

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Special Bench (Video Conference)

**CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON’BLE MEMBER (J)
CORAM: SHRI SATYA RANJAN PRASAD, HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 08.12.2022 AT 4:00 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition IB/324/2022
NAME OF THE COMPANY	Sindhanur Gangavathi Tollyways Pvt Ltd
NAME OF THE PETITIONER(S)	IDBI Bank Ltd
NAME OF THE RESPONDENT(S)	Sindhanur Gangavathi Tollyways Pvt Ltd
UNDER SECTION	7 of IBC

ORDER

Orders in **CP 324/7/2022** pronounced, recorded vide separate sheets. In the result, the Company Petition is allowed. CIRP is triggered against the Corporate Debtor and moratorium is imposed.

Sd/-

MEMBER (TECHNICAL)

Syamala

Sd/-

MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II, HYDERABAD**

C.P. (IB) No.324/7/HDB/2022
Under section 7 of the IB Code, 2016
r/w Rule 4 of the Insolvency and Bankruptcy
(Application Adjudicating Authority) Rules, 2016.

In the matter of
M/S SINDHANUR GANGAVATHI TOLLWAY PRIVATE LIMITED

Between:

M/S IDBI Bank Limited,
NPA Management Group,
#5-9-89/1 & 2, Chapel Road,
Hyderabad – 500001.

...Applicant/Financial Creditor

A N D

M/S Sindhanur Gangavathi Tollway Private Limited,
No. 9 (P), CII Green Building Lane, HITEC City,
Kondapur, Hyderabad – 500084.

...Respondent/Corporate Debtor

Date of Order: 08.12.2022

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Member, Judicial

Sri Satya Ranjan Prasad, Member, Technical

Counsel present:

For the Financial Creditor: Mr. B. Harinath Rao

For the Corporate Debtor: Mr. M. Maharshi Viswaraj

Per : Bench

ORDER

1. Under consideration is an Application filed by IDBI Bank Limited (hereinafter referred to as “Applicant”), under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code, 2016”), read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP"), against M/S Sindhanur Gangavathi Tollway Private Limited (hereinafter referred to as “Corporate Debtor”), alleging default of a financial debt over Rupees One Crore by the Corporate Debtor.

2. Brief facts of the case, as submitted by the Applicant, are as follows:
 - a) The Corporate Debtor is a special purpose vehicle, established for the development of an existing two-lane Sindhanur-Gangavathi-Ginigere section (length of 83 km), of State Highway No. 23, in the state of Karnataka, on DBFOT toll basis (hereinafter referred to as "the project").
 - b) The concession is for a period of 24 years and the last date of the said period is 09.01.2038. The said project achieved provisional COD on 07.09.2015 and started toll collections from 27.09.2015.
 - c) The Applicant initially sanctioned a Rupee Term Loan of Rs. 50 Crore to the Corporate Debtor for the development of the project, vide Sanction Letter No. HO/PAD/SGTPAL/569, dated 01.01.2013.
 - d) The said loan facility was to be repaid in 52 unequal quarterly instalments, commencing at the end of the moratorium period, from 01.07.2016.

- e) The said loan, together with interest, liquidated damages, costs, charges, expenses and other monies payable by the Corporate Debtor has been secured by various security interest created in favour of the lenders.
- f) Account to the Corporate Debtor, on account of substantially lower traffic on the stretch as compared to the projected toll collection, the account of the Corporate Debtor had been classified as a 'non-performing asset' (NPA) on 29.05.2018.
- g) Notice, dated 05.12.2018, was issued by the Applicant to the Corporate Debtor, calling upon it to pay the outstanding due of Rs. 52,17,25,548.53. as on 01.12.2018, together with future interest at contractual rates. However, the Corporate Debtor had not come forward to clear the due amount.
- h) That the total outstanding liability of the Corporate Debtor amounts to Rs. 69,15,97,044.77/-, which includes interest of Rs. 19,65,97,044.77, as on 21.08.2022.

Since the Corporate Debtor had failed to repay the outstanding amounts, the Applicant has preferred the instant Application and thus, the learned counsel for the Applicant prayed that the Application be allowed.

3. The Corporate Debtor, in its reply, submitted that it is not in a position repay the loans availed from the Applicant on account of poor toll collections and other factors beyond the control of the Corporate Debtor, which have led to financial uncertainties in its business operations because of poor realization of revenue and lowering in operating margins.
4. We have heard the learned counsel appearing for the parties and perused the record.

