

THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
AT NEW DELHI

Company Petition No. (IB)-706 (PB)/2018

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

M/s ICICI Bank Ltd. .... Applicant/Financial Creditor

Vs

Apex Buildsys Ltd. .... Respondent / Corporate Debtor

*Judgment delivered on: 20.09.2018*

**CORAM:**

**MR. CHIEF JUSTICE (RTD.) M. M. KUMAR HON'BLE PRESIDENT**

**MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)**

For Applicant Company: Mr. Krishnendu Datta,  
Ms. Padmaya Kaul,  
Ms. Aishwarya Chaudhary, Advocates  
For Respondent Company: Mr. Samridhi Gogia,  
Mr. Anshuman Gupta,  
Ms. Ankita Saha, Advocates

M/s ICICI BANK LTD. Vs. APEX BUILDSYS LTD.



## ORDER

**S. K. Mohapatra, Member**

1. ICICI Bank Limited, claiming as the financial creditor, has filed the instant application 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 company M/s Apex Buildsys Ltd., referred to as the corporate debtor.
2. The Respondent Company M/s Apex Buildsys Limited (CIN No. L 45400 DL 1993 PLC 051603) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 06.01.1993 having its registered office at B-292, Chandra Kanta Complex, Shop No. 7, Near Metro Pillar No. 161, New Ashok Nagar, New Delhi - 110096. Since the registered office of the respondent corporate debtor



is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is appropriate to mention that the applicant ICICI Bank Limited is a public company incorporated under the Companies Act, 1956 and is also a Banking Company within the meaning of the Banking Regulation Act, 1949 having its registered office near Chakli Circle, Old Padra Road, Vadodra - 390 007 and Regional Office at ICICI Bank Tower, NBCC Palace, Bhisham Pitamah Marg, Pragati Vihar, New Delhi - 110003.

4. Mr. Sanjay Sharma, authorized representative of the applicant and working as Legal Manager has preferred the present application on behalf of the applicant ICICI Bank Limited for initiation of corporate insolvency resolution process in terms of the provisions of the Code.



5. . The applicant has proposed the name of Mr. Gian Chand Narang, for appointment as interim resolution professional having registration number IBBI /IPA-002 /IP-N000362 /2017-18/ 11031, resident of Block B2, Flat No. 214, Varun Apartment, Sector-9, Rohini, Delhi-110085, email-id [narangcg58@gmail.com](mailto:narangcg58@gmail.com). Shri Gian Chand Narang has agreed to accept appointment as the IRP and has signed a communication dated 02.06.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Shri Gian Chand Narang as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.



6. The applicant has claimed that the respondent company M/s Apex Buildsys Limited, formerly known as Era Buildsys Limited, is part of the group of companies of the Era Group and has defaulted in making payments of the amounts due to the Applicant Bank.
7. The case of the applicant as contained in the application is that on 11<sup>th</sup> November, 2011 loan of INR 100, 00, 00,000 (Rupees Hundred Crores Only) was extended to the Corporate Debtor through a rupee term loan facility (RTL-I) which was disbursed in two tranches i.e. on 22.11.2011 and on 12.12.2011. In order to secure RTL-I, the Corporate Debtor hypothecated the whole of its movable fixed assets on first ranking pari-passu charge and all of its current assets on second ranking pari-passu charge, in favour of the Applicant, by way of a deed of hypothecation dated 11 November 2011. The charge on the assets of the Corporate Debtor as created by the deed of hypothecation dated 11 November 2011 was filed



with the Registrar of Companies (ROC) under Form-8 and a certificate of registration of charge dated 15 November 2011 was issued by the ROC. A copy of the rupee facility agreement for RTL – I, copy of the deed of hypothecation dated 11 November 2011 and copy of the Form 8 along with the certificate of registration of charge have been placed on record.

8. In addition a corporate guarantee and a personal guarantee was extended by Era Infra Engineering Limited (Corporate Guarantor) and Mr. H.S. Bharana (Personal Guarantor) through a deed of corporate guarantee and a deed of personal guarantee respectively, both dated 11 November 2011, in favour of the Applicant. The said deed of corporate guarantee and deed of personal guarantee have also been placed on record.

9. The Applicant further extended a working capital facility loan to the tune of INR 60,00,00,000 (INR Sixty Crores) by way of a working capital facility dated 13 December 2011 (WC Loan



Facility). The credit arrangement letter (CAL) for the WC Facility dated 14 October 2011 clarifies that the WC Loan of the INR 60 crores comprised of a cash credit facility (CC Facility) of INR 25 crores and a bank guarantee facility of INR 35 crores. The WC Loan Facility was amended vide credit arrangement letter dated 10 December 2012, and the loan facility was reduced to INR 25 crores, comprising CC Facility of INR 10 crores and an overdraft facility (OD Facility) of INR 15 crores, thereby cancelling the earlier bank guarantee facility of INR 35 crores. Further, the other amendments which took place over time, to the WC Loan Facility, were recorded in an amendatory document executed on 23 March 2013. The credit arrangement letter (CAL) dated 14 October 2011, the amendatory CAL dated 10 December 2012 and the agreement dated 23 March 2013 detailing the amendments to the WC Loan Facility that were executed on multiple events, have been placed on record.



10. The WC Loan Facility was secured by the Corporate Debtor by way of a deed of hypothecation dated 13 December 2011, hypothecating the current assets and receivables on first ranking pari-passu charge in favour of the Applicant. The charge on the assets of the Corporate Debtor as created by the said deed of hypothecation to secure the WC Loan Facility was filed with the ROC under Form-8 and a certificate of registration of charge dated 14 December 2011 was issued by the ROC. The deed of hypothecation against the WC Loan Facility was amended on 23 March 2013, vide a deed of modification, pursuant to the modification of the WC Loan Facility on 10 December 2012, reducing the security on WC Loan Facility to INR 10 crores, i.e. on the revised CC Facility and creation of second charge over entire movable properties, equipment for the revised CC Facility of INR 10 crores. The modified charge on the WC Facility was filed with the ROC under Form-8 and a certificate of registration of charge





was issued on 22 April 2013. Further, the Corporate Guarantor and the Personal Guarantor also extended a corporate and a personal guarantee, respectively in favour of the Applicant for the WC Loan Facility both dated 13 December 2011. By way of its letters dated 23 March 2013, the Corporate Guarantor and the Personal Guarantor undertook that their guarantees dated 13 December 2011 would continue against the WC Loan Facility post the amendment dated 23 March 2013, which included the OD Facility.

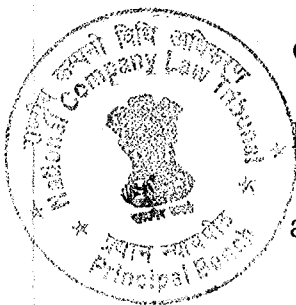
11. Additionally, to further secure RTL-I in full and the WC Loan Facility up to INR 10 crores (i.e. the CC Facility under the WC Loan Facility), a declaration of mortgage was executed by the Corporate Debtor on 22 November 2012, depositing with the Applicant the title documents for two specific immovable properties as described in the application.



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12. It is submitted in the application that in order to secure the OD Facility under the WC Loan Facility, a deed of hypothecation was executed on 23 March 2013, hypothecating all movable properties and equipment (as described therein) on a first ranking pari-passu charge. The charge over Immovable Properties was also extended to the said OD Facility on a first ranking pari-passu charge, by way of a declaration dated 23 March 2013. The charge so created on the OD Facility was filed under Form-8 with the ROC and a certificate of registration was issued on 22 April 2013.

13. Thereafter, in June 2013, the Applicant was inducted into the consortium of lenders lead by the State Bank of India. The members of the SBI Consortium collectively executed an inter-se agreement dated 27 June 2013 vide which SBI was designated as the lead bank for the consortium. Pursuant thereto, a working capital consortium agreement on 27 June 2013 was executed securing an overall amount of INR 235.75 crores,



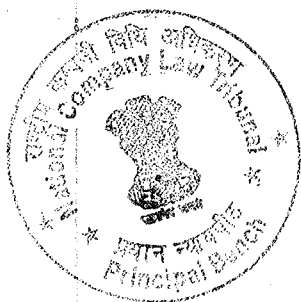
including the WC Loan Facility to the extent of INR 10 crores sanctioned by the Applicant (comprising the CC Facility under the WC Loan Facility). To secure the abovementioned facility, the Corporate Debtor executed a joint deed of hypothecation on 27 June 2013, hypothecating its entire current assets on first ranking pari-passu charge and its movable fixed assets (both present and future) on a second ranking pari-passu charge in favour of the SBI Consortium. The charge created by the Joint deed of hypothecation was filed with the ROC under Form-8 and the ROC issued the certificate of registration of charge dated 24 July 2013 confirming the charge. To further secure the facility under the Working Capital Consortium Agreement, the Corporate Guarantor executed a deed of guarantee dated 27 June 2013. In support of the pleading the Inter-se Agreement, the Working Capital Consortium Agreement, the Joint deed of hypothecation, the deed of corporate guarantee dated 27 June 2013 and the certificate



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of registration of charge have been placed on record.

14. Thereafter, the Applicant extended a fresh loan of INR 17, 00, 00,000 (INR Seventeen Crores) by way of a rupee term facility agreement executed on 19 November 2013 (RTL-II). To secure RTL-II facility, the Corporate Debtor executed a deed of hypothecation dated 19 November 2013 hypothecating, on first ranking pari-passu charge, the whole of its movable assets (as described therein) in favour of the Applicant. The charge was filed by the Corporate Debtor with the ROC under Form-8 and the certificate of registration of charge was issued by the ROC on 20 November 2013. Further, the Corporate Guarantor and the Personal Guarantor also executed their respective deeds of guarantees on 19 November 2013 against RTL-II, in favour of the Applicant. Additionally, by way of a declaration of mortgage dated 25 September 2014, a first ranking pari-passu charge on the Immovable Properties was extended to



secure RTL-II. The charge so created by way of the declaration of mortgage was filed with the ROC and a certificate of registration of charge dated 30 September 2014 was issued by the ROC. The rupee term facility agreement for RTL-II, the deed of hypothecation for RTL-II, the deed of corporate guarantee, the deed of personal guarantee and the certificate of registration of charge dated 30 September 2014 have also been placed on record.

15. The details of various credit facilities extended by the Applicant to the Corporate Debtor, along with the securities and contractual comforts have been enumerated in the table below:

Credit Facilities	Amount (in crores)	Security	Contractual Comforts
RTL - I	100	A. Following charges on the assets of the Corporate Debtor in terms of the deed of hypothecation dated 11 November 2011: (i) First ranking pari-ssu charge over the movable fixed assets. (ii) Second ranking pari-passu	A. Deed of personal guarantee executed by Personal Guarantor on 11 November 2011. B. Deed of corporate guarantee executed by Corporate Guarantor on 11 November 2011.

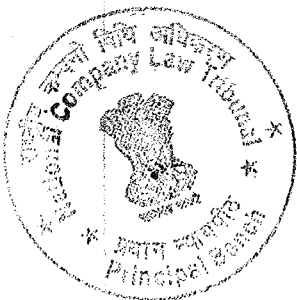


		charge over the current assets. B. First ranking pari-passu charge, on the Immovable Properties created in terms of declaration of mortgage dated 22 November 2012.	
CC Facility	10	A. Following charge on the assets of tE Corporate Debtor in terms of the deed of hypothecation dated 13 December 2011, a amended vide dee of modification dated 23 March 2013 and the joint deed of hypothecation dated 27 June 2013: (i) First ranking pari-passu charge on entire current assets. (ii) Second ranking pari-passu charge on movable assets. \  B. Second ranking pari-passu charge, on Immovable	1. Deed of personal guarantee executed by Personal Guarantor on 13 December 2011.  2. Deed of corporate guarantee executed by Corporate Guarantor on 13 December 2011.  3. Deed of corporate guarantee executed by Corporate Guarantor on 27 June 2013



