

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

CP No.(IB) 77/ALD/2017

IN THE MATTER OF:

IDBI BANK LIMITED

having its registered office at IDBI Tower,
WTC Complex, Cuffe Parade, Colaba,
Mumbai, Maharashtra – 400005

..... **Applicant/Financial Creditor**

Versus

JAYPEE INFRATECH LIMITED

having its registered office at Sector 128,
Noida – 201304, Uttar Pradesh

..... **Respondent/Corporate Debtor**

Judgement delivered on 09.08.2017

Coram : Shri H.P. Chaturvedi, Member (J)

For the Applicant/ Financial Creditor:

Shri Bishwajit Dubey, Advocate
Shri Rahul Agarwal, Advocate
Shri Uday Khare, Advocate

For the Corporate Debtor:

Shri R.P Agarwal, Advocate


JUDGEMENT

(Per Shri H.P. Chaturvedi)

The applicant IDBI Limited (for brevity Financial Creditor) has filed the present petition U/s 7 of the Insolvency & Bankruptcy Code, 2016 read [hereinafter referred to as “the Code”] with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process in respect of the respondent

corporate debtor company M/s Jaypee Infratech Ltd. The Brief facts of the present case are stated as under:

- (i) The applicant IDBI Bank Ltd. is a company within the meaning of the Companies Act, 2013 and a banking company within the meaning of the Banking Regulation Act, 1949 and having its registered office IDBI Tower, WTC Complex, Cuffe Parade, Colaba, Mumbai – 400 005, in the State of Maharashtra and a branch, inter alia, at IDBI Tower, 4th Floor, Plot No – C-7, G Block, Opp. NSE, Next to SBI, Bandra-Kurla Complex Bandra (East), Mumbai – 400051, in the State of Maharashtra.
- (ii) It was incorporated on September 27, 2004 as a company within the meaning of the Companies Act, 2013 and further a banking company within the meaning of the Banking Regulation Act, 1949.
- (iii) The 'Corporate Debtor' has CIN No. L45203UP2007PLC033119. It was incorporated on April 5th, 2007. Its authorised share capital is Rs.3000,00,00,000/- (Rupees Three Thousand Crore only) and the paid up share capital is Rs.1388,93,34,970/- (Rupees One Thousand Three Hundred Eighty-Eight Crore Ninety-Three Lakh Thirty-Four Thousand Nine Hundred and Seventy). The aforesaid data concerning the Corporate Debtor is authenticated by master data available on the website of Ministry of Corporate Affairs.
- (iv) The 'Financial Creditor' has given all the details of financial debt as per the Code. In part-IV of the application, which is on a proforma prescribed under Rule-4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 of the Code, the following details are given about the financial debts:



- a. In total the Financial Creditor has sanctioned *four (4) loans aggregating to Rs.4650,00,00,000 (Rupees Four Thousand Six Hundred and Fifty Crores)* and disbursed the entire said amount.
- b. An amount of *Rs.900,00,00,000 (Rupees Nine Hundred Crore)* was then sold to India Infrastructure Finance Company Limited, as per the Takeout Finance Agreement dated May 22, 2015, and by a Novation Deed to the Common Loan Agreement all rights and obligations in respect of the said amount were novated to India Infrastructure Finance Company Limited. The total debt, therefore granted to the Corporate Debtor was *Rs.3750,00,00,000 (Rupees Three Thousand Seven Hundred and Fifty Crore)*.

The tabulation of the four loans is as follows:



Particulars (Facility-wise)	Sanction Amount (In INR)
Rupee Term Loan Tranche-II	200,00,00,000/-
Rupee Term Loan Tranche-II	4000,00,00,000/- (900,00,00,000 Down sold to India Infrastructure Finance Company Limited)
Rupee Term Loan - B	350,00,00,000/-
Rupee Term Loan -B	100,00,00,000/-

The date of disbursement of loan under the Loan Agreement has been annexed the application as **Exhibit-6**.

