

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.(IB)No.244/BB/2018
U/s 7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

Deena Bank
Asset Recovery Branch
C/o. Bangalore Zone Office
38, Sapthagiri Palace,
12th Cross, Ganganagar South,
Near CBI Office
Bangalore – 560 024.

- Petitioner/Financial Creditor

Versus

M/s.Kavveri Telecom Infrastructure Limited and others
Plot No.31 to 36, 1st Main, 2nd Stage,
Arakere Mico Layout,
Bannerghatta Road,
Bangalore – 560 068.

- Respondent/Corporate Debtor

Date of Order: 21st March, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri T.P.Muthanna

For the Respondent : Dr.Aditya Sondhi, Senior Counsel with
Shri Gowtham.S.Bharadwaj

ORDER

Per:Rajeswara Rao Vittanala, Member (Judicial)



- 1) C.P.(IB)No.244/BB/2018 is filed by Deena Bank (Petitioner/Financial Creditor) U/s 7 of IBC, 2016, R/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter-alia, seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Kavveri Telecom Infrastructure Limited & Others (Respondent/Corporate Debtor) on the ground that the Corporate Debtor committed a default amount of Rs.69,18,44,425.03/- (Rupees Sixty Nine Crores Eighteen Lakhs Forty Four Thousand Four Hundred Twenty Five and Paise Three only) which includes Principal amount and Interest.
- 2) Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:
 1. Dena Bank (herein after referred as Petitioner/Financial Creditor) is incorporated on 26.05.1938 is a Body Corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.
 2. M/s. Kavveri Telecom Infrastructure Limited & Others (Respondent/Corporate Debtor) is a Company limited by shares, was incorporated on 10.09.2008 and it is engaged in Telecom business. Its Authorized Capital is Rs.5,00,00,000/- (Rupees Five Crores only) Paid up Share Capital is 1,78,35,300/- (Rupees One Crore Seventy Eight lakhs Thirty Five Thousand Three Hundred only).
 3. The Financial Creditor has sanctioned a term loan of Rs.45 Crores to the Corporate Debtor on 23.12.2011, subsequently, the Corporate Debtor defaulted on 30.09.2013 in making repayment of the loan as per the sanction terms. Consequently, the amount was classified as NPA on 31.12.2013.



4. A legal notice dated 22.12.2014 was issued to the Corporate Debtor on behalf of Financial Creditor by inter alia stating that the Corporate Debtor defaulted in repaying the principal and interest and demanded to pay a sum of Rs.52,12,49,438.60 as on 22.12.2014. In reply to the said legal notice, the Corporate Debtor vide letter dated 05.01.2015 while admitting the loan disbursed to the Company in 2012, has stated among others that they met the Chairman of the Bank on 18.03.2014 and requested him to restructure the accounts so that they can start making the payments from 2016 when all other sites funded by Dena Bank generate revenues to the extent of Rs.14.48 crores per annum which will be more than sufficient to take care of the term loan instalments and interest.
5. Thereafter, the Corporate Debtor has paid 2 months interest of Rs. 111 lakhs and the same was credited to the Current account No.02911023878 and was transferred to the loan account on 27.03.2014 to 29.03.2014.
6. The Corporate Debtor submitted a proposal for One Time Settlement of term loan account vide their letter dated 03.03.2017. While confirming the sanction of Rs.45 crores term loan facility from Dena Bank, JC Road Branch, Bangalore, it is stated that they have been servicing the interest from the beginning as per sanction and they have been making payments regularly till January 2014. As there was enormous delay in collection of money, the account has become NPA. During March 2014, the Corporate Debtor met the Chairman of the Bank and sought restructure of Term loan. During the meeting, the Chairman requested the Corporate Debtor amongst others to pay two months interest of



Rs. 111 lakhs to be serviced on or before 31.03.2014. An amount of Rs.111 Lakhs was credited to the Current Account No. 02911023878 and the same was transferred to the loan account from 27.03.2014 to 29.03.2014. Further, the Corporate Debtor in the said letter has made an offer for OTS settlement of Rs.5.50 Crores towards full and final settlement of the dues and they will make the payment of OTS before 31.03.2018 etc.