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		Properties created in terms of declaration of mortgage dated 22 November 2012	
OD Facility	15	<p>A. Following charges A. Deed of personal on the assets of the Corporate Debtor in terms of the deed of hypothecation dated 23 March 2013:</p> <p>(i) First ranking pari-passu charge over the movable fixed assets;</p> <p>B. First ranking pari-passu charge, on Immovable Properties created in terms of declaration of mortgage dated 23 March 2013. RTL-II</p>	<p>Deed of Personal Guarantee Executed by Personal Guarantor on 13 December 2011.</p> <p>B. Deed of corporate guarantee executed by Corporate Guarantor on 13 December 2011.</p>
RTL - II	17	<p>A. Following charges on the assets of the Corporate Debtor in terms of the deed of hypothecation dated 19 November 2013:</p>	<p>1. Deed of personal guarantee executed by Personal Guarantor on 19 November 2013.</p>



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		<p>(i) First ranking pari-passu charge on all movable fixed assets.</p> <p>B. First ranking pari-passu charge on Immovable Properties created in terms of declaration of mortgage dated 25 September 2014.</p>	<p>2. Deed of corporate guarantee executed by Corporate Guarantor on 19 November 2013.</p>
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16. It is stated in the application that the Corporate Debtor defaulted in its obligations of repayment under the various credit facilities extended by the Applicant as well as the SBI Consortium. Pursuant thereto, discussions on restructuring of the debt of the Corporate Debtor were conducted in the meetings of the Joint Lender Forum (JLF) on 26 September 2014 and on 30 December 2014. Pursuant to the JLF, the Applicant entered into bilateral restructuring agreement with the Corporate Debtor. Accordingly, the debt of the Corporate Debtor was restructured



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by way of a restructuring agreement dated 31 December 2014, as follows:

Original Facilities	Amount (in crores)	Restructured Facilities	Amount (in crores)
RTL-I	100	RTL-I	57.9
CC Facility	10	Restructured Facilities	7.62
OD Facility	15	RTL - III	15
RTL-II	17	RTL-II	17
		Restructured WCTL	2.38
		FITL-I	4
		FITL-II	16

17. It is further submitted that as per the Restructuring Agreement all existing securities, including the corporate guarantees would continue to be in force. A copy of the minutes of meetings of the JLF dated 26 September 2014 and 30 December 2014 and a copy of the Restructuring Agreement dated 31 December 2014, containing the detailed terms and conditions of the Restructured Facilities that were duly accepted by the Corporate Debtor have been placed on record.



18. Additionally, to secure the Restructured Facilities, the Personal Guarantor executed a deed of guarantee in favour of the Applicant on 31 December 2014. Further, a deed of hypothecation dated 7 July 2015 was executed by the Corporate Debtor, hypothecating its assets to the loans under the Restructuring Agreement at varied ranking of charges. Additionally, by way of a declaration of mortgage as executed on 7 July 2015, the Immovable Properties, and certain movable properties were charged to the Applicant to secure the loans under the Restructuring Agreement at varied ranking of charges. The charges created by the deed of hypothecation and declaration of mortgage to secure the Restructured Facilities were filed with the ROC under Form CHG-1 and a certificate of registration of charge was issued on 20 July 2015. The deed of guarantee executed by the Personal Guarantor on 31 December 2014 against the Restructured Facilities, the deed of hypothecation dated 7 July 2015, the declaration



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of mortgage dated 7 July 2015 and a copy of the said Form CHG-1 as filed with the ROC have also been placed on record.

19. It is submitted that subsequently the Applicant, upon the Corporate Debtor's request extended a bank guarantee facility for an amount of INR 4.41 crores (Fresh BG Facility), by way of a master facility agreement dated 26 June 2015 (Master Facility Agreement). In order to secure the same, the Personal Guarantor executed a deed of guarantee in favour of the Applicant on 6 July 2015. Further thereto, the Corporate Debtor executed a deed of hypothecation in favour of the Applicant on 6 July 2015, creating a first ranking pari-passu charge on current assets, account assets and receivables, and a second ranking pari-passu charge on movable fixed assets including DPG machinery and equipment of the Corporate Debtor. Additionally, by way of a declaration of mortgage dated 7 July 2015, a second ranking pari-passu charge was created on the Immovable



Properties against the Fresh BG Facility, in favour of the Applicant. The charges created by the deed of hypothecation dated 6 July 2015 and declaration of mortgage dated 7 July 2015 to secure the Fresh BG Facility were filed with the ROC under Form CHG-1 and a certificate of registration of charge was issued on 14 July 2015. The Master Facility Agreement, the deed of guarantee executed by the Personal Guarantor against the Fresh BG Facility, the deed of hypothecation for Fresh BG Facility, the declaration of mortgage dated 7 July 2015 with respect to the Fresh BG Facility and the certificate of registration of charge dated 14 July 2015 have been placed on record.