- (v) The defaulted amount within the meaning of Section 3(12), i.e. the computation relating to the defaulted amount and days of default has been annexed by the Financial Creditor at Exhibit – 7. The total amount due as on June 15, 2017 is **Rs.526,11,40,827/- (Rupees Five Hundred Twenty-Six Crore, Eleven Lakh, Forty Thousand, Eight Hundred Twenty-Seven)**, this includes the principal amount in default under the Rupee Term Loan – Tranche – II of the Common Loan Agreement which is **Rs.49,99,99,998 (Rupees Forty-Nine Crore Ninety-Nine Lacs Ninety-Nine Thousand, Nine Hundred and Ninety-Eight)**. In addition to this, the default amount towards the overdue interest (including liquidated damages as default interest) amounts to **Rs.476,11,40,829 (Rupees Four Hundred and Seventy-Six Crore Eleven Lacs Forty Thousand, Eight Hundred and Twenty-Nine)**.

IDBI EXPOSURE AS ON JUNE 01, 2017						(Amount in Rs.)
Particulars (Facility wise)	Sanction amount	Outstanding	Overdues			Overdue Since
			Principal	Interest	Total	
RTL Tranche-I	200,00,00,000	218,63,02,119	Nil	18,63,02,119	18,63,02,119	31.10.2016
RTL Tranche-II	4000,00,00,000	3513,24,20,268	Nil	413,24,20,268	413,24,20,268	31.07.2016
RTL-A	350,00,00,000	384,52,59,120	Nil	34,52,59,120	34,52,59,120	31.10.2016
RTL-8	100,00,00,000	109,71,59,322	49,99,99,998	9,71,59,322	59,71,59,320	31.10.2016
Total	4650,00,00,000	4226,11,40,829	49,99,99,998	476,11,40,829	526,11,40,827	


- (vi) The Financial Creditor has provided particulars of financial debt documents, records and evidence of default. The Financial Creditor has provided details of the Security documents from Exhibit 8 to Exhibit 13 in Volume II – IV of the Application. The Security comprises the following:

- I. **Deed of Hypothecation:** The Unattested Deed of Hypothecation dated May 25, 2015 (the “**Unattested Deed of Hypothecation**”) and the Amended and Restated Deed of Hypothecation dated February 6, 2016 (the “**Amended and Restated Deed of Hypothecation**”) have been attested by the Corporate Debtor in favour of the Security Trustee. Following security has been created;
- a. A first charge on all the movables of the company, present and future; excluding movables which are forming part of the common infrastructural facilities of real estate development;
 - b. A first charge on the corporate debtor company's book debts, receivables, on all bank account including but not limited to the Debt Service Reserve Account (DSRA), the Trust & Retention Account (TRA) where all the cash inflows from toll collection and sale proceeds of the real-estate shall be utilized in a manner & priority to be decided by the lender's agent/RTL lenders, commissions, revenues of whatsoever nature & wherever arising, intangibles including but not limited to goodwill, rights, undertaking and uncalled capital, both present and future;
 - c. A first charge on or assignment of all rights, title, interest, benefits, claim and demands whatsoever of the Corporate Debtor in the concession agreement save and except in relation to portion of land which is developed/undeveloped and alienated by Corporate Debtor from time to time
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pursuant to sale agreement and project documents duly acknowledged and consented to be the relevant counter parties to such project documents, all as amended, varied or supplemented from time to time, statutory/non-statutory clearances & approvals obtained/ to be obtained for the project; letter of credit, guarantee, performance bond, etc. provided by any party for the project; insurance contracts/insurance Proceeds pertaining to the project (other than those in respect of discharge of third party liability) and all benefits incidental to project activities.

- d. A first charge on the Debt Service Reserve Account (DSRA) for an amount equal to 1.5 times the principal and interest payment due for the ensuing quarter to the rupee term lenders.
- e. In support of the above the applicant bank has annexed copies of its Unattested Deed of Hypothecation, Amended and Re-Attested Deed of Hypothecation dated February 6, 2016 executed by the Corporate Debtor in favour of the Security Trustee as Exhibit-10 (Colly) of the present petition.

II. Personal Guarantee: Shri Manoj Gaur the chairman cum managing director of the Company as being "Personal Guarantor" has further guaranteed the obligations of the Corporate Debtor under the Loan Agreements pursuant to the personal guarantee dated May 25, 2015, (the "Personal Guarantee") executed by the



Personal Guarantor in favour of the Security Trustee. Copy of the Personal Guarantee has been annexed herewith as Exhibit-11.

