

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-21(ND)/2022

IN THE MATTER OF:

Yes Bank Limited

Registered Office at:
Yes Bank House,
Off Western Express Highway,
Santacruz East, Mumbai – 400055

And a Branch Office at :

4th Floor, Max Towers, Sector 16B,
Noida, Uttar Pradesh – 201301

...Applicant/Financial Creditor

VERSUS

Mothers Pride Education Institution Private Limited

Registered Office at:
11/77 West Punjabi Bagh,
New Delhi - 110026

...Respondent/Corporate Debtor

Section: 7 of IBC, 2016

Order Delivered on : 11.10.2022

CORAM

SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SH. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Adv. Sanjay Bhatt

For the Respondent : Adv. Kusum Ansari

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Yes Bank Ltd. Vs. Mothers Pride Education Institution Pvt. Ltd.

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ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

Yes Bank Limited (the '**Applicant/Financial Creditor**') has filed the present application under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (the '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against Mothers Pride Education Institution Private Limited (the '**Respondent/Corporate Debtor**').

2. The Respondent namely, Mothers Pride Education Institution Private Limited is a Company incorporated on 28.06.2012 under the provisions of erstwhile Companies Act, 1956 with CIN U80903DL2012PTC238175 having its registered office at 11/77 West Punjabi Bagh, New Delhi - 110026, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 3,00,00,000/- and Paid-up Share Capital is Rs. 1,39,75,000/- as per the master data annexed with the Application.

3. It is stated by the Applicant that the Yes Bank Limited (**hereinafter referred to as 'YBL'**) was approached by the Respondent Mothers Pride Education Institution Private Limited (**hereinafter referred to as 'MPEIPL'**) for grant of loan facility for the purpose of refinance of existing facility utilized for upgradation/ renovation and expansion of schools, reimbursement of capex already incurred in school

and balance towards future capex in school. YBL subsequently sanctioned the loan in favour of MPEIPL vide facility letter No. YBL/DEL/1811/2017-18 dated 30.12.2017.

4. It is further stated by the Applicant that in pursuance of the sanction letter dated 30.12.2017, YBL & MPEIPL executed three loan agreements on 10.02.2018 being Term Loan I amounting to Rs. 45,600,000/- (which was disbursed on 14.03.2018), Term Loan II amounting to Rs.35,550,000/- (which was disbursed on 16.03.2018) and Term Loan III amounting to Rs.3,22,850,000/- (which was disbursed on 18.09.2018), detailing the terms and conditions of loan facility was entered into between YBL and MPEIPL. It is submitted by the Applicant that the abovesaid Term Loans were secured by Personal and Corporate Guarantees.

5. It is submitted by the Applicant that in view of the non-payment of the Term Loans by MPEIPL, YBL/ Applicant declared the account of the Corporate Debtor/ MPEIPL as a Non-Performing Asset ('**NPA**') on 29.09.2019. The total debt due from the Corporate Debtor as on 20.07.2021 stood at Rs.10,86,86,870.10/-

6. The particulars of the total amount of default and the date of default or date of Declaration of accounts of the respondent as NPA, as mentioned by the applicant at Serial no.2 of the Part IV of its application are reproduced overleaf for the sake of convenience :

2.	<p>Amount claimed to be in default</p> <p>Date on which the default occurred</p>	<p>Amount due and payable by the Corporate Debtor under the loan extended to Corporate Debtor (T- I):</p> <p>INR 108,686,870.10 as on July 20, 2021</p> <p>Amount due and payable by the Corporate Debtor under the Group Company Debt is :</p> <p>INR 986,970,994.66 as on July 20, 2021</p>
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		<p>Total Claim: INR 1,095,657,864.76 as on July 20, 2021</p> <p>Date of declaration of NPA for Corporate Debtor: September 29, 2019</p> <p>Date of declaration of NPA for Group Company Debt: September 29, 2019</p> <p>Date of Guarantee Invocation Notices – November 08, 2019</p> <p>A certified copy of the computation sheet for working of interest and days of default is annexed herewith and marked as <u>ANNEXURE A-10.</u></p>
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7. That from the perusal of the Part IV of the Application, it is observed that the Applicant has claimed Rs.10,86,86,870.10/- as an unpaid financial debt and 29.09.2019 to be the date of default/NPA.

8. It is further pleaded by the Applicant that out of the total term loan facilities disbursed of Rs.17,10,00,000/-, it had assigned a part of its loan facility of Rs.8,50,00,000/- to Aditya Birla Finance Limited vide a novation cum Assignment Agreement dated 28.08.2018 signed and executed between the Applicant, ABFL and the Corporate Debtor. After such assignment of part of the debt, the debt/exposure of the Applicant stood reduced to Rs.8,60,00,000/-. As a result of non-payment of Terms Loans, the YBL/Applicant issued a Loan Recall Notice dated 08.11.2019 calling upon the MPEIPL /Corporate Debtor to repay the entire remaining dues of Rs.8,93,53,062/- within 7 days.

9. It is submitted by the Applicant that the YBL also filed O.A. No. 256/2020 on 22.10.2020 under the provisions of Recovery of Debts Due to Banks & Financial Institutions Act, 1993 ('RDDB Act') against the Corporate Debtor before DRT-I, Delhi, which is pending adjudication.

10. The Financial Creditor has relied on the following documents to prove existence of the financial debt.

- a) Sanction/Facility Letter bearing No. YBL/DEL/1808/2017-18 dated 30.12.2017 issued by YBL in favour of Corporate Debtor.

- b) Loan Agreement dated 21.11.2011 with respect to Term Loan I for Rs. 1,71,000,000/- executed between YBL & Corporate Debtor.
- c) Personal Guarantee of Mr. Devendra Gupta, Ms. Sudha Gupta, Mr. Prateek Gupta, Mr. Paras Gupta, Mrs. Raj Rani Gupta and Mr. Anil Kumar Goel dated 10.02.2018 in favour of YBL.
- d) Corporate Guarantee of Mothers Pride Education Personna Pvt. Ltd. Presidium Education Institution Pvt. Ltd. and Scholartube Education & Learning Solutions Pvt. Ltd. dated 10.02.2018 in favor of YBL.
- e) Loan recall notice dated 08.11.2019 issued by YBL to the Corporate Debtor.
- f) The loan account statement of Corporate Debtor from 10.02.2018 till 20.07.2021.

11. Basing on the aforesaid facts and documents, the Financial Creditor has prayed for initiation of CIRP against the Respondent.

12. This Adjudicating Authority has issued notice to the Respondent on 21.01.2022. On issuance of notice, the Respondent has filed its reply on 06.06.2022 and stated that no evidence of default or record of default has been filed by the Applicant to constitute the existence of a financial debt disbursed against the consideration of time value of money. That the Financial Creditor has failed to establish default within the meaning of section 3(12) of the Code, inasmuch as, no demand of repayment of loan was ever raised and served upon the Corporate Debtor. Hence, there is no non-payment of alleged debt.

12.1. That the documents basing on which the present application is filed are not binding upon the Corporate Debtor as there exists the dispute. The Financial Creditor has already initiated the proceedings under RDDB Act before the DRT and under section 138 of Negotiable Instruments (NI) Act. It is established law that the proceedings under RDDB Act, Section 138 of NI Act are of civil nature for recovery of money and due to pendency of such cases, the application is not maintainable.

12.2. No notice of demand and/or default has ever been served upon the Corporate Debtor, by the Financial Creditor and/or through information utility as per section 7 of the Code. Hence, in the absence of compliance of such mandatory pre-requisites, the application is not maintainable.

12.3. Admittedly, the Financial Creditor has assigned a substantial part of the debt to an NBFC namely, Aditya Birla Finance Limited (**hereinafter "ABFL"**) vide assignment deed dated 28.08.2018. The said factum of assignment truly, have novated the loan and security agreements and terms and conditions of the agreements of the Applicant stood changed. Effectively, the Applicant has become the co-lender along with ABFL.

12.4. That the co-lender, Aditya Birla Finance Limited has initiated the arbitration proceedings under the alleged arbitration agreement dated 28.08.2018 and obtained certain interim orders against the Respondent in the petition no. OMP (I) 418/2019 titled as "Aditya Birla Finance Limited vs. Presidium Educational and Charitable Trust & Ors., filed

under section 9 of Arbitration and Conciliation Act, 1996 before the Hon'ble High Court of Delhi, in which the Applicant is Respondent No. 20 and remained the consenting partner of the said proceedings. Hence, the Applicant has practically submitted itself to the jurisdiction of arbitration. It is further stated that in the said petition, consequent to passing of interim orders dated 15.11.2019 and 14.01.2020, the Corporate Debtor has been made muted qua its financial affairs and also transfer of the assets, in any manner.

12.5. It is submitted that vide order dated 22.12.2020, the entire financial affairs of Corporate Debtor have been put under the control and directions of Hon'ble Receiver, Mr. Justice Deepak Gupta, who has effectively become *custodian legis* of all affairs and assets of corporate Debtor. It is to be noted that the Applicant is the consenting party to the said proceedings and orders. The said order is still in force.

12.6. It is further submitted that vide judgment dated 06.12.2021, the said petition under Section 9 of Arbitration and Conciliation Act, 1996 has been disposed of and the aforesaid interim protections have been extended until the same are varied by the Hon'ble Arbitrator, Mr. Justice Madan B. Lokur, appointed as sole Arbitrator to adjudicate the claims, guarantees and securities.

13. The Applicant has filed its Rejoinder and Written Submissions and stated that the Applicant, out of the total term loan facilities of Rs. 17,10,00,000/-, had assigned a part of its loan facilities of Rs.

8,50,00,000/- together with all rights and the underlying securities thereto to Aditya Birla Finance Limited vide Deed of Assignment signed and executed between the Applicant, ABFL and the Corporate Debtor. After such assignment of part of debt, the exposure of the Applicant stood reduced to Rs.8,60,00,000/-.

13.1. That the present application under Section 7 of IBC is for the amount due, payable and in default to the Applicant under the term loan retained by it and not with respect to the debt assigned to ABFL. Clauses 6 & 7 of the Assignment Agreement record that the Applicant shall continue to remain entitled to all rights and benefits in relation to the loan facilities retained by it. The Corporate Debtor is a party to the Assignment Agreement and is fully aware of the terms and conditions.

13.2. In any case, the existence of debt has also been admitted in the audited balance sheet of the Corporate Debtor for the financial Year 2018-19 annexed as Annexure A-8 of the Application. In the said audited balance sheet, the debt has been admitted by the Corporate Debtor under the head "Long Term Borrowings" (page 178) under Note No. 4 of the notes forming part of the balance sheet.

13.3. The Applicant is not a party to the Arbitration Agreement executed between Corporate Debtor and ABFL and the Applicant is only arrayed as a proforma party in the petition No. OMP (I) 418/2019 titled as "Aditya Birla Finance Limited vs. Presidium Educational and Charitable Trust & Ors." before the Hon'ble High Court of Delhi filed by ABFL under Section

9 of the Arbitration and Conciliation Act, 1996, which is also recorded in the Order dated 06.12.2021 passed by the Hon'ble High Court of Delhi in said Petition, as reproduced below:

*“The Court is further informed that the withdrawals from the escrow accounts have been carried by **Respondent No. 20 that is not a party to the arbitration agreement.** While Respondent No. 20 is free to take recourse to or pursue remedies in accordance with law, which has already been initiated, they would also not operate the escrow accounts without the permission of the learned Arbitrator or direction from the court of competent jurisdiction...”*

13.4. The arbitration proceedings initiated by ABFL, which have now been disposed of by the Hon'ble High Court of Delhi, pertains to only ABFL's debt and therefore, the contention that the entire financial affairs of the Corporate Debtor are under the control and directions of the Hon'ble Receiver, Mr. Justice Deepak Gupta is misleading and incorrect. The order dated 22.12.2020 of the Hon'ble High Court, Delhi itself clarifies this aspect and the relevant part of the order is reproduced below:

*“Accordingly, with the consent of the parties, Justice Deepak Gupta, former Judge of the Hon'ble Supreme Court (+91 XXXXXXXXXX) is appointed as Receiver to henceforth **monitor the escrow accounts being maintained by the respondent no. 20 and the deposit of amounts therein as well as application thereof, which includes analysing all past instances of deposits as well and verifying whether the same adhered to the terms of the loan**”*

agreements. *The learned Receiver shall inspect whether the amounts being collected by respondent nos.1 to 5 from their schools by way of fee and other charges are being, and have been, **positively deposited in the escrow accounts.** Further, all disbursements to be made from the escrow accounts shall be effected only pursuant to an authorisation therefore by the learned Receiver. It will be open for the learned Receiver to call for all books and records of respondent nos. 1 to 5, which he may need to discharge his duties under this appointment, and both sides shall render their full assistance to him on all these aspects. The learned Receiver shall be paid a sum of Rs.10 lakhs towards remuneration, which shall be released from the escrow accounts in question and may be increased if the need so arises.”*

13.5. Even otherwise, the proceedings initiated by ABFL before the Hon'ble High Court and the orders passed by the Hon'ble High Court would not in any manner restrain the Corporate Debtor from making any payment to the Applicant, as the debt which is due and payable to the Applicant has been outstanding even before the initiation of any proceedings against the Corporate Debtor. In any case, a direction issued by the Hon'ble High Court of Delhi vide order dated 06.12.2021 to make any payment does not restrain the Corporate Debtor from meeting its liability in ordinary course of business including payment of dues of the Applicant.

14. After hearing submission of both the parties and perusing the documents placed on the record, this Bench observes that the Respondent has raised contentions that there is a dispute between the

parties and the Applicant has not issued notice of demand or record of the information utilities, as envisaged under section 7 of the Code along with rules under Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

15. As per the Scheme of the IBC 2016, although the 'dispute' can be a ground to seek dismissal of an application filed under Section 9 of the IBC 2016 but this ground is not available to seek dismissal of an application filed under Section 7 of IBC, 2016. Further, unlike Section 9, there is no pre-requisite of sending a statutory demand notice under Section 8 of IBC, 2016 before filing an application under Section 7 of IBC, 2016. Furthermore, even as regards placing the record of Information Utility, the Hon'ble High Court of Calcutta in the matter of **Univalve Projects Pvt. Ltd. Versus The Union of India & Ors. W. P. No. 5595 (W) of 2020 dated 18.08.2020** has held that the provision is directory in nature. The relevant portion of Para 67 of the said Judgment is reproduced below –

"b) I am of the view that financial creditors can rely on either of the modes of evidences at hand to showcase a financial debt, that is, either a record of default from the IU OR any other document as specified which showcases the existence of a financial debt. Such other documents may belong to any of the four classes of documents stated in sub-regulation 2(b) of Regulation 8 of the CIRP, 2016 or as the Supreme Court has observed in Swiss Ribbons (P) Ltd. (supra), all the eight classes of documents stated in Part-V to Form-1 appended with the AA Rules, 2016.

c) Based on sub-paragraph (b) above, it may therefore be inferred that Section 215 of the IBC, 2016 is not mandatory in nature."

Hence, in our considered view, the aforesaid contentions raised by the Respondent merits no consideration.

16. It is further contended by the Corporate Debtor that since there are proceedings pending under Section 138 of the Negotiable Instruments Act and under the RDDB Act before DRT, the present Application is not maintainable. In this context, we refer to the provision under Section 238 of IBC 2016, which reads as below :

“238. provisions of this Code to override other laws.

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

Thus, in our considered view, the pendency of the proceedings under the Negotiable Instruments Act or/and under the RDDB Act are no bar in filing an application under Section 7 of IBC 2016 to initiate Corporate Insolvency Resolution Process, since Section 238 provides overriding effect to the provisions of IBC over the anything inconsistent therewith contained in any other law being in force. Hence, we find no force in this contention of the Respondent.

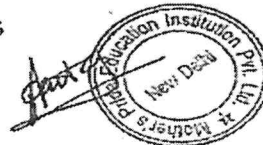
17. It is contended by the Respondent that the Applicant has admittedly assigned a substantial part of its debt to Aditya Birla Finance Limited (ABFL) vide assignment deed dated 28.08.2018 and the said assignment of loan has been secured with common mortgage

and guarantees between the Applicant and ABFL. The said factum of assignment truly, have novated the loan and security agreements of the Applicant, and the terms and conditions of the alleged agreements of the Applicant stood changed. Effectively, the Applicant has become the co-lender along with the Aditya Birla Finance Limited. Per contra, the Applicant has stated that vide the aforesaid Assignment Agreement, it has assigned only a part of its loan facilities, i.e., of Rs.8,50,00,000/- out of the term loan of Rs.17,10,00,000/- together with all rights and the underlying securities thereto to "ABFL". Hence, the Applicant still has an exposure of Rs.8,60,00,000/-, and the clauses 6 & 7 of the Assignment Agreement executed between the Applicant and ABFL records that *the Applicant shall continue to be entitled to all rights, benefits in relation to the loan facilities retained by it.* At this juncture, we refer to Clauses 6 and 7 of Deed of Assignment dated 28.08.2018 executed between the Yes Bank Limited, Aditya Birla Finance Limited and the Mothers Pride Education Institution Private Limited, the scanned copy of which are reproduced overleaf :

4. By execution of this Deed, the Transferee Lender shall be bound by all the Transaction Documents (as if such Assigned Facilities were provided by the Transferee Lender to the Borrower) to the same extent as the Transferring Lender to the extent of the Assigned Facilities from the Effective Date.
5. The Loan Agreement shall stand modified to the extent as specified in the Annexure A to this Deed.
6. The Transferring Lender shall have no liability, responsibility or obligation whatsoever, and shall relinquish all its rights in respect of the Assigned Facilities transferred by it pursuant to this Deed. The Transferring Lender shall, however, remain responsible in respect and to the extent of, and shall continue to be entitled to all rights, benefits, entitlements and privileges in relation to the Facilities retained by it as more specifically set out against its name in the Annexure A to this Deed (including the benefit of the security and additional comfort), all of which shall continue to remain in full force and effect. In addition, nothing contained in this Deed or the transfer of the Assigned Facilities in the manner contemplated herein shall affect or adversely impact the rights, benefits, entitlements and privileges of a Transferring Lender in relation to Facilities retained by it as more specifically set out against its name in the Annexure A to this Deed (including the benefit of the security), all of which shall continue to remain in full force and effect.
7. The Transferring Lender (a) makes no representation or warranty and assumes no responsibility with respect to the any statements, warranties or representations made in or in connection with any of the Transaction Documents or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with any Transaction Document or any other instrument or document furnished pursuant thereto, and (b) makes no representation or warranty and assumes no responsibility with respect to the financial condition of the Borrower and/or security provider, or the performance (including ability to perform) or observance by the Borrower, the security provider and/or the other Lender, as the case may be, of any of their obligations under any Transaction Document to which they are or will be a party or any other instrument or document furnished pursuant thereto.
8. Nothing herein or in the Transaction Document shall oblige the Transferring Lender to (a) accept or be liable for any claim or demand from the Transferee Lender on any ground or for any reason whatsoever in relation to the subject matter of this Agreement, or (b) support or be liable for any damages or losses directly or indirectly sustained or incurred by the Transferee Lender for any reason whatsoever including, without limitation, the non-performance by the Borrower or any other party to the Transaction Documents of its obligations under any such document.
9. Wherever necessary, the Transaction Documents are hereby amended (and deemed to have been expressly amended, notwithstanding anything contained in such documents) to the extent of the Assigned Facilities by the Transferring Lender and assumed by the Transferee Lender(s). The Transferee Lender(s), upon execution of this Deed, is/are deemed to have executed and become signatories to each Transaction Documents to which the



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From the perusal of the Clauses 6 and 7 of the Deed, we observe that the Applicant continues to be entitled to all rights, benefits in relation to the loan facilities retained by it and further assumes no responsibility with respect to the loan facilities assigned to the ABFL. Hence, it would be wrong to deduce that the Applicant has lost all rights to recover its dues on execution of the Assignment Deed.

18. It is further contended by the Respondent that vide para 9 of the order passed on 15.11.2019 in OMP (I) 418/2019 -“Aditya Birla Finance Limited vs. Presidium Educational and Charitable Trust & Ors”, the Hon’ble High Court of Delhi restrained the Respondent to transfer the assets in any manner. At this stage, we therefore refer to the order passed by the Hon’ble High Court of Delhi on 15.11.2019 -

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P.(I) (COMM.) 418/2019**

ADITYA BIRLA FINANCE LIMITED Petitioner
Through: Mr. Rajiv Nayyar, Senior Advocate
with Mr. Saket Sikri, Mr. Manmeet
Singh, Ms. Neha Mehta and Ms. Ria
Kohli, Advocates.

versus

**PRESIDIUM EDUCATIONAL AND
CHARITABLE TRUST & ORS.** Respondents
Through: Mr. P.S. Singhal, Advocate for R14.
Mr. Vinay Kumar Garg, Senior
Advocate with Mr. Sunil Kumar and
Mr. K. Sri Varshini, Advocates for
R15, R16 and R17.

**CORAM:
HON’BLE MR. JUSTICE J.R. MIDHA**

% **ORDER**
15.11.2019

I.A. 15842/2019

Allowed, subject to just exceptions.

O.M.P.(I) (COMM.) 418/2019

1. Issue notice. Learned counsel for respondent No.14 accepts notice. Learned counsel for respondents No.15 to 17 also accepts notice. Notice be issued to respondents No.1 to 13 by all modes including *e-mail* and *dasti*, returnable on 14th January, 2020.
2. Learned senior counsel for the petitioner submits that advance copy of this petition has been personally delivered to all the respondents.
3. The petitioner advanced Rs.100 crores to respondents No.1 to 5 by

taking over their liabilities towards Yes Bank from which respondents No.1 to 5 had taken loan to the tune of Rs.260 crores. It is further submitted that respondents No.6 to 14 are the guarantors to the repayment of the loan. It is further submitted that respondents No.1 to 5 have defaulted in their obligations to the tune of Rs.98.26 crores. It is further submitted that the respondents have not transferred any amount to the Escrow account as per the agreement and are siphoning off the entire amount by transferring the same to the other accounts.

4. Learned senior counsel for the petitioner seeks interim injunction against respondents No.1 to 14. This Court is satisfied that interim directions are warranted against respondents No.1 to 14.

5. Respondents No.1 to 14 are directed to file the affidavit of their assets on the date of the cause of action i.e. taking the loan as well as on the date of filing of the affidavit in Form 16A, Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure within 30 days.

6. Respondents No.1 to 5 are directed to file additional affidavit in the format attached hereto as *Annexure A-1* within 30 days.

7. Respondents No.6 to 14 are directed to file additional affidavit in the format attached hereto as *Annexure A-2* within 30 days.

8. Respondents No.1 to 5 are directed to disclose on affidavit the fees and charges collected from the students and number of students during the period 2018-19 and 2019-20 within 30 days.

9. Respondents No.1 to 14 shall not dispose of, alienate, encumber either directly or indirectly or otherwise part with the possession of any assets to the tune of the outstanding amount except in the ordinary course of business such as payment of salary and statutory dues till the next date of hearing.

10. All the respondents shall remain present in Court on the next date of hearing.

11. Copy of this order be sent to respondents No.1 to 14.

12. Copy of this order be given *dasti* to counsel for the petitioner under signature of Court Master.

J.R. MIDHA, J.

NOVEMBER 15, 2019

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19. Furthermore, it has been added by the Respondent that the Hon'ble High Court, while finally disposing of the aforesaid matter vide Judgment dated 06.12.2021, has continued the restrictions imposed vide para 9 of the order dated 15.11.2019 and left it to the Ld. Arbitrator, appointed in that matter, to take decisions.

16. The Court is further informed that the withdrawals from the escrow accounts have also been carried out by Respondent No. 20 that is not a party to the arbitration agreement. While Respondent No. 20 is free to take recourse to or pursue remedies in accordance with law, which has already been initiated, they would also not operate the escrow accounts without the permission of the learned Arbitrator or direction from the court of competent jurisdiction.

17. It is further clarified that the directions given vide Order dated 15th November, 2019 in para 9 shall also continue to operate along with directions given in the Order dated 14th January, 2021.

18. The learned Arbitrator shall be free to modify, extend, recall, or alter the Order passed by this Court including continuation of the appointment of the learned Receiver and the Chartered Accountant, after considering the submissions of the counsel for the parties on merits. It is further clarified that the views expressed by this Court are only tentative in nature and the learned Arbitrator would consider the application under Section 17 of the Act, uninfluenced by any observations made by this Court in the previous Orders or this Orders.

19. At the request of the parties, it further directed that interim applications, if any, which are in the nature of seeking directions of interim measures, shall also be considered by the learned Arbitrator while considering the application under Section 17 of the Act, in accordance with

law.

20. The counsel for the Chartered Accountant informs that the fees of the CA still unpaid. Mr. Tripathi states that if a written request is received by the Petitioner, the payment shall be made forthwith.

21. Accordingly, the present petition and pending applications are disposed of in the above terms.

DECEMBER 6, 2021
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SANJEEV NARULA, J

20. When we carefully analyse the sequence of events, we find that certain restrictions on the Corporate Debtor were imposed only on and after 15.11.2019, whereas the account of the Corporate Debtor was marked and became the NPA on 29.09.2019 (i.e., the date of default in the present matter). Hence, prior to 15.11.2019, the Respondent had no alleged restrictions in servicing its debt to the Applicant. Further, in our considered view, activities like procurement of loan and making payment or servicing debt in furtherance of business is part of the ordinary course of business. Hence, we find no force in the contention of the Respondent that it was restricted by the Hon'ble High Court in servicing its dues towards the Applicant. Furthermore, even in case the

Respondent has felt restricted in discharging its continuing debt obligations, it could have sought clearance/permission from the Hon'ble arbitrator. But we find no such document placed on record.

21. We have also perused Loan Account Statement as well as the Balance Sheet of the Corporate Debtor for the Financial Year 2018-19 placed with the Application, where in the Note no.4 under the head "Long Term Borrowings", the Corporate Debtor had acknowledged its debt in long-term borrowing category. In light of the admission of debt by the Respondent in its balance sheet and marking/declaration of Account of Corporate Debtor as NPA by the Applicant Bank, we find that the debt and default are clearly established, which are the two essential conditions to trigger CIRP under Section 7 against the Corporate Debtor. At this juncture, we would like to refer to the Judgment of Hon'ble Supreme Court passed in the matter of **Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407**", whereby it is held that-

*"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an installment amount. **For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets***

triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.”

(Emphasis supplied)

22. In the given facts and circumstances, the present Application being complete and the Applicant/Financial Creditor having established the default in payment of the Financial Debt for the default amount above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) The institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the Respondent any of its assets or any legal right or beneficial interest therein;

- (c) Any action to foreclose, recover or enforce any security interest created by the Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Respondent.”

23. As proposed by the Financial Creditor, this Bench appoints Sh. Ganga Ram Agarwal as IRP having Registration No. IBBI/IPA-002/IP-N00874/2019-20/12777 (Email: ganga.agarwal@aaainsolvency.com), subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that :

“Sh. Ganga Ram Agarwal (ganga.agarwal@aaainsolvency.com), IRP having Registration No. IBBI/IPA-002/IP-N00874/2019-20/12777 is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is directed to take the steps as mandated under the IBC 2016 specifically under Section 15, 17, 18, 20 and 21 of The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016 of the Code.”


24. The Financial Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount,

however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional concerned and shall be paid back to the Financial Creditor.

25. A copy of this Order shall immediately be communicated by the Registry/ Court Officer of this Tribunal to the Financial Creditor, the Respondent and the IRP mentioned above. In addition, a copy of the Order shall also be forwarded by the Registry/Court Officer of this Tribunal to the IBBI for their record.



(L. N. GUPTA)
MEMBER (T)



(BACHU VENKAT BALARAM DAS)
MEMBER (J)