20. At the request of the Corporate Debtor, the Fresh BG Facility and the Restructured CC Facility were renewed by the Applicant vide a CAL dated 23 June 2016 (Renewal CAL). The renewal CAL has been enclosed with the application.



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21. Under the Fresh BG Facility, the Applicant time and again, upon requests from the Corporate Debtor, extended bank guarantees, in favour of various beneficiaries, of which the following bank guarantees have been invoked/recalled by the beneficiaries:

Sr. No.	Bank Guarantee No.	Invocation Date	Amount Invoked
1.	0007BGR0041717	1 <sup>st</sup> October 2016	5.6
2.	0007BGR0092216	17 <sup>th</sup> march 2017	0.3

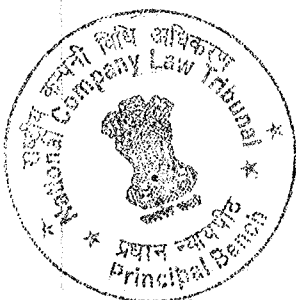
22. It is submitted that pursuant to such invocation, the Applicant has been constrained to make payments to the corresponding beneficiaries on behalf of the Corporate Debtor. The copies of bank guarantees issued by the Applicant and the invocation letters sent by the beneficiaries have also been placed on record.

23. It is submitted that despite the restructuring of the facilities, the Corporate Debtor was unable to adhere to the repayment schedules for the Restructured Agreement, and that of the various



bank guarantees extended by the Applicant, under the purview of the Fresh BG Facility. In view of the same, the account of the Corporate Debtor was classified as a non-performing asset (NPA) with the Applicant on 30 September 2016, with effect from 31 December 2014. Accordingly, on 14 March 2017, the applicant issued a demand notice to the Corporate Debtor for payment of the outstanding amount of INR 16.9 crores. The demand notice dated 14 March 2017 has been placed on record.

24. It is submitted that despite repeated requests and demands made by the Applicant, no payments were remitted by the Corporate Debtor. Therefore, the Applicant was constrained to issue a recall-cum-invocation letter dated 19 May 2017 to the Corporate Debtor recalling the entire credit facilities availed by the Corporate Debtor from the Applicant, and requesting the Corporate Debtor to remit the total outstanding amount to the tune of INR 132.81 crores.



25. However, despite the above notice, the Corporate Debtor has failed and neglected to repay the outstanding dues under the credit facilities to the Applicant. In view of the same, the Applicant filed an application bearing O.A. No. 86/2018 before the Debt Recovery Tribunal under section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 on 30 December 2017. It is submitted that the Original Application is still pending before the Learned Debts Recovery Tribunal.

26. In view of continuing defaults of the Corporate Debtor under the Restructuring Agreement, it is stated that the Applicant was constrained to revoke the Restructuring Agreement in terms of clause 6 (21) of the Restructuring Agreement vide letter dated 24 May 2018. It is contented that in terms of clause 8 read with clause 12 of the Restructuring Agreement, the original liabilities of the Corporate Debtor are reinstated, as were before the restructuring of the



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facilities. Accordingly, it is submitted that the payment obligations of the Corporate Debtor will be governed by the original facility agreements i.e. pre-restructuring facilities, i.e. RTL-I, RTL-II, CC Facility and the OD Facility. The letter of revocation of the Restructuring Agreement has been placed on record.

27. The applicant bank at Part – IV of the Application has claimed total outstanding dues amounting to INR 1,663,641,205 as on May 8, 2018 along with applicable interest and charges in term of the pre-restructuring facilities and the Fresh BG Facility. A tabular computation of amount in default has been placed on record.

28. It is submitted that the Corporate Debtor has defaulted to repay the outstanding financial debts and failed to pay its creditors and accordingly, it is prayed that insolvency proceedings be initiated against the Corporate Debtor under the provisions of Section 7 of the Insolvency Code.



