

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

C.P.(IB) No.17/BB/2019  
U/s 7 of IBC, 2016  
R/w Rule 4 of I&B (AAA) Rules, 2016

**In the matter of:**

M/s. Oriental Bank of Commerce  
Represented by Chief Manager,  
Sri D.M.Dora,  
RRL Cluster, No-92/95,  
HJS Chambers Richmond Road,  
Bangalore -560 025 - Petitioner/Financial Creditor

**Versus**

M/s.IDEB Projects Pvt. Ltd.  
9<sup>th</sup> and 10<sup>th</sup> Floor, Delta Towers Sigma  
Soft-Tech, Park 7, Whitefiled Main Road,  
VarathurKodi, Opp.Varathur Lake,  
Varathur, Karnataka  
Bangalore - 560 066 - Respondent/Corporate Debtor

**Date or Order: 29<sup>th</sup> March, 2019**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

**Parties/Counsels Present:**

For the Petitioner : Shri S.S.Nagananda with Ms.Rajitha T.O.  
For the Respondent : Shri AjeshKumar.S along with  
Shri Sharanjith Shetty,  
Shri S.R.Tejas representing SBI

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB) No.17/BB/2019 is filed by Oriental Bank of Commerce('Petitioner/Financial Creditor') under Section 7 of the IBC, 2016 R/w Rule 4 of the I&B (AAA) Rules, 2016, by inter alia, seeking to initiate Corporate Insolvency Resolution Process in

respect of M/s.IDEB Projects Pvt. Ltd ('Respondent/Corporate Debtor') on the ground that the Corporate Debtor failed to pay the outstanding amount of Rs.36,18,52,994/- (Rupees Thirty Six Crores Eighteen Lakhs Fifty Two Thousand Nine Hundred and Ninety Four Only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- 1) Oriental Bank of Commerce (herein after referred to as Petitioner/Financial Creditor) was incorporated on 1980. The Financial Creditor is a Banking Company registered under the Companies Act, 1956 having CIN No. U65191DL1901PLC002036.
- 2) M/s. IDEB Projects Pvt. Ltd (herein after referred to as Respondent/Corporate Debtor) was incorporated on 17.04.1997, CIN No. U85110KA1997PTC022128. Authorised share capital is Rs.27,70,00,000/- (Rupees Twenty Seven Crore Seventy Lakhs Only) and Paid up Capital is Rs.20,70,67,130/- (Rupees Twenty Crore Seventy Lakhs Sixty Seven Thousand One Hundred and Thirty Only).
- 3) The Corporate Debtor had approached the Financial Creditor and other Banks for procuring financial assistance for the purpose of working capital. In pursuant to the request of the Corporate Debtor, the Financial Creditor had sanctioned the credit facility vide Sanctioned the credit facility vide Letter dated 04.07.2007. Subsequently, the parties have entered into a Working Capital Consortium Agreement dated 11.07.2007. The working Capital Consortium includes State Bank of India(SBI), State Bank of Hyderabad (SBH), State Bank of Patiala (SBP), State Bank of Travancore (SBT), ICICI Bank and the Financial Creditor. The meeting of the consortium designated State Bank of India as Lead Bank of the consortium under the Inter-creditors Agreement dated 11.07.2007



- 4) The consortium together had sanctioned total working capital of Rs. 380,00,00,000/- (Rupees Three Hundred and Eighty Crores Only) which consists of State Bank of India(SBI), State Bank of Hyderabad (SBH), State Bank of Patiala (SBP), State Bank of Travancore (SBT), ICICI Bank and the Oriental Bank of Commerce(Financial Creditor). Accordingly, respective Banks have issued separate sanction letters. Under the said arrangement, the Corporate Debtor had availed working capital credit limit of Rs.38,00,00,000/- (Rupees Thirty Eight Crores Only) from the Financial Creditor(OBC) under the Working Capital Consortium Agreement dated 11.07.2007 and in terms of the Sanction Letter dated 04.07.2007.
- 5) Further, the Corporate Debtor had created security interest by way of charge in favour of the consortium banks jointly and severally on all the current assets, stocks of raw materials, semi-finished goods, stores and spares, from work, bills receivable, debts and all other movables as more and fully described under the Joint Deed of Hypothecation and also pledged the shares of the associate Company vide Pledge Agreement dated 11.07.2007. In order to secure the credit facility availed by the Corporate Debtor, Mortgage was also created in favour of the Financial Creditor and other consortium banks by depositing the Title Deeds of the Property.
- 6) On 06.06.2009, the Financial Creditor issued a Renewal Cum Reduction of the certain limits and created securities interest for the facility granted under the Facility. Even though the Corporate Debtor had utilized entire loan amount and did not pay the amount due despite of several reminders from the Financial Creditor herein. Further, they have issued legal notice on 12.08.2010 to the Corporate Debtor by demanding to pay outstanding.
- 7) State Bank of India along with 5 others Banks, have filed O.A No.862 of 2010 U/s 19 of the Recovery of Debts due to the