7. The Corporate Debtor vide their letter dated 19.06.2017 addressed to the General Manager, Dena Bank informing that the OTS Proposal given to the Bank would be considered if the ledger balance as on the date of account becoming NPA was paid. It was further informed that the Corporate Debtor would explore the option of selling the equipments funded by the Bank to remit the proceeds to the Bank provided a written approval is given by the Bank etc.
8. The Corporate Debtor in their Balance Sheet for 2016-2017 has disclosed that Financial Creditor, Dena Bank has granted term loan of Rs. 45 Crores and had defaulted in payment of the loan and on the application filed before DBT Recovery Tribunal, the Tribunal vide orders dated 27.03.2017 directed the Corporate Debtor to pay a sum of Rs.52,12,49,438 with interest jointly and severally. **The Corporate Debtor approached the High Court of Karnataka, and High Court has granted interim stay order for execution of the impugned order dated 27.03.2017.**
9. The Corporate Debtor in their Balance Sheet for the period from 01.04.2017 to 31.03.2018 filed with ROC has disclosed in



auditor's report relating the default in the repayments of financial dues as under:

10. "The Company has defaulted in repayment of the loans to Dena Bank and ICICI Bank. The outstanding principal and interest thereon became NPA (Non Performing Assets). The said Bank loans as per the Books of the Accounts outstanding balance as at 31.03.2017 is Rs.67 Crores for Dena Bank (including principal and interest but excluding penal interest).
11. ***The Financial Creditor has filed OA No. 16 of 2015 before DRT, Bangalore, to recover the outstanding amount. The Corporate Debtor has filed Statement of Objections on 09.12.2015 in the said Application by inter admitting that there were defaults in the repayment of loan and repayment schedule could not be adhered due to lack of expected business required.***
12. The Financial Creditor has further submits that as per Section 19 of Limitation Act, any entry in the Balance Sheet of the Company showing that they owed to the Creditor amounts to an acknowledgment of liability. Section 19 of the Limitation Act requires that words used in the acknowledgment must indicate existence of jural relationship between the parties such as the debtor and creditor. The Corporate Debtor has made part payment of Rs.111 lakhs from 27.03.2014 to 29.03.2014 as indicated in the Statement of Account is sufficient acknowledgement of liability so as to extend the period of limitation as per Section 19 of the Limitation Act. In the communication sent by the Corporate Debtor on 05.01.2015 as reply to legal notice dated 22.12.2014, the Corporate Debtor, while admitting the sanction of the loan has requested the

420

Chairman of the Bank to restructure the accounts so that they can start making the payments from 2016. In the letter dated 05.03.2017, the Corporate Debtor has made an offer for OTS settlement of Rs.5.50 crores towards full and final settlement of the dues and that they would make the payment of OTS before 31.03.2018 etc. In the letter dated 19.06.2017, it was also informed that the Corporate Debtor would explore the option of selling the equipments funded by the Bank to remit the proceeds to the Bank provided a written approval is given by the Bank etc., The Balance Sheet of the Corporate Debtor for the year 2016-2017 and 2017-2018 discloses relating the default in the repayments of financial dues to the Financial Creditor. Therefore, it is contended that the instant petition is filed within period of limitation.

13. It is further stated that Petitioner has filed OA No.16/2015-DRT-I(TA No. 634 of 2017 for recovery of Rs. 52,12,49,438.60 and the same was allowed by the Tribunal by an order dated 27th March, 2017. that the Defendants jointly and severally shall pay Rs.52,12,49,438.60 together with interest at 16.55% p.a. with monthly rests from the date of application till the date of realization. DRT also issued Recovery Certificate No.2060/2017 on 25.05.2017. May, 2017. Aggrieved by the said order, the Respondent has filed WP No. 18013 of 2017 against the Financial Creditor Under Article 226 of Constitution of India, before the Hon'ble High Court of Karnataka. Ultimately, the case was disposed of vide its order dated 22.02.2019 with a liberty to the Petitioner to file an appeal U/s 20 of Recovery of Debts and Bankruptcy Act, 1993 within a period of 3 weeks from the date of receipt of Certified



copy of that order. It is also ordered that if any interim orders has been granted and the Petitioner has complied with the condition made therein, interim order shall continue for a period of 3 weeks from the date of receipt of certified copy of the orders passed. The Hon'ble High Court passed an ex-parte interim order on 27.04.2017 as under:

14. "Since it is pointed out that an application had been filed before the Petitioner and even prior to the final orders being passed and before disposing of the application, the final order is passed, the execution of the impugned orders dated 27.03.2017 shall remain stayed".
15. Therefore, it is contended that the Hon'ble High Court has stayed only execution of the orders and not the final orders passed by the DRT. As per Section 7 of IBC, 2016, the evidence of default has to be specified. As evidence of the default by the Corporate Debtor is evident from the above documents furnished and thus instant petition is independently maintainable and the fact remains the Respondents failed to pay the outstanding amount in question. And the instant petition is not appeal against any order of DRT or the Hon'ble High court. Therefore, proceedings initiated by the petitioner before DRT and the orders passed by Hon'ble High court would only support the case. The Non-disclosure of the above information in the Application filed before Hon'ble NCLT was neither intentional nor deliberate but it is only due to the reasons explained above.
16. The Petitioner/Financial Creditor has filed a complaint before CBI BS & FC at Bangalore on 26.07.2017 against the M/s. Kavveri Telecom Infrastructure Ltd., Sri Shivakumar



Reddy, Promoter Director, Smt. R.H.Kasturi, Promoter Director and Smt. C Uma Reddy, Promoter Director. CBI has registered a regular case U/s 120-B read with Section 420, 468, 471 of IPC and S 13(2) r/w S 13(1) (D) of PC Act 1988 and registered the case against the above accused and the matter is under investigation.

17. The Petitioner further submit that DRT has issued the Recovery Certificate on 25.5.2017 for Rs.52,12,49,438.60 as on 01.01.2015 together with interest at 16.55% p.a. with monthly rests from the date of application till the date of realization. Therefore, the Financial Creditor has claimed Rs.69,18,44,425.03 as the total outstanding dues as on 30.09.2018.
18. The Petitioner/Financial Creditor has suggested Shri B.Hariharan with Registration No.IBBI/IPA-001/IP P00380/2017-2018/10637 as IRP and he has also filed his written consent communication in Form No.2 dated 13.11.2018, by inter alia declaring that he is a qualified Resolution Professional; no disciplinary proceedings are pending against him with the IBBI or Insolvency Professional Agency (IPA) of ICAI etc.
19. The Petitioner/Financial Creditor has filed gist of document and he has also filed an Application IA.No.131/2019 by enclosing the additional documents in support of the case. The documents are as follows:
 - 1) Legal Notice dated 22.12.2014 addressed to the Corporate Debtor and their reply dated 05.01.2015 thereto.
 - 2) Letter dated 03.03.2017 of Corporate Debtor where in proposal for OTS is submitted.



- 3) Letter dated 19.06.2017 of Corporate Debtor.
 - 4) Annual Report 2016-2017 of Corporate Debtor.
 - 5) Financial Statement 01.04.2017 to 31.03.2018 of Corporate Debtor.
 - 6) Copy of Original Application 16/2015 filed before DRT Bangalore and Statement of Objections filed thereto by the Corporate Debtor.
 - 7) Copy of Orders dated 22.02.2019 of Hon'ble High Court of Karnataka in Writ Petition 18013/2017.
 - 8) Copy of Writ Petition 18013/2017 filed before Hon'ble High Court of Karnataka and Statement of Objections filed thereto.
 - 9) Copy of FIR registered by CBI on the complaint filed by the Financial Creditor against the Corporate Debtor.
 - 10) The Calculation sheet prepared by the Financial Creditor on the total outstanding dues as on 30.09.2018.
- 3) The case was listed before this Bench for Admission on various dates viz., 11.12.2018, 17.12.2018, 11.01.2019, 30.01.2019, 04.02.2019, 08.02.2019, 06.03.2019 and 18.03.2019. The case is adjourned on above dates and notice was duly ordered to the Respondents.
- 4) Heard Shri T.P.Muthanna, learned Counsel for Petitioner and Dr. Aditya Sondhi, learned Sr. Counsel for Respondent. We have carefully perused all the pleadings made by both the parties and also extant provisions of the Code.
- 5) The learned Counsel for Petitioner while reiterating various averments made in the pleadings raised for the petitioner, has further submitted that the instant Company Petition is filed in accordance with law and the debt and default in question is not in