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29. The respondent corporate debtor has filed its reply on 27.07.2018 and written submission on 22.08.2018. Various objections raised by the respondent company are dealt with in seriatim below.

30. It is the case of the respondent that the corporate debtor is a solvent company and was unable to carry on its business and pay off its liabilities due to inter-se fight and disagreement between the lenders. It is argued that initiation of CIRP against the respondent corporate debtor would be detrimental to the assets and business of the corporate debtor. Simply a word of mouth that the respondent company is a solvent company will not suffice. There has been huge default in repayment of loan to various lenders. Applicant bank alone has claimed total outstanding dues amounting to INR 1,663,641,205 as on May 8, 2018. The material on record clearly goes to show that respondent committed default in repayment of the loan amount even after demand made by the



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applicant bank. Needless to say that the Code gets triggered the moment default is of rupees one lakh or more.

31. The respondent corporate debtor has also taken a stand that due to subdued market conditions in infrastructure sectors, it faced difficulty in realization of receivables making it impossible to match loan repayments with the loan receivables. The respondent has sought for more time to repay the loan in the light of long-term growth expectation for the industry.

32. In this regard it is pertinent to note that in financial transactions, adjustments and compromise are to be left to the parties to settle the matter in their best interest or exigencies of the business. However, in the absence of any binding compromise agreement/ debt restructuring approval, it is beyond the powers of the adjudicating authority to extend time indefinitely or to defer the prayer of applicant financial creditor for admission of Section 7 petition. Time is the



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essence of the Code. A far strict time frame is expected to be followed by the Adjudicating Authority at every stage of the proceedings. Accordingly, further time as sought for cannot be allowed in violation of the provisions of the Code.

33. The respondent corporate debtor has blamed lenders banks for failure in the restructuring of loans. It is also alleged that the inter-se disagreement amongst the JLF lenders pertaining to sale of one Pant Nagar plant has resulted in delay of the proposed sale for a consideration of approximately 50 crores. It is also the case of the respondent that huge amount to the tune of 230 crores are receivable from certain arbitration proceedings, on receipt of which substantial portion of the total debts of the corporate debtor can be paid off. In this regard applicant has responded that the lender banks have cooperated with the corporate debtor in every way possible. Applicant even entered in to bilateral restructuring agreement giving the corporate debtor multiple



opportunities to revive its business, but to no avail. It is further submitted that applicant had obtained the no objection certificate for the sale of the Pant Nagar Plant for the benefit of the corporate debtor. However, it is alleged that the sale was delayed solely due to the inaction of the corporate debtor and for its inability to obtain approvals for the proposed sale from regulatory authorities within the agreed time frame. Be that as it may once despite demand there is default in repayment of the loan amount, the applicant gets right to move under the Code. The application under Section 7 is maintainable once the default is more than one lakh, in view of Section 4 of the Code.

34. It has been pointed out that the applicant bank has not filed complete statement of account for the period starting from the initial disbursement of loan. The corporate debtor has also disputed the amount of default claimed in the present application. In this regard applicant has placed the balance sheet of the corporate debtor



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for the financial year ending 2017 which shows that several outstanding debts are due to various lenders. Besides the loan agreements, security documents and charge certificates reveal the details of loan facilities availed by the corporate debtor. The applicant has furnished detailed evidence of debt in order to prove its claim and the default committed by the respondent.

35. In addition, subsequent to the restructuring of the loan facility, banker's books for the period of April 2016 to May 2018 has been placed on record. The applicant bank has filed the statement of accounts duly certified in accordance with Banker Books Evidence Act, 1891 as per requirement of Form 1 part V column 7 of the application. Certified copy of statement of account kept during the course of banking business basing on which the claim has been raised can be termed as supporting evidence of the financial debt.

36. Respondent has also disputed over the amount of default, which cannot be a ground of



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rejection of an application under Section 7 of the Code as the determination of quantum of financial debt is not within the domain of the Adjudicating Authority. In the present proceeding the Tribunal is not supposed to ascertain the quantum of amount of default or to pass a decree as to how much is actually due to the applicant financial creditor. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application.