Banks and Financial Institution Act, 1993 before the Debt Recovery Tribunal at Bangalore, by inter alia stating that the 1<sup>st</sup> Defendant Company, the Corporate Debtor herein, was incorporated as a Private Limited Company in the year 1997 and started operations in the year 1998 as Construction/Contracting Company. The 1<sup>st</sup> Defendant Company is involved in all aspects of infrastructure projects such as roads, bridges, metro-rails, industrial park, residential and commercial building including IT parks. During 2007, the 1<sup>st</sup> Defendant Company was banking with ICICI Bank and Lord Krishna Bank under multiple banking arrangements. The 1<sup>st</sup> Defendant Company desired to broad base their banking arrangement and therefore approached the State Bank of India (SBI), Oriental Bank of Commerce (OBC), State Bank of Patiala (SBOP), State Bank of Travancore (SBT) and ICICI Bank (ICICI). The said Banks agreed to provide working capital facilities to a total extent of Rs.380 Crores under a Consortium Lending Arrangement. Under the Arrangement, the following facilities were provided by Applicant No.1 to 5 Banks:

- a) Working Capital Credit limit of Rs.75 Crores
- b) LC Limit of Rs.50 Crores
- c) Bank Guarantee Limit of Rs.255 Crores and the limits sanctioned by each of the above said Banks are as hereunder:

a. State Bank of India (SBI)	:	Rs.95 Crores
b. Oriental Bank of Commerce	:	Rs.38 Crores
c. State Bank of Patiala	:	Rs.76 Crores
d. State Bank of Travancore	:	Rs.76 Crores
e. ICICI Bank	:	Rs.95 Crores

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**Total** : **Rs.380 Crores**

- 8) Wherein Oriental Bank of Commerce has issued a Sanction letter dated 04.07.2007, by inter alia seeking a following reliefs:

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- i. Rs.73,46,64,105/- (Rupees Seventy Three Crores Forty Six Lakhs Sixty Four Thousand One Hundred and Five Only) together with cost and current and future interest at 11.75% p.a, with monthly rests in respect of Cash Credit amount.
  - ii. Rs.5,64,45,711/- (Rupees Five Crores Sixty Four Lakhs Five Thousand Seven Hundred and Eleven Only) together with cost and current and future interest at 14.25% p.a, with monthly rests in respect of Term Loan (I) Amount.
  - iii. Rs.2,08,89,695/- (Rupees Two Crores Eight Lakhs Eight Nine Thousand Six Hundred and Ninety Five Only) together with cost and current and future interest at 14.25%, p.a with monthly rests in respect of Term Loan (II) Account. Etc.
- 9) Subsequently, the Compromise Petition has filed by State Bank of India against M/s. IDEB Projects Pvt. Ltd, before the Debts Recovery Tribunal at Bangalore, Under Regulation 88 of the DRT Regulations of Practice R/w Section 22(2) and 19(25) of the Recovery of Debt Due to Banks and Financial Institutions, by inter alia seeking the DRT to record the terms of the Compromise as detailed above, and pass a decree and issue Recovery Certificate in favour of the Applicant Banks. In the terms of the above settlement, DRT issued a Recovery Certificate No.9473 dated 23<sup>rd</sup> March, 2016 to all Banks, who have filed the case, which includes Oriental of Commerce, "Petitioner herein") Under Sub-section 7 & 22 of Section 19 of the Recovery of Debts Due to the Banks and Financial Institution Act, 1993 as amended from time to time, certificate for a sum of Rs.340,55,06,550/- (Rupees Three Hundred Forty Crores Fifty Five Lakhs Six Thousand Five Hundred Fifty Only) along with costs, expenses and future interest as prayed in OA from the date of filing OA i.e.



15.10.2010 till the date of realization in full, jointly, severally and personally from the Certificate Debtors...

- 10) In pursuant to decree passed by DRT in the above case, the Corporate Debtor is liable to pay an amount of Rs.36,18,52,994/- (Rupees Thirty Six Crores Eighteen Lakhs Fifty Two Thousand Nine Hundred and Ninety Four Only) towards the facility granted by the Financial Creditor. Later on, the Recovery Officer DRT-I at Bangalore had issued Demand Notice on 25.04.2016, on behalf of all Banks, to the respondents in the case, basing on above Recovery Certification, by calling upon the Respondents ( which includes the Petitioner herein) to deposit total amount of Rs.340,55,06,550/- including interest as on 31.10.2010 along with future interest and cost till realisation is due against them, within 15 days from the date of receipt of the notice, failing which recovery proceedings shall be initiated as per rules. Therefore, as on 30.11.2018 the Corporate Debtor is liable to pay an amount of Rs.106,87,50,000/- (Rupees One Hundred and Six Crores Eighty Seven Lakhs Fifty Thousand Only). However, the Corporate Debtor failed to pay said outstanding till today by forcing the Financial Creditor to initiate the instant CIRP against the Corporate Debtor under the Code.

3. The Respondent/Corporate Debtor has opposed the petition, by filing a Statement of Objection dated 05.02.2019 by inter alia contending as follows:

- 1) At the outset it is submitted that the instant Petition filed by the Financial Creditor is not maintainable, and it liable to be dismissed in limine for the following reasons:
- i. According to the Financial Creditor in Form -1, the total amount of the debt disbursed is Rs. 38,00,00,000/- (Rupees Thirty -Eight Crores Only), and the amount claimed to be in default is Rs. 106,87,05,000/- (Rupees



Hundred and Six Crores Eighty- Seven Lakhs Five Thousand Only).

- ii. The Financial Creditor relies on the Recovery Certificate bearing NO.9473 issued by the Debt recovery Tribunal, Bangalore in OA 862/2010 appended at Annexure-AAV at page no 712 of the above Petition in order to make out the said claim. It is pertinent to observe from the said Recovery Certificate, in the inner page 3 at page no 714 of the above Petition the following words "terms of final order dated 21/07/2015 passed by this Tribunal (Debts Recovery Tribunal)" It will be observed that the date 21/07/2015 is rounded and the date 25/04/2016 is denoted.
  - iii. There is no gain saying in fact that the Recovery Certificate dated 23/03/2016 could not have been issued prior to the final order denoted as 25/04/2016.
  - iv. The said Recovery Certificate also does not specifically provide for the amount claimed in Form No.1 as stated herein above to the Financial Creditor.
- 2) It is alleged that the Financial Creditor has suppressed the following material facts to the issue:
- i. That the proceedings in OA No.862/2010, was a joint Petition of Lead Bank, State Bank of India along with the Financial Creditor, State Bank of Patiala, State Bank of Travancore, ICICI Bank and the State Bank of Hyderabad and Oriental Bank of Commerce ( Financial Creditor). A perusal of the Original Application No 862/2010 will show that this was a joint Petition.
  - ii. That only a lead bank can take any action for enforcement against the Corporate Debtor as mentioned below. The agreement entered into by the aforesaid Banks including the Financial Creditor, more particularly



provided at Clause 3(1), and the inter se agreement dated 30/10/2009. Clause 3(h) reads as follows.

*“Any action for the enforcement of the said Securities against the Borrower shall be taken by the Lead Bank in consultation with other members of the SBI Consortium and SBI as a Lead Bank shall be at liberty to take any steps to realise or enforce the said securities agreed to be created or to close any cause to be closed the respective Cash Credit Account(s) or other Account(s) opened in the Books of the Said Banks but in the Morning of the full working day immediately preceding, any action intended to be taken under this clause due notice of such intention and of the action intended to be taken shall be communicated in writing by the Lead Bank to the other Banks and the other Banks Shall immediately or as soon as possible after receipt of such notice demand repayment of the moneys due under the relative Cash Credit Account(s) or other Account(s) of the Borrower with it and notify its intention in writing either to act jointly in such action then the said Banks shall act jointly and in case of failure, neglect or refusal by the Other Banks to join in any action, the Lead Bank taking action shall make the Banks so refusing a defendant/ respondent in any action which it may take against the Borrower”.*

It is contended that there is an irrevocable letter of authority was executed by the Financial Creditor to State Bank of India (Lead Bank).

- iii. Subsequently, the Corporate Debtor and Financial Creditor along with the other members of the Consortium reached a Settlement on 30.10.2014 in OA 862/2010 before the Hon'ble Debts Recovery Tribunal.





- iv. The aforesaid Settlement was approved by the Hon'ble Debt Recovery Tribunal on 30.10.2014 as evident in the order sheet dated 30.10.2014 passed by the Hon'ble Debt Recovery Tribunal.
  - v. That subsequently, as per the enclosed statement, the Corporate Debtor has paid a sum of Rs.298,86,14,799/- (Rupees Two Hundred and Ninety Eight Crores Eighty Six Lakhs Fourteen Thousand Seven Hundred Ninety Nine Only).
  - vi. That having noticed that certain terms of the compromise, was modified unilaterally, prompting the Corporate Debtor to file an Application for Revision in SR(RS)4174 of 2017 before the DRT and the same has been taken on Board and a notice was issued to the Consortium including the Financial Creditor.
  - vii. Subsequently, the Consortium Bank including the Financial Creditor have filed a memo dated 14.11.2017 and 06.07.2018 inter alia seeking Rectification of Recovery Certificate.
  - viii. The Corporate Debtor has challenged the same before the Debts Recovery Tribunal and the matter is posted for the Consortium including the Financial Creditor to file their objections.
  - ix. That in view of the aforesaid, the Recovery Certificate bearing No.9473 in O.A 862 of 2010 does not exist as on this date.
- 3) It is contended that in view of the inter-se Agreement, the Financial Creditor does not fall within the definition of Section 5(vii) of the IBC Code. And there is no financial Debt within the meaning of Section 5(8) of the IBC Code. The amount of sums claimed in Form-I is not in compliance with Section 7 of the IBC Code as the present Financial Creditor is not a Financial Creditor.



