

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

CP (IB)/10/7/HDB/2017

Date: 15.03.2017

Between

Indian Bank  
66, Rajaji Salai,  
Royapettah  
Chennai – 600014  
Tamil Nadu  
Also at,  
254- 260, Avvai Shanmugam Salai  
Royapettah  
Chennai – 600014  
Tamil Nadu



CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL

... Petitioner

AND

Kadevi Industries Limited  
A-A2, Electronic Complex  
Kushaiguda  
Hyderabad – 500062

... Respondent

Counsel for the Petitioner:

Mr. VK Sajith, Mr. G.P.Yash Vardhan,  
Mr.S.J.Suresh, Mr. Vivvek Naidu

Counsel for the Respondent:

None

**CORAM:**

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

**ORDER**

(As per Ravikumar Duraisamy, Member (T))

1. The Application was filed by the Financial Creditor namely Indian Bank against Corporate Debtor, i.e. Kadevi Industries Limited. The application was taken up for hearing on 10.02.2017 and posted on



13.02.2017. Since Counsel for the Petitioner requested time as his senior counsel is not available, the case was posted to 14.02.2017. On 14.02.2017 senior counsel sought time to submit information sought by the Bench by the next date of hearing. Accordingly, he has submitted his reply on 20.02.2017.



2. The Financial Creditor has stated that an amount of Rs.171,09,96,659/- is in default as on 26.01.2017, out of which Rs.124,60,22,645/- is the balance principal amount and Rs.46,49,74,014/- is memorandum of interest and the date of default is from 31.03.2015. The Petitioner stated that the above loans were disbursed on various dates from 6<sup>th</sup> April 2009 onwards. The Loan account of the Corporate Debtor has been classified as 'NPA' as on 31.03.2015. The Applicant has also submitted documents in support of loan given to Kadevi Industries Limited.
  
3. The Corporate debtor was enjoying Rs.80,00,00,000/- of the fund based and non-fund based limits with the Financial Creditor as a sole banker. As the Corporate Debtor desired to expand its business by entering to varied sectors of business verticals, it approached Banks such as SBH (State Bank of Hyderabad), Axis Bank, Corporation Bank to increase the financial facility limits. Upon deliberations, the above mentioned Banks have formed a Consortium authorising the Financial Creditor herein to lead the Consortium as a 'LEAD BANK' in order to facilitate financial assistance to the Corporate Debtor. Pursuant to the formation of Consortium of Banks, financial assistance to a tune of Rs.135 Crores fund based and non-fund based was provided to the Corporate Debtor. Further, in the year 2009, the Financial Creditor has enhanced the limits from Rs.135 Crores to 175 Crores of fund based and non-fund based.
  
4. The petitioner/applicant submitted that subsequent to classifying the account of the Corporate Debtor as NPA, the Financial creditor got issued notice on 05.03.2016 under section 13(2) of The Securitization



and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and subsequently Symbolic possession was taken on 11.08.2016 under section 13(4) of the said Act. CMM application was also filed and eviction petitions filed in 3 CMM courts of Nampally, Ranga Reddy and Secunderabad on 27/28/29.08.2016 for eviction. In addition to the above an Original Application No.523 of 2016 has also been filed before the Debt Recovery Tribunal, Hyderabad. on 05.04.2016 for the recovery of the outstanding dues and the same is next posted to 06.03.2017 for filing Written Statement by the Defendants. SA was filed by the company on 30.11.2016 in DRT, Hyderabad against our SARFAESI proceedings and the same has been posted to 22.02.2017.



5. Upon perusal of the documents submitted along with the application, the Bench issued notice to the Financial Creditor, dated 23.02.2017 U/s 7(5) of IBC 2016 to rectify certain deficiencies.
6. The counsel has submitted his reply dated 06.03.2017 and the matter was again posted for hearing on 07.03.2017. The counsel contended that as per the provisions of Insolvency and Bankruptcy Code (IBC), 2016/Rules, there is no requirement to serve a copy of the application to the other party namely Kadevi Industries Ltd. It is humbly submitted that it is very clear from the rules that despatching copy of the application is not a condition precedent for filing the captioned application. However, he submitted proof of service of application sent by professional courier.
7. With regard to the necessary approval of the Board of Directors of Indian Bank for the proposed appointment of the IRP, he again contended that there is no requirement specified in the IBC, 2016 that the Bank has to pass a Board Resolution. It is further submitted that as the Insolvency and Bankruptcy Code 2016 or the rules stipulates passing of any board resolution authorising the appointment of proposed IRP, therefore, no resolution has been passed by the financial creditor. He further