37. Similarly, the objection on the ground of discrepancies in the amount of claim cannot sustain. The variance in the amount of default is mainly on account of difference of dates. Be that as it may the corporate debtor would be entitled to raise objection of mismatching of dues before the resolution professional/ committee of creditors. Adjudicating Authority is only to ascertain the existence of a default and not the exact amount due. Mere mismatch of the figures will *ipso facto*



not estop the admission of corporate insolvency resolution process under section 7 of the Code.

38. In connection with the objection regarding pendency of proceedings, it is well settled that the pendency of DRT proceedings and initiation of action under SARFAESI Act by other secured creditors; cannot be an impediment or bar to initiate the Corporate Insolvency Resolution Process under Section 7 of the Code.

39. It is pertinent to mention here that the scheme of the Code provides for triggering the insolvency resolution process by three categories of persons namely,

- a) Financial creditor
- b) Operational creditor, and
- c) Corporate debtor itself.

40. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein only “Financial Creditor” / “Financial Creditors” can file an application. As per



Section 7(1) of the Code an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.

41. The expressions "Financial Creditor" and "Financial debt" have been defined in Section 5 (7) and 5 (8) of the Code and precisely "Financial debt" is a debt along with interest, if any, which is disbursed against the consideration for time value of money.

42. In the present case applicant bank had sanctioned and disbursed various loan amounts recoverable with applicable interest by entering in to loan agreements with the corporate debtor. The corporate debtor had borrowed the credit facilities against payment of interest as agreed between the parties. The loan was disbursed against the consideration of time value of money with a clear commercial effect of borrowing. In that view of the matter not only the present claim will come within the purview of 'Financial Debt' but also the applicant bank can clearly be termed as 'Financial



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*Creditor'* so as to prefer the present application under Section 7 of the Code.

43. 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:

1. *Default has occurred.*
2. *Application is complete, and*
3. *No disciplinary proceeding against the proposed IRP is pending*

44. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited* reported in AIR 2017 SC 4532 at Para 19 has observed that:

*"Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution*



*professional, it shall admit the application. **The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application.***”

(Emphasis given)

45. An application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence of existence of default. What is material is that the default is at least 1 lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable.

46. It is seen that the applicant has placed various documents in relation to the disbursement of the loan to the respondent company. The materials on record and the loan documents clearly depict that that the loan was sanctioned and the loan agreements were properly executed.



Respondent company utilised and enjoyed the loan facility. Additionally, the applicant has also furnished a copy of the Balance sheet and financial statements for the financial year ending 2017 of the corporate debtor, which *inter alia* reveals that the company has defaulted in repayment of the loan to the applicant and that huge debts are outstanding as reflected in the statement of accounts of the company.

47. It is thus seen that the applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default.

48. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the loan facilities and has committed default in repayment of the outstanding loan amount.



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49. In the case on hand, it is seen that respondent corporate debtor has committed default in repayment of the outstanding financial debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. Accordingly, it is seen that the application of the financial creditor is complete and there is no disciplinary proceeding pending against the proposed IRP. We are satisfied that the present application is complete and the applicant financial creditor is entitled to claim its outstanding financial debt from the corporate debtor and that there has been a default in payment of the financial debt.

50. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

51. Mr. Gian Chand Narang, having registration number IBBI /IPA-002 /IP-N000362 /2017-18/ 11031, resident of Block B2, Flat No. 214, Varun



Apartment, Sector-9, Rohini, Delhi-110085, email-id [narangcg58@gmail.com](mailto:narangcg58@gmail.com) is appointed as an Interim Resolution Professional.

52. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by the IBBI Regulations) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

53. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d). Thus, the following prohibitions are imposed:

*“(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.”

54. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the



Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

55. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation,



the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

56. 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 possible but not later than seven days from today.



*Raju* 20/9/2018  
व. वि. बं. राज V.V.B. RAJU  
उप पंजीयक DEPUTY REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
NATIONAL COMPANY LAW TRIBUNAL  
Block-3, 6th Floor, CGO COMPLEX  
LODHI ROAD, NEW DELHI - 110003

*Sd*  
(M.M. KUMAR)  
PRESIDENT

20.09.2018

*Sd*  
(S. K. MOHAPATRA)  
MEMBER (T)

FREE OF COST