

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
SPECIAL BENCH (URGENT HEARINGS)**

5

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 26.06.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 13/7/HDB/2020
NAME OF THE COMPANY	Simhapuri Energy Ltd
NAME OF THE PETITIONER(S)	State Bank of India
NAME OF THE RESPONDENT(S)	Simhapuri Energy Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders passed vide separate orders.


MEMBER(T)

Syamala


MEMBER(J)

**THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.13/7/HDB/2020

U/s 7 of I&B Code, 2016
read with Rule 4 of I & B (AAA) Rules, 2016

In the matter between :

State Bank of India
Having its Central Office at
State Bank Bhavan
Madame Cama Road, Mumbai - 400021.
And acting through its
Stressed Assets Management Branch-II
D. No.3-4-1013/A, 1st Floor
Commuter Amenity Centre (CAC)
TSRTC Bus Station
Kachiguda, Hyderabad - 500027.
Represented by its Authorised Representative
Mr.B.V. Rangadham, Assistant General Manager.

.. **Petitioner
Financial Creditor**

VERSUS

1. Simhapuri Energy Limited
A company having its registered office at
Madhucon Greenlands
6-3-866/2, 3rd Floor, Begumpet
Hyderabad, Telangana - 500016,
Represented by its Managing Director.

.. **Corporate Debtor**

2. Union of India
Through its Secretary
Ministry of Corporate Affairs
Southern Region, 5th Floor
Shastri Bhavan, 26, Haddows Road
Chennai - 600 006.

.. **Proforma respondent**

Date of order : 26.06.2020

Coram:

**HON'BLE SHRI RATAKONDA MURALI
MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI,
MEMBER (TECHNICAL)**

Parties / counsels present:

For the Petitioner : Shri D. Narender Naik, Advocate

For the Respondent: Shri M.S. Srinivasa Iyengar, Advocate.

Per: HON'BLE SHRI RATAKONDA MURALI, MEMBER (JUDICIAL)

Heard on: 18.03.2020, 18.05.2020, 22.05.2020, 02.06.2020 and
08.06.2020.

ORDER

The petitioner was incorporated as State Bank of India on 01.07.1955 vide State Bank of India Act, 1955 and its PAN is AAACS8577K. Its registered office is at Hyderabad as described in Part-1, Column-4 of the petition.

2. Respondent no.1- Simhapuri Energy Limited is a limited company incorporated under the provisions of the Companies Act, 1956. It is, inter alia, engaged in the business of generation and sale of electricity. Its registered office is at Madhucon, Greenlands, 6-3-866/2, 3rd Floor, Begumpet, Hyderabad - 500 016. The Corporate Debtor has its Power Generation Plant at Tamminapatnam Village and Post Chillakaru Mandal, Nellore District, Andhra Pradesh - 524412.

3. The present application is filed by the financial creditor/ State Bank of India against M/s. Simhapuri Energy Limited i.e Corporate Debtor for default of financial debt of Rs.636,73,74,998.30 (Rupees six hundred thirty six crores seventy three lakhs seventy four thousand nine hundred ninety eight and paise thirty only) with overdue interest amounting to Rs.308,10,87,250.46 (Rupees three hundred and eight crores ten lakhs eighty seven thousand two hundred and fifty and paise forty six only). Hence, this Petition is filed under Section 7 of Insolvency





and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

4. The petitioner-SBI, by way of consolidation, has merged its associate banks, viz. State Bank of Hyderabad (SBH), State Bank of Mysore (SBM), State Bank of Travancore (SBT), State Bank of Bikaner & Jaipur (SBBJ) and State Bank of Patiala (SBP). Prior to such merger SBH, SBM, SBT, SBBJ and SBP have granted and disbursed facilities to the Corporate Debtor as under:

Sl. No.	Facility granted	Amount in Rupees	How could it be availed
1.	Rupee Term Loan.	173,40,00,000	Letter of credit facility which could be availed of by Corporate Debtor pursuant to Phase-I, RTL Agreement (Phase-I RTL Facility).
	Sub-limit component.	156,06,00,000	
2	Rupee Term Loan.	421,00,00,000	Letter of credit facility which could be availed of by Corporate Debtor pursuant to Phase-II, RTL Agreement (Phase-II RTL Facility).
	Sub-limit component.	156,00,00,000	
3	Rupee Term Loan.	52,20,00,000	Pursuant to Phase-II Additional Facility Agreement (Phase-II Additional Facility)
4	Working Capital Facilities in the form of Fund-based and non-	165,50,00,000	Pursuant to WC Facility Agreement (WC Facility).




	fund based facilities.		
5	Other Working Capital Facilities in the form of Fund-based and non-fund based facilities (including Letters of Credit and Bank Guarantees issued on behalf of the Corporate Debtor).	--	--

5. The said facilities were secured by charge created on various movable and immovable assets of the Corporate Debtor from time to time.

6. The account of the Corporate Debtor became a Non-Performing Asset ("**NPA**") with the guidelines issued by the Reserve Bank of India with effect from September 28, 2016.

7. As on 22.11.2019, the Corporate Debtor has defaulted in paying the principal amount: Rs.636,73,74,998.30 with overdue interest of Rs.308,10,87,250.46.

8. The Financial Creditor sent two letters dated January 03, 2018 and March 06, 2018 to the Corporate Debtor, informing the Corporate Debtor that the term loan accounts have become NPA due to non-payment.

9. A Recall Notice was issued by the Financial Creditor to the Corporate Debtor dated 08.09.2018, recalling the facilities. Hence the present petition under section 7 of the I&B Code, 2016 is filed on 25.09.2019.




10. COUNTER DATED 18.02.2020 FILED BY THE CORPORATE DEBTOR.

10.1 It is averred in para 2 of the Counter that the financial creditor along with 14 other lenders has filed OA No.185 of 2019 (ANNEXURE-1) before the Debt Recovery Tribunal which is sub-judice. This petition, therefore, is not maintainable in view of multiplicity of proceedings.

10.2 It is averred in para 5 of the Counter that pursuant to measures of Government of India to invite participation of private sector in power generation, respondent/ Corporate Debtor has established 600 MW Power Generation Project, which started its operation in 2012-13. For the said project the respondent/ Corporate Debtor has taken loans amounting to Rs.2474 crores as secured loan from the Consortium of 19 Banks led by SBI and Canara Bank.

10.3 It is averred in para 6 of the Counter that the respondent/ Corporate Debtor has bagged contract of Andhra Pradesh Southern Power Distribution Company Limited for procurement of 400 MW power for 12 years commencing from 31.03.2016 being successful bidder. However, the matter is sub-judice before the AP Electricity Regulatory Commission (APERC). Having suffered losses in keeping the plant idle the respondent/ Corporate Debtor has secured Tariff Adoption and approval vide order of the APERC dated 14.08.2018 (ANNEXURE-3). The difficulties experienced by power generation companies, more particularly the private ones have been taken cognizance of by the Parliamentary Standing Committee on Energy and remedial measures have been suggested. Fortieth Committee Report on Energy has been submitted to Parliament. The matter is pending before the Hon'ble Supreme Court, which has granted some relief in a batch of petitions, viz. Transfer Petition (C) Nos.1399 – 1404 of 2018. It is, therefore, submitted by the Corporate Debtor that any adverse order, if passed against the respondent/ Corporate Debtor would have serious repercussions.



10.4 It is averred in para 7 of the Counter that the respondent/ Corporate Debtor submitted representation dated 19.12.2018 (ANNEXURE-4) to Financial Creditor. Gist of such representation is given in this paragraph.

10.5 In para 8 of the Counter the respondent/ Corporate Debtor has enumerated various Resolution Plans submitted by it right from 20.01.2018 till 10.02.2020. Notwithstanding Joint Lenders' Meetings held in association with the Corporate Debtor on several occasions the petitioner/ Financial Creditor has filed this petition and also filed OA before the Debt Recovery Tribunal, Hyderabad.

10.6 The respondent/ Corporate Debtor avers in para 9 of the Counter that only working capital facilities in the form of Fund-based and Non-fund based facilities upto Rs.165.50 crores have been granted. The respondent/ Corporate Debtor refuted the claim of the petitioner made in Part-IV, Para-4, Page 9 of the petition that the petitioner/ Financial Creditor has granted "other working capital facilities" either fund-based or non-fund based (including letter of credit and bank guarantees) issued on behalf of the Corporate Debtor as mentioned in Part-IV, Para-4, Page 9 of the petition.

10.7 It is averred in para 10 of Counter that the charge on the assets is in favour of 20 lenders, who form a consortium and it is enforceable on *pari passu* basis and in accordance with the agreements entered into by the lenders. The assets of the respondent/ Corporate Debtor have not been charged to any single lender.

10.8 It is averred in para 12 of Counter that the present petition is filed in breach of Master Inter-creditor Agreement dated 07.09.2018 (ANNEXURE-5 of the Counter) entered into between various categories of lenders. Article 5.3 (Taking of Common Inter-creditor Action in Other Circumstances" and Article 5.4 (Restricted Actions) have been reproduced in the Counter. Such agreements have been entered into from time to time, the latest being dated 07.09.2018. It is thus, submitted that the present petition has not been filed on behalf of other lenders nor they are joined as parties in the present petition, in absence



of which the petition under section 7 of the I&B Code is not maintainable.

11. REJOINDER DATED 26.02.2020 FILED ON BEHALF OF THE PETITIONER/ FINANCIAL CREDITOR.

11.1 In para 5 of the Rejoinder it is averred that the petitioner/ Financial Creditor has filed Company Petition No.617 of 2018 against respondent no.1 herein, viz. Simhapuri Energy Limited before this Tribunal. This Tribunal has, inter alia, observed in para 16 of its order dated 19.11.2019 that,

"It is true that there is no dispute with regard to the debt as well as default."

It is averred that since the present petition is filed for the same debt (which is not in dispute) and default committed by the Corporate Debtor, claiming updated amounts towards the interest accrued, the present petition deserves to be admitted.

11.2 In para 6 of the Rejoinder the authority, who signed the Counter dated 18.02.2020 is questioned. It is averred that deponent, Shri C. Narasimha Rao was not authorised by the respondent/ Corporate Debtor to file the said Counter.

11.3 In para 8 of the Rejoinder it is averred that the contention of the respondent/ Corporate Debtor that the present petition is not maintainable as the petitioner has filed OA before the Debt Recovery Tribunal, Hyderabad, is untenable and is not sustainable in law. It is contended that NCLT has held that the law is well settled on the issue that pendency of proceedings before Debt Recovery Tribunal cannot be an impediment or bar to initiate corporate insolvency resolution process under section 7 of the Code.

11.4 In para 9 of the Rejoinder, **on bona fide of the Financial Creditor**, it is averred that it is the discretion of the consortium of lenders either to accept or reject the offer/ OTS proposal given by the Corporate Debtor. It has no bearing on the maintainability of Company Petition. The Financial Creditor had given ample opportunities to the

Adh. ...

[Signature]

Corporate Debtor to improve its OTS proposals, but in vain. Even during the Lenders' Meeting dated 15.02.2020, the Corporate Debtor submitted its OTS proposal without improvements. The lenders unanimously rejected the same. Minutes of said Joint Lenders' Meeting dated 15.02.2020 is at EXHIBIT-I. It is not the Financial Creditor alone, who rejected the OTS proposal of the Corporate Debtor, but such proposals were rejected by all the lenders of the Corporate Debtor. It is finally contended that submission of OTS proposal itself signifies there has been a default by the Corporate Debtor. Hence the petition deserves admission.

11.5 In para 10 of the Rejoinder, **on locus standi of the Financial Creditor**, the petitioner dismissed the contention of the respondent/ Corporate Debtor (i) that the present petition is in violation of Master Inter-creditor Agreement dated 07.09.2018 (ANNEXURE-5 of the Counter) and (ii) that all the lenders are not joined as parties to the petition, as incorrect in law. The Corporate Debtor has defaulted in repayment of debts owed to the Financial Creditor and the present **petition is filed only for such defaults in relation to the Financial Creditor and not all the lenders**. It is also contended that the Tribunal is not required to consider whether permission/ consent is obtained from authority like Lenders' Forum; is not required to go into the terms of contract between the parties while admitting petition under section 7 of I&B Code. It is further contended that filing of the present petition is within the knowledge of all the lenders and Meeting of Lenders dated 15.02.2020 acknowledges the same.

11.6 In para 11 of the Rejoinder, **on admission of the petition**, the petitioner contended that submission of the Corporate Debtor that considering the alleged hardships experienced by the Corporate Debtor and in public interest no adverse orders be passed, is baseless and such submission deserves no consideration. In fact, CIRP enables revival of the Corporate Debtor and maximisation of its assets. It is further contended that this Tribunal rather than going into various documents entered into between the parties, is required to consider whether debt and default are established.



12. WRITTEN SUBMISSIONS DATED 5th/ 10th JUNE 2020 FILED BY THE RESPONDENT/ CORPORATE DEBTOR.

12.1 The contents of para 1 is a mere repetition of what is averred in para 12 of Counter that the present petition is filed in breach of Master Inter-creditor Agreement dated 07.09.2018 (ANNEXURE-5 of the Counter) entered into between various categories of lenders. Article 5.3 (Taking of Common Inter-creditor Action in Other Circumstances" and Article 5.4 (Restricted Actions) were reproduced in the Counter and again reproduced in this Written Submissions as well. The same submission as in para 12 of the Counter has been reiterated that the present petition has not been filed on behalf of other lenders nor they are joined as parties in the present petition, in absence of which the petition under section 7 of the I&B Code is not maintainable.

12.2 It is averred in para 2 of the Written Submissions that security trustee has been appointed through which IDBI Trusteeship Service Limited is responsible for safe custody of the original documents/ agreements pertaining to the project securities, title deeds of properties, etc. One of the covenants of the Trusteeship Agreements is that the security enforcement can only be by a common inter-creditor action and any concerted actions have to be initiated on a collective basis. Common actions can only be taken cognisance by the Security Trustee on behalf of all the lenders.

12.3 In para 3 of the Written Submissions what is averred in para 2 of the Counter is emphasised that the financial creditor along with 14 other lenders has filed OA No.185 of 2019 (ANNEXURE-1 to the Counter) before the Debt Recovery Tribunal. Thus, the Financial Creditor cannot pursue two remedies simultaneously.

12.4 In para 4 of the Written Submissions the Corporate Debtor has relied on two decisions of the Hon'ble NCLAT, New Delhi, namely:



- (i) Asian Natural Resources (India) Ltd & another Vs. IDBI Bank Limited, rendered in Company Appeal (AT) (Insolvency) No.60 & 62 of 2017, and
- (ii) Oriental Bank of Commerce Vs. Messrs Ruchi Global Limited rendered in Company Appeal (AT) (Insolvency) No.387 of 2019.

The decision rendered in the former judgment is followed in the latter one. It is submitted that the latter judgment does not apply to the facts of the present case as Inter-se Agreement between the banks referred to in the said decision does not contain a restriction similar to clause 5.4(c) of the Inter-Creditor Agreement in the present case. Clauses (1), (2) and (3) in the case before the Hon'ble NCLAT are reproduced in this para to demonstrate as to how the said case before the Hon'ble NCLAT is markedly different from the present case. It is contended that having recognised the legal obligation in the Inter-Creditor Agreement to act in consortium with other banks by joining its consortium partners as applicants in OA No.185 of 2019 before the Debt Recovery Tribunal, Hyderabad, the petitioner cannot ignore the said requirement before this Tribunal.

12.5 In para 5 of the Written Submissions the Corporate Debtor relies on a decision of the Hon'ble Supreme Court in the case of **ABL INTERNATIONAL LIMITED AND ANOTHER Vs. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LIMITED, (2004) 3 SCC 553**. Para 52 of the said judgment is reproduced to lay emphasis that the petitioner-SBI being 'State' within the meaning of Article 12 of the Constitution of India even in contractual matters cannot act arbitrarily and in disregard of its legal obligations.

12.6 In para 6 of the Written Submissions it is contended that the Minutes of the Meeting of Consortium dated 15.02.2020 is sans merit. Minutes of the said meeting were required to be confirmed by the subsequent Meeting; and no meeting was held subsequent thereto. Thus, such Minutes cannot be relied on.



13. WRITTEN SUBMISSIONS DATED 5th/ 11th JUNE 2020 FILED BY THE FINANCIAL CREDITOR/ STATE BANK OF INDIA.

13.1 It is averred in para 2 of the Written Submissions that the petition has been filed by the Assistant General Manager duly authorised by the Financial Creditor. Shri D. Narender Naik and Shri Cyril Amarchand Mangaldas are authorised to act on behalf of the Financial Creditor. Relevant are Exhibits 1, 2 and 3.

13.2 It is averred in para 3 of the Written Submissions that the Financial Creditor had filed IA No.312 of 2020 on 14.05.2020 seeking urgent hearing of the Company Petition.

13.3 It is averred in para 4 of the Written Submissions, in reiteration of what was stated in para 5 of the Rejoinder, that Company Petition No.617 of 2018 filed by the Financial Creditor had been dismissed vide order dated 19.11.2019 (Exhibit 18, page 1616 of the Company Petition), solely on account of the Circular of the Reserve Bank of India for Resolution of Stressed Assets – Revised Framework dated 12.02.2018. The Tribunal in para 16 of the order observed a under:

"It is true that there is no dispute with regard to the debt as well as default."

13.4 In paras 6(a) to (d) of the Written Submissions details of facilities granted and disbursed to the Corporate Debtor are given. The said details are discussed in para 4 (supra).

13.5 In paras 6.1 and 6.2 of the Written Submissions it is averred that an amount of Rs.749,08,87,004/- was disbursed to the Corporate Debtor as per scheduled at Exhibit 4, page 64 of the Company Petition. The said facilities were secured by charge created on various movable and immovable assets of the Corporate Debtor from time to time and registered with the Registrar of Companies (Exhibit 6, pages 67 to 84 of the Company Petition).



13.6 It is averred in para 7 of the Written Submissions that the first default occurred on 30.06.2016 and the account of the Corporate Debtor has become a non-performing asset (NPA) with the guidelines dated 28.09.2016 of the Reserve Bank of India.

13.7 In para 8 of the Written Submissions defaults occurred as on 22.11.2019 have been enumerated as was discussed in para 3 (supra). Computation Table of defaults is at Exhibit 5, pages 65 & 66 of the Company Petition.

13.8 In para 9 of the Written Submissions documents/ Exhibits 11 to 17 were discussed which would evidence the default of the Corporate Debtor in repayment of facilities.

13.9 In para 10 of the Written Submissions the Financial Creditor has proposed the name of IRP, namely, Shri Anish Niranjan Nanavaty, whose documents are at Exhibit 19, pages 1637 to 1642 of the Company Petition.

13.10 Para 11 of the Written Submissions is reiteration of para 6 of the Rejoinder, which says that Shri C. Narasimha Rao, who signed the Counter dated 18.02.2020 is not authorised by the respondent/ Corporate Debtor to file the said Counter. Said Shri Rao was authorised only in respect of the earlier petition.

13.11 In para 12 of the Written Submissions the Financial Creditor has formulated the following points to prove that the debt and default are not in dispute.

- (a) That the Corporate Debtor has not disputed the debt either in earlier petition or in reply thereto.
- (b) That the Tribunal, vide order dated 19.11.2019 (Exhibit 18, page 1616 to 1636 of the Company Petition) passed in earlier petition, viz. Company Petition No.617 of 2018, has observed that:

"It is true that there is no dispute with regard to the debt as well as default."



- (c) The Financial Creditor relied on para 11 of the decision (**ANNEXURE-1**) of the Hon'ble NCLAT in the case of **GOURI PRASAD GOENKA EX-CHAIRMAN OF NRC LIMITED Vs. PUNJAB NATIONAL BANK**, Company Appeal (AT) (Insolvency) no.28 of 2019, on the point of considering the quantum of debt granted by the Financial Creditor while admitting the Company Petition.

13.12 In para 13 of the Written Submissions the Financial Creditor has formulated the following points to prove that proceedings before the Debt Recovery Tribunal, Hyderabad do not bar the Financial Creditor from prosecuting the present petition.

- (a) The contention of the Corporate Debtor that Financial Creditor is barred from pursuing two remedies at a time, viz. a proceeding before Debt Recovery Tribunal and the present proceeding, is not sustainable in law. It is settled that proceeding before Debt Recovery Tribunal is not an impediment to initiate CIRP against Corporate Debtor under section 7 of the I&B Code.
- (b) The Financial Creditor relied on para 7 of the decision (**ANNEXURE-2**) of the Hon'ble NCLAT in the matter of **VINEET KUMAR KHOSLA Vs. EDELWISS ASSET RECONSTRUCTION COMPANY** rendered in Company Appeal No.441 of 2019, to disprove that if a dispute is pending in another forum, provisions of the I&B Code cannot be invoked.
- (c) The Financial Creditor relied on para 21 of the decision (**ANNEXURE-3**) of the Hon'ble NCLT, Mumbai in the matter of **BANK OF INDIA Vs. SHRENUJ & COMPANY LIMITED**, rendered in CP No.190 of 2018, to contend that proceeding before Debt Recovery Tribunal is no bar to proceedings under section 7 of I&B Code.
- (d) The Financial Creditor relied on para 26 of the decision (**ANNEXURE-4**) of the Hon'ble NCLT, Principal Bench in the matter of **INDIAN OVERSEAS BANK Vs. PIXION MEDIA PRIVATE LIMITED** rendered in CP No.438 of 2018 to contend that Debt Recovery Tribunal proceedings and action under

SARFAESI Act cannot be an impediment to section 7 proceedings.

13.13 In paras 14.1 to 14.8 of the Written Submissions the Financial Creditor has formulated the following points to prove that Financial Creditor independently has locus standi to maintain the Company Petition.

- (a) The Corporate Debtor contended that security enforcement can be by way of common action by the security trustee, viz. IDBI Trusteeship Services Limited, pursuant to Clause IV of the Master Agreement dated 07.09.2018; the Company Petition being contrary to the said Master Agreement is not maintainable for want of non-joinder of all the lenders to the present proceedings. The Financial Creditor submitted that the said contention is untenable.
- (b) That section 7(1) of the I&B Code provides that Financial Creditor can file application by itself alone or jointly with other Financial Creditors or any other person on behalf of the Financial Creditor.
- (c) The Financial Creditor relied on paras 55 and 58 of the decision (**ANNEXURE-5**) of the Hon'ble Supreme Court in the case of **M/S. INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR.**, (2018) 1 SCC 407, wherein it is held that the Code is a self-contained Code which is exhaustive in nature when it comes to insolvency resolution.
- (d) That the present petition is filed in relation to default committed by the Corporate Debtor in repayment of debt due to the Financial Creditor only, not qua all other lenders of the Corporate Debtor.
- (e) The Tribunal has to consider whether there is debt due from the Corporate Debtor and whether Corporate Debtor has defaulted in its repayment. It is not to consider whether the Corporate Debtor has obtained permission from one or the other authority.
- (f) The Financial Creditor relied on para 7 of the decision (**ANNEXURE-6**) of the Hon'ble NCLAT in the matter of **ASIAN**





NATURAL RESOURCES INDIA LIMITED Vs. IDBI BANK LTD rendered in Company Appeal (AT) (Insolvency) No.60 of 2017, to contend that presence of an inter-se agreement between the lenders of a Corporate Debtor does not take away the right of an individual lender to file application under section 7 of I&B Code.

- (g) The Financial Creditor relied on para 84 of the decision (**ANNEXURE-7**) of the Hon'ble NCLAT in the matter of **M/S. INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR.**, (supra) rendered in Company Appeal (AT) (Insolvency) Nos.1 and 2 of 2017, wherein it is held that consent of members of JLF is not required to file an application under section 7 of the Code.

13.14 In para 14.9 of the Written Submissions it is contended that the insolvency proceedings are filed with knowledge of all the lenders. Minutes of meeting of lenders of the Corporate Debtor dated 15.02.2020 (Exhibit-1, pages 9 to 11 of the Rejoinder) acknowledges filing of the Company Petition.

13.15 In para 15 of the Written Submissions the Financial Creditor has formulated the following points to disprove the allegations of the Corporate Debtor that the petitioner lacks bona fides.

- (a) The Corporate Debtor has alleged that while convening various meetings of the lenders of the Corporate Debtor ostensibly for resolving the stress in the account of the Corporate Debtor, the petitioner has filed the present petition and accordingly lacks bona fides. Besides, the present petition has neither sufficient cause nor justification. Said allegations are baseless and meritless.
- (b) In reiteration of what was stated in para 9 of the Rejoinder it is stated that it is the discretion of the consortium of lenders either to accept or reject the offer/ OTS proposal given by the Corporate Debtor. OTS proposal is immaterial for the purpose of admission of the Company Petition. In this context the Financial Creditor relied on para 56 of the decision (**ANNEXURE-8**) of this Tribunal in the matter of **BANK OF**
- 110

BARODA Vs. GOLDEN JUBILEE HOTELS PRIVATE LIMITED, rendered in CP No.248 of 2017.

- (c) The Financial Creditor further relied on para 22 of the decision (**ANNEXURE-9**) of the Principal Bench in the matter of **BANK OF INDIA Vs. BASIC INDIA LIMITED** rendered in CP No.397 of 2018, wherein it is held that in absence of any binding compromise agreement, it is beyond the powers of the Adjudicating Authority to decline or defer the prayer of the Financial Creditor for admission of the petition filed under section 7 of the Code.
- (d) In reiteration of what is stated in para 9 of the Rejoinder, on **bona fide of the Financial Creditor**, it is averred that the Financial Creditor had given ample opportunities to the Corporate Debtor to improve its OTS proposals, but in vain. Even during the Lenders' Meeting dated 15.02.2020, the Corporate Debtor submitted its OTS proposal without improvements. The lenders unanimously rejected the same.
- (e) The Financial Creditor relied on para 17.4 of the decision (**ANNEXURE-10**) of the NCLT, Ahmedabad in the matter of **BANK OF BARODA Vs. PITHAPUR POLY PRODUCTS PVT LTD.**, rendered in CP No.421 of 2018, wherein it is held that OTS proposal clearly shows the intent, acknowledgment and continuance of the debt by the Corporate Debtor.

13.16 Paras 16.1 and 16.2 of the Written Submissions are reiteration of para 11 of the rejoinder, wherein it is contended that the plea put forth by the Corporate Debtor that having regard to the hardships experienced by the Corporate Debtor and in public interest no adverse order be passed against the Corporate Debtor deserves no consideration. In fact, CIRP enables revival of the Corporate Debtor and maximisation of its assets.

13.17 In para 16.3 of the Written Submissions the Financial Creditor relied on para 27 of the decision (**ANNEXURE-11**) of the Hon'ble Supreme Court in the matter of **MOBILOX INNOVATIONS PRIVATE LIMITED Vs. KIRUSA SOFTWARE PRIVATE LIMITED** (supra) (2018) 1 SCC 353, wherein it is held 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 without looking into any other criterion for admission of the application. The decision, in para 28, in **M/S. INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR.**, (supra) (2018) 1 SCC 407, too echoes the same proposition. The Hon'ble Supreme Court in para 52 of its decision (**ANNEXURE-12**) in the case of SWISS RIBBONS PRIVATE LIMITED & ANOTHER Vs. UNION OF INDIA & OTHERS, (2019) 4 SCC 17, has relied on the above observations in the case of **M/S. INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR.** (supra).

13.18 In para 16.4 of the Written Submissions it is submitted that the Financial Creditor has established both debt and default in repayment of debt by the Corporate Debtor. The Corporate Debtor does not allege any defect in the Company Petition. Hence the petition deserves admission.

FINDINGS

14. We have heard the learned counsel for the Financial Creditor as well as the learned counsel for the Corporate Debtor through videoconference. Both sides filed Written Submissions. Summary of Written Submissions on both the sides is stated supra. This is the second petition filed against the Corporate Debtor under section 7 of the I&B Code to initiate CIRP. The learned counsel for the Financial Creditor filed similar petition against the Corporate Debtor bearing Company Petition No.617 of 2018, which was dismissed on the ground that the said petition was filed in pursuance of Circular of Reserve Bank of India dated 12.02.2018. Thereafter, the present petition is filed.

15. The case of the Financial Creditor is that it had disbursed various types of loans to the Corporate Debtor from time to time. It is the case of the Financial Creditor that it had disbursed a total amount of Rs.749,08,87,004/-. Exhibit-4, Page No.64 of the Company Petition



contains schedule of disbursement of various types of loans to the Corporate Debtor.

16. It is the case of the Financial Creditor that the amount of default as far as principal is Rs.636,73,74,998.30 and interest is Rs.308,10,87,250.46.

17. The learned counsel for the Financial Creditor would contend that this Tribunal has categorically observed in para 16 of its earlier order in Company Petition No.617 of 2018 dated 19.11.2019 as follows:

"It is true that there is no dispute with regard to the debt as well as default."

18. The learned counsel contended that the present petition is filed adding interest and that the Corporate Debtor did not dispute the debt and it is proved that there is default. Therefore, the present petition is to be admitted against the Corporate Debtor and the CIRP to be initiated.

19. The learned counsel for the Financial Creditor has relied on various documents filed along with the Company Petition to establish disbursement of loans to the Corporate Debtor and further to establish the default by the Corporate Debtor. The Financial Creditor relied on Exhibit A-11, which is CIBIL Report dated 22.11.2019. The relevant page nos. of the Company Petition are 1015 to 1022. The Financial Creditor further relied on the Report of the Central Repository of Information on Large Credits dated 10.09.2018, marked Exhibit 12 at pages 1308 to 1312 of the Company Petition. Exhibit 15 Colly. is the letter dated 03.01.2018 addressed to the Corporate Debtor by the Financial Creditor informing that the term loan accounts have become Non-Performing Assets (NPA) due to non-payment and calling upon the Corporate Debtor to service the irregularities. They are shown at pages 1516 to 1520 of the Company Petition. Exhibit 15 Colly. is one more letter dated 06.03.2018 directing the Corporate Debtor to service the irregularities.

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20. The Financial Creditor further relied on Recall Notice dated 08.09.2018, whereunder the Financial Creditor was recalling the facilities, which is shown as Exhibit 17 at pages 1612 o 1615 of the Company Petition. The Financial Creditor also filed Report obtained from the Information Utility Centre to establish the default (IU Certificates), which is filed in the Tribunal through e-mail dated 16.05.2020. The Financial Creditor filed documents to establish disbursement of loan through Exhibit 7 Colly., Exhibit 18 Colly., Exhibit 9 and Exhibit 10 Colly. These exhibits are filed along with the Company Petition.

21. The learned counsel for the Financial Creditor would contend that the Corporate Debtor did not dispute existence of debt and default.

22. The learned counsel would contend that the Corporate Debtor tried to raise dispute with regard to quantum of debt. However, at the time of admission of the petition filed under section 7 of the I&B Code, the Tribunal to consider whether there is debt and default. The Tribunal need not look into the quantum of debt.

23. In this connection the learned counsel for the Financial Creditor has relied on decision of the Hon'ble NCLAT in the case of **GOURI PRASAD GOENKA EX-CHAIRMAN OF NRC LIMITED Vs. PUNJAB NATIONAL BANK**, Company Appeal (AT) (Insolvency) no.28 of 2019, wherein the Hon'ble Appellate Tribunal held as follows:

"11. In so far as joining of issue by the Corporate Debtor qua the quantum of payable debt is concerned, same does not fall for consideration of the Adjudicating Authority at the stage of admission of the application under Section 7 of the I&B Code. The only requirement is that the minimum outstanding debt should be to the tune of Rupees One Lakh. The actual amount of claim is to be ascertained by the Resolution Professional after collating the claims and their verification which comes at a later stage. The contention raised on this score also fails."

24. It is true that the Hon'ble NCLAT has categorically held the issue relating to quantum of debt payable does not fall for consideration of the Adjudicating Authority at the time of admission of the application under

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section 7 of the I&B Code. We agree with the contention of the learned counsel for the Financial Creditor that the issue of quantum of debt is not to be taken into account at the time of admission provided it is shown that the debt is more than Rs.1 lac and there is default.

25. The learned counsel for the Financial Creditor further contended that the Corporate Debtor challenged the petition on the ground that the Financial Creditor already initiated proceedings against the Corporate Debtor along with other Financial Creditors before the Debt Recovery Tribunal, Hyderabad in respect of loan amount and as such the present petition is not maintainable. It is the case of the learned counsel for the Corporate Debtor that the Financial Creditor along with 14 other lenders already invoked the provisions of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 and filed OA No.185 of 2019, which is pending before the Debt Recovery Tribunal-1, Hyderabad. The learned counsel contended that the Financial Creditor cannot pursue two remedies simultaneously and that filing of the present petition is not permissible under law. On the other hand the learned counsel would contend that the Hon'ble NCLAT has categorically held in the matter of **VINEET KUMAR KHOSLA Vs. EDELWISS ASSET RECONSTRUCTION COMPANY** rendered in Company Appeal No.441 of 2019, that initiation of proceedings before the Debt Recovery Tribunal does not bar from taking action under the I&B Code. The learned counsel has quoted para 7 of the judgment which is as follows :-

"We are not convinced with the submissions that only because the Financial Creditor had moved for relief before DRT, it could not have resorted to proceedings under the IBC. There is no provision which bars referring to IBC if already relief has been sought or pending in another Forum. .. As such there is no substance in the argument that if dispute is already pending in another forum, IBC cannot be invoked."

In this connection the learned counsel for the Financial Creditor relied on decision of the Hon'ble NCLT, Mumbai Bench in the matter of **BANK OF INDIA Vs. SHRENUJ & COMPANY LIMITED** (CP No.190 of 2018) and also decision of the Hon'ble NCLT, Principal Bench in the matter of **INDIAN OVERSEAS BANK Vs. PIXION MEDIA PRIVATE LIMITED** (CP No.438 of 2018). It is true that initiation of proceedings against the

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Corporate Debtor before the Debt Recovery Tribunal is not a bar for initiation of action under the I&B Code. Therefore, we agree with the contention of the learned counsel for the Financial Creditor that the present petition against the Corporate Debtor is maintainable even though lenders including the Financial Creditor herein already moved Debt Recovery Tribunal against Corporate Debtor.

26. The learned counsel for the Corporate Debtor would contend that the present petition is not maintainable at the instance of the Financial Creditor on the ground that the Financial Creditor is bound by Master Inter-creditor Agreement dated 07.09.2018. The learned counsel for the Corporate Debtor mainly relied on Articles 5.3 and 5.4 of the Agreement, which is shown as Annexure-5 to the Counter. The contention of the learned counsel is that Article 5.4 of the Agreement provides that no lender shall -

- (a) Take any common Inter-creditor Action, including enforcing any interest in the Common Security Interest;
- (b) Sell, repossess to take possession of any goods or assets of the borrower forming part of the Common Security Interest as a consequence of the event of default or otherwise;
- (c) Take any action for the winding up, liquidation, official management; receivership, bankruptcy, insolvency or dissolution of the borrower or any analogous process;"

27. The contention of the learned counsel is that the creditors of the Corporate Debtor have from time to time entered into such agreements and the latest agreement is dated 07.09.2018. The learned counsel for the Corporate Debtor would contend that the Financial Creditor herein on its own cannot maintain the present application unless other lenders also join. The present application is filed in individual capacity of Financial Creditor and it is not filed on behalf of other lenders of Corporate Debtor. The learned counsel contended that the Agreement prohibits any action to be taken by a single lender and joint action is contemplated. The learned counsel further contended that all the lenders along with Financial Creditor herein jointly moved petition before Debt Recovery Tribunal. This is in tune with the Master Inter-creditor Agreement. On the other hand the only Financial Creditor / the

petitioner herein has filed this petition under section 7 of the I&B Code. Therefore, the Financial Creditor alone cannot initiate action against the Corporate Debtor which is against Article 5.4 of the Agreement.

28. On the other hand the learned counsel for Financial Creditor would contend that the Financial Creditor can independently file petition under section 7 of the I&B Code. The learned counsel has relied on section 7(1) of the I&B Code and contended that the section provides power to individual Financial Creditor to file, *inter alia*, application either by itself or jointly with other Financial Creditors. In this connection the learned counsel for the Financial Creditor relied on section 7(1) of the I&B Code, which is reproduced hereunder:

"7(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred."

29. The learned counsel further relied on decision of the Hon'ble Apex Court in the matter of **M/S. INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR.**, (2018) 1 SCC 407 and contended that the Hon'ble Apex Court held that I&B Code is self-contained Code, which is exhaustive in nature when it comes to insolvency resolution. The learned counsel contended that the present petition is filed by the Financial Creditor in respect of a default committed by the Corporate Debtor for the loans advanced by the Financial Creditor / petitioner.

30. It is true that the present petition filed by the Financial Creditor is confined to the loans advanced by it to the Corporate Debtor and the default committed. Section 7 of the I&B Code does not prohibit an individual Financial Creditor to file application under section 7 of the I&B Code. The Agreement, if any, arrived at *inter se* between the creditors does not prohibit a lender to initiate action under section 7 of the I&B Code against the Corporate Debtor.

31. In this connection the learned counsel for the Financial Creditor has relied on decision of the Hon'ble NCLAT in the matter of **ASIAN NATURAL RESOURCES (INDIA) LTD & ANOTHER VS. IDBI BANK**

LIMITED, rendered in Company Appeal (AT) (Insolvency) No.60 & 62 of 2017, wherein the Hon'ble Appellate Tribunal held that presence of an *inter se* agreement between the lenders of a Corporate Debtor does not take away right of an individual lender to file application under section 7 of the I&B Code. The learned counsel has relied on the relevant para of the judgment which is quoted below:

"Apart from that the Inter-se Agreement between different banks is not binding in nature, the 'Corporate Debtors' not being signatories cannot derive advantage of such Inter-se Agreement. This apart, the 'financial creditors' having right to file application under Section 7 of the I&B Code, individually or jointly on behalf of other 'financial creditors' as quoted below, the Inter-se Agreement between the 'financial creditors' cannot override the said provision, nor can take away the right of any Financial Institution to file application under Section 7 of the I&B Code: - "

32. The learned counsel contended that the above judgment was also relied on by the Hon'ble NCLT, Principal Bench, New Delhi in the case of **INDIAN OVERSEAS BANK Vs. PIXION MEDIA PRIVATE LIMITED** rendered in CP No.438 of 2018.

33. The learned counsel would contend that the present petition is filed against the Corporate Debtor with the knowledge of all the lenders. He relied on Exhibit 1, which is Minutes of the Meeting of Lenders filed with Rejoinder. Thus, all the lenders are aware of filing of petition by the Financial Creditor against the Corporate Debtor. It is true that in an application filed under section 7 of the I&B Code, the Tribunal has to see whether debt and default exist. It is not in dispute that the Financial Creditor disbursed various types of loans from time to time and there is default. Other contentions raised by the learned counsel for the Corporate Debtor cannot be entertained since the Financial Creditor is able to establish the debt and default. Therefore, the petition is to be admitted against the Corporate Debtor. After going through the documents filed by the petitioner we are of the view that the petition is liable to be admitted against the Corporate Debtor. The petition is accordingly admitted.

34. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

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(A) The 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

(B) 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.

(C) 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.

(D) That the order of moratorium shall have effect from **26th June 2020** 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, whichever is earlier.

(E) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.



(F) That this Bench hereby appoints Shri Anish Niranjana Nanavaty having Registration No. IBBI/ IPA-002/ IP-N00272/ 2017-18/ 10830, as Interim Resolution Professional, whose contact details are:

e-mail ID:- anish.nanavaty.arp@gmail.com

Address: 2A-208, Raheja Classique, New Link Road
Andheri (W), Mumbai - 400053.

as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(G) Proposed IRP filed Form-B issued by the Institute of Insolvency Professionals. It is filed through e-mail today. Authorisation for Assignment is valid from 15.01.2020 to 14.01.2021. This information is also available in IBBI Website. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.

35. Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

36. Accordingly, this Petition is admitted.


VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

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RATAKONDA MURALI
MEMBER (JUDICIAL)