- 4) It is further contended that as of this date, the Financial Creditor has not filed any Application to recover the sums due, subsequent to the disbursement, save and except, for the Application in OA 862/2010 before the Debts Recovery Tribunal filed by the Consortium. If that is so, then the Financial Creditors claim is time barred and in other words by the Law of Limitation shall apply for recovering a sum of Rs.38,00,00,000/- (Rupees Thirty-Eight Crores Only) claimed to have been disbursed by the Financial Creditor. And there is no default committed by the Corporate Debtor as such and there exists a dispute between the Consortium of Bankers and the Corporate Debtor, which is pending before the DRT.
- 5) It is stated that the Corporate Debtor has in all paid a sum of Rs. 298,86,14,799/(Rupees Two Hundred and Ninety Eight Crores Eighty Six Lakhs Fourteen Thousand Seven Hundred Ninety Nine Only) to the Consortium. As per Memorandum of Understanding (MOU) with the Consortium signed on 06.10.2017 and which is pursuant to the earlier Agreement dated 09.05.2012 and agreement dated 10.09.2014, the parties have agreed as per Clause No.35 in Agreement dated 09.05.2012 that no Recovery Proceedings shall be commenced or continued under the terms of the said Agreement are fulfilled. Clause 35 reads as follows:

**“Clause 35***However the working capital lenders may proceed with legal proceedings already initiated against the Borrowers/Guarantors and others and mortgaged properties before the DRT Bangalore in OA 862 of 2010 and obtain decrees against the Borrower/Guarantor and the mortgaged properties but shall not execute the said decrees during the pendency of this MOU”.*

The Consortium including the Financial Creditor has vide aforesaid MoU's dated 06.10.2017 has admitted that





there has been good progress to date in recovery of loans and extended the term of the MOU till 31.03.2020.

- 6) The Corporate Borrower has filed Writ Petition vide W.P No.56059 of 2017 challenging the continuation of the proceedings before the Recovery Officer of the Debt Recovery Tribunal and the said Writ Petition is pending. Subsequent to filing the Writ Petition, the above MOU Agreements, between L&T and the Consortium and Corporate Debtor was terminated unilaterally without consent of the Corporate Debtor. The legal position of the Corporate Debtor is that same is not binding on the Corporate Debtor.
  - 7) The Corporate Debtor has filed Writ Petitioner No.6984 of 2019 (GM-DRT) against Oriental Bank of Commerce (OBC), Under Article 226 of the 227 of the Constitution of India praying to quash the proceeding pending before this Tribunal. On considering the case, Hon'ble High Court of Karnataka disposed of the same, by an order dated 22<sup>nd</sup> February, 2019 by directing this Tribunal to consider and decide the objection preferred by the Petitioner with regard to maintainability of the proceeding pending before it by a speaking order, after affording an opportunity of hearing to the parties and thereafter proceed further in the matter. It is made clear that this Court has not expressed any opinion with regard to merits of the case.
4. Ms. Rajitha T.O, learned Counsel for Petitioner has filed a Written Arguments dated 28.03.2019, by inter alia contending as follows:
- a) It is submitted that in accordance with Compromise Petition the terms of the repayment was detailed in schedule there under. As per Schedule II, the total amount due to the Financial is Rs.48.42 Crores.
  - b) It is further submitted that Clause 14 of the Joint Compromise Petition provides for the remedy in the event of any default on the part of the Corporate

Debtor and its reads as follows: *"In the event of failure on the part of Defendant No.1 (Corporate Debtor) to make payment to any or all of the Applicants any one instalment in terms of provisions of the Compromise Petition, the entire certificate amount as claimed in the OA with interest, costs and expenses shall become payable at once and the Applicant Banks shall have the right to initiate proceedings before the Recovery Officer for the realisation of the entire certificate amount with interest thereon and the Applicant bank shall have the right to proceed further under the provisions of the SARFESI Act, 2002 and the lead bank shall be fully authorised and entitled to take physical possession of the Application schedule mortgaged properties and to sell the same and realise the dues payable under the Recovery Certificate"*.

- c) In pursuance of OA decreed the Debt Recovery Tribunal , Bangalore, the Corporate Debtor is liable to pay an amount of Rs.36,18,52,994/- (Rupees Thirty Six Crores Eighteen Lakhs Fifty Two thousand Nine Hundred and Ninety Four Only) towards the facility granted by the Financial Creditor. Later on 25.04.2016 the Recovery officer DRT-1 at Bangalore had issued Demand Notice in respect of the same. Therefore, as on 30.11.2018 the Corporate Debtor is liable to pay an amount of Rs.106,87,50,000/-.
- d) The understanding as per paragraph 35 of the MOU was confirmed to the said immoveable properties and cannot be extended to state or mean that all the recovery proceedings have been agreed to be stalled during the pendency of the said MoU. It is further submitted that the subject matter of OA 862 of 2010 are charged exclusively to the Consortium Banks and



L&T has nothing to do with it. This has been further clarified by Paragraph 38 of the MOU, which is extracted herein below: "In this regard, it is to be expressly noted by the Borrower (Corporate Debtor) that the Lenders (Consortium Bankers) are entering into the MOU without prejudice to their rights/continue with the legal proceedings, civil and criminal against the Borrower (Corporate debtor) and or the Guarantors at any time so long as their dues remain unpaid".

- e) In the matter of A V Krishna Vs. Karnataka Leasing and commercial Corporation Ltd reported in 1992 SCC Online KAR 348, ILR 1993 KAR 338, wherein the Hon'ble High Court of Karnataka, observed at paragraph 11 that "an order for winding up of a Company shall operate in favour of the creditors and of all the contributories of the Company as if it had been made on the joint petition of the creditor and of a contributory" *"therefore, when a winding up petition is entertained and considered, the Order made by the Court ultimately would ensure to the benefit of all the creditors and contributories. In fact, the procedure contemplated before making such an order includes a mandatory procedure of an advertisement of a Company Petition, so that other creditors or contributors may participate in the proceedings. A petition for winding up under section 433(e) of the Companies Act, certainly is a Petition by and on behalf of the class of creditors having regard to the nature of the proceedings and the effect of the ultimate order that may be made by the Court"*.
- f) In the matter Swaraj Infrastructure Pvt. Ltd., Vs. Kotak Mahindra Bank Ltd in Civil Appeal No.1291 of

2019, the Hon'ble Supreme Court held that in paragraph 20 that "We may only end by saying that cases like the present one have to be decided by balancing the interest of creditors to whom money is owing, with a debtor Company which will now go in the red since a winding up petition is admitted against it. It is not open for persons like the appellant to resist a winding up petition which is otherwise maintainable without there being any bonafide defence to the same. We may also hasten to add that the respondent cannot be said to be blowing hot and cold in pursuing a remedy under the Recovery of Debts Act and a winding up proceeding under the Companies act, 1956 simultaneously. Here, it is important to refer to the Judgment of Lord Atkin in *Lissenden v. C.A.V.Bosch, Ltd.*, (1940) 1 All E.R., At 436-437 which says.

*"the doctrine of election could have no place in the present case. The applicant is not faced with alternative rights. It is the same right that he claims, but in larger degree. In Mills v. Duckworth, (1938) 1 All E.R.318, a plaintiff, who had been awarded damages for negligence had taken the judgment sum out of a larger sum paid into Court and have been appealed against the quantum of damages, and was met by a similar objection to his appeal. Greer, L.J, in overruling the objection, pointedly said, at p.321.*

*" the plaintiff said: " I am not going to blow hot and cold. I am going to blow hotter." Here the Applicant is not faced with a choice between the alternative rights. He has exercised an undisputed right to compensation, and claims to have a right to more.*

45/17



*One has not lost one's right to a second help because one has taken the first." When secured creditors like the Respondent are driven from pillar to post to recovery what is legitimately due to them, in attempting to avail of more than one remedy at the same time, they do not "blow hot and cold", but they blow hot and hotter. The appeals are accordingly dismissed with no order as to costs.*

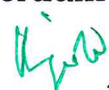
5. Subsequently to the filing of the instant petition, I.A No.75 of 2019 is filed by State Bank of India (Petitioner) U/R 11 of the NCLT Rules, 2016 by inter alia seeking to permit them to join as petitioner/Financial Creditor to the main petition. They have inter alia contending as follows:

- 1) The options available to the consortium of banks in the event of such an eventuality is stipulated in Clause 14 of said compromise Petition, which read as follows:

*"In the event of failure on the part of defendant No.1 to make payment to any or all of the applicants, and one of the instalment in terms of the provisions of this Compromise Petition, the entire certificate amount as claimed in the OA with interests, costs and expenses shall become payable at once the applicant banks shall have right to initiate proceedings before the recovery officer for the release of the entire certificate amount with interest thereto.."*

Therefore, SBI is also entitled to recover the amounts claimed in the OA with interest.

- 2) After issuance of amended recovery certificate, the Impleading Applicant made substantial efforts to recover the amounts due from the Corporate Debtor. However, the Corporate Debtor failed to clear the same. It has substantial interest in the instant Petition. In fact, out of the total amount due payable by the Corporate Debtor in favour of the Consortium



of Banks, majority of amount to a tune Rs.211.31 Crores excluding accrued interest is payable to the Impleading Applicant alone.

3) SBI relied upon the following Judgments in support of its case.

- i. M/s. Innovative Industries vs. ICICI Bank and another,<sup>1</sup>, NCLAT
- ii. M/s. Bank of Maharashtra vs. Visa Power Limited<sup>2</sup>, Order dated 22.12.2017 of the NCLT Kolkata Bench

6. Heard Shri S.S Nagananda, Learned Senior Counsel along with Ms.Rajitha T.O, learned Counsel for Petitioner and Shri Ajesh kumar S along with Shri Sharanjith Shetty, learned Counsel for Respondent, and Shri S.R.Tejas, for State Bank of India(impleading Applicant). We have carefully perused the pleadings of the all the parties along extant provisions of Code and the law on the issue.

7. S.S.Nangananda, Learned Senior Counsel for Petitioner further submits that the basic facts with regard to the sanction of the loan, committing default etc are not in dispute. Under the consortium of Banks, the Respondent had availed Working Capital Facilities of Rs. 380 Crores in terms of the Working Capital consortium Agreement dated 11.07.2007 in terms of sanction letter dated 12.07.2007. On committing default, all the consortium Banks together have filed O.A No. 862 of 2010 before Debt Recovery Tribunal (DRT) at Bangalore. Subsequently, DRT decreed the amount and also issued a recovery certificate to all the consortium Banks including the present petitioner/financial Creditor. Subsequently, the Recovery Officer issued a demand notice dated 25.04.2016 to all the Respondents of OA , which includes the Respondents herein, by demanding to pay the

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<sup>1</sup> 2017 SCC Online NCLAT 70

<sup>2</sup> ,(CP(IB) No.574/KB/2017





outstanding amount to all the Banks including the Petitioner. Since, the Petitioner failed to pay the outstanding amount in question, it is aggregated to 106, 87,500,000/- (Rupees Hundred and Six Crore Eighty Seven Lac Fifty Thousand Only) which includes principal and interest. Therefore, the impugned outstanding amount is calculated in accordance with terms of decree passed by the Debt Recovery Tribunal and there is no deviation/discrepancy in the claim as alleged by the Respondent/Corporate Debtor. The decree and Recovery certificate in question confers rights to all Banks jointly and severally to recover their dues from the Corporate Debtor. Section 7 of Code too permit Financial Creditor, to file an application/petition either jointly or singly. Therefore, it is asserted that Company Petition is maintainable as the Petitioner is claiming only the dues pertaining to it and it is not filed on behalf of Consortium of Banks. Since the Instant Company Petition is filed in accordance with law by establishing the debt and default, suggesting name of IRP viz. Shri Valayudham Jayavel, Registration No. **IBBI/IPA-001/IP-P01012/2017-18/11663**, a qualified Insolvency Professional, who is not facing any disciplinary proceedings, the instant petition is fit case to admit.

8. Shri Sharanjeth Shetty, learned Counsel for Respondent/Corporate Debtor, while pointing out various averments made in the Reply dated 05.02.2019, which are briefly stated supra, has further submitted that the Company Petition is liable to be dismissed for incomplete application, discrepancy in outstanding amount, petitioner is not a financial creditor, it is barred by laches and limitation etc. He has relied upon the Judgments rendered in Innovative Industries Vs. ICICI Bank,<sup>3</sup> and

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<sup>3</sup> C.A No.8337 of 2017

another in B.K Educational Vs. Parag Gupta,<sup>4</sup> in support of his case.

9. The case is listed for admission on various dates viz. 08.01.2019, 23.01.2019, 31.01.2019, 05.02.2019, 06.02.2019, 18.02.2019, 25.02.2019, 12.03.2019, 22.03.2019, & 27.03.2019, and the same is adjourned in order to afford to both the parties to put forth their respective contentions.
10. The Respondent has filed only Statement of Objection dated 05.02.2019 and it has not chosen filed any separate Interim Application (IA) by raising the question of maintainability petition. Therefore, the Tribunal is deciding the case by taking into consideration of all the objections raised by the Respondent which includes question of limitation and maintainability as directed by the Hon'ble High Court of Karnataka as stated supra.
11. So far as objection with regard to filing of application only by Oriental Bank of Commerce leaving other Consortium Banks is concerned, it is to be pointed out here that Section 7 of the Code permit a Financial Creditor either by itself or jointly with other financial creditors can file an application for initiating CIRP against the Corporate Debtor when it has committed a default. Therefore, Oriental Bank of Commerce admittedly the financial Creditor, which has extended loan to the Corporate Debtor and it has committed default and suffered a decree passed by the DRT and issued Recovery Certificate entitling all the consortium Banks to recover the their outstanding amount jointly and severally. Therefore, the instant Company Petition is maintainable singly.
12. So far as the allegations of Corporate Debtor with regard to the discrepancies in the outstanding amount is concerned, it is not in dispute that the Corporate Debtor/Respondent has initially availed

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<sup>4</sup> CA No.23988 of 2017



the loan amount of Rs.38,00,00,000 Crores from the Petitioner. When it committed default, the Consortium Banks lead by SBI has filed original application and obtained joint decree entitling the Banks to recover their respective outstanding amount jointly and severally from the Corporate Debtor. As per the Compromise Petition has filed before DRT under Regulation 88 of the Debts Recovery Tribunal Regulations of Practice as mentioned above, the settlement with regard to the Petitioner/Financial Creditor (Oriental Bank of Commerce) is for sum of Rs.48.42 Crores subject to terms and conditions mentioned therein.

13. Admittedly the Recovery certificate in question was issued by Debt Recovery Tribunal for total outstanding amount of Rs. 340,55,06,550/- (Rupees Three Hundred Forty Crores Fifty Five Lakhs Six thousand Five Hundred Fifty Only) along with costs, expenses and future interest as prayed in OA from the date of filing of OA i.e. 15.10.2010 till the date of realization in full, jointly, severally and personally from the Certificate Debtors. Therefore, the interest is calculated accordingly and thus outstanding amount in question arrived. Therefore, the outstanding claimed in the instant petition can provisionally found to be correct subject to further verification by the IRP basing on the record to be produced by the Bank and the Respondent during process of CIRP.
14. So far as the contention of Respondent that they have paid part payment in the meanwhile would not absolve the Corporate Debtor from its responsibility to pay the outstanding amount in full. Moreover, it is not in dispute that the Corporate Debtor is liable to pay the outstanding amount to the Financial Creditor apart from other Consortium Banks.
15. So far as the contention of the Respondent that the Petitioner is not a Financial Creditor is concerned, it is relevant definition given with regard to the Financial Creditor under the Code. Section 5 (7)

& (8) deals with definition of Financial Creditor and Financial Debt respectively and Section 3 (10),(11) & (12) of the Code deals with definition of Creditor, debt and default respectively. The provisions are extracted below:

**5(7) "FINANCIAL CREDITOR "** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;

**5(8) "FINANCIAL DEBT"** means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—

- (a) *money borrowed against the payment of interest;*
- (b) *any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;*
- (c) *any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- (d) *the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- (e) *receivables sold or discounted other than any receivables sold on nonrecourse basis;*
- (f) *any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) *any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) *any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) *the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause;*



**3(10) CREDITOR** means any person to whom a debt is owed and included a financial creditor, on operation creditor, a secured creditor, an unsecured editor **and decree holder.**

**3(11) "DEBT "** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt:

**3(12)"DEFAULT"** means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not (paid) by the Debtor or the Corporate Debtor, as the case may be:

16. In the instant case, as detailed supra, the Respondent has admittedly borrowed money in question against the payment of interest from the Petitioner and thus the outstanding amount is to be called financial debt and this debt is owed to Petitioner (OBC) and thus it is to be called a Financial Creditor. As per above definition, a Creditor includes a **Decree holder and default non-payment** in whole or any part or installment of the amount of debt due and payable and not yet paid. The Petitioner being Financial Creditor, has also obtained a decree from DRT as detailed supra. Therefore, the Petitioner being the financial institution is undoubtedly a Financial Creditor and the contention of the Corporate Debtor contra is not at all tenable and it is hereby rejected.
17. So far as the question of laches limitation is concerned, it is to be stated that as per the Provision 7(1) of the Code, an Application can be filed against the Corporate Debtor when default has occurred. As stated supra "Default" means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not (paid) by the debtor or the Corporate Debtor, as the case may be. Admittedly, the Debt Recovery Tribunal has decreed the outstanding amount as on date with future interest and thus issued Recovery Certificate No.9473 dated 23<sup>rd</sup> March, 2016 in

pursuant to the decree passed in OA No.862 of 2010. Admittedly, the Corporate Debtor has not paid the outstanding amount till date. The instant Company Petition is filed on 12.12.2018. Moreover, the loan in question granted by the Bank is a continue cause of action till loan is repaid to the Bank. As per definition of debt, it means a liability or obligation in whole or in part of the Claim. The Learned Counsel for the Respondent has not placed any order restraining the Tribunal from proceeding with the case except the order of Hon'ble High court of Karnataka, as stated supra, by directing the Tribunal to dispose of the case in accordance with law. And there is no stay granted in pending appeal, by the Debt Recovery Tribunal. It is not in dispute that Provisions of the Limitation Act, 1963 is applicable to the provisions of the Code and it is also held by Hon'ble Supreme Court in B.K.Educational case referred supra. Therefore, we are of the considered opinion that the instant Company petition is within limitation.

18. In order to find as to whether any solution to the issue in question is possible or not, the Tribunal granted several opportunities to the parties. However, there is no solution to the issue and Respondent has not come forward to pay even part amount and thus there is no other alternative for the Tribunal except to consider the question of admission. The Respondent committed default not only in respect of instant petitioner but also to the State Bank of India apart from other banks as per the Debt Recovery Tribunal Certificate mentioned above. Therefore, the Corporate Debtor is prima facie become insolvent and thus it is a fit case to admit.
19. So far as the impleading of State Bank of India is concerned, as stated supra, an Application/ Petition can be filed either jointly or singly by a financial Creditor. Therefore, the instant petition filed by Oriental Bank of Commerce is maintainable. State Bank of India can be permitted to make its claim to the IRP during the process of



IRP. Therefore, it is not necessary to permit the State Bank of India to join as Petitioner/Financial Creditor to the Company petition.

- 20.** Since the instant Company petition is filed under Section 7 of Code, the Adjudicating Authority has to examine, whether Company Petition is filed in accordance with the provisions of Section 7 of the Code or not. It is relevant to refer law on the points to be considered while considering a petition/application filed under provisions of Section 7 of Code. We may advert to the order dated 15<sup>th</sup> May 2017 of Hon'ble NCLAT passed in Company Appeal (AT) (Insolvency) No.1 & 2/2017, wherein the Hon'ble NCLAT, New Delhi, has dealt the issue of admission of a case filed under Section 7 of the Code, under Paras 55 to 58, which are extracted below:

**“55)** Process of initiation of Insolvency Resolution process by a financial creditor is provided in Section 7 of the I & B Code. As per sub-section (1) of Section 7 of the I & B Code, the trigger for filing of an application by a financial creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the financial creditor shall make an application in prescribed form and manner and with prescribed documents, including:

“record of the default” recorded with the information utility or such other record or evidence of default as may be specified;

the name of the resolution professional proposed to act as an interim resolution professional; and  
any other information as may be specified by the Board.

**56).** The procedure once an application is filed by the financial creditor with the Adjudicating Authority is



specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of the I& B Code:

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), **ascertain** the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section(3)".

**57)** Sub-section (5) of Section 7 of the I& B Code provides for admission or rejection of application of a financial creditor. Where the Adjudicating Authority is satisfied that-.....the documents are complete or incomplete.

58) The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the financial creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the financial creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority's summary adjudication, though limited to 'ascertainment' and 'satisfaction'."

- 21.** The Hon'ble Supreme Court has also upheld the above judgement in Civil Appeal Nos. 8337-8338 of 2017 vide judgement dated 31<sup>st</sup> August, 2017. The Hon'ble Supreme Court has adverted to the Section 7, at para 28 , which reads as under:

**"28.** *When it comes to financial Creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt*



owed to any financial creditor of the Corporate Debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7 (5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. 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. Under sub-section (7), the adjudicating authority shall then communicate the



*order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.*


**22.** In the light of provisions of Section 7 of Code, and law as declared by the Hon'ble NCLAT and Hon'ble Supreme Court as extracted above, the Adjudicating Authority/ Tribunal has to examine the instant case with regard to debt and default, whether Application/petition is complete/incomplete, such default is supported by evidence; named qualified Interim Resolution Professional. As stated supra, the instant Company petition is filed in accordance with law. The total/overall outstanding dues in favour of the Financial Creditor is Rs. 106,87,50,000/- (Rupees Hundred and Six Crore Eighty Seven Lac Fifty Thousand Only) with future interest cost, suggested name of Shri Valayudham Jayavel, 79, Concorde Cupertino, Electronic City Phase I, Bengaluru 560 100, **Registration No. IBBI/IPA-001/IP-P01012/2017-2018/11663** as Interim Resolution Professional and he has filed written Communication dated 03.12.2018 under rule of I & B(AAA) Rules, 2016 by inter alia declaring that he is a qualified Insolvency Resolution Professional, he is not undergoing any disciplinary proceedings, he is willing to accept to appointment as such if the Tribunal appoints him etc. Therefore, we are satisfied that debt and default in question has occurred in the instant case, and thus it is a fit case for admission to initiate CIRP in respect of Corporate Debtor.

**23.** In the result, by exercising the powers conferred on this Adjudicating Authority, U/s 7(5)(i) and other extant provisions of IBC, 2016, the following orders are passed:

- 1) The Company Petition bearing CP (IB) 17/BB/2019 is hereby admitted initiating CIRP in respect of Corporate Debtor (M/s. IDEB Projects Pvt. Ltd.)






- 2) Shri Valayudham Jayavel, 79, Concorde Cupertino, Electronic City Phase I, Bengaluru 560 100, **Registration No.IBBI/IPA-001/IP-P01012/2017-2018/11663** is hereby appointed as Interim Resolution Professional in respect of Corporate Debtor to carry on the functions as mentioned under Insolvency & Bankruptcy Code;
- 3) The following moratorium is declared prohibiting all of the following, namely:
- i) 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;
  - ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - iv) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;
  - v) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
  - vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
- 

- vii) The order of moratorium shall have effect from the date of such order till the completion of Corporate Insolvency Resolution Process;
- 4) The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI from time to time.
- 5) The IRP should follow all extant provisions of IBC, 2016, and the rules including fees rules, if any, issued by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time. IRP is further directed to strictly adhere time schedule as mentioned under the Code.
- 6) IA No. 75 of 2019 is filed by State Bank of India stands disposed of by granting liberty to it to file its claim before the above IRP and IRP is directed to consider its claim in accordance with law.
- 7) Post the case for report of the IRP on **30.04.2019**



**(ASHOK KUMAR MISHRA)**  
**MEMBER, TECHNICAL**



**(RAJESHWARA RAO VITTANALA)**  
**MEMBER, JUDICIAL**

Raushan