disputed and IRP suggested is qualified professional duly registered with IBBI. Therefore, it is urged the Tribunal to admit the instant Company Petition by initiating CIRP as prayed for.

6) Dr. Aditya Sondhi, the learned Sr. Counsel for Respondent has opposed the maintainability of the Company Petition by inter alia contending as follows:

1. It is submitted that Petitioner has filed the instant application under Section 7 of the Code, alleging that the Respondent has failed to clear the certain financial debts in relation to terms loans. From the averments in the application filed by the Petitioner, it is case of the Petitioner that the alleged date of default by the Respondent was 30.09.2013 and the date from which the account of the Respondent was declare a Non-Performing asset was 31.12.2013. The Petitioner is alleging that the Respondent, has defaulted in paying a sum of Rs.69,12,44,425.03 and has issued a notice under Form 3 dated 01.10.2018.
2. It is submitted that instant application made by the Petitioner under Section 7 of the Code, is barred by limitation, as the Petitioner is seeking to initiate insolvency proceedings against the Respondent, in relation to a default committed on 30.09.2013. The present proceedings were initiated by issuing Form 3 on 01.10.2018, which is more than five (5) years after the alleged default. Thus, the present application is time barred and liable to be rejected on this sole ground alone.
3. It is further submitted that having regard to Section 238-A of IBC, 2016 which specifically states that the Limitation Act, 1963, shall apply to proceedings before this Hon'ble Tribunal,



the instant proceedings are barred by limitation. Section 238-A of the Code is extracted herein below as follows:

“The Provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellant Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellant Tribunal, as case may be.”

4. Despite, the claims of the Petitioner being time barred, the Petitioner with an ulterior motive and with the sole intention of harassing the Respondent, filed a notice of admission before this Hon'ble Tribunal to initiate Corporate Insolvency Resolution Proceedings against the Respondent, reiterating the claims made in the said Form 3.
5. It is thus, submitted that the instant application is time barred and hit by the provisions of the Limitation Act and is liable to be rejected on this ground alone. It is further submitted that the Respondent has filed the instant preliminary objections on issue of limitation and seeks liberty to file additional objections, subsequently, if need arises.
- 7) The learned Counsel for Respondent No.1, has further filed an objection to the IA.No.131/2019, by inter alia, contending as follows:
 1. It is respectfully submitted that the above matter was posted before this Hon'ble Tribunal on 08.02.2019, on which day, upon submissions made by the Advocate for 1st Respondent regarding maintainability of the above proceedings on the grounds of limitation based on the judgment passed by Hon'ble Supreme Court of India in B.K.Educational Services Private Limited Vs. Parag Gupta and Associates and order passed by



High Court on 27.04.2017, the Petitioner Advocate submitted that there are some other judgments. Hence, this Hon'ble Tribunal was pleased to direct the Petitioner as under:

"Therefore, learned Counsel is directed to file the gist of the case for the cause of action in filling cases, etc, disclosures of the order passed by the Hon'ble High Court of Karnataka, including non-disclosure to the Hon'ble High Court of Karnataka....."

2. As such, what was expected by this Hon'ble Tribunal from the Petitioner was to file "Gist of the case" as per the pleadings already made in the above case in the Petition and explain regarding non-disclosure of order passed by the Hon'ble High Court. Per contra, in the guise of filling such gist, the Petitioner served a memo along with certain documents to the Advocate appearing for the 1st Respondent on 06.03.2019. This Hon'ble Tribunal directed the Petitioner to file the same in the registry and posted the matter to 18.03.2019.
3. It is submitted that again on 12.03.2019, the Petitioners' Advocate served an application for producing additional information and filling additional documents to the first Respondents Advocate, which was prepared on.
4. It is further to be noted that the Petitioner has not pleaded regarding as to why the interim order passed in WP 18013 of 2017 by the Hon'ble High Court dated 27.03.2017 was not brought to the notice of this Hon'ble Tribunal at the time of filing the above Petition. No doubt the said writ petition was listed before the Hon'ble High Court on 20.02.2019 in the Stage of "Order" for the ACCEPTANCE OF SERVICE NOTICE TO R4". Reading of the statement of objection filed by the bank in the said Writ Petition, it admits as to the error committed by



the DRT. However, noting the absence of the Petitioner Counsel therein, the Hon'ble High Court disposed of the said writ petition and the error committed by the DRT was not considered. However, the Petitioner therein, has filed an application for recalling the said order in the writ petition, which application is yet to be considered by the Hon'ble High Court.

5. It is submitted that it is thus submitted that the said application filed by the Petitioner is beyond the scope of the direction passed by this Tribunal dated 08.02.2019 and the same is not maintainable and misconceived, hence liable to rejected.
- 8) The learned Counsel for the Respondent also relied upon the Hon'ble Supreme Court judgment in the case of *B.K. Educational Services Private Limited Vs. Parag Gupta and Associate*¹ has further submitted that having regard to Section 238-A of IBC, 2016 which specifically states that the Limitation Act, 1963, shall apply to proceedings before this Hon'ble Tribunal, the instant proceedings are barred by limitation. Section 238A of the Code is extracted herein below as follows:

“238A. Limitation *The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as case may be.”*

“48 *It is thus clear that since the Limitation Act is applicable to applications filed under Section 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets*

¹ 2018 SCC Online SC 1921



attracted. "The rights to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

In another judgement rendered in *National Textile Corporation Limited Vs Nareshkumar Bardrikumar Jagad and others* ², it is, inter alia, held that Section 8 & 12 of the Code is extracted herein below as follows:

"8 Per contra, Shri Mukul Rohatgi, learned Senior Counsel appearing for the Respondents, submitted that it is not permissible for the court to travel beyond the pleadings. No evidence can be led on an issue in respect of which proper pleadings have not been taken. Findings of fact cannot be recorded on a issue on facts in respect of which no factual foundation has been laid. The appellant had never raised the issue before the courts below that the Central Government was the tenant and it was holding the premises merely as an agent. In the written statement filed by the appellant, no reference was made to the provisions of the 1995 Act. Even otherwise, the tenancy rights which had vested in the Central Government, stood vested immediately, by operation of law, in the appellant, a public sector undertaking as well as the public limited company having a paid-up share capital of more than rupees one crore, thus the appellant has no protection of the 1999 Act.

² Civil Appeal No.7448 of 2011

Handwritten signature in green ink.

“12 Pleadings and particulars are necessary to enable the court to decide the rights of the parties in the trial. Therefore, the pleadings are more of help to the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. A decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ. (Vide *Trojan & Co. vs. Nagappa Chettiar*³, *State of Maharashtra vs. Hindustan Construction Co. Ltd*⁴ and *Kalyan Singh Chouhan vs. C.P. Joshi*⁵).

- 9) The Company Petition is filed U/s 7 of IBC, 2016, which reads as under:

“7. (1) A Financial Creditor either by itself or jointly with (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.

Explanation. For the purposes of this sub-section, a default includes a default in respect of a financial debt owned not only to the applicant financial creditor but to any other financial creditor of the Corporate Debtor.

