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05.07.2023

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IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.201
C.P.(IB)/301(AHM)2022

Proceedings under Section 7 IBC

IN THE MATTER OF:

Indian Bank (Erstwhile Allahabad Bank) .....**Applicant**
V/s
Yash Kirti Tours and Travels Pvt Ltd) .....**Respondent**

Order delivered on: 03/07/2023

Coram:
Mr. Shammi Khan, Hon'ble Member(J)
Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:
For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronounced of the order. The order is pronounced in the open court, vide separate sheet.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BANCH (COURT NO. I)

CP (IB) No. 301/AHM/2022

[Order under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016].

IN THE MATTER OF:

Indian Bank
(Erstwhile Allahabad Bank),
Branch Office: Stressed asset Management,
Brnach, 2nd Floor, Deshna Chambers,
B/H Kadva Patidar Vadi, Usmanpura
Cross Road, Opp. AMC Water Tank,
Ashrasm Road, Ahmedabad-380014.

...Applicant / Financial Creditor

VERSUS

Yash Kirti Tours and Travels Private Limited
HE-1, Ashirwad Complex, Transport Nagar,
Jaipur, Rajasthan.-302003
CIN: U63040RJ2001PTC017067

...Respondent (Corporate Guarantor of Siddhi Vinayak Logistics Ltd.)

Order Pronounced On: 03/07/2023

Coram: SHAMMI KHAN (Member Judicial)
KAUSHALENDRA KUMAR SINGH (Member Technical)

Appearance:

For the Applicant/Financial Creditor: Ld. Adv. Mr. Sumit Parikh
For the Respondent/ Corporate Guarantor: Ex-parte.

ORDER

1. The instant Application is filed on 20.10.2022 by Indian Bank (for brevity '**the Applicant**') through its Chief Manager/ Branch Head Mr. Bhoopendra Singh, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity ' **IB Code'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as a Financial Creditor for initiation of Corporate Insolvency Resolution Process ('**CIRP'**) against the Yash Kirti Tours and Travels Pvt. Ltd. (for brevity '**Corporate Guarantor**') of Siddhi Vinayak Logistics Ltd.

2. Briefly, the facts of the case as mentioned in the Application and submitted by the Applicant are that the Applicant Bank is a body corporate constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 incorporated on 19.07.1969, having identification No. as (PAN- AAACI1607G) and having its head office at 254-260, Avaal Shanmugham Salai, Chennai 600014 and Branch office at Stressed Asset Management (Sam) Branch, 2nd Floor, Deshna Chambers, B/H Kadva patidar Vadi, Usmanpura Cross Road, Opp. Amc Water Tank, Ashram Road, Ahmedabad, Gujarat – 380014. The Applicant is in the banking business providing various types of financial facilities including business loans, personal loans, consumer loans, loan against property, home equity loans, term loan etc.

3. The Respondent/Corporate Guarantor is a company limited by shares, incorporated under the provisions of the Companies Act, 1956 on 18.06.2001, duly registered with Registrar of Companies, Ahmedabad having CIN No.: U63040RJ2001PTC017067 and its registered office is located at HE1, Ashirwad Complex, Transport Nagar, Jaipur Rajasthan.

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

The authorized share capital of the Respondent/Corporate Guarantor is Rs. 2,00,00,000/- and the Issued, Subscribed and Paid-up share capital of the Respondent/Corporate Guarantor is Rs. 1,26,60,000/-.

4. The Applicant states that one M/s. Siddhi Vinayak Logistic Ltd. (hereinafter referred to as "borrower") through its directors had approached the Applicant Bank for sanction of term loan facility for purchase of 188 new commercial vehicles. The Applicant considered the request and sanctioned term loan of Rs. 47.75 crores to the borrower vide sanction letter dated 29.03.2010. As per the terms of the sanction letter, the borrower had offered and agreed to give primary and collateral security. The Respondent/Corporate Guarantor had executed the Corporate Guarantee for the said loan of original borrower on 30.03.2010. The copy of said guarantee, executed by the Respondent/Corporate Guarantor with the Applicant, is annexed with the application.

5. The borrower, again, through its directors had approached the Applicant for renewal of existing term loan and sanction of additional term loan facility for purchase of 405 new commercial vehicles. The Applicant considered the request and renewed the existing term loan and sanctioned additional term loan of Rs. 120.00 crores vide sanction letter dated 23.11.2012. As per the terms of sanction letter the borrower again had offered and agreed to give primary and collateral security. The Respondent/Corporate Guarantor had executed corporate guarantee for the said additional term loan of original borrower on the 04.12.2012. The copy of said guarantee executed by Respondent/Corporate Guarantor is annexed with the application. The borrower company again approached the Applicant for review/restructure of its term loan accounts, which the

Applicant agreed vide letter dated 29.12.2014. For availing such facility, the borrower had offered and agreed to give primary and collateral security. Upon review/restructure of term loans, the borrower along with the Respondent/Corporate Guarantor also executed guarantee documents. The Board of Directors of Respondent/Corporate Guarantor had passed Board Resolution dated 03.12.2012 in which it was resolved that company should stand as Respondent/Corporate Guarantor to secure all the liabilities of the borrower which has been annexed with the application.

6. The Applicant bank states that the Respondent/Corporate Guarantor had accepted all the liabilities of the Siddhi Vinayak Logistic Private Limited (borrower) and had again signed guarantee document on 31.12.2014 which has been annexed with the application. The borrower company availed the credit facilities sanctioned by the Applicant bank but despite numerous follow up, failed to repay the dues of the Applicant bank as per agreed terms. The Respondent/Corporate Guarantor also failed to honour their commitments given in the guarantee agreements.

7. Due to default in payment of loan amount to the Applicant, the account of original borrower was declared as NPA (non-performing asset) in the Books of the Applicant on 30.09.2015. Total amount claimed to be in default as on 13.10.2022 is Rs. 278,62,49,265/-.

8. The Applicant bank further submitted that despite numerous follow up, the borrower failed to repay the dues of the Applicant as per agreed terms and the Respondent/Corporate Guarantor also failed to honour their commitments given in the guarantee agreements. Ultimately the Applicant recalled the loan on 05.11.2015. The Applicant initiated

recovery proceedings against the principal borrower i.e. M/s. Siddhi Vinayak Logistic Limited and Respondent/Corporate Guarantor by issuing notice on 23.02.2016 under Section 13 (2) of SARFAESI Act, 2002. The Applicant had also initiated recovery proceedings against the principal borrower and its Respondent/Corporate Guarantor, before DRT-II, Ahmedabad on 28.04.2017 by filing Original Application (OA) No. 515/2017 and the same has been decided by DRT-II in favour of the Applicant vide order dated 04.03.2020. The Relevant portion of the order is reproduced below:

> *"That the Original Application No. 515 of 2017 initiated by the Applicant Bank for issuance of Recovery Certificate to the tune of Rs. 168,74,53,914.30 (Rupees one hundred sixty-eight crores seventy-four lacs fifty-three thousand nine hundred fourteen and paise thirty only) together with interest @ 10% per annum with monthly rests from the date of filing of O.A. till full realisation of entire dues and costs is hereby succeeds and is allowed against the defendant No. 1 to 13 with costs jointly and severally."*

9. Thereafter, the Applicant bank filed an application under section 7 of IB Code before this Adjudicating Authority, for initiation of CIRP against the principal borrower i.e., M/s. Siddhi Vinayak Logistic Limited, which was admitted on 12.09.2017 and, thereafter, order for initiation of liquidation process against the principal borrower was passed on 19.11.2018.

10. As per Form 1, part IV, the Respondent/Corporate Guarantor is in total default of Rs. 278,62,49,265/- (Rupees two hundred seventy-eight crores sixty-two lacs forty-nine thousand two hundred sixty-five only) which

includes principal amount of Rs.121,58,48,530/-, unclaimed interest of Rs. 141,08,69,492/- (Rupees one hundred forty-one crores eight lacs sixty-nine thousand four hundred ninety-two only) and penal interest of Rs. 15,95,31,243/- (Rupees fifteen crores ninety-five lacs thirty-one thousand two hundred forty-three only) due and payable by the Respondent/Corporate Guarantor.

11. The Applicant has proposed the name of **Mr. Iqbal Singh Gandhi** to be appointed as Interim Resolution Professional (IRP), having Registration No. IBBI/IPA-001/IP-P02365/2021-2022/13524 and address at C/302 Rosewood Estate, Satellite, Near Prerna Tirth Jain Derasar, Ahmedabad-380015, Gujarat. His e-mail id is iqbalsingh2659@yahoo.co.in. The written consent of IRP in Form-2 dated 15.10.2022 with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed which is on record.

12. Despite serving notice none appeared on behalf of the Respondent/Corporate Guarantor dated 17.11.2022 and 21.11.2022. On 25.01.2023 notice was returned with instruction "Addressee Left without instruction". Thereafter notice was sent to the Respondent/Corporate Guarantor through email on 27.01.2023. However, the same was bounce-back from the server. Further in compliance of the order dated 30.01.2023 paper publication was made. Despite of paper publication no representation from the Respondent/Corporate Guarantor was received. Affidavit of service of publication has been filed on 25.03.2023. Therefore, vide order dated 10.04.2023 the Respondent/Corporate Guarantor was proceeded **ex-parte**.

13. We have heard the learned counsel for the Applicant and have perused the material available on record. On perusal of the records it is found that the Applicant Bank had extended credit facilities to M/s. Siddhi Vinayak Logistic Ltd. (borrower) initially in the year 2010 which were renewed/extended/enhanced from time to time at the request of the borrower and on the strength of the security documents executed not only by the borrower but also by the Guarantors, including the present Respondent/Corporate Guarantor. Guarantee for payment of debt of original borrower continued vide corporate guarantees executed on 30.03.2010, 04.12.2012 and 31.12.2014 for various limits by Respondent. Demand/legal notice dated 05.11.2015 served on the Respondent/Corporate Guarantor as well as the decree passed by DRT against the Respondent/Corporate Guarantor also confirms the debt and default.

14. The registered office of the Respondent/Corporate Guarantor is situated in Jaipur (Rajasthan). However, this Adjudicating Authority, has already passed order for initiation of CIRP against the principal borrower i.e., M/s. Siddhi Vinayak Logistic Limited, which was admitted on 12.09.2017. Thereafter, order for initiation of liquidation process against the principal borrower was also passed on 19.11.2018. Therefore, as per Section 60 sub section (2) (3) of the IB Code, this Tribunal has jurisdiction to entertain and try this application against the Respondent/Corporate Guarantor.

15. In light of the above discussions, it is evident that the debt is due and payable and default has occurred. The present application is complete in terms of Section 7 (5) of the Code. The Applicant is entitled to claim its

dues, establishing the default in payment of the financial debt beyond doubt. Moreover, since the application is not contested and submissions of Applicant are not disputed/objected by the Respondent/Corporate Guarantor, the same will amount to deemed admission. It is beyond doubt that the Respondent/Corporate Guarantor is incapable of discharging its debts and requires resolution.

16. Therefore, in light of the above facts the Application filed under sub-section (2) of Section 7 of IBC, 2016 is maintainable. The existing financial debt is of more than **rupees one crore** which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Guarantor deserves to be admitted.

17. In view of the above, the Respondent/Corporate Guarantor has defaulted in the payment of its debts. Accordingly, we admit this application and order as under: -

(i) The Application bearing **CP(IB)301/(AHM)/2022** filed by **Indian Bank (Erstwhile Allahabad Bank)** (the Applicant/ Financial Creditor), under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Yash Kirti Tours and Travels Private Limited** (the Respondent/Corporate Guarantor) is hereby admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

(a) the institution of suits or continuation of pending suits or proceedings against the Respondent/Corporate Guarantor 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/Corporate Guarantor 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/Corporate Guarantor 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/Corporate Guarantor.

(ii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Respondent/Corporate Guarantor under Section 33 of the IBC, 2016, as the case may be.

(iii) The Applicant/Financial Creditor has proposed the name of **Mr. Iqbal Singh Gandhi** having Registration No. IBBI/IPA-001/IP-P02365/2021-2022/13524 to act as the IRP. His e-mail id is iqbalsingh2659@yahoo.co.in. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by Mr. Iqbal Singh Gandhi as per the

requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code. Therefore, this Adjudicating Authority hereby appoints **Mr. Iqbal Singh Gandhi** having Registration No. IBBI/IPA-001/IP-P02365/2021-2022/13524 to act as an IRP of the Respondent/Corporate Guarantor under Section 13(1) (c) of the IBC, 2016.

(iv) The IRP shall perform all his functions as contemplated, *inter-alia,* by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Respondent/Corporate Guarantor, its Promoters or any other person associated with management of the Respondent/Corporate Guarantor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Respondent/Corporate Guarantor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(v) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) against the Respondent/Corporate Guarantor and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) The IRP is expected to take full charge of the Respondent/Corporate Guarantor assets, and documents without any delay whatsoever. He is also free to take police assistance in

this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

(vii) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Respondent/Corporate Guarantor.

(viii) It is further directed that the supply of goods/service to the Respondent/Corporate Guarantor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(ix) The IRP shall be under duty to protect and preserve the value of the property of the Respondent/Corporate Guarantor and manage the operations of the Respondent/Corporate Guarantor as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(x) The Applicant/Financial Creditor is directed to pay an advance of **Rs. 2.00 lacs (Rupees two lacs only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.

(xi) In terms of Section 7(7) of the Code, the Registry is directed to communicate a copy of this order to the Applicant/Financial

Creditor, the Respondent/Corporate Guarantor, to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Respondent/Corporate Guarantor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xii) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

18. Accordingly, **CP(IB) No. 301/AHM/2022** is allowed and disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

DIVYA/LRA

Prepared by

Signature

Date 05/7/2023

Certified to be True Copy of the Original
03/07/23
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad