

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

CP (I&B) 593/NCLT/MB/2018  
Under Section 7 of the IBC, 2016

In the matter of  
**L & T Infrastructure Finance Company Limited**  
...Financial Creditor

V/s  
**Maharashtra Vidyut Nigam Private Limited**  
...Corporate Debtor

Order delivered on 14.2.2019

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)  
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Counsel Rohan Kadam, Adv. Rashid Bootwalla  
For the Respondent: Adv. Pragya Khaitan

*Per V.P. Singh, Member (Judicial)*

**ORDER**

1. It is a Company Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (IBC) by the financial creditor namely L & T Infrastructure Finance Company Limited against the Corporate Debtor namely Maharashtra Vidyut Nigam Pvt. Ltd. to initiate corporate insolvency resolution process against the corporate debtor. The amount claimed to be in default is Rs. 94,95,68,366/- as on 21.3.2018. The date of default has been stated as 31.1.2015, and the date of declaration of Corporate Debtor's account as a non-performing asset has been stated as 31.3.2016.
2. It is stated by the Financial Creditor that the Corporate Debtor is a private sector company and a group company of one, Gupta Global Resources Private Limited (GGRPL), who has guaranteed the loans given to GGRPL under a Deed of Guarantee dated 5.1.2015. It is stated that when GGRPL defaulted in payment, after that notice was issued to the Corporate Debtor for payment. However, Corporate Debtor failed to pay.
3. The Financial Creditor has stated that on 21.1.2010, a loan agreement was entered into between the Financial Creditor and the Gupta Global Resources Private Limited for Rs. 100 crores. On 3.1.2015, GGRPL entered into a Master Restructuring Agreement ("MRA") with, *interalia*, the Financial Creditor by which the Rs.100 crore loan was restructured for Rs. 53 crores on terms and conditions mentioned therein. Article III,

Clause 15.3 (iv)/ p.85 of this MRA provided the facilities together with all interest, default interest, liquidated damages, premia on prepayment or redemption, costs, expenses, the remuneration payable and all other amounts whatsoever stipulated shall be secured by an irrevocable and unconditional guarantee executed by the Corporate Debtor. On 5.1.2015, under the MRA, the Corporate Debtor executed an unconditional guarantee. The Financial Creditor called upon GGRPL to pay the outstanding dues through letters dated 16.5.2016, 7.6.2016, 13.7.2016. On 14.6.2016, GGRPL responded to the Financial Creditor, informing it of the initiation of SDR mechanism.

4. The Financial Creditor has further stated that on 9.8.2016, the Financial Creditor sent a demand notice to GGRPL and the Corporate Debtor *inter alia* directing them to make payment of Rs. 14.65 crores within 7 days of receipt of notice. On 23.8.2016, the Financial Creditor addressed a Notice under Sections 433 and 434 of the Companies Act, 1956 calling upon the Corporate Debtor to make payments of the amounts due in light of the Corporate Guarantee, given on behalf of GGRPL. The Financial Creditor addressed letters dated 8.11.2016, 2.1.2017, 4.1.2017 to GGRPL calling upon it to make payment.
5. It is further stated by the Financial Creditor that on 27.4.2017, the Financial Creditor sent a Notice to the Corporate Debtor *inter alia*, invoking the corporate guarantee dated 5<sup>th</sup> January 2015. After that, the petition filed before the Hon'ble Bombay High Court, Nagpur Bench by the Financial Creditor was transferred to this Tribunal and numbered as TCP 999/2017.
6. On 4.8.2017, this Tribunal passed an Order in *C.P. No. 1140/2017* admitting the application preferred by Reliance Commercial Finance Ltd. against the Corporate Debtor. Therefore TCP 999/2017 was dismissed, and the Financial Creditor was directed to file its claim with the Interim Resolution Professional appointed in *C.P. No. 1140/2017 vide* order dated 15.9.2017. On 10.10.2017, meeting of Committee of Creditors was held in which the Financial Creditor had the highest voting share.
7. On 13.12.2017, the Hon'ble NCLAT set aside the admission order dated 4.8.2017 passed in *C.P. No. 1140/2017* and passed an order that;
  - "The Corporate Debtor would be bound by its Compromise Agreement with Reliance Commercial Finance Ltd."

8. It is further stated that since the Financial Creditor did not receive any payment from the Corporate Debtor, therefore, it has preferred the present petition u/s 7, IBC.
9. It is stated by the Financial Creditor that given the definition of debt in Section 5(8) IBC, the debt is covered by the definition of financial debt. The definition of financial debt is given below for ready reference.
- “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*
- ...*
- (i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;*
10. Reference has been made to the specific clause in the Deed of Guarantee dated 5.1.2015 to show that the Corporate Debtor unconditionally and irrevocably guaranteed the debt of GGRPL.
11. The Financial Creditor has stated that the total amount of debt granted to GGRPL was Rs. One hundred crores (restructured to Rs. 53 crores under the MRA) and Funded Interest Term Loan of Rs. 11,49,79,995/-. The Financial Creditor has further stated that the amount claimed to be in default is Rs. 94,95,68,366/- as on March 21<sup>st</sup> 2018 along with further interest. It is stated that this amount is also borne out by the statement of accounts certified by the Banker’s Books of Evidence Act, 1891 and the I.T. Act 2000.
12. The Financial Creditor has stated that another company petition against the Corporate Debtor bearing CP No. 1140/2017 preferred by Reliance Commercial Finance Ltd. which was admitted by this Tribunal’s order dated 4.8.2017 stands abated by Hon’ble NCLAT’s order dated 13<sup>th</sup> December 2017. Therefore, there are no pending insolvency proceedings against the corporate debtor.
13. The Corporate Debtor did not file a reply even though several opportunities were given for the same. During the hearing the Corporate Debtor raised, *inter-alia*, following defences:
- a) The rate of interest as prescribed by the Facility Agreement dated 21.1.2010 and the Master Restructuring Agreement dated 5.1.2015 is 13.25% and 12% respectively. It is submitted that the rate of interest claimed by the Financial Creditor in demand notice dated 23.8.2016 u/s 433, 434 of the Companies Act,

1956 is 36% per annum from 1.8.2016 till the date of payment. Further submitted that the Financial Creditor has not filed any document to substantiate its claim.

- b) The principal amount claimed by the Financial Creditor in the demand notice dated 23.8.2016 is Rs. 14,45,70,350/- whereas the principal amount claimed by the Financial Creditor in the present petition is Rs. 94,95,68,366/-. It is submitted that there is a difference in the principal amount claimed and the same is indicative of the extortive nature of the Financial Creditor.
- c) The petition is barred by limitation as it was filed on 9.4.2018 for an alleged default that occurred on 31.1.2015. Further, that this is in non-compliance of S. 238A, IBC. The Financial Creditor contends that they are within the period of limitation as they had filed a winding-up petition before the Hon'ble High Court at Nagpur, which was transferred to the NCLT, Mumbai. After that the Financial Creditor filed a petition u/s 7, but it was rejected *vide* order dated 15.9.2017 giving the Financial Creditor liberty to make its claim before the Interim Resolution Professional in CP 1140/I&BP/NCLT/MB/MAH/2017 and financial creditor was not authorised to file a fresh petition.
- d) The Corporate Debtor has denied and disputed the very claim of the Financial Creditor and is also denying any liability arising from it. It is submitted that the proviso to Clause 24 of the Deed of Guarantee dated 5.1.2015 clearly states that any notice or communication to the guarantor shall be effective only on actual receipt by the guarantor's officer, for whose attention the notice or communication has been expressly marked. The Financial Creditor has not produced any document to show that the demand notice was received by the Corporate Debtor and given the same, the liability cannot be staked at the doorstep of the Corporate Debtor.
- e) It is submitted that the Deed of Guarantee dated 5.1.2015 executed in Delhi is not duly stamped in accordance with the provisions of the Maharashtra Stamp Act, 1958, therefore, the same cannot be acted upon or looked into by this Tribunal. Reference has been made to Sections 18, 33 & 34 of the Stamp Act and it is stated that as per Section 18, if an instrument is executed outside Maharashtra, then same has to be stamped within 3 months from the date first it is received in the state. Reference has also been made to the judgment of *SMS Tea Pvt. Ltd. v. Chandmari Tea & Co. Pvt. Ltd. [(2011) 14 SCC 66]*. It is further submitted that since

the Deed of Guarantee is insufficiently stamped, the Tribunal should not act upon it.

- f) It is submitted since the Financial Creditor brought the Deed of Guarantee into the state of Maharashtra from Delhi, the burden of complying with the provisions of Section 18 of the Stamp Act falls on the Financial Creditor. Reference has also been made to Section 30A of the Stamp Act to state the liability to pay stamp duty falls on the Financial Creditor.
- g) It is also submitted that the right of the Respondent to file its reply has been closed, otherwise the Respondent would have agitated that the Deed of Guarantee is not the same document, that has been executed between the parties and also appears to be forged and fabricated document, for the reasons that it does not bear the stamp of the company. The stamp paper is from Delhi and not from Maharashtra, signature of the person signed also appears to be different from actual signature.
- h) It is submitted that Form 1, in part III, mentions the name of Mr Vinod Kothari as the proposed Interim Resolution Professional. However, Form 2 of Mr Dhiren Shantilal Shah has been annexed to the petition.
- i) It is submitted that in Form 1, in part IV, the amount claimed has been stated. However, the Financial Creditor has neither explained the said amounts nor provided any narration of the same.
- j) The Financial Creditor had been included in the Committee of Creditors by its alleged claim as is evident from the minutes of the 3<sup>rd</sup> CoC minutes dated 10.10.2017. Further, the same minutes show the allegedly admitted claim amount of the Financial Creditor as Rs. 83,74,78,808/-, however, the Financial Creditor is now claiming a higher amount.

14. The Financial Creditor rebutted the defences raised by arguing the following:

- a. The present Petition is not time-barred since the Deed of Guarantee dated 5<sup>th</sup> January 2015 annexed as Annexure K to the Application, at Pg. 253, is a continuing guarantee, payable on demand as stipulated in Clause 3b. It is further submitted that in *Syndicate Bank vs. Channaveerappa Beleri and Ors. (2006 11 SCC 506)*, the Supreme Court held that limitation in respect of a guarantee of demand would run from the date that the guarantee is invoked, and the guarantor commits a breach by refusing to make payment. In the present case,

the Guarantee was invoked by the Applicant on 27<sup>th</sup> April 2017 (Annexure L at Pg. 269 of the Petition, Vol I). The Corporate Debtor after that failed to pay. Thus, limitation if at all, would begin from 27<sup>th</sup> April 2017. In view thereof, the present Petition is within the limitation.

- b. The Deed of Guarantee executed by the Corporate Debtor is not insufficiently stamped. It is stated that the Stamp for this document was purchased by the Corporate Debtor as apparent from Pg. 253 of the Petition. The Corporate Debtor has acted upon the document. To substantiate this, reliance has been placed on *Tata Capital Financial Services v Unity Infraprojects (MANU/ MH/1362/2015)* to state that since the guarantee has been acted upon and the debt has been admitted by the corporate debtor, it cannot raise the objection that the document is insufficiently stamped.
- c. The Deed of Guarantee obliges the Corporate Debtor to *interalia* guarantee the obligations of GGRPL under the MRA Agreement (*See Clause 3 of the Guarantee at Pgs. 255-256 of the Petition*). It is thus a simplicitor promise to pay any debts of GGRPL and not a promise to pay a fixed sum. It is a simple letter of guarantee. Article 57 prescribes that stamp duty of Rs. 100 is payable on a letter of guarantee.
- d. Section 19(a) of the Maharashtra Stamp Act provides that in respect of an instrument or a copy thereof executed out of the state, the chargeable duty would be the difference between what has been paid outside and what is to be paid within Maharashtra. Thus, only the differential stamp duty is chargeable. In the present case, a stamp duty of Rs. 100/- has already been paid in Delhi (*See Stamp at Pg. 253 of the Petition*). Article 37 of the Maharashtra Stamp Act equally prescribes stamp duty of Rs. 100/- is payable on a letter of guarantee. There is thus no differential amount of chargeable duty to be collected. For these reasons, the Corporate Debtor's objections on stamp duty are frivolous and liable to be rejected. Thus, no case is made out for impounding the document.
- e. It is further submitted that Corporate Debtor's submission that the Deed of Guarantee is fabricated and false. It is pertinent to note that the present Petition was filed in April 2018. Despite getting the opportunity, the Corporate Debtor has not filed any evidence to substantiate its claim.
- f. Without prejudice, it is submitted that the Guarantee was invoked in April 2017. The corporate debtor has not taken out any proceedings to assail the guarantee

by way of civil suit or otherwise. Thus its oral submission that the guarantee is fabricated is ex-facie false and made to mislead this Court is without any basis.

- g. There is no mismatch in the amount of debt claimed. No such dispute has been raised prior in time. The Adjudicating Authority is simply required to ascertain whether a debt more than Rs.1,00,000/- exists. Any crystallisation or ascertainment of the amount claimed is a duty cast upon the Interim Resolution Professional/Resolution Professional.
- h. The Financial Creditor has now submitted Form 2 of Mr Vinod Kothari whose name appears in the application under Section 7.

15. We have heard the parties and perused the records.

16. The Corporate Debtor is a guarantor *vide* a Deed of Guarantee dated 5.1.2015 regarding the loans given to Gupta Global Resources Private Limited (GGRPL). A guarantee is covered by the definition of financial debt provided in Section 5(8), IBC.

17. The Financial Creditor called upon the principal borrower namely Gupta Global Resources Private Limited (GGRPL) to pay, however, it did not clear the dues. After that, the Financial Creditor addressed a notice dated 27.4.2017 to the Corporate Debtor invoking the Deed of Guarantee dated 5.1.2015. Due to non-payment, the Financial Creditor filed a petition before the High Court of Bombay, Nagpur Bench which got transferred to this Tribunal and was numbered as TCP No. 999/2017. Since another petition against the Corporate Debtor bearing CP No. 1140/2017 preferred by Reliance Commercial Finance Ltd. was admitted by this Tribunal, the petition preferred by the Financial Creditor bearing TCP No. 999/2017 was dismissed with liberty to file a claim before the Interim Resolution Professional appointed in CP No. 1140/2017. The Hon'ble NCLAT set aside the admission order passed in CP No. 1140/2017. Since the Financial Creditor was not paid its dues, the Financial Creditor filed the present petition.

18. The contention of the Corporate Debtor that the present petition is barred by the law of limitation does not survive as the guarantee was invoked by the Financial Creditor on 27<sup>th</sup> April 2017 and the Financial Creditor filed the present petition on 9.4.2018.

19. The proceedings before this Adjudicating Authority are summary in nature. It is pertinent to mention that stamp duty payable and paid on letter of guarantee is Rs. 100

and it has been purchased by the Corporate Debtor. Therefore, the Corporate Debtor has no right to raise the objection of insufficient stamp duty.

20. Concerning the mismatch in the principal amount and the interest rate chargeable, it is to be clarified that the Adjudicating Authority does not have to ascertain the exact due amount as held by the Hon'ble NCLAT in the matter of *The Dhar Textile Mills Ltd. vs. Asset Reconstruction Company (India) Limited*, Company Appeal (AT) (Insolvency) No. 11 of 2019. The Adjudicating Authority has to satisfy itself that a debt of minimum Rs. 1,00,000/- exists. So the contention of the Corporate Debtor regarding the principal amount and interest rate charged is untenable.
21. The Financial Creditor has submitted the Form 2 of Mr Vinod Kumar Kothari, insolvency professional whose name appears in part III of Form. 1.
22. As per Section 7 of IBC, a petition has to be admitted if a default has occurred, debt is due, and application is complete, and no disciplinary proceedings are pending against the proposed resolution professional.
23. This Petition reveals that there is a debt as defined in Section 3(11) of IBC. Also, there is a default in this case within the meaning of Section 3(12) of IBC. Though the Corporate Debtor has raised a dispute regarding his liability to pay the debt. However, the dispute is irrelevant for admitting a petition U/S 7 of the Code. The application of the Financial Creditor is complete, amount of more than Rs one lac is a due and application is complete. No disciplinary proceedings are pending against the proposed resolution professional. Therefore, this petition deserves to be admitted.
24. This Bench at this moment admits this petition filed under Section 7 of IBC, 2016, declaring moratorium with consequential directions as mentioned below:
  - I. That this Bench at this moment prohibits
    - a) 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;
    - b) transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under



the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench at this moment appoints Mr Vinod Kumar Kothari is having registration number IBBI/IPA-002/IP-N00019/2016-17/10033, email: resolution@vinodkothari.com, phone: +91-33-2281 7715 as Interim Resolution Professional to carry the functions as mentioned under IBC.

25. Accordingly, this Petition is admitted.

26. The Registry is at this moment directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional by email and speed post.

**Sd/-**

**RAVIKUMAR DURAISAMY**  
**Member (Technical)**

**Sd/-**

**V. P. SINGH**  
**Member (Judicial)**

DT. 14.2.2019