³ 2 AIR 1953 SC 235

⁴ (2010) 4 SCC 518; (2010) 2 SCC (Civ) 207; AIR 2010 SC 1299⁴

⁵ (2011) 11 SCC 786 ; (2011) 4 SCC (Civ) 656 ; AIR 2011 SC 1127

LjAD

- (2) *The Financial Creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.*
- (3) *The Financial Creditor shall, along with the application furnish-*
- (a) *a record of the default recorded with the information utility or such other record or evidence of default as may be specified.*
 - (b) *the name of the resolution professional proposed to act as an interim resolution professional; and*
 - (c) *any other information as may be specified by the Board.*
- (4) *The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).*
- (5) *Where the Adjudicating Authority is satisfied that:*
- (a) *A default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*
 - (b) *Default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

Provided *that the Adjudicating Authority shall, before rejecting the application under clause (b) sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.*



- (6) *The Corporate Insolvency Resolution Process shall commence from the date of admission of the application under sub-section (5).*
- (7) *The Adjudicating Authority shall communicate:*
- (a) *the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor.*
- (b) *the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.*
- 10) In the instant case, as detailed supra, it is not in dispute that Financial Creditor has sanctioned a term loan of Rs. 45 crores to the Corporate Debtor, and it has defaulted in making repayment of the loan as per the sanction terms leading the account of the Company classified as NPA on 31.12.2013. The Financial Creditor also filed Original Application (OA.No.16/2015) before DRT, Bangalore and the DRT has decreed an amount by issuing certificate to collect the amount due from the Respondent, as stated supra. The Statement of Accounts of the borrower produced by the Petitioner as Annexure 2, showed that the outstanding amount is due from the Respondent. They have also filed a Certificate U/s 2A in (b) & 2A (c) of the Bankers' Books Evidence Act, 1891 (As Amended) in support of the statement of Accounts in respect of the Corporate Debtor, bearing the Account Number 027957023753 Rs.39,64,24,144.87/-.
- 11) Dr. Aditya Sodhi, the learned Senior Counsel for Respondent, has seriously opposed the petition by raising question of limitation and also opposed IA No. 131 of 2019 for submission of additional information and documents and also alleged suppression of Writ Petition filed before Hon'ble High Court of Karnataka and also



stated they have also filed an Application before the Hon'ble High Court of Karnataka U/s 151 of the Civil Procedure Code 1908, by inter alia seeking to recall the order dated 20.02.2019 and the same is pending on the file of Hon'ble High court.

- 12) So far as the issue of limitation is concerned, it was already raised before the DRT by the Financial Creditor, and after considering the question of limitation, the DRT has allowed OA No.16/2015 by an order dated 27.03.2017. Moreover, the Petitioner got issued Legal Notice dated 22.12.2014 to the Respondent calling upon it to pay the outstanding amount. In pursuant to that legal notice, the Corporate Debtor has responded to legal notice vide reply dated 05.01.2015, by inter alia requesting not to precipitate the matter as any action other than restructuring would harm the interests of their Company, which will directly affect their ability to make the payments of installments and interests as per the restructuring plans agreed.
- 13) Subsequently, the Respondent has addressed another letter No.KTIL/2016-2017/0055 dated 3rd March, 2017, by inter alia stating as follows:

" We were servicing the interest from the beginning as per the sanction and we were also making the payment regularly till Jan 2014, although our cash flow was not supporting it due to various factors effecting the business because of the supreme court judgment in February 2012 on 2G scam cancelling 122 licenses to various cellular operators and downturn in the general economy of the country. As explained on many occasions during the last few years to your various officials, there was enormous delay in collections and Company has been put in to lot difficulties and account turned to NPA in June-2014.



Our Company has incurred huge losses from past three years due to the reasons mentioned above and we are unable service both interest and principal.