III. Indentures of Mortgage: Copies of Indentures of Mortgage have been annexed which is marked as forming part of Exhibit -12 of the application.

IV. Pledge: Jaiprakash Associates Limited, a shareholder of the Corporate Debtor by way of a Deed of Pledge dated February 6, 2016 pledged 51% of the Corporate Debtor's total paid up share capital in favor of Security Trustee. A Copy of the Deed of pledge is annexed herewith as Exhibit -13 of present I& B Application.

Estimated Value of the Aforementioned Security:

Excluding 51% of the shares of the Corporate Debtor pledged as stated above and movable properties of the Corporate Debtor, the market value of the assets is estimated to be INR 17116,00,00,000/- (Rupees Seventeen Thousand One Hundred and Sixteen Crore only). The distress value of the assets is estimated to INR 14548,00,00,000/- (Rupees Fourteen Thousand Five Hundred and Forty-Eight Crore only).

(vi) In support of the existing financial debts under default the Financial Creditor/Applicant has annexed following documents giving particular of the amount and date of default:

a) Copy of the audited Balance Sheet for the Financial year 2016-2017 of the Corporate Debtor acknowledging the indebtedness of the Corporate Debtor;

- b) Balance Confirmation acknowledging the indebtedness of the Corporate Debtor as on March 31, 2017.
- c) RBI directive no. DBR No. BP. IBC10/21.04.048/2016-2017 dated June 15, 2017 giving directions to the IDBI Bank Limited to initiate Insolvency Resolution Process under the provisions of the I & B Code, 2016.
- d) Report from the Central Repository on Information on Large Credits ("CRILC") date June 17, 2017.
- e) CIBIL Report, showing account of the Corporate Debtor as sub-standard from April 2016 – March 2017.
- f) Entries in Banker's Book in accordance with the Banker Books Evidence Act, 1891 as maintained by the IDBI Bank.

By perusal of the application filed by Financial creditor it appears to be found complete as being in conformity with the provision of Section 7 of the Code and Rules applicable. The provision of Section 7 of the Code reads as under:

7. Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with other financial creditors 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 owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.*

(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) 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) of 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.

From the perusal of documents annexed with the present petition, it is evident the default has occurred, that meets the requirement of Section 3(11) & (12) of the Code.

Section 3(11) and 3(12) of the Code which reads as under:

3(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

3(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;

The Financial Creditor has also filed the Written Communication sent by the proposed Interim Insolvency Resolution in Form No. II informing that there is no disciplinary proceeding pending against the proposed IRP.

As, the total amount of default now comes to **Rs.526,11,40,827/- (Rupees Five hundred twenty-six crores eleven lakh forty thousand eight hundred twenty-seven) which is in excess of Rs.1,00,000/- (Rupees One Lakh only)**. Hence, the present application to initiate the Corporate Insolvency Resolution Process (as per the I & B Code, 2016) in respect of Corporate Debtor Company.

The Corporate Debtor Company in the present matter earlier had filed its objection opposing the Admission but later on 04.08.2017 in presence of its officer through its counsel withdrew the same.

Thus, by considering the subsequent development took place in the present matter, this court being Adjudicating authority advised the Corporate Debtor Company to file a formal memo to such effect. Pursuant thereto Shri Manoj Gaur, being Chairman Cum Managing Director filed a formal memo through his Learned counsel Shri R.P. Agarwal, containing such averment, are

stated as, *"the parties to the petition had a meeting on 03.08.2017. They discussed need to withdraw their objection on the present petition. In such meetings they expressed their desire for early approval of the resolution plan of the Corporate Debtor Company which is already under consideration of its lenders. In view of this the Corporate Debtor has expressed its no-objection"*.


The Corporate Debtor Company has further explained about its memo of no-objection given on account of *considering the interest of all the stakeholders of the Respondents Company including home buyers and depositors*. In view of this the Corporate Debtor Company did not press for its objection to the present petition.

Considering the such statement of the withdrawal of the objection and to concede with the prayer made in for seeking admission of the present Petition. It is felt, not necessary to look into merits of such objection.

We have perused the above stated memo and gone through the present petition and duly considered the subsequent development that took place in the matter.

It is now undisputed position in the present matter the Financial Creditor along with other lenders and the present Corporate Debtors are having a consensus for early approval of resolution plan of the corporate debtor company.

