IN NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, COURT- V

C.P. 654/IB/MB/2023

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

State Bank of India

State Bank Bahavan, Nariman Point, Madam Cama Road, Mumbai 400021.

..... Financial Creditor/
Petitioner

Vs

M/s Ambika Brickwell LLP

301, Shalaka, Plot No. 32, Juhu Road, Santacruz West,

Mumbai 400054.

..... Corporate Debtor

Order Dated: 12.08.2024

Coram:

Hon'ble Reeta Kohli, Member (Judicial) Hon'ble Madhu Sinha, Member (Technical)

Appearances: -

For the Petitioner: Adv. Ashish Mehta (VC)

For the Respondent: Mrs Khushboo Shah Rajani (PH)

C.P. No. 654/MB/2023

ORDER

Per: Madhu Sinha, Member (Technical)

The above Company Petition is filed by **State Bank of India** hereinafter called as the ("**Financial Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **M/s Ambika Brickwell LLP** hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 7 Insolvency and Bankruptcy Code (hereinafter called "**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Financial Debt of Rs. 63,37,00,000/-(47,61,00,000/- towards cash credit and Rs. 9,96,00,000/- towards term loan). The Date of Default is **31.12.2021**. The date of NPA is **31.03.2022**.

Brief Facts of the Case and Submissions by the Financial Creditor

1. The petitioner filed the present petition on **21.03.2023**, for default in repayment of the following loan facilities:

Cash Credit Facility	49,50,00,000/-
Term Loan GELC 2.0	9,96,00,000/-

2. Cash Credit Facility was for Working Capital Requirement availed in terms of the Sanction Letter (Letter of Arrangement) dated 08.11.2017 against the mortgage of property situated at Thane and personal guarantee of promoter Mr. Anup Shyam Kulkarni. The facility was payable on demand. The same was duly availed by the Corporate Debtor, being apparent from the statement of accounts annexed to this petition.

The important terms of the above stated Letter of Arrangement are reproduced here under:-

Working Capital: Repayable on demand. This facility has been sanctioned on 18.09.2017 was made available for 34 months from the date of sanction subject to review every 12 months, when it may be cancelled/reduced depending upon the conduct and utilization of the advance or as per the Bank's Scheme. The working capital sanctioned but not availed within a period of 3 months from sanction would lapse, and require revalidation.

Term Loan: NAP

Others: Interest shall be payable on the outstandings in the loan accounts computed on daily balances, basis duly, compounded and debited to the accounts at monthly rest on the last working day of every month, in accordance with the accounting practices of the Bank from time to time.

Disbursement Schedule of the Cash Credit Facility is as follows:

Quarter	Loan Amt	Cumulative	Promoter	Debt:Equity
Ending	in Rs. Cr	Loan in Rs.	Contribution	
		Cr	in Rs. Cr	
Dec 17	4	4	2.08	1.92
Mar 18	6.50	10.50	5.40	1.94
Jun 18	12.50	23.00	11.41	2.02
Sept 18	16.00	39.00	18.31	2.13
Dec 18	8.50	47.50	21.54	2.21
Mar 19	2	49.50	23.32	2.12

Proposed Repayment Schedule:

Quarter Ending	Amount (Rs. Cr)
Dec 19	12,37,50,000

March 20	12,37,50,000
June 20	12,37,50,000
Sept 20	12,37,50,000
Total	49,50,00,000/-

- **3.** A Loan Cum Hypothecation Agreement dated 08.11.2017 was also executed between the parties to this case, Clause 10 of this above stated Agreement defined default as follows:
 - "...10. The Borrowers hereby agree that notwithstanding anything contained herein or in any other documents, the entire balance then due under the said facilities shall, if so decided by the Bank, become forthwith due and payable upon the happening of any of the following events and the Bank shall be entitled to enforce its security:
 - a. Any instalment of the principal or interest remaining unpaid and in arrears for a period of one month after due date whether demanded or not;

....."

- **4.** A Guarantee Agreement dated 08.11.2017 and a Deed of Mortgage dated 10.11.2107 was also executed between the parties in order to secure the loan extended by the Financial Creditor.
- 5. On 20.02.2019, a Letter of Arrangement was issued in favour of the Corporate Debtor, thereby granting approval for extending the date of commencement of commercial operations (DCOD) from Dec 19 to Dec 20 and also releasing Rs. 8.50 Cr in conformity with revised cash flow.
 As per the terms of the Letter of Arrangement dated 08.11.2017,

the following disbursement and repayment schedule were agreed by the Corporate Debtor:

Disbursement Schedule

Quarter Ending	Loan Amount in Crs	Cumulative Loan
		(Rs. Crs)
Dec 17	12.5	12.5
March 18	12.5	25
Jun 18	16	41
Sept 18	0	41
Dec 18	0	41
Mar 19	4.85	45.85
Jun 19	3.65	49.5

Revised Repayment Schedule

Repayment is due on or before the quarter ended

Quarter Ending	Amount (Rs. Cr)	
Dec 20	12,37,50,000	
Mar 21	12,37,50,000	
Jun 21	12,37,50,000	
Sept 21	12,37,50,000	
Total	49,50,00,000	

- **6.** On 10.05.2021 a Supplementary Agreement of Loan was executed between the parties whereby working capital term loan GECL of Rs. 10 crores was extended to the Corporate Debtor, to be repaid within 48 monthly instalments. On the same day a Guarantee Agreement was also executed between the parties.
- **7.** On 08.07.2021, a Deed of Rectification and a Deed of further charge was executed between the parties.
- **8.** On 22.07.2021, a Letter of Arrangement was issued by the Financial Creditor accepting the request of Corporate debtor for deferment/extension of repayment subject to fulfilment to certain terms and conditions. As per <u>the Letter of Arrangement dated 22.07.2021</u> the following repayment schedule was agreed by Corporate Debtor:

Repayment	Quarterly	No. of Instalments
Quarterly at the end	Instalment	
of the Quarter		
Dec 21	12,37,50,000	1
Mar 22	12,37,50,000	1
June 22	12,37,50,000	1
Sept 22	12,37,50,000	1
Total	49,50,00,000	4

The Term Loan of Rs. 10.00 Cr will be repaid in 48 equal monthly instalment sand interest as and when applied starting from May-2022 with a moratorium period of 12 months.

The Working Capital Term Loan (Guaranteed Emergency Credit Line) has to be closed along with original loan sanctioned for Project Ambika Estate Phase-1 Bhiwandi

- **9.** It is the case of the Financial Creditor that the Corporate Debtor defaulted in repayment of the First Instalment amounting to Rs. 12,37,50,000 due by December 2021 which is also substantiated by the entries of the Statement of Account annexed to this petition.
- 10. On 08.04.2022, on account of the above stated default, the Financial Creditor was constrained to issue a notice under Section 13(2) of the SARFAESI Act, 2002. In reply to the above stated notice on 06.06.2022, the Corporate Debtor admitted the loan facilities availed by it and stated as under:

"9. In view of the aforesaid, you are requested to the referenced withdraw notice dated 08.04.2022 as its subject matter is repleted with incomplete and incorrect facts and evidences in utter disregard to my Client's interests. My client reiterates their readiness and willingness to repay the outstanding loan and requests your good office to restructure my Client's loan account maintained with you, in compliance with your letter dated 01.06.2022, whereby my Client's Loan Account has been migrated to Stressed Assets Management. My client humbly requests you to kindly refrain from taking any such steps as mentioned in the referenced notice under SARFAESI Act, 2002."

- **11.** This letter was replied to by the Financial Creditor by its letter dated 18.06.2022, reiterating the content of the letter dated 08.04.2022.
- **12.** Meanwhile, this petition was filed on 21.03.2023. This Hon'ble Tribunal, by order dated 07.09.2023, directed that the present petition be proceeded exparte however thereafter vide Order dated 26.09.2023, the Corporate Debtor was allowed to file application for setting aside the first mentioned order and

also file reply. In its reply the Corporate Debtor once again admitted its debt for the alleged amount and the corresponding default.

- **13.** On 06.10.2023, the reply was taken on record and thereafter on three occasions i.e., on 26.10.2023, 07.11.2023 and 06.12.2023, the Corporate debtor sought time from this Hon'ble Tribunal in order to settle the matter with the Financial Creditor.
- **14.** On 10.01.2024, the Corporate Debtor stated that they have given a proposal seeking 30 days extension to make concrete offer to Financial Creditor to settle the matter with Financial Creditor. Thereafter, by email dated 07.02.2024, the same was rejected by the Financial Creditor via email stating that:

"With reference to your letter no. nil dated 09.01.2024, we have to advise that the multiple opportunities had already been given by the bank and even by Hon'ble Tribunal for resolution of account. Considering the volume of public money involved in the account, we express our inability to extend/grant any additional time for submission of concrete resolution proposal."

15. It is the case of the Corporate Debtor that debt and default of an amount of more than 1 crore clearly stands established and hence this petition ought to be admitted. In order to substantiate this contention, the Financial Creditor relies on the judgement of *Innoventive Industries Ltd. v. ICICI Bank and Anr.* (2018) 1 SC 407, which clearly held as follows:

"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 receipt of a notice from the adjudicating authority. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of

financial debt, the adjudicating authority has merely to see the records of the Information Utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law, or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority it may reject an application and not otherwise."

Submissions by the Corporate Debtor

- 1. At the very outset, the Corporate Debtor had through a clear and express statement in his reply, admitted the fact of the alleged debt being due and defaulted upon. The Corporate Debtor, in its reply, mainly cites the reasons for the default and its attempts to make good the default.
- **2.** The Corporate Debtor further submitted that being in the construction industry, its business was majorly affected due to Covid-19 pandemic lockdown and resultant increase in the cost of steel and cement.
- **3.** It is the case of the Corporate Debtor that its insolvency will adversely affect the lives of numerous workers, employees and homebuyers.
- **4.** The Corporate Debtor intended to pay the loan for which various OTS proposals were made to the Financial Creditor but in vain.
- **5.** The Corporate Debtor submitted that it is a running concern and two of its towers are nearing completion and once a genuine investor/joint venture partner is found all of its stalled projects will also resume.
- **6.** The settlement proposals dated 27.01.2022, 18.05.2022 and 24.06.2022 and 26.08.2022, sent by the Financial Creditor were all rejected by the Corporate Debtor.

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- 7. A structured plan for revival of Mega Project i.e. Ambika City dated 06.02.2023 and 23.02.2023 were sent to Financial Creditor to show them how the Corporate Debtor will be paying the proposed amount along with the payment table wherein it also requested the Financial Creditor to release NOC for flat mortgaged with Financial Creditor by the Corporate Debtor so that the flat could be sold to the purchaser and the payment made to Financial Creditor.
- **8.** Another proposal for repayment dated 30.01.2023 along with Demand Drafts amounting to Rs. 43,20,960/- followed by an email dated 31.03.2023 to consider the above stated proposed plan were not replied to by the Corporate Debtor.
- 9. It is the case of the Corporate Debtor that request was made to the Financial Creditor for GECL 2.0 in the month of January 2021 and the Financial Creditor kept delaying the process and finally disbursed the additional WCTL under GECL 2.0 in May 2021. The five month delay in the disbursement led to slow construction and slow sales momentum. Sales did pick up post construction starting in June, and again Corporate debtor requested the GECL of 10% which came as a relief from the govt. in July 2021. The Financial Creditor kept saying the same would be processed soon, in the month of December 2021 the loan was denied. This was the time when the first instalment was to be paid during which time construction and sales were again slow.
- 10. The Financial Creditor has successfully obtained direction to take physical possession under Section 14 of SARFAESI Act, 2002 from the Hon'ble Chief Judicial Magistrate Court, Thane. It has also filed an O.A. in DRT-1 against the Borrower. The Financial Creditor is thus engaged in forum shopping and pressuring the Corporate Debtor to succumb to its unlawful demand of repaying the entire amount in one stroke.

Findings

16. We have heard the Ld. Counsels for the Petitioner and the Respondent and have gone through the record.

- 17. The Corporate Debtor in the present case has from the very beginning accepted and acknowledged its liability towards the Corporate Debtor. This fact can be established from Reply Letter dated 06.06.2022 sent by the Corporate debtor to the Financial Creditor. The Court observes that Corporate Debtor was given multiple chances to repay and regularise the loan through revised/extended repayment schedules but there was failure in adherence to this as well. Even in its Affidavit-in-Reply to the present Petition the Corporate Debtor is not shying away from the admission of its debt equalling the Default Amount and the corresponding default.
- available on record and considering the Corporate Debtor had admitted it's debt as well as the fact of default, the claim of Financial Creditor remains unchallenged. Hence, this Bench concludes that the Petitioner has successfully demonstrated the existence of "debt" and "default" committed by the Corporate Debtor in this case. All the ingredients of Section 7 of the Code are thereby satisfied. The present petition also satisfies the Pecuniary, Territorial and Subject matter jurisdiction of this Hon'ble Tribunal and is also filed well within the Limitation Period.
- **19.** Accordingly, the above Company Petition is '**admitted**' by passing the following:

ORDER

- a) The above Company Petition No. (IB) 654/IB/MB/2023 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Ambika Brickwell LLP.**
- b) The Financial Creditor has suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition. This Bench therefore hereby appoints Avil Jerome Menezes, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00017/2016-2017/10041, as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c) The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- d) That this Bench hereby prohibits 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; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any

property by an owner or lessor where such property is occupied

e) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

by or in the possession of the Corporate Debtor.

- f) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g) That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k) Accordingly, the **C.P. 654/IB/MB/2023** is **admitted**.

1) The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

MADHU SINHA

REETA KOHLI

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)

//VLM//