As explained to you during our meeting with you on February 21, 2016 and subsequently, as we are not able to pay any amounts from the business, the only way for us to make any payments is for our directors to raise any loans from their relatives and friends. Further our director Mr. Shivakumar Reddy has discussed internally with relatives and friends and after lot of discussions and deliberations, we wish to submit an offer to you for an amount of Rs.5,50,00,000/- (Rupees Fifty Crores Fifty Lakhs only) towards our full and final closure of our term loan account with you as a onetime settlement (OTS), we will make the payment within one year from the date of accepting our offer of OTS ie approximately on or before 31st March 2018, if we are able to get the sanction on or before March 31, 2017. Further we request you to issue the sanction letter under OTS scheme and issue the no due certificate to the Company, relieve the personal guarantors Mr. C.Shivakumar Reddy and Mrs. R.H.Kasturi, release the equity shares and release of two acres of land as given for collateral security. It may not be out of place to mention that these funds of Rs.5.5 crores are being arranged by our promoters Mr.C.Shivakumar Reddy and Mrs. R.H.Kasturi by raising loans from friends, relatives and other associates to liquidate the liabilities. Further they request you to give the sanction to enable us to proceed further.

In another letter No. KTIL/2017-2018/064 dated 19th June 2017, by inter alia stating as follows:



“the during the month of February, 2017, we were called to your zonal office by your then General Manager (RML), Shri Duaji and unfortunately we could not attend the same as it was with a very short notice and the undersigned was travelling. Then we met your zonal officers wherein they mentioned that we could submit a proposal for OTS. We informed them that the business is not in a position to generate the revenues to do OTS and only way we could give proposal for OTS is by way of raising loans from our friends and relatives. Accordingly, we have taken some time to talk to our friends and relatives and gave a proposal for Rs.5.50 Crores as the OTS as we could be able to only get assurances from our relatives and friends that they will be able to loan us only upto Rs.5.50 crores. We have thus submitted our OTS Proposal to your zonal office on March 3, 2017. A copy of the said proposal is attached herewith for your ready reference. We have till today not received any official response to our request for OTS submitted on March 3, 2017.”

Therefore, the instant petition is not barred by laches and limitation as contended by the learned counsel for the Respondents.

- 14) So far as the allegation of suppression filing of Writ Petition before the Hon'ble High Court of Karnataka against the order of DRT dated 27.03.2017 is concerned, as rightly contended by the learned for the Petitioner that proceedings under the Code is independent of other proceedings initiated before other judicial forums as long as cause of action subsists. In any case, all the material documents are placed before the Tribunal to consider them.



- 15) So far as the permission sought by the Petitioner to place additional information and additional documents by way of filing IA No. 131/2019 is concerned, it is necessary for the Adjudicating Authority to examine all relevant information and documents with reference to the issue and thus we have taken them on record and considered those information and documents. Moreover, proceedings under the IBC are summery in nature and thus all relevant information and documents are to be considered. Therefore, the contentions of learned Senior Counsel in that regard is not at all tenable and liable to be rejected. Therefore, we are inclined to allow IA No.131/2019 by taking additional information and add documents on record.
- 16) We have granted sufficient opportunity to the Respondent so as to see whether any viable solution to the issue can be found before admitting the case. However, the Respondent did not come forward with any solution to the issue except raising un-tenable grounds. It is also not known whether any appeal is filed against the order dated 27.03.2017 passed by DRT before Appellate Tribunal under section 20 of Recovery of Debts and Bankruptcy Act, 1993. Therefore, there is no other alternative for the Tribunal except to consider the question on admission as per law.
- 17) This Tribunal, on earlier occasion considered the law, in a Petition filed U/s 7 of IBC, 2016, read with Rule 4 of I&B (Application to Adjudicating Authority) Rules, 2016 filed by *Axis Bank Limited Vs. Lotus Shopping Centres Private Limited*⁶, in CP(IB)No.66/BB/2017 and passed an order dated 30.08.2018 by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Lotus Shopping Centres Private Limited (Corporate Debtor), under the

⁶ CP(IB)No.66/BB/2017 vide order dated 30.08.2018



provisions of IBC, 2016. The parameters to consider an application filed U/s was considered by Hon'ble NCLAT vide order dated 15th May 2017 passed in Company Appeal (AT) (Insolvency) No.1&2/2017 wherein the Hon'ble NCLAT, New Delhi, has dealt the issue of admission of a case filed under Section 7 of the Code, under Para's 55 to 58, which are extracted below:

