

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-1504(PB)/2019

IN THE MATTER OF:

Corporation Bank

.....Financial Creditor

v.

M/s. Patna Highway Projects Limited

.....Corporate Debtor

**SECTION: UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

JUDGMENT DELIVERED ON 03.01.2020

CORAM:

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

**MS. SAROJ RAJWARE
HON'BLE MEMBER (T)**

PRESENT:

For the Financial Creditor: Ms. Ekta Choudhary & Mr. Kunal Chhabra,
Advocates

For the Respondent: Mr. Samir Malik, Mr. Neel Kamal Dev Nath
& Ms. Ashima Ghosh, Advocates

For the Intervener: Mr. Ramji Srinivasan, Senior Advocate with
Mr. Prateek Kumar, Ms. Sneha
Janakiraman and Mr. Rohit Ghosh,
Advocates

M.M. KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-Corporation Bank has filed the instant petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of M/s Patna Highway Projects Limited.

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2. The Corporate Debtor-M/s. Patna Highway Projects Limited is a company registered under the provisions of the Companies Act, 1956 and was incorporated on 22.12.2009. The identification number of the Corporate Debtor is U74999DL2009PLC197265 and its registered office is situated at Second Floor, Plot No. 360, Block-B, Sector 19, Dwarka, New Delhi-110075.

3. The Financial Creditor has proposed the name of Resolution Professional, Mr. Sutanu Sinha with the address Insolvency Professional and Partner BDO Restructuring Advisory LLP, Floor 4, Duckback House, 41, Shakespeare Sarani, Kolkatta-700017 and email id – sutanusinha@bdo.in. His registration number is IBBI/IPA-003/IP-N000020/2017-18/10167. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

4. The details of financial debt advanced by the petitioner-Financial Creditor have been set out in Part-IV of the proforma. The total amount sanctioned, granted and restructured in the form of Term Loan starting from 01.09.2010 to 25.03.2015 is claimed to be INR 192,55,00,000/-.

The amount claimed to be in default and the details of default have been given in sub para 2 of Part-IV which reads as under:

2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH DEFAULT OCCURED	Total Amount claimed:- Rs. 199,73,97,499/- due and outstanding as on 30.04.2019 along with future and pendenlite interest @1%			
	Date of Default is i.e. the date of NPA is 28.05.2015.			
	(Amount in Rupees)			
	Facility	Limit sanctioned	Balance outstanding as on 30.04.2019	No of days overdue
	Term Loan	150,00,00,000	153,58,34,204	334
Term Loan	42,55,00,000	46,15,63,295	334	
Total	192,55,00,000	199,73,97,499		

5. The details of the security held by, or created for the benefit of 'financial creditor' along with the certificate of registration of charge (at pgs. 59-61) issued by the Registrar of Companies have been placed on record which fulfils the requirements of Section 77 & 78 of Companies Act, 2013.

6. The Petitioner-Financial creditor has asserted that the account of the Corporate Debtor was classified as NPA on 28.05.2015. It has then placed reliance on various documents namely Master Restructuring

Agreement dated 29.04.2015, Supplemental Agreement No. 2 dated 29.04.2015, Supplemental Agreement for Pledge of share dated 29.06.2015, Power of Attorney dated 29.06.2015 by Gammon Infrastructure Projects Limited as pledger in favour of the Security Trustee, Amendment No. 2 of the Corporate Guarantee and undertaking and Amendment to the Indenture of Mortgage dated 24.09.2015 (Annexure-9 to 13).

7. A record of default is available with the Central Repository of Information on Large Credits (CRILC) as per its asset classification report dated 17.05.2019 of the Corporate Debtor (at pgs. 197-199). Likewise, a certificate under Section 2A (b) of the Bankers Book Evidence Act (at pg. 302) authenticating the Entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 with regard to two different bank accounts (at pgs. 200-301) of the Corporate Debtor have been placed on record. It is deposed by the officer that the statement of different accounts filed by the financial creditor are true and correct copies of the bank records maintained by the Financial Creditor in its computer.

8. The precise case of the Petitioner thus is that the total amount in default due and payable to the Petitioner by the Respondent-Corporate



Debtor as on 30.04.2019 is Rs. 199,73,97,499/- along with future and pendenlite interest @ 1%.

9. Learned counsel for the Corporate Debtor has advanced numerous arguments to oppose the admission of the petition which are as under: -

1. The present petition is barred by limitation as it has been filed on 17.05.2019 and that as per Entry No. 2 under part IV of Form I, the date of default has shown as 28.05.2015. In this way the date of occurrence of the default is over three years. To substantiate its contention, he placed reliance on the judgments rendered in the case of **B.K. Educational Services Pvt. Ltd. v. Parag Gupta and Associates** (Civil Appeal No. 23988 of 2017) and **Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Ltd. and Anr.** (Civil Appeal No. 4952 of 2019).
2. The person who has signed the petition namely Mr. Sanjay Monocha has nowhere in the supporting affidavit dated 28.05.2019 stated that he has been authorized by the petitioner-Bank to make the petition

for and on its behalf. The petition has been made by Mr. Monocha being a General Power of Attorney holder (at pgs. 16-27). He further authorized on the basis of authorization (at pg. 28) by an official of the petitioner-Bank i.e. the Deputy General Manager of the Greater Mumbai Zonal Office but not by the petitioner-Bank.

3. The petition is not complete. In the present case as against the Entry No. 2 under Part IV of form-1 i.e. 'amount claimed to be in default and the date on which the default occurred', the date of default has been mentioned as 28.05.2015. The amount claimed to be in default is not the amount that accrued on the said date of default, but the one which accrued on 30.04.2019. Likewise, against the Entries No. 1 & 3 under Part V of form-1 i.e. 'particulars of security held, the date of its creation, its estimated value as per the creditor' & 'record of default with the information utility, if any', same have not been mentioned therein and no record of default has been attached along with the petition.



4. The petitioner-Bank has greatly contributed to the default and as such it is not entitled to any benefit. The Petitioner Bank along with other Consortium Banks have continued to not make payments towards the payment of various project related expenses for completing the balance work of the project given by NHAI.
5. The last argument advanced by the learned counsel for the Respondent is that the initiation of proceedings under Section 7 of the Code, 2016 is not in the interest of the project and the Consortium Members. On facts it has been submitted that Respondent has already mooted a proposal for one time settlement vide its letter dated 07.03.2019 (Annexure R/12). Three Banks have accorded their sanction to the said OTS letter and the Respondent is likely to receive approval and/or suggestions of other consortium members banks shortly.

10. Having heard learned counsel for the parties we are of the considered view that the Financial Creditor-Bank has succeeded in

establishing a case for triggering the Corporate Insolvency Resolution Process.

11. It can be seen from sanction letter dated 01.09.2010 that the Petitioner-Bank sanctioned and granted term loan facility to the Respondent to the extent of Rs. 150,00,00,000/-. The said facility was restructured vide sanction reference dated 25.03.2015. Thus, the total limit sanctioned to the Respondent was to the extent of Rs. 192,55,00,000/-. The loan and security document for restructured facility was executed on 29.04.2015. Para 36 at pg. 45 of the Annexure I – Terms and Conditions which is the detailed term sheet of the said sanction letter dated 01.09.2010 defines ‘Event of Default’ and the same reads as follows:

“Non-payment of any instalment of principal amount/ of the Debt Facilities for a period of 30 business days from the due date, or
.....

12. The Respondent failed to pay the amount as per the amortization schedule-II attached at page No. 103 with the Master Restructuring Agreement dated 29.04.2015. As per said schedule the first payment became due on August, 2017. Thus, the account of the Respondent moved to default and the same was reported in the Central Repository

of Information on Large Credits (CRILC) on 31.12.2017 which is patent from a perusal of asset classification report dated 17.05.2019 of the Corporate Debtor (relevant pg. No. 198). The statement of account clearly shows that the last payment was received by the petitioner-Bank on May, 2018. The Respondent as per the restructuring documents executed was to pay from August, 2017 (as laid down in amortization schedule). On its failure to pay the amount as undertaken, the account moved to default on 31.12.2017. Therefore, we have no hesitation in rejecting the argument based on limitation period.

13. There is a vital document placed on record namely General Power of Attorney (at pgs. 16-27 of the petition) dated 07.10.2009 executed by the Corporation Bank, Head Office, Mangalore in the presence of two witnesses Mr. A. Mohan Rao, General Manager and Mr. N. Radhakrishna Shet, General Manager establishing authority in favour of Mr. Sanjay Monocha, Senior Manager (Credit) (now holding the post of Assistant General Manager) of the Bank at that relevant time to file the present application. The said General Power of Attorney had been duly registered in the office of Senior Sub Registrar, Mangalore Taluk. It has further countersigned by one Mr. K.V. Raghava Kamath, Deputy



General Manager. Further letter of authority dated 22.05.2019 issued by Deputy General Manager of the Bank posted at Greater Mumbai Zonal Office in favour of Mr. Sanjay Monocha, Assistant General Manager clearly authorized him to file the present petition against M/s Patna Highway Projects Limited before this Tribunal and to make all necessary corrections, modifications, supplementing and complementing the aforesaid petition on behalf of the Bank by virtue of Board Resolution dated 12.02.2017. Even otherwise the General Power of Attorney is a widely worded document and it has various clauses empowering the attorney to file any proceedings before Courts or any other fora. Therefore, it is established that the petition has been filed by a person authorized in accordance with law. The affidavit and the vakalatnama have also been duly signed by the aforesaid officer. In view thereof, we do not find any substance in the objection raised on behalf of respondent.

14. The other argument is that initiation of proceedings under Section 7 of the Code would not serve the interest of the project and the consortium members. It has not been disputed that the Corporate Debtor owe to the Financial Creditor more than Rs. 192 crores as per the assertion made in Part-IV of Form-I prescribed for filing a petition

under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016. Obviously, the Corporate Debtor is a fund starving company and its assets are under financial stress. Once the aforesaid factual position is obtaining in the case in hand, we are unable to understand as to how the resolution of such like stress assets could be achieved except by initiating a process in that direction namely Corporate Insolvency Resolution Process under Section 7 of the Code. Without initiation of such a process there is no possibility of restructuring of its financial position, infusing of funds by another entrepreneur, acquiring more efficient management which is the primary object of the Code. Therefore, to say that it will not be in the interest of the project would not ex-facie be acceptable. The argument proceeds wholly on the wrong assumption and therefore is liable to be rejected. Accordingly, we have no hesitation to reject the same.

15. The Financial Creditor has placed on record various documents in relation to the disbursement of loan to the Respondent Company. The materials on record and the loan documents clearly depicts that the loan was sanctioned, disbursed and the loan/hypothecation agreement were properly executed. Respondent company utilized and



enjoyed the loan facilities. The Financial Creditor has relied upon the document namely 'Charges Registered' obtained from the website of Registrar of Companies confirming creation of mortgage over the properties in order to secure the loan.

16. The Tribunal is not an adjudicating authority to ascertain the quantum of amount of default or to pass decree as to how much amount is actually due to the Petitioner-Financial Creditor. Adjudicating Authority is not to decide a money claim or suit. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default if it amounts to rupees one lac or above (Section 4) before admitting the petition.

17. We further find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in our order dated 27.11.2018 rendered in the case of ECL Finance Limited vs. Digamber Buildcon Pvt. Ltd. (IB- 1039(PB)/2018).

18. After a reading of Section 7 of the Code along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The IRP

proposed does not have any disciplinary proceedings pending against him.

19. As a sequel to the above discussion, this petition is admitted and Mr. Mr. Sutanu Sinha is appointed as an Interim Resolution Professional.

20. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code.

21. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

22. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to

perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditors.

23. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

24. Before parting we must notice the complaint generally made against Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such



correction if need be and act accordingly by placing it before the Financial Creditor as it is only fair to do so.

C.A. No. 1810(PB)/2019

25. During pendency of present petition, Phoenix ARC Private Limited has filed an application being C.A. No. 1810(PB)/2019 dated 12.09.2019. The prayer made in this application is to permit intervention in the pending proceeding on the ground that the debt of the Respondent as owed to Yes Bank Limited and Federal Bank was taken over by it. As a result, the applicant is the largest lender of the Corporate Debtor and the Lenders' Agent in the Lenders' Consortium holding 28% share in the financial debt of the Corporate Debtor. The Lenders' Consortium is now constituted with the members including the applicant and the Financial Creditor-Corporation Bank as well. The Reconstituted Lenders' Consortium, convened a meeting on 05.04.2019 (Annexure-6) to discuss various issues pertaining to the construction and development of the Project which had been awarded to the Corporate Debtor with respect to National Highway. The Financial Creditor-Corporation Bank is resorting to the CIRP proceedings against the Corporate Debtor to be used as a leverage for better recoveries. However, all other lenders constituting the



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Reconstituted Lenders, Consortium have clearly expressed their 'discomfort' against the said suggestion. In the result, it was resolved by the Reconstituted Lenders' Consortium that the lenders consider alternate resolution strategies for the Corporate Debtor, discuss OTS evaluation etc. at the earliest. Despite being well aware of the fact that a majority of the Reconstituted Lenders' Consortium holding 82.27% of the financial debt of the Corporate Debtor are keen to explore alternative resolution strategies in respect of the financial stress of the Corporate Debtor and solely in an attempt to force recovery of its own dues to the detriment of the Project, filed the present petition. We are unable to accept the submission. There is no bar in any law for a consortium member to initiate proceeding under Section 7 of the Code as long as it answers the requirement of Section 4 and Section 7 (2) of the Code. We have already concluded that those requirements are satisfied. Accordingly, we reject the submission.

26. Moreover, as per the judgment of the Hon'ble NCLAT rendered in the case of **IDBI Bank Ltd. v. Odisha Slurry Pipeline Infrastructure Ltd.**, Company Appeal (AT) (Insolvency) No. 51 of 2019 decided on 15.01.2019, no third party could intervene to oppose admission. However, the applicant would be well within its right to file its claim before the Interim Resolution Professional namely Mr. Sutanu Sinha

which shall be considered in accordance with law. Application being C.A. No. 302(PB)/2018 stands disposed of.

27. 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, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its Master data & its website by updating the status of 'Corporate Debtor' and by making a specific mention regarding admission of this petition.

28. A copy of this order shall also be sent to the Secretary, Ministry of Corporate Affairs, New Delhi for compliance of directions issued in para 27 above.



**(M.M. KUMAR)
PRESIDENT**



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

03.01.2020
VINEET