

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 31.01.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 158/7/HDB/2018
NAME OF THE COMPANY	Ciscons Projects Pvt Ltd
NAME OF THE PETITIONER(S)	Tata Capital Financial Services Ltd
NAME OF THE RESPONDENT(S)	Ciscons Projects Pvt Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Order pronounced in Open Court. Petition is admitted, vide separate order.



MEMBER JUDICIAL

AS

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

CP(IB)No.158/7/HDB/2018

Under Section 7 of the Insolvency and Bankruptcy
Code, 2016, Read with Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority)
Rules, 2016.

In the matter of:-

M/s.Tata Capital Financial Services
Limited,
Registered Office is situated at:
One Forbes, Dr.V.B.Gandhi Marg,
Fort, Mumbai 400 001.

...Petitioner/
Financial Creditor

Vs

M/s.CISCONS Projects Private Limited,
Flat No.604, Tirumala Shah Residency,
6th Floor,
Yellareddyguda, Ameerpet,
Hyderabad 500 016.

...Respondent/
Corporate Debtor

Order delivered on: 31.01.2019

Parties/Counsel Present:

For the Petitioner/Financial Creditor:

Mr.Keshava Rao Saini, Advocate

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Mr.G.P.Yash Vardhan, Advocate
Mr.Vivveck Naidu, Advocate
Mr.Anil Kumar, Advocate

For the Respondent/Corporate Debtor:

Mr.V.S.R Avadhani, Advocate
Mr.A.Sudhakar, Advocate
Mr.G.Sethu Rama Rao, Advocate
Ms.D.Siri Preeti, Advocate
Ms.A.Sandhya Rani, Advocate

K.ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL

ORDER

1. The present petition is filed by 'Tata Capital Financial Services Limited' (hereinafter referred to as 'Financial Creditor') under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. CISCONS Projects Private Limited(hereinafter referred to as 'Corporate Debtor').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. The learned counsel appearing for Petitioner/Financial Creditor submitted that, the Corporate Debtor approached the

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Petitioner/Financial Creditor seeking financial assistance pursuant to being approached by the Corporate Debtor seeking financial assistance, the Petitioner in principal agreed to extend such financial assistance. Pursuant to such understanding, the Corporate Debtor after conducting a board meeting passed resolution wherein it was decided to avail credit facility to an extent of Rs.6 crores from the Financial Creditor. The Resolution of the said Board of Directors is filed along with the Petition as **Annexure No.9**.

4. Pursuant to such decision an Application was submitted by this Respondent/Corporate Debtor seeking credit facility. The said application is shown as **Annexure No.10**. Based upon such Application made by the Corporate Debtor, Financial Creditor had accepted to the request made by the Respondent and had issued a sanction letter and is shown at **Annexure No.12**. On the same day along with the sanction letter, the Financial Creditor had also issued term sheet for repayment and repayment schedule and are shown as **Annexure No.14 & Annexure No.15**. Upon such sanction being granted by the Financial Creditor, the Corporate Debtor had in fact executed Right of Lien and set off which are filed as **Annexure No.16 & Annexure No.17**.
5. The Financial Creditor in fact had sanctioned an amount of Rs.6 crores to the Corporate Debtor. At this juncture the Respondent/Corporate Debtor had addressed a Letter dated 28.09.2013,

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wherein it has requested the Financial Creditor to credit the loan amount into the account of M/s. Coastal Projects Pvt. Limited. The said letter dated 28.09.2013 addressed by the Corporate Debtor to the Financial Creditor is filed as **Annexure No.18**. The Corporate Debtor in the said letter has clearly requested the Financial Creditor to release an amount of Rs.5.5 crores into the account of M/s. Coastal Projects Pvt. Limited. Considering the request of Corporate Debtor the Financial Creditor had in fact transferred an amount of Rs.5.5crores into the account of M/s. Coastal Projects Pvt. Limited. The Corporate Debtor thus availed the credit facility, initially the Corporate Debtor made repayment of certain amounts and thereafter had committed default. The Financial Creditor on several times made demands calling upon the Corporate Debtor to make repayment of the amounts. Since the Corporate Debtor had not come forward to make any further payments of the default amount, as per the understanding between the parties, the Financial Creditor had invoked Arbitration Clause and had referred the dispute to Sole Arbitrator Mr.B.A.Shelar. The Respondent/Corporate Debtor has not contested the matter before the said Arbitrator. The Arbitrator has passed a reasoned Award dated 22.12.2014 in favour of the Financial Creditor herein. The copy of the Award is also filed as **Annexure No.6**.

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6. Since the Corporate Debtor had not come forward to make the payments that it was due and liable and further since there was a debt and also default committed by the Corporate Debtor, left with no other alternative the Financial Creditor was constrained to file this Application U/s.7 of I &B Code, 2016 against the Respondent.
7. The Corporate Debtor filed counter, inter alia denying the allegations made in the Application. It is stated that an amount of Rs.5.5 crores was disbursed to the account of M/s. Coastal Projects Pvt. Limited but not to this Corporate Debtor. The Applicant has not prepared to submit the account and proof of crediting loan amount to the account of M/s. Coastal Projects Pvt. Limited. But admitted that this Corporate Debtor has made payments from time to time to the Applicant and not defaulted in serving the loan to the Applicant.
8. The Respondent has stated that there are 2 letters/notices to this Corporate Debtor dated 04.08.2014 claiming an amount of Rs.1,52,49,423/-(Principle + Interest) and in another notice dated 11.08.2014 calling upon the Corporate Debtor to pay Rs.5,96,84,256/- was due as on 04.08.2014 without enclosing any statement of accounts. This discrepancy in figures was also disclosed in the Arbitral Award.
9. The Arbitrator while passing the Ex-parte Award has considered the figures of subsequent letter dated 11.08.2014. Without asking clarification

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from the Applicant with regard to the said discrepancy, it is mentioned that the Sole Arbitrator acted partially in the interest of the Applicant and the said Award is not the conclusive proof. Submitting the above the Corporate Debtor prayed for dismissal of the Petition.

10. In the written arguments, the Respondent has stated that there is no mortgage of any property either movable or immovable in favour of the Financial Creditor, therefore original transaction dated 27.09.2013 which sought to be enforced by filing the present Application on 17.11.2017 is barred by limitation. The claim under Insolvency and Bankruptcy Code is not maintainable basing on the Ex-parte Arbitration Award dated 22.12.2014.
11. That admittedly the amount has been claimed by the Petitioner has never been credited to the account of the Respondent Company. The Petitioner claims that basing on a letter dated 28.09.2013 they have remitted an amount of Rs.5.5 crores in the account of M/s. Coastal Projects Pvt. Limited and the said letter is forged and fabricated document. The Petitioner has taken the signatures of the Respondent Company on blank letter heads and on blank stamp papers on the ground of sanctioning of loans and prepared this case particularly without making the M/s. Coastal Projects Pvt. Limited as a party.

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12. Therefore, this present case is not maintainable for non-joinder of the necessary party under Order I rule 9 of CPC. It is also stated that such letter dated 28.09.2013 is not accompanied with any Board Resolution.
13. Respondent stated that they paid some amounts towards principle though they have not sanctioned loan to this Company and the Petitioner is liable to repay the said amount paid by the Respondent Company and the Respondent reserves their right to file a counter claim.
14. Respondent finally prayed to dismiss the Petition.
15. Both parties have filed written argument. Heard both sides and perused the pleadings.
16. It is the case of the Petitioner/Financial Creditor that only on the request of the Respondent they have sanctioned a loan of Rs.6 crores and disbursed an amount of Rs.5.5 crores to M/s. Coastal Projects Pvt. Limited at request of the Corporate Debtor vide its letter dated 28.09.2013 and thereafter this Corporate Debtor has paid some amounts. The Petitioner/Financial Creditor has filed several documents to prove the existence of debt:-
 - Arbitration Award dated 22.12.2014 passed by the Learned Arbitrator in proceedings initiated under the Arbitration and Conciliation Act, 1996.



Copy of the Arbitration Award dated 22.12.2014 is filed as **Annexure No.6.**

- The latest and complete copy of the Financial Contract reflecting all amendments and waivers to date

Copy of the Loan Agreement dated 28.09.2013 is filed as **Annexure No.7.**

- A record of default as available with any credit information company


Copy of the report dated 20.09.2017 by TransUnion CIBIL Limited is filed as **Annexure No.8(Page No.100A-100Z2).**

- List of other documents attached to this Application in order to provide the existence of Financial Debt, the amount and date of default

1. Copy of Board Resolution dated 27.09.2013 passed by the Corporate Debtor is filed as **Annexure No.9(Page No.101-103)**

2. Copy of the Application Form submitted by the Corporate Debtor for Financial Assistance is filed as **Annexure No.10 (Page No.104-110)**

3. Copy of the credit Appraisal Memorandum is filed as **Annexure No.11(Page No.111-133)**

4. Copy of the Sanction Letter dated 28.09.2013 is filed as **Annexure No.12(Page No.134-140)**
 5. Copy of the Term Sheet dated 28.09.2013 is filed as **Annexure No.13(Page No.141-143)**
 6. Copy of the Repayment Schedule is filed as **Annexure No.14(Page No.144-145)**
 7. Copy of the Certificate of Borrowing dated 28.09.2013 is filed as **Annexure No.15 (Page No.146-147)**
 8. Copy of the Right of Lien and set off dated 28.09.2013 granted by the Corporate Debtor and is Guarantor in favour of Financial Creditor is filed as **Annexure No.16(page No.148-150)**
 9. Copy of the Deed of Guarantee dated 28.09.2013 executed by the Corporate Debtor and its Guarantor in favour of the Financial Creditor is filed as **Annexure No.17(Page No.151-166)**
 10. Copy of the letter dated 28.09.2013 issued by the Corporate Debtor requesting the Financial Creditor for disbursement of amount of Rs.5,50,00,000/- to M/s. Coastal Projects Pvt. Limited is filed as **Annexure No.18(Page No.167-168)**
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11. Notice dated 04.08.2014 issued by the Financial Creditor to the Corporate Debtor for repayment of the outstanding amounts is filed as **Annexure No.19(Page No.169)**

12. Notice dated 11.08.2014 issued by the Financial Creditor to the Corporate Debtor for repayment of the outstanding amounts is filed as **Annexure No.20(Page NO.170-173)**

17. The Financial Creditor gave reply to the objections of the Corporate Debtor in the following manner:-

a) The Corporate Debtor in the counter had taken a specific stand that, the amount of Rs.5.5 crores was transferred to the account of M/s. Coastal Projects Pvt. Limited and as such the present Application ought to have been filed against M/s. Coastal Projects Pvt. Limited and not against the Corporate Debtor, as it is the M/s. Coastal Projects Pvt. Limited that is the ultimate beneficiary. For this contention the Financial Creditor stated that they would have transferred the amount directly into the account of the Corporate Debtor if the above referred letter dated 28.09.2013 is not addressed with a request to credit the amount in the accounts of M/s. Coastal Projects Pvt. Limited.

18. As seen the documents filed by the Financial Creditor in support of the claim there is an

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Application for loan made by the Corporate Debtor basing on it the amounts stated above had sanctioned to it. Further the said amount were transferred to the account of M/s. Coastal Projects Pvt. Limited only based upon a letter dated 28.09.2013 (**Annexure No.18, Page No.167-168**) addressed by the Corporate Debtor. Therefore it is clear that only this Corporate Debtor approached this Financial Creditor for sanctioning of the loan and having availed the credit facility the Corporate Debtor alone has to make payment of the said amounts.

19. Even otherwise, the Corporate Debtor admitting the liability had in fact made repayment of the part amounts and the said fact is admitted by the Corporate in its counter. Therefore the fact that the Corporate Debtor making such part repayment itself is a conclusive proof that he has availed credit facility from the Financial Creditor.
20. The Corporate Debtor had again taken a defence that the Arbitral proceedings are not correct and that the same are biased in favour of Financial Creditor and that, the same ought to have been initiated against the M/s.Coastal Projects Pvt. Ltd and that the present Application filed by the Financial Creditor against the Corporate Debtor based upon the said Award is not maintainable.
21. At this juncture, as seen the case of the Financial Creditor, he has filed this Application U/s.7 of IB Code based upon several documents but not



solely basing on the Arbitral Award. It is argued that the said Arbitral Award is only supporting document in addition to many other documents filed by them substantiating the loan transactions and disbursement of amounts. The Award has corroborated all other prior transactions in relation to the loan taken by the Corporate Debtor. Further the Corporate Debtor has not challenged the Award till now before any Authorities.

22. The Petitioner has made out a case and also has satisfied this Adjudicating Authority proving that there is a debt due payable by the Respondent. The pleas in the counter are untenable. Therefore in these circumstances I am inclined to admit this Petition.
23. The instant petition is admitted and This Adjudicating Authority order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.
24. This Adjudicating Authority hereby Appoint Ms.SandhyaTadla as IRP as proposed by the Financial Creditor. There is no disciplinary proceedings pending against the IRP as evidenced from Form-2 and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public

announcement as prescribed under Section 15 of the Insolvency and Bankruptcy Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.


25. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit all of the following, namely:

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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.



26. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.
27. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.
28. The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
29. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
30. The address details of the IRP are as follows:-

Ms.SandhyaTadla,
Address: 402B, Technopolis,
Chikoti Gardens, Begumpet,
Hyderabad 500016,
Email: Sandhya@EzResolve.in



Registration Number: IBBI/IPA-002/IP-
N00186/2017-18/10503.

31. The present Petition is hereby admitted.



K. ANANTHA PADMANABHA SWAMY
MEMBER JUDICIAL