submitted that the counsel for the financial creditor has issued offer letter to IRP Sh. C.S. Gunturu Raghu Babu and the same was accepted by him. He also further stated that it is pertinent to mention here that the financial creditor is well aware of Shri C.S. Gunturu Raghu Babu being proposed as IRP because it was the decision of the financial creditor to appoint him as IRP. The counsel has not submitted any document to support this claim that it was the decision of financial creditor to appoint Sh. Gunturu Raghu Babu as IRP. He referred para-14 of the Power of Attorney issued to the Assistant General Manager of Indian Bank dated 23.01.2013. However, that para also do not authorise the AGM of the Bank to propose the name of IRP.



8. Considering the facts and contentions of the Counsel, though the Bench is of the prima facie opinion that the case deserves to be rejected, however, the Bench taken a positive/practical view that the resolution to be passed by the Board of Directors of the Bank is its internal management/administrative issue. Considering the preamble of IBC 2016 and also considering Government's initiative i.e., "Ease of Doing Business", the Bench admits the application filed Under section 7 of IBC 2016 as prayed for in the Application. Further, the financial creditor being a Bank which is an integral part of the economy, serving the common people, lends loans to various purposes including priority sector, Corporate Sector.
9. For easy reference we quote/reproduce part of the preamble of IBC 2016. The objective of the new law is to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner and for maximization of value of assets of such persons and matters connected therewith or incidental thereto. The IBC will give quantum leap to the functioning of the credit market. The vision of new law is to encourage entrepreneurship and innovation.



10. We are satisfied that Financial Creditor has to receive Rs.171,09,96,659, which is the default amount including the interest as on 26.01.2017. Therefore, there is a default by the Corporate Debtor namely Kadevi Industries Limited and we are satisfied that the financial creditor is entitled to claim relief under Section 7 of the IBC, 2016. We admit the present Company Petition/Application filed under IBC with following directions:



a. We declare a moratorium by prohibiting the following actions:

1. 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;
2. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
3. 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;
4. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
5. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

b. Direct to cause the public announcement of initiation of Corporate Insolvency Resolution Process of the Company as per the details given in sections 15(1) and 15(2), on [www.ibbi.gov.in](http://www.ibbi.gov.in) (designated website of Insolvency and Bankruptcy Board Of India, circulated vide IIBI/IP/PUBLIC ANN./221 dated 01.02.2017) in addition to other accepted modes of publication, immediately and call for submission of claims as per Section 15 of the IBC, 2016 read with Regulation 6 of the Insolvency and Bankruptcy Board of India



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- c. We appoint Mr. Gunturu Raghu Babu (Regn No IBBI/IPA/02/2016-17/34/2016-17/1048, dt.19.12.2016) as an Interim Resolution Professional.
- d. Direct the personnel of Kadevi Industries Limited, to assist and cooperate with Interim Resolution Professional to provide access to documents and records and management of the affairs of the company.
- e. We direct the Interim Resolution Professional, to constitute a committee of creditors, after collation of all claims received against the corporate debtor and determination of financial position of corporate debtor, as per Section 21 of IBC. The first meeting of the committee of creditors, shall be held within 7 days of the constitution of committee of creditors and their decision has to be communicated to the Tribunal as per Section 22 of IBC, 2016.
- f. We direct the Interim Resolution Professional to follow all the applicable provisions of the Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- g. Post the case to 17.04.2017.



Sd/-

**RAVIKUMAR DURAISAMY**

**MEMBER (T)**

Sd/-

**RAJESWARA RAO VITTANALA**

**MEMBER (J)**

*V. Annapoorna*  
**V. ANNA POORNA**  
 Asst. DIRECTOR  
 NCLT, HYDERABAD - 68