In addition to above the Hon'ble NCLAT in the matter of *M/s Innoventive Industries Ltd. Vs ICICI Banks & Anr. Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017* has examined the relevant provision of the Section 7 of the Code and ruled that the 'adjudicating authority' on receipt of



the application under Section 7 subsection (2) is required to ascertain existence of default on the basis of evidence furnished by the Financial Creditor under sub – section (3). The ‘adjudicating authority’ is required to satisfy three things: Occurrence of default; application is complete and no disciplinary proceeding is against the proposed Insolvency Resolution Professional.

For the sake of convenience relevant portion is reproduced as under:

82. As discussed in the previous paragraphs, for initiation of corporate resolution process by Financial creditor under sub section (4) of Section 7 of the Code, 2016, the adjudicating authority on receipt of application under sub section (2) is required to ascertain existence of default from the records of Information Utility or on the basis of other evidence furnished by the financial creditor under sub-section (3) under section 5 of Section 7, the ‘adjudicating authority’ is required to satisfy-

- (a) Whether a default has occurred.*
- (b) Whether an application is complete: and*
- (c) Whether any disciplinary proceeding is against the proposed Insolvency Resolution Professional.*

83. Once, it is satisfied, it is required to admit the case but in case the application is incomplete application, the financial creditor is to be granted seven days’ time to complete the application. However, in a case where there is no default or defects cannot be rectified, or the record enclosed is misleading, the application has to be rejected.


84. Beyond the aforesaid practice, the ‘adjudicating authority’ is not required to look into any other factor.


Having heard the submission of Shri Bishwajit Dubey along with Shri Rahul Agarwal, Advocate for Financial Creditor as well as Shri R.P. Agrawal, Advocate for Corporate Debtor, the present petition deserves admission. Hence, it is admitted under the Section 7 of the I & B Code, with consequential directions given as under:

- I. That the adjudicating Authority of this bench of the Tribunal hereby appoints **Mr. Anuj Jain, Email.Id anujvjain@bsraffiliates.com, Registration No. IBBI/IPA-001/IP-P00142/2017-18/10306, Address: M/S BSRR & Co. Chartered Accountants, 8th Floor,**



Building No.10, DLF Cybercity, Gurgaon - 122002 as Interim Resolution Professional to carry the functions as mentioned under the Code.

- II. That the order of moratorium u/s 14 shall have effect from *09.08.2017* till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33 as the case may be.
 - III. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 SARFESI Act, 2002; the recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.
 - IV. That the supply of essential goods or services to corporate debtor, continuing, shall not be terminated or suspended or interrupted during the Moratorium period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of the Corporate Debtor.
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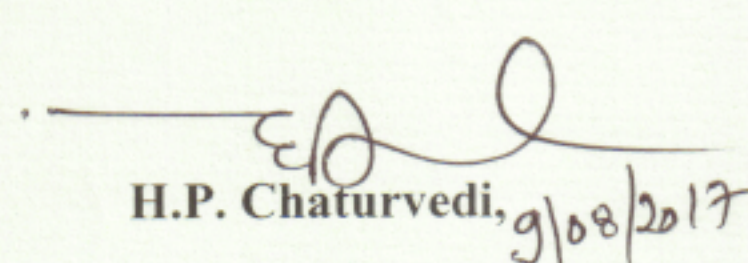
- V. During the period of Moratorium, the affairs of Corporate Debtor to be continued and conducted in accordance with the law and as a going concern.
- VI. That the provisions of Section 14 sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- VII. That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the code and calling for submissions of claim under Section 15 of the Code.
- VIII. The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *interalia*, by Sections 17, 18, 20, 21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and cooperation to the Interim Resolution Professional. Where any personnel of the corporate debtor, its promoter or any other person required to assist or co-operate with IRP, does not assist or co-operate, IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.
- IX. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of its obligation imposed by Section 20 of the I& B Code, 2016.
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X. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor after the completion of necessary formalities.

XI. A Copy of this order be communicated to the IRP as well as to Insolvency and Bankruptcy Board of India.

Date: 09/08/2017

Typed By:
Aparna Trivedi
Law Research Assistant


H.P. Chaturvedi, 9/08/2017

Member (Judicial)