



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-V, MUMBAI BENCH**

C.P (IB) NO. 1120 OF 2021

AND

I.A. No. 2102 of 2022

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 Bhavan, Madame Cama Road,
Nariman Point, Mumbai – 400 021

.....Financial Creditor/Petitioner

Vs

M/s. VHM Industries Limited

220, Kewal Industrial Estate, Senapati Bapat Marg,
Lower Parel (West), Mumbai – 400 013

.....Corporate Debtor

Order reserved on: 29.11.2022

Order Pronounced on: 16.12.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Mr. Yash Pandya (Advocate).

For the Corporate Debtor: Senior Counsel Mr. Gaurav Joshi a/w Mr. Ashish Parwani, Mr. Dikshat Mehra and Mr. Chintan Gandhi (Advocates).





For the Intervening Applicant: Mr. Ashish Kamat a/w Ms. Bency
Ramakrishnan i/b Mr. Akash Menon
(Advocates)

Per: Shri H.V. Subba Rao, Member (Judicial)

Order

1. The above Company Petition is filed by State Bank of India, hereinafter called as "**Petitioner**" seeking to initiate of Corporate Insolvency Resolution Process (**CIRP**) against M/s. VHM Industries Limited (hereinafter called as "**Corporate Debtor**") by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 2,21,43,23,173/-.
2. The Petitioner has annexed the following documents which demonstrates the Financial Debt:
 - a. Copy of NeSL report dated 28.10.2021
 - b. Copy of Sanction Letter dated 11.10.2014
 - c. Copy of Sanction Letter dated 07.01.2016
 - d. Copy of Sanction Letter dated 18.04.2017
 - e. Copy of Sanction Letter dated 27.04.2018
 - f. Copy of Sanction Letter dated 04.04.2019
 - g. Copy of Inter Se Agreement dated 19.03.2015
 - h. Copy of Joint Deed of Hypothecation dated 19.03.2015
 - i. Copy of Inter Se Agreement 01.09.2016
 - j. Copy of the Working Capital Consortium Agreement 01.09.2016
 - k. Copy of Revival Letter dated 30.08.2019
 - l. Copy of Balance Confirmation dated 31.03.2018





Facts of the Case:

3. The Petitioner submits that, the Corporate Debtor was availing by way of financial assistance under the sole banking arrangement till the year 2014. In 2015, four new banks viz. the Karur Vyasa Bank Ltd., Syndicate Bank, Corporation Bank and Canara Bank have joined for the purpose of extending financial assistance to the Corporate Debtor under Consortium Arrangement wherein the Petitioner was the “Lead Bank” of the Consortium. In addition to working capital credit facilities, the Corporate Debtor had also availed a term loan under Consortium Arrangement in the year 2015.
4. The Petitioner submits that, the credit limits sanctioned to the Corporate Debtor have got renewed from time to time. The last such renewal of the credit limit was communicated to the Corporate Debtor was on 04.04.2019. Furthermore, the Petitioner had also received the Revival letters from the Corporate Debtor and last such Revival Letter received by the Petitioner as on 30.08.2019.
5. The Petitioner submits that, the Respondent was facing liquidity issues in running the business activities. Due to this, the operation and conduct of the loan accounts in respect of various credit facilities became irregular. The date of default as per the NeSL Report is 25.09.2019. Thus, in accordance with the guidelines by the Reserve Bank of India, the account of the Respondent was classified as Non-Performing Asset (NPA) with effect from 23.12.2019. Thereafter, the Petitioner was duly following up with the Corporate Debtor was unable to regularize the accounts. Subsequently, the Petitioner had issued a notice under Section 13(2) of the SARFAESI Act, 2002 dated 09.09.2021, to the Corporate Debtor as well as the Guarantors of the Corporate Debtor.