5. The Financial Creditor has attached the record of financial information held with the National E-Governance Services Limited, dated 28.09.2022 and records with the Central Repository of Information on Large Credits (CRILC), dated 12.08.2022, in which the credit facilities of the Corporate Debtor, with the Applicant, are appearing under the 'default' category.
6. The records of default held with the information utility, namely the National E-Governance Services Limited, dated 28.09.2022, bears the Unique Debt Identifier: AABCI8842G_0377673200000505, shows the total default amount as Rs. 69,15,97,044.77/-, as on 31.08.2022. The record bearing Unique Debt Identifier: AAACC6106G_492971000011, attached at Page No. 142, shows the default amount as Rs. 1,84,92,617.79/-. The record bearing Unique Debt Identifier: AAACC6106G_0617256000366, attached at Page No. 130, shows the default amount as Rs. 25,91,04,927.52/-.
7. It is important to note that the Corporate Debtor has not disputed the existence of the debt. The Corporate Debtor has also not denied the 'default' in serving the debt in question.
8. In view of the above, we are of the view that in the instant case there is a financial debt and there has been a default committed by the Corporate Debtor in repayment of the same. This Adjudicating Authority is satisfied that the Financial Creditor has proved its case by producing evidence that default has occurred, for which the Corporate Debtor is liable to pay. The Application is also filed well within the period of limitation.

9. It is pertinent to note that the Hon'ble Supreme Court of India, in the case of *Innoventive Industries Ltd v. ICICI Bank & Anr.* [(2018) 1 SCC 407], held as under:

“.....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 subsection (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.”

10. Further, the Hon'ble Supreme Court in *Vidarbha Industries Power Limited v. Axis Bank Limited* [Civil Appeal No.4633 of 2021], had held as follows:

“88. The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits. For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is good reason not to do so. The Adjudicating Authority may, for example, admit the application of the Financial Creditor, notwithstanding any award or decree, if the Award/Decretal amount is incapable of realisation. The example is only illustrative”.

11. We, therefore, in the light of the above ruling carefully examined whether the Corporate Debtor had made out any ground against admission of the present application for initiation of the CIRP against the Corporate Debtor, and found none.

12. The Financial Creditor has also fulfilled all the stipulations as required under the provisions of the Code, 2016, for the purpose of initiating the Corporate Insolvency Resolution Process. Further, we found due compliance of the

requirements in terms of Section 7(3) of the Code, 2016, by the Applicant, and this Adjudicating Authority in terms of its power under Section 7 (4) ascertained the existence of debt and default, as alleged on the part of the Corporate Debtor from the record placed by the Applicant, under sub-section (3) of Section 7 of the Code, 2016. We are fully satisfied that the present Application under sub-section (2) of Section 7 of the Code, 2016, is complete in all aspects and that there are no disciplinary proceedings pending against the proposed resolution professional. In these circumstances, this Adjudicating Authority is inclined to admit the instant Application.

13. Accordingly, the Application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process, which shall ordinarily be completed within the timelines stipulated in the Code, 2016 (as amended), reckoning from the date on which this order is passed.
14. The Financial Creditor has proposed the name of Mr. Raghu Babu Gunturu, as the Interim Resolution Professional (hereinafter referred to as the "IRP"). Accordingly, this Adjudicating Authority appoints Mr. Raghu Babu Gunturu, bearing Registration No.: IBBI/IPA-002/IP-N00025/2016-2017/10053, R/o 1st Floor, Golden Heights, Plot No. 9, Opp. Raheja IT Mind Space, HUDA Techno Enclave, Madhapur, Hyderabad – 500081, E-mail ID: raghurp@ezresolve.in, as the Interim Resolution Professional. The IRP is directed to file Authorization for Assignment within three days from the date of this order.
15. The IRP is directed to take charge of the management of the Corporate Debtor, immediately. He is also directed to cause public announcement as prescribed under Section 15 of the Code, 2016, within three days from the

date of receipt of this order, and call for submissions of claim in the manner as prescribed.

16. We direct the Financial Creditor/Petitioner to pay a sum of Rs.2,00,000/- towards the advance fee of the IRP and expenses towards the CIRP, which shall be ratified later on by the Committee of Creditors.
17. Moratorium is, hereby, declared and shall have effect from the date of this order till the completion of the CIRP, for the purposes referred to in Section 14 of the Code, 2016. It is hereby ordered that all of the following are prohibited:
 - 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 or 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 rights 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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. *Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.*

18. The supply of essential goods or services to the Corporate Debtor shall not be terminated, suspended or interrupted during the moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period. Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.
19. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code, 2016. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the Code, 2016.
20. The Financial Creditor as well as the Registry are directed to send the copy of this Order to the IRP, to enable him to take charge of the assets etc. of the Corporate Debtor, and comply with this order as per the provisions of the Code, 2016.
21. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.

22. The Registry shall also communicate this Order to the Registrar of Companies, Hyderabad, for updating the status of the Corporate Debtor in the website of the Ministry of Corporate Affairs.
23. Accordingly, this Petition is admitted.

Sd/-

(Satya Ranjan Prasad)
Member, Technical

Sd/-

(Dr. N.V. Ramakrishna Badarinath)
Member, Judicial