“55) *Process of initiation of Insolvency Resolution process by a financial creditor is provided in Section 7 of I&B Code. As per sub-section (1) of Section 7 of I&B Code, the trigger for filing of an application by a financial creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the financial creditor shall make an application in prescribed form and manner and with prescribed documents, including:*

- i. *“record of the default” recorded with the information utility or such other record or evidence of default as may be specified;*
- ii. *the name of the resolution professional proposed to act as an interim resolution professional; and*
- iii. *any other information as may be specified by the Board.*

“56) *The procedure once an application is filed by the Financial Creditor with the Adjudicating Authority is specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of I&B Code:*



(4) *The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), **ascertain** the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)".*

"57) *Sub-section (5) of Section 7 of I&B Code provides for admission or rejection of application of a financial creditor. Where the Adjudicating Authority is satisfied that-.....the documents are complete or incomplete.*

"58) *The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the financial creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the financial creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority's summary adjudication, though limited to 'ascertainment' and 'satisfaction'."*

18) The Hon'ble Supreme Court has also upheld the above judgement in Civil Appeal Nos. 8337-8338 of 2017 in case of *Innovative Industries Limited vs. ICICI Bank & Anr.* vide judgement dated 31st August, 2017. The Hon'ble Supreme Court has adverted to the Section 7, at para 28, which reads as under:

"28. *When it comes to financial Creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an*

application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7 (5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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 sub-section (7), the adjudicating authority shall then communicate

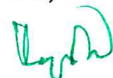


the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

- 19) In the light of provisions of Section 7 of Code, and law as declared by the Hon'ble NCLAT and Hon'ble Supreme Court as extracted above, the Adjudicating Authority/ Tribunal has to examine the instant case as to whether Application/Petition filed is complete with supported evidence: debt and default established; suggested a qualified Resolution Professional to appoint as Interim Resolution Professional etc.
- 20) On perusal of the instant Company Petition along with material documents filed and the objections raised by the Respondents as briefly stated supra, and the law as cited above, we are satisfied that the instant Company Petition is filed by Dena Bank (Financial Creditor), U/s 7 of IBC, 2016 strictly in accordance with law, with substantial evidence produced in support of debt and default as per the Bank Statement; suggested Shri B. Hariharan, bearing Registration Number.IBBI/IPA-001/IP-P00380/2017-2018/10637, to appoint him as Interim Resolution Professional, who has filed Written Communication dated 13.11.2018, under Rule 9 of I&B(AAA) Rules, 2016, by inter alia, declaring that he is a qualified Insolvency Resolution Professional Registered with IBBI/IPA-001/IP-P00380/2017-2018/10637 and he is not undergoing any disciplinary proceedings, expressing his willingness to act as such etc. Therefore, it is fit case to initiate CIRP as prayed for.
- 21) In view of the above facts and circumstances of case, and by exercising powers conferred on this Adjudicating Authority, U/s 7(5)(a) and other extant provisions of IBC, 2016, the following orders are passed:-



1. CP(IB)No.244/BB/2018 is hereby admitted by initiating CIRP in respect of M/s. Kavveri Telecom Infrastructure Limited and others, the Corporate Debtor;
2. Shri B. Hariharan, bearing Registration No.IBBI/IPA-001/IP-P00380/2017-2018/10637 is hereby appointed as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency & Bankruptcy Code, 2016 and the rules framed by the IBBI from time to time.;
3. The following moratorium is declared prohibiting all of the following, 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 Securitisation 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;
 - e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;



- f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator as also not applicable to surety.
- g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.
4. The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
5. IRP is further directed to strictly adhere time schedule as mentioned under the Code. And he is directed to file progress reports from time to time to the Tribunal.
6. Post the case for report of the IRP on **22.04.2019**.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL