

**THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI**

Company Petition No. (IB)-1581(PB)/2018

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

ICICI Bank Limited

Applicant/Financial Creditor

Vs

VIL Limited

Respondent/Corporate Debtor

Judgment delivered on: 19.03.2019

CORAM

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

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

For Applicant: Mr. Anand Shankar, Mr. Arpit Gupta, Advocates.

For Respondent: Mr. Saurabh Kalia, Mr. Palash Agarwal, Advocates.

ORDER

S. K. Mohapatra, Member

1. ICICI Bank Limited, 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 VIL Limited, referred to as the corporate debtor.
2. The Respondent Company M/s VIL Limited (CIN No. U74210 DL 1997 PLC 168576) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 23.05.1997 having its registered office at Pankaj Galaxy 1, Second Floor, Plot No. 8, Sector-12, Dwarka, New Delhi - 110075. 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 subsection (1) of Section 60 of the Code.

3. It is appropriate to mention that the applicant ICICI Bank Limited (hereinafter referred as ICICI Bank), is a public company incorporated under the Companies Act, 1956, having its Registered Office at Near Chakli Circle, Old Padra Road, Vadodra – 390 007.

4. Mr. Rishi Thakur Legal Manager of the applicant duly authorized through Power of Attorney dated 4th May, 2017 and Board Resolution dated 27th October , 2017 has preferred the present application on behalf of the applicant for initiation of corporate insolvency resolution process against the respondent corporate debtor in terms of the provisions of the Code. Copy of the Power of Attorney dated 4th May, 2017 and Board Resolution dated 27th October, 2017 passed by the Board of Directors of the applicant have been placed on record.

5. The applicant has proposed the name of Shri Vijender Sharma, for appointment as Interim Resolution Professional having registration number IBBI / IPA-003 / IP-P00003/ 2016-17 / 10022 with the address C/o VRSA Insolvency Professionals LLP, Building No. 11, 3rd Floor, Hargobind Enclave, Vikas Marg, Delhi – 110092. Shri Vijender Sharma has agreed to accept the appointment as the interim resolution professional and has signed a communication dated 16.10.2018 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. He has enclosed the copy of Certificate of Registration dated 20th March, 2018 issued by IBBI. In addition, further necessary disclosures have been made by Shri Vijender Sharma as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

6. It is the case of the applicant that by way of a credit arrangement letter dated 29 June 2004, it has extended working capital facilities amounting to INR 80.0 million (Indian Rupees Eighty Million) to the Corporate Debtor. In order to secure the loan a credit facility agreement dated 23 July 2004 was entered into between the Corporate Debtor and the Applicant with respect to the WC Facility of INR 80.0 million.

7. Subsequently, the WC Facilities were enhanced from INR 80.0 million to INR 130.0 million (Indian Rupees One Hundred and Thirty Million) by way of a Credit Arrangement Letter dated 25 January, 2005. A master facility agreement dated 03 March 2005 was entered into between the Corporate Debtor and the Applicant with respect to the enhanced WC Facility of INR 130.0 million (Indian Rupees One Hundred and Thirty Million) (Master Facility Agreement-I).

8. Again by way of a credit arrangement letter dated 16 September 2005, the WC Facility was enhanced from INR 130.0 million to INR 257.0 million (Indian Rupees Two Hundred and Fifty-Seven Million),

whereby the bank guarantee facility was enhanced from INR 130.0 million to INR 250.0 million and an additional derivative facility of INR 7.0 million was granted to the Corporate Debtor. Pursuant to the aforesaid, a master facility agreement dated 29 September 2005 was entered into between the Corporate Debtor and the Applicant with respect to the enhanced WC Facility of INR 257.0 million (Indian Rupees Two Hundred and Fifty-Seven Million) (Master Facility Agreement-II).

9. It is submitted that while working capital facility of INR 250.0 million (Indian Rupees Two Hundred and Fifty Million) was secured by way of charge over the assets of the Corporate Debtor and the Guarantors/third party security providers, the derivative facility of INR 7.0 million was an unsecured facility.

10. Further, by way of a credit arrangement letter dated 13 June 2006, the WC Facility was enhanced from INR 257.0 million (Indian Rupees Two Hundred and Fifty-Seven Million) to INR 407.0 million (Indian

Rupees Four Hundred and Seven Million), whereby the bank guarantee facility was enhanced from INR 250.0 million to INR 400.0 million and the derivative facility of INR 7.0 million remained unchanged. Pursuant to the above, a master facility agreement dated 12 December 2006 was entered into between the Corporate Debtor and the Applicant with respect to the enhanced WC Facility of INR 407.0 million (Indian Rupees Four Hundred and Seven Million)

11. Subsequently, by way of a credit arrangement letter dated 22 October 2007 and at the request of the Corporate Debtor, the WC Facility of INR 400.0 million (Indian Rupees Four Hundred Million) was enhanced to INR 410.0 million (Indian Rupees Four Hundred and Ten Million). Accordingly, a master facility agreement dated 19 November 2007 was entered into between the Applicant and the Corporate Debtor with respect to the WC Facility of INR 410.0 million (Indian Rupees Four Hundred and Ten Million).

12. At the request of the Corporate Debtor, the WC Facility of INR 410.0 million (Indian Rupees Four

Hundred and Ten Million) was again enhanced to INR 600.0 million (Indian Rupees Six Hundred Million) through a credit arrangement letter dated 4 April, 2008. Pursuant to the enhancement, a master facility agreement dated 30 April 2008 was executed between the Corporate Debtor and Applicant with respect to the WC Facility of INR 600.0 million (Indian Rupees Six Hundred Million) (Master Facility Agreement-V). The WC Facility of INR 600.0 million was renewed by way of a credit arrangement letter dated 31 March, 2009.

13. Further, by way of a credit arrangement letter dated 11 January 2010 and at the request of the Corporate Debtor, the WC Facility of INR 600.0 million was enhanced to INR 800.0 million (Indian Rupees Eight Hundred Million), which also included an overdraft facility of INR 10.0 million as a sub-limit of the bank guarantee facility of INR 800.0 million. Subsequently, a master facility agreement dated 23 February 2010 was entered into between the Corporate Debtor and the Applicant with respect to

the WC Facility of INR 800.0 million (Indian Rupees Eight Hundred Million) (Master Facility Agreement-VI). The WC Facility of INR 800.0 million was renewed by way of a credit arrangement letter dated 04 March 2011.

14. By way of a credit arrangement letter dated 29 June 2012, the WC Facility of INR 800.0 million was reduced to INR 750.0 million (Indian Rupees Seven Hundred and Fifty Million) and further, a cash credit facility of INR 50 million was introduced as a sub-limit of the bank guarantee facility. Accordingly, the Master Facility Agreement-VI was amended by way of supplemental and amendatory agreement dated 19 July 2012 and the WC Facility of INR 800.0 million was reduced to INR 750.0 million (Indian Rupees Seven Hundred and Fifty Million) (Supplemental and Amendatory Agreement-I). The WC Facility of INR 750.0 million was renewed by way of a credit arrangement letter dated 16 July 2013.

15. Subsequently, by way of a credit arrangement letter dated 15 January 2015, the WC Facility of INR

750.0 million was further reduced to INR 681.3 million. Accordingly, the Master Facility Agreement-VI was amended by way of supplemental and amendatory agreement dated 28 February 2015

16. It has been stated in the application that the WC Facilities of INR 681.3 million is secured by charge over assets of third parties/Guarantors, apart from the charge created over the assets of the Corporate Debtor.

17. Lastly by way of a Credit Arrangement Letter dated 30 January 2017, the WC Facility of INR 681.3 million was reduced to INR 616.6 million. It has been submitted that the WC Facility was utilized by the corporate debtor on various dates.

18. However, the Corporate Debtor started defaulting in payment of the WC Facilities from May, 2017 and due to continued defaults in making payments of the amount owed to the Applicant, the account of the Corporate Debtor was classified as a Non-Performing Asset (NPA) on 30 September 2017 by the Applicant in accordance with the existing RBI guidelines.

19. It is submitted in part IV of the application that the total amount of default is Rs. 46,28,29,952.44/- as on 30.09.2018 along with applicable interest and charges.

20. The applicant has filed copies of all the relevant loan agreements, guarantee deeds, hypothecation deeds, and revival and confirmation letters executed by the respondent company from time to time including the registration as well as modification of charges created in order to secure the loan facilities sanctioned/ enhanced / revised from time to time.

21. In addition copies of the Bankers Book Certificates along with relevant bank statements have been placed on record. Applicant has also annexed the details of computation of the default amount along with days of default in support of its claim.

22. 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.

23. On the ground that huge amounts are outstanding, it is claimed that the respondent corporate debtor has become commercially insolvent and accordingly it is prayed for initiation of corporate insolvency resolution process against the respondent company by admitting the present application.

24. The respondent corporate debtor has filed its reply on 23.01.2019. Rejoinder to the reply was filed by applicant on 11.02.2019.

25. We have heard the learned counsels for the parties and have perused the case records.

26. The various objections raised by the respondent corporate debtor are discussed below.

27. It is the case of the respondent that there is no Financial Debt as defined under Section 5(8) of the IBC, 2016 as there is no consideration for the time value of the money and that the Applicant has failed to prove the same.

28. In the present case the applicant had sanctioned and disbursed the loan amount from time to time by entering into various loan agreements with the

corporate debtor. As per loan agreements the credit facilities are recoverable with applicable interest and other charges. The corporate debtor had borrowed the credit facilities against payment of interest as agreed between the parties. The loan was disbursed against the consideration for time value of money with a clear commercial effect of borrowing. Moreover, the debt claimed in the present application includes both the component of outstanding principal and interest. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant can clearly be termed as '*Financial Creditor*' so as to prefer the present application under Section 7 of the Code.

29. It is also the case of the respondent that no sum is due or payable at this stage. It is alleged that there is no debt under Section 3(11) of the IBC, 2016 as no amount is due or payable by the respondent and there has been material discrepancy in the quantum of debt claimed. It is alleged that the Applicant has failed to

place any evidence on record that the claimed amount is due or payable by the respondent.

30. In this regard the applicant in its rejoinder has submitted that the respondent has not disputed the existence of debt and has not challenged any of the financial documents, facility agreements, deed of Guarantee and deed of Hypothecation executed with the financial creditor. It is further stated that the respondent in its reply has not raised any challenge to the computation of default amount, bank statements and the Bankers Book Certificate placed on record.

31. 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 which was duly disbursed and has committed default in repayment of the outstanding loan amount.

32. In respect to the allegation that the petition is defective, it is appropriate to mention that the present application has been filed in '**Form-I**' under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The form has been duly filled in along with required details and evidence of default. It is open to the Applicant to file Section 7 application either by itself or jointly. Similarly, Section 7 application can be allowed for occurrence of default in respect of a financial debt owed not only to the applicant but to any other financial creditor of the corporate debtor. There appears to be no infirmity in the application form, being complete in all respect.

33. It is also 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.

34. Be that as it may simply a word of mouth that the respondent company is a solvent company will not be sufficient. There has been huge default in repayment of loan to various lenders. Applicant bank alone has claimed total outstanding dues of around INR 463 million. Needless to say, that the Code gets triggered the moment default is of rupees one lakh or more. The material on record clearly goes to show that respondent committed default in repayment of the loan amount even after demand made by the applicant bank.

35. 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. It is submitted that the respondent has taken constant efforts to stabilize the company by requesting the banks to restructure the loan and in this regards the

restructuring plan has also been submitted. It is contended that the Restructuring Proposal was submitted to lenders in October 2017 but owing to the changes of the RBI guidelines in February, 2018, the proposal was revised and resubmitted on 16.05.2018 and with further discussions with lenders, the proposal was again resubmitted on 04.07.2018 to all the lenders including the Applicant. However, no further action has been taken place since then. The respondent has sought for more time to repay the loan in the light of long-term growth expectation for the industry.

36. 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 the applicant financial creditor for admission of Section 7 petition. Time is the

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.

37. Needless to say, that 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 or existence of default. What is material is that the default is for at least Rs.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. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

38. 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.

39. 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.

40. 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.

41. In the present case it is reiterated that the applicant had sanctioned and disbursed the loan amount from time to time recoverable with applicable interest by entering into 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 for time value of money with a clear commercial effect of borrowing. Moreover, the debt claimed in the present application includes both the component of outstanding principal and interest. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant can clearly be termed as '*Financial Creditor*' so as to prefer the present application under Section 7 of the Code.

42. The application filed by the applicant financial creditor under sub-section 5 (a) of Section 7 of the code, has to be admitted on satisfaction that:

- i. *Default has occurred.*
- ii. *Application is complete, and*
- iii. *No disciplinary proceeding against the proposed IRP is pending.*

43. 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)

44. An application of financial creditor 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. It is reiterated that the material on record clearly goes to show that respondent had

availed the loan facilities and has committed default in repayment of the huge outstanding loan amount.

45. In the facts it is seen that the applicant bank clearly comes within the definition of Financial Creditors. The material placed on record further confirms that applicant financial creditor had disbursed various loan facilities to the respondent corporate debtor and the respondent has availed the loan and committed default in repayment of the 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. It is also seen that there is no disciplinary proceeding pending against the proposed IRP. Applicant has placed on record voluminous and overwhelming evidence in support of the disbursement as well as to prove the default. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its dues from the corporate debtor

and that there has been default in payment of the financial debt.

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

47. Shri Vijender Sharma, having registration number IBBI / IPA-003 / IP-P00003/ 2016-17 / 10022 with address C/o, VRSA Insolvency Professionals LLP Building No. 11 3rd Floor, Hargobind Enclave, Vikas Marg, Delhi – 110092, is appointed as an Interim Resolution Professional.

48. 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 Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

49. 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) of the Code. 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 Securitization 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."

50. 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.

51. 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 committed by the ex-management or any tainted / illegal transaction by ex-directors or anyone else, 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.

52. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

19.03.2019

Sd/-
(M.M. KUMAR)
PRESIDENT

Sd/-
(S. K. MOHAPATRA)
MEMBER (T)

Shammy