Reply by the Respondent

6. The Respondent has filed a reply dated 14.06.2022 to the above Application, wherein the Respondent submits that three Inter se Creditor Agreements have been entered into between the Petitioner and other banks which are as follows:
- a. The first Inter se Creditor Agreement dated 19.03.2015 regarding the term loan is between the Petitioner, Corporation Bank and Karur Vyasa Bank ("**ICA 1**").
 - b. The second Inter se Creditor Agreement dated 14.09.2015, regarding the Bank Guarantees, between the Petitioner, Corporation Bank and Karur Vyasa Bank Ltd. ("**ICA 2**").
 - c. The third Inter se Creditor Agreement dated 18.09.2016, regarding term loans is between the Petitioner, Corporation Bank, Karur Vyasa Bank Ltd., Syndicate Bank and Canara Bank ("**ICA 3**").
7. The Respondent submits that, the Petitioner to bring action under the Code is subject to and controlled by Inter se Creditor Agreements and procedures laid down therein. In this regard the Respondent has relied upon various clauses of the 3 Inter se Creditors Agreements mentioned above, which lays down the procedure with regard to initiation of action against the borrower (i.e. the Respondent). The Respondent further submits that, clause 3(j) of ICA 1 and ICA 2 provides that the Lead Bank, can take action against the Borrower only after consultation with the Sub-committee or other Members of the Consortium. Similarly, clause 6(f) of ICA 3, clause 3(s) of ICA 1 provides similar procedure regarding initiation of any action against the borrower should be done with consultation of the Member banks of the Consortium.





8. The Respondent submits that, the Petitioner has not consulted with the other members of the Consortium and the Respondent, thereafter, filed an application for Initiation of CIRP against the Respondent, without prior consultation with other member banks of the Consortium. The Respondent further submits that while triggering initiation of the CIRP by one member of the Consortium while the financial debt exists to other lenders of the Consortium, the consent of the other members of the Consortium is necessary under the provision of Section 238 of the Code. As the Inter Se Creditor Agreements will prevail over the individual Facility Agreements.
9. The Respondent submits that, the Authorized representative of the Petitioner has failed to obtain due authorization as per the SBI Regulations. In this regard the Respondent submits that vide letter dated 28.10.2021 the Deputy General Manager, SARGC III, Commercial, Mumbai has authorized one Mr. Daya Shankar, Asst. General Manager, to sign all the documents in respect to present proceeding against the Respondent. In furtherance, it is submitted that, Regulation 77, read with Regulation 76 of the State Bank of India Regulations, 1955, governs the signing of applications, petitions, accounts receipts and documents of the State Bank. Regulation 76 empowers only the Managing Directors, Deputy Managing Directors and Chief General Managers and such other officers and employees of the State Bank as the Central Board or the Executive Committee may authorise in this behalf by notification in the Gazette of India to such extent and subject to such limitation if any, as the Central Board or the Executive Committee may specify or impose in so authorising, to authorise other persons, for and on behalf of the State Bank, to sign all documents, instruments, accounts, receipts, letters and advices connected with the current or authorised business of the State Bank. However, in the present situation, the representative of the Applicant is authorised by the Deputy General Manager and not by the Chief General Manager. Moreover, no notification in the Gazette of India has





been provided by the Petitioner which authorises the Deputy General Manager. Hence the conditions laid down by the Regulation 76 of the SBI Regulations, 1955 are not satisfied. It is also submitted that, the Regulations 77 and 76 of the SBI Regulations, 1955 only confer a right upon the authorised person to sign general applications, petitions and documents. This general power cannot be stretched to be exercised on signing of petitions and application under special laws such as the Insolvency and bankruptcy Code, 2016.

10. The Respondent submits that, the default amount is claimed by the Petitioner does not match with the NeSL documents, wherein total amount of default stated at about Rs. 148 crores as compared to the claim amount which is Rs. 2,21,43,23,173/-. It is further submitted that, the balance confirmation dated 31.03.2018, produced as a proof of claim by the petitioner for about Rs. 175 crores has not been signed.
11. The Respondent also submits that, the certificate filed by the Petitioner under Section 2A of the Bankers Books Evidence Act, 1891 is defective as it has not been signed by a competent officer and is thus not duly certified. Hence, the same should not be accepted.
12. The Respondent submits that, the Techno-Economic Viability (TEV) Study Report has been prepared by Resurgent India Limited who was appointed at the request of the Petitioner for the Respondent for the purpose of resolution plan of the outstanding debts of the Corporate Debtor. The report focused on understanding the technical, financial and market feasibility of the Respondent. It is further stated that, the TEV report has concluded that the units of the Respondent are technically feasible.
13. The Respondent further submits that the TEV Report acknowledged that despite the challenges faced by the textile industry globally due to factors including the COVID-19 pandemic, the Respondent has





market feasibility. The Report further concluded that the proposed restructuring proposal for the Respondent is financially viable. With regard to above the Respondent submits that, the TEV Study has been conducted at the request of the Petitioner. The Report has given a detailed analysis on how the Respondent, as functioning unit is feasible in all aspects- be it technical, financial or market feasibility. The Respondent has requested to the Petitioner to review the TEV Report again, however the Respondent did not receive any communication from the Petitioner.

14. The Respondent submits that, the Respondent has made several attempts to arrive at an amicable resolution with the Consortium of Banks. In this regard the Respondent vide its letter dated 22.09.2021 submitted a proposal for a One Time Settlement (“OTS”), of Rs. 61 crores to settle their outstanding dues. The said OTS was discussed by the Consortium of bank at Joint Lender meeting dated 27.09.2021. however, the same was not acceptable to the Consortium of Banks and rejection of the OTS offer was conveyed to the Respondent by the Petitioner vide letter dated 08.10.2021. Upon rejection of the OTS proposal, the Respondent, through its letter dated 31.05.2022 enhanced its OTS offer towards the dues of the Consortium of Banks to Rs. 76.28 Crores. In this regard the Petitioner vide a letter dated 08.06.2022 asked the Respondent to improve its enhanced OTS offer on certain parameters like upfront payment and term of the payment. The Petitioner also sought in formation on, source of funds for proposed OTS offer. In light of the same, the Respondent is agreeable to revise its OTS offer on most of the parameters raised by the Petitioner.

Rejoinder by the Petitioner

15. The Petitioner mentions, that the Respondent has raised first contention that the Petitioner, as a single member of the consortium must not be allowed to bring action against the Corporate Debtor





independently as this would be in violation of the inter se Agreement on the rights of the other lenders. In this regard the Petitioner submits that the purpose of the Inter se Agreement is ease of business, efficient monitoring, security creation and to observe compliance thereof. Furthermore, Petitioner mentions that a Joint Lenders Meeting of the Respondent was held on 21.05.2021 wherein the Petitioner informed the forum that the Respondent's financial restructuring plan could not get desired RP4 rating, therefore restructuring is not possible. They further informed that as due to COVID, lenders have lost almost one-year time could not initiate other resolution options, therefore proposed that the forum should explore other options. Consequently, the members decided to file individual suits.

16. With regard to second contention raised by the Respondent with regard to appointment of the Authorized person to sign the Company Petition as invalid. The Petitioner submits that, according to notification dated, 27.03.1987, all officers, employees of the Petitioner on whom signing powers conferred shall continue to exercise the powers conferred on them for the discharge of their function notwithstanding the place of their posting. The Petitioner further submits that, the letter dated 16.06.2017 of the Petitioner is duly signed by the erstwhile Chairman of the Petitioner, it is notified that all the officers on whom signing powers have been conferred vide Notification dated 27.03.1987 to sign application, reply, affidavit and generally all pleadings and filing applications for initiation of CIRP before the NCLT under the provisions of the IBC, 2016 on behalf of the Petitioner.

17. The third contention raised by the Respondent is that the default amount recorded on NeSL portal, and the total out standing amount stated in the Statement of Accounts do not match. The Petitioner in this regard submits that, the default amount recorded in the NeSL





portal does not comprise of the interest amount and only depicts the interest amount.

18. The fourth contention raised by the Respondent is that certificate filed by the Petitioner under Section 2A of the Bankers Books Evidence Act, 1891 is defective as it has not been signed by a competent officer. In this regard the Petitioner submitted that, they have denied the contention raised by the Respondent as the same is as per the provisions of the Code.
19. The fifth contention raised by the Respondent is that as per the Reserve Bank of India's Circular dated 07.06.2019, in reference to Prudential Framework for Resolution of Stressed Assets, there are certain conditions for implementation of the Resolution Plan. The Resolution Plans (RPs) involving restructuring/change in ownership in respect of accounts where the aggregate exposure of lenders is INR 1 billion and above, shall require independent credit evaluation (ICE) of the residual debt by credit rating agencies (CRAS) specifically authorized by the Reserve Bank of India for this purpose. While accounts with aggregate exposure of INR 5 billion and above shall require two such ICES, others shall require one ICE. Only such RPs which receive a credit opinion of RP4 or better for the residual debt from one or two CRAS, as the case may be shall be considered for implementation. In the case of Respondent, the Independent Credit Evaluation is done, and the credit opinion received is of RP-6. Therefore, the Resolution Plan submitted for the Respondent did not receive the credit opinion of RP4, thus, it cannot be considered for implementation.
20. The Last contention raised by the Respondent is that several attempts were made by the Respondent for settlement of the matter through OTS proposals, the Petitioner in this regard submits that, in the matter of The Bijnor Urban Cooperative Bank Limited, Bijnor & others





v. Meenal Agarwal & others (Civil Appeal No. 7411 of 2021), the Hon'ble Supreme Court held that the grant of benefit of OTS scheme cannot be prayed as a matter of right. It further stated that no bank can be compelled to accept a lesser amount under the OTS scheme despite the fact that the Bank is able to recover the entire loan amount by auctioning the secured property/mortgaged property. When the loan is disbursed by the bank and the outstanding amount is due and payable to the bank, it will always take a conscious decision in the interest of the bank and in its commercial wisdom. Therefore, the decision taken by the Bank to reject the OTS Proposal is done in its commercial wisdom.

Findings

21. Heard Mr. Yash Pandya the Ld. Counsel appearing for the Petitioner and Mr. Gaurav Joshi the Ld. Senior Counsel appearing for the Corporate Debtor and Mr. Ashish Kamat the Ld. Counsel appearing for the intervener/ workmen and perused the records.
22. The counsel for the Corporate Debtor in its reply has raised, the following contentions disputing the debt:
 - a. The Financial Creditor has failed to follow procedure under the Inter Se Creditor Agreements;
 - b. The authorized representative of the Financial Creditor has failed to obtain due authorization as per SBI Regulations;
 - c. Irregularity between the Default Amount and Unsigned Balance Confirmation;
 - d. Certificate issued under Bankers' Books of Evidence Act, 1891 relied by the Financial Creditor is defective.
23. Upon the abovementioned contentions raised by the Corporate Debtor the Financial Creditor preferred to file a rejoinder in which they have replied to each and every contention raised by the Corporate Debtor. In this regard the issues are dealt as hereunder.





24. As regards to the first contention raised by the Corporate Debtor we have to refer to Section 7(1) of the Insolvency and Bankruptcy Code, 2016. Which read as:

“Section 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.”

25. In this regard, Section 7 (1) of the Code enables the Petitioner to initiate independent proceedings against the Corporate Debtor. Furthermore, the Financial Creditor submits that in a Joint Lenders Meeting the other members of the Consortium also decided to initiate independent proceedings. Hence the contention raised by the Corporate Debtor has no legal substance.

26. With regard to the second contention raised by the Corporate Debtor regarding failure of the Representative of the Financial Creditor to obtain due authorization as per SBI Regulation. The Bench is of the view that the letter dated 16.06.2017, is duly signed by the erstwhile Chairman of the Petitioner, it is notified that all the officers on whom signing powers have been conferred vide Notification dated, 27.03.1987 to sign application, reply, affidavit and generally all pleadings and filing applications for initiation of CIRP before the NCLT. Therefore, the contention raised by the Corporate Debtor does not survive.

27. The next contention raised by the Corporate Debtor is with regard to the amount recorded on NeSL portal as compared to





the amount claimed by the Financial Creditor. In respect of the above the Petitioner shed light upon the same and submitted that the default amount record on the NeSL portal does not comprise of the interest amount and it only depicts the principal amount. Moreover, the Corporate Debtor has duly signed a revival letter dated 30.08.2019 wherein he has acknowledged the debt. The Bench places its reliance on the Judgement of the Apex Court in Asset Reconstruction Company (India) Limited Vs Bishal Jaiswal & Anr. Wherein it was held that Section 18 of the Limitation Act, which extends the period of limitation depending upon the acknowledgement of Debt made in writing and signed by the Corporate Debtor. Therefore, the present Petition is within limitation. It is appropriate to mention here that the Corporate Debtor is continuously giving offers for settlement under One Time Settlement to the Financial Creditor, even during the pendency of this Company Petition. The latest offer is of Rs. 120 Crores given couple of days before concluding arguments. Therefore, the question of limitation does not arise in this case, as per the law laid down by the Hon'ble Apex Court in Dena Bank Vs. C. Shivakumar Reddy (Civil Appeal No. 1650 OF 2020). Since, submission of OTS proposal also extends the period of limitation and gives fresh cause of action.

28. Corporate Debtor has also submitted that, a TEV Report sought by the Financial Creditor, which concluded the Corporate Debtor as a going concern. In this regard the Bench observes that, mere fact of the Corporate Debtor is a going concern, neither a restricts the Financial Creditor to file the present Petition and initiate Resolution Process, nor warrants for dismissal of the same.





29. In view of the above it is noteworthy that the Corporate Debtor has filed a Revival Letter dated 30.08.2019 which is annexed to the Company Petition, wherein the Corporate Debtor has acknowledged the outstanding liability towards the Financial Creditor. Apart from that, the Financial Creditor also filed the Statement of Accounts of the Corporate Debtor duly certified as per Bankers' Books Evidence Act, 1891 duly signed and stamped. The Corporate Debtor did not dispute the execution of all the loan documents at the time of sanctioning of the loan. Therefore, the debt of the Financial Creditor stands proved.
30. On going through the submissions made by the Learned Counsel for the Petitioner and the Respondent and on perusing the documents produced on record, it is clear that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 7 of the Insolvency & Bankruptcy Code, 2016.
31. Considering the above facts, we come to conclusion that the nature of Debt is a "**Financial Debt**" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of '**debt**' and '**default**', for admission of a petition under section 7 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation. The Petitioners have also suggested the name of proposed Interim Resolution Professional in Part-3 of the Petition along with his consent letter in Form-2.
32. It is the submission of Mr. Ashish Kamat the Ld. Counsel appearing for the intervening workmen, that there are nearly





2000 employees working in the Corporate Debtor company and the company is in operations, and if the Company Petition is admitted and CIRP is ordered against the Corporate Debtor, there is a likelihood of losing their jobs and the IRP, may not be able to efficiently manage the company. Even though the submission of Mr. Ashish Kamat appears to be fair and reasonable, this Tribunal is helpless since, there is no prohibition prescribed in the Code for ordering CIRP against a Corporate Debtor which is functional. This Tribunal is not in agreement with the submissions of Mr. Ashish Kamat of losing jobs by workmen, since, the IRP is entitled to take expert assistance to manage the Corporate Debtor company as a going concern by hiring them. Even otherwise it is only an apprehension which may happen or may not happen.

33. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**' by passing the following:

ORDER

- a. The above Company Petition No. 1120 OF 2021 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. VHM Industries Limited**.
- b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, **Mr. Sunil Kumar Agarwal**, having Email ID- anil91111@hotmail.com, having Address – E-505, Galaxy Apartments, Quoreshi Nagar, Kurla East, Mumbai City, Maharashtra – 400 070 and having registration No. IBBI/IPA-001/IP-





P01390/2018-2019/12178, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Petitioner 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 towards expenses and not towards 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 by or in the possession of the Corporate Debtor.
- 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.
- 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, C.P (IB) NO. 1120 OF 2021 is **admitted**.
- l. In pursuance of the above, I.A. No. 2102 of 2022 is **dismissed**.
- m. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

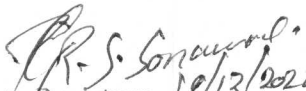
Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

H.V. Subba Rao
Member (Judicial)

Certified True Copy _____
Date of Application 19/12/2022
Number of Pages 16
Fees Paid Rs. 80/-
Application called for collection copy on 19/12/22
Case prepared on 19/12/2022
Case filed on 19/12/2022


Deputy Registrar 19/12/2022,
any Law Tribunal, Mumbai Bench

