2016.

15. Under sub-section 5(a) of section 7 of the code, the application filed by the applicant financial creditor has to be admitted on satisfaction that:

(i) Default has occurred;



- (ii) Application is complete, and
- (iii) No disciplinary proceeding against the proposed IRP is pending.

16. As a sequel to the aforesaid discussion and the material placed on record it is confirmed that the petitioner-financial creditor had disbursed money to the respondent-corporate debtor. It is accordingly held that the respondent-corporate debtor has committed default in repayment of the outstanding financial debt which exceeds the statutory limit of Rupees One Lakh. Thus, the petition warrants admission as it is complete in all respects.

17. Learned Counsel for the petitioner has argued that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process stand fulfilled and accordingly the present petition is admitted.

18. Having heard the learned counsels for the Financial Creditor and Corporate Debtor and having perused the paper book with their able assistance we find that the provisions of Section 7 (2)



and Section 7 (5) of IBC have been complied as discussed in detail in our Order dated 27.11.18 rendered in the case of ECL Finance Limited vs. Digamber Buildcon Pvt Ltd (IB-1039(PB)/2018).

19. After a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The name of the IRP has been proposed and there are no disciplinary proceedings pending against the proposed Interim Resolution Professional.

20. As a sequel to the above discussion, this petition is admitted and Mr. Navneet Kumar Gupta is appointed as the Interim Resolution Professional (Details stated in para 8 above).

21. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code.



22. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government and a surety in a contract of guarantee to a corporate debtor. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. We direct the Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Navneet Kumar Gupta to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of



Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

24. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional at the earliest but not later than seven days from today. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

**(M.M.KUMAR)
PRESIDENT**

Sd

**(PRADEEP R. SETHI)
MEMBER (TECHNICAL)**

Pronounced under Rule 151 of the NCLT Rules as Sh. Pradeep R. Sethi, Member (T) is not holding the Court today.

Sd/-

**(NIRMALA VINCENT)
Court Officer**

**14.02.2019
(VIDYA)**