

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

8. C.P.(IB)-429(MB)/2022

CORAM: SHRI H. V. SUBBA RAO, MEMBER (J)
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **29.03.2023**

NAME OF THE PARTIES: State Bank of India

V/s.

Deogiri Infrastructure Private Limited.

SECTION 7 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Mr. Drupad Patil a/w Mr. Dheeraj Patil, counsel appearing for the Financial
Creditor and Mr. Aniruth Purusothaman, counsel appearing for the Corporate
Debtor are present through virtual hearing.

C.P.(IB)-429(MB)/2022

Heard the arguments of counsels appearing on both sides and the above
Company Petition is **admitted**. Detail order follow:

Sd/-
MADHU SINHA
Member (Technical)
//Vitthal//

Sd/-
H. V. SUBBA RAO
Member (Judicial)

Certified True Copy

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On 14/4/2023

Pr. S. Sonawane
Deputy Registrar 14/4/2023

National Company Law Tribunal Mumbai Bench



**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 429/IBC/MB/2022

An Application for initiation of Corporate Insolvency Resolution Process by a Financial Creditor under Section 7 of Insolvency and Bankruptcy Code, 2016.

In the matter of

STATE BANK OF INDIA

Having registered office at: Stressed Assets Management Branch- II, Raheja Chambers, Ground Floor, B-Wing, Free Press Journal Marg, Nariman Point, Mumbai 400 021

.....Financial Creditor

Vs

**M/S. DEOGIRI INFRASTRUCTURE
PVT. LTD.**

Having registered office at Office No.105, First Floor Siddharth Arcade, Opp. MTDC, Railway Station Aurangabad, 431005

..... Corporate Debtor

Coram:

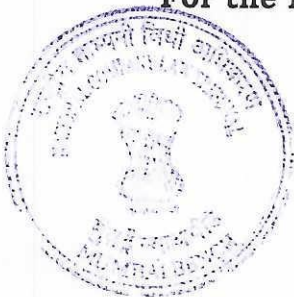
Hon'ble Shri. H.V. Subba Rao, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Order on: 29.03.2023

For the Petitioner : Mr. Drupad Patil a/w Mr. Dheeraj Patil, Adv.

For the Respondent : Mr. Aniruth Purusothaman, Adv.



ORDER

1. This Company petition is filed by **STATE BANK OF INDIA** (hereinafter called "Financial Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **M/S. DEOGIRI INFRASTRUCTURE PVT. LTD.** (hereinafter called "Corporate Debtor") alleging that the Corporate debtor committed default in making payment to the Financial Creditor. This petition has been filed by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016. (hereinafter called "Code") (Application to Adjudicating Authority) Rules, 2016, for a resolution of an unreserved financial debt of **Rs. 48,29,37,607.62/-**.

2. **Brief facts leading to filing the above Company Petition by the Financial Creditor are as follows:**

- i. The applicant has filed the above-said Company Petition under Section 7 of the Insolvency and Bankruptcy Code in this Hon'ble Tribunal to seek initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
- ii. At the request of the Corporate Debtor, the State Bank of Hyderabad sanctioned, granted and disbursed multiple facilities in the sum of Rs. 80.00 Lakhs and in lieu whereof various documents were executed including Hypothecation



Agreement, Deed of Guarantee and Confirmation Letter by Personal Guarantor.

- iii. Thereafter, the same facilities were time to time extended till Sanction Letter dated 30.06.2014. The State bank of Hyderabad sanctioned Credit Facilities of Rs. 1600 lakh to Corporate Debtor till 30.06.2014.
- iv. Vide Government Gazette F. No.7/73/2015 dated 22.02.2017, State Bank of India has acquired the State Bank of Hyderabad.
- v. Similarly, the Corporate Debtor had approached the Present Applicant i.e. State Bank of India for credit facilities. At the request of Corporate Debtor, Applicant had Sanctioned Credit Facilities of Rs. 1500 Lakhs on 17.05.2014 and in lieu whereof various documents were executed including Hypothecation Agreement, Deed of Guarantee and Confirmation Letter by Personal Guarantor.
- vi. Thereafter, the same facilities were time to time extended till sanction letter dated 19.01.2018. The State Bank of India sanctioned Credit Facilities of Rs. 4100 Lakh to Corporate Debtor till 19.01.2018. The repayment whereof was secured by executing various loan documents.



- vii. The Corporate Debtor has availed facility and utilized the same, however, the Corporate Debtor fails to make the payment thereunder since Corporate Debtor has defaulted in making payment of Both Loan Account, therefore the present Petition under Section 7 of Insolvency and Bankruptcy Code, 2016.
- viii. As on 31.01.2022, Corporate Debtor is liable to pay the following amounts to Applicant.
- a. Rs. 19,37,78,037.37 Cash Credit by State Bank of India Account No. 33851909502
 - b. Rs. 24,77,29,250.25 of Cash Credit by State Bank of Hyderabad Account No. 33851909502
 - c. Rs. 4,14,30,320.00 of Bank Guarantee by State Bank of India Account No. 33852012536
- ix. Therefore, Corporate Debtor is liable to pay the total aggregate amount of Rs. 48,29,37,607.62

The Corporate Debtor filed affidavit in reply of Mr. Raghvendra Shripatrao Joshi, who is the authorised representative of Corporate Debtor opposing the CP. The relevant paras of affidavit in reply are extracted hereinunder:

DEFECTS IN THE CAPTIONED COMPANY PETITION:

- i. It is submitted that from the documents annexed to the said petition it can be seen that the Financial Creditor has implicitly



stated that there are two date of default with respect to the date of Corporate Debtor.

- ii. It is submitted that the Financial Creditor has stated that the following in the captioned Petition:
 - a) The date of default mentioned in Page no.37 in Part-IV of the captioned Petition is 10.04.2019.
 - b) The debt of the Corporate Debtor was classified as NPA on 30.10.2018 (in accordance with the directives/guidelines relating to asset clarifications issued by the Reserve Bank of India consequent to the default committed by the Corporate Debtor in repayment of Principal debt and interest thereon) as stated on page no. 140 (paragraph no.4) in Exhibit X of the captioned Petition.
- iii. Defective Documents annexed by the Financial Creditor to be impounded for Non-payment of the required Stamp Duty.
- iv. It Is submitted that the captioned Petition cannot be prosecuted against the Corporate Debtor due to the aforesaid material defects in it.
- v. It is submitted that the deferent dates of default is an incurable defect as the classification of an account as NPA is an important decision taken by a Financial Institution taking into account the guidelines issued by the Reserve Bank of India.



- vi. In light of the contentions of the Corporate Debtor, the captioned petition filed by the Financial Creditor deserves to be dismissed.

Heard Mr. Drupad Patil, appearing for the Financial Creditor and Mr. Aniruth Purusothaman, appearing for Corporate Debtor and perused the material available on record, Mr. Aniruth Purushothaman fairly submitted that even though the Corporate Debtor has filed detailed reply opposing the C.P. on various grounds, he is mainly pressing one on the ground of limitation and one expiry of the license of the IRP proposed by the Financial Creditor in their Petition.

In so far as the contention of expiry of the license of the earlier IRP, is concerned the Financial Creditor filed affidavit dated 29.03.2023 along with consent of another RP Mr. Shailesh Bhalchandran Desai since it is a curable defect by virtue of which the above objection of the Corporate Debtor stands rectified. In so far as the contention with regard to the limitation is concerned it is the contention of the Corporate Debtor that the actual date of default is 30 October 2018 and not 10.04.2019 as mentioned in the C.P. Even if the above date suggested by the Corporate Debtor is accepted as true the last date for filing the above CP falls on 29 October 2021. In view of the *Suo moto* extension of period of limitation for filing cases before courts and various tribunals by



the Hon'ble Supreme Court due to Covid-19 situation the above Company Petition being filed on 11.03.2022 is within limitation and accordingly the plea of limitation raised by Corporate Debtor also deserves to be rejected. Except the above two defence, the Corporate Debtor did not raise any other defence in admitting the above company petition. Therefore, this bench did not find any reason to dismiss the above CP.

Accordingly, the above Company Petition is **admitted** by passing the following:

ORDER

- a. The above Company Petition No. C.P. (IB)-429(MB)/2022 is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/S. DEOGIRI INFRASTRUCTURE PVT. LTD.**
- b. This Bench hereby appoints **Mr. Shailesh Bhalchandran Desai** as Insolvency Professional, Registration No. IBBI/IPA-001/IP-P00183/2017-18/10362 residing at C/o, Headway Resolution and Insolvency Services pvt. Ltd. 708, Raheja Centre, 7th Floor, Free Press Margh, Nariman Point, Mumbai-400021 E-mail id: ip10362_desai@gmail.com as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the



above amount only towards expenses and not towards fee till his fee is decided by COC.

- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.



- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

// Vitthal //

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)

Certified True Copy
Copy Issued "free of cost"
On 6/4/2023

[Signature]
Deputy Registrar

National Company Law Tribunal Mumbai Bench

