

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

C.P. (IB) No. 36/MB/2021

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016.

In the matter of

Canara Bank

[CIN: 467190KA1906PLC001069]

...Financial Creditor

v/s.

M/s. Timblo Drydocks Pvt. Ltd. & Ors.

[CIN: U63032GA1973PTC000164]

...Corporate Debtor

Order Delivered on: **28.03.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

CP (IB) No. 36/MB /2021

For the Financial Creditor:

Ms. Sunita Rawat *i/b.* O.A. Das, Ld.
Counsel for the Financial Creditor.

For the Corporate Debtor:

Ms. Divya Bahl, Ld. Counsel for the
Corporate Debtor.

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ORDER

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) by **Canara Bank** (“Financial Creditor”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) in the matter of **M/s. Timblo Drydocks Pvt. Ltd.**, the Corporate Debtor herein.

1.1 The captioned petition has been filed on 10.11.2020 and the total default, per the Financial Creditor herein, amounts to INR 123,92,54,212.20/- (Rupees One Hundred Twenty-Three Crores, Ninety-Two Lakhs, Fifty-Four Thousand, Two Hundred and Twelve and Paise Twenty only). The Date of Default, as specified in Part-IV of the present petition, is August 31.10.2019.

1.2 A due perusal of our records evinces an OTS Proposal *dated 27.06.2023*, which was admittedly entered into between the Financial Creditor and the Corporate Creditor herein. Resultantly, the captioned petition was ‘Dismissed as Withdrawn’ *vide Order dated 14.07.2023*. In due course of time and following a purported breach of consent terms thereof, the Financial Creditor sought restoration of the captioned petition, and this Bench was pleased to allow the same *vide Order dated 04.01.2024*. The captioned petition is thereby, ripe for adjudication.

Submissions of the Financial Creditor

2. The Financial Creditor submits that the Corporate Debtor was provided with Cash Credit Facilities aggregating to INR 140 Crores *vide Four Sanction Letter(s) dated 08.08.2013, 22.05.2015, 04.01.2017 and 20.12.2018*. As against the said sanction(s), the necessary board resolutions were admittedly passed by the Corporate Debtor herein.

3. In relation to the afore-mentioned cash credit facilities, various collateral securities were executed to secure its repayment. The list of securities as against the First and Second sanction(s) are as follows:

First Sanction
<p>i. [NF 480] Pronote <i>dated</i> 13.08.2013 for Rs. 50,00,00,000/-.</p> <p>ii. [NF 372] Request for Overdraft Facilities <i>dated</i> 13.08.2013.</p> <p>iii. [NF 721] Letter of Undertaking re: Loans/Advances <i>dated</i> 13.08.2013.</p> <p>iv. [NF 446] Counter Indemnity <i>dated</i> 13.08.2013 for Rs. 25,00,00,000/-.</p> <p>v. Common Hypothecation Agreement <i>dated</i> 13.08.2013 for Rs. 75,00,00,000/-.</p>
Second Sanction
<p>i. [NF 493] Letter of Renewal <i>dated</i> 04.06.2015.</p> <p>ii. One-time FEMA Declaration-cum-Undertaking Letter to Bank <i>dated</i> 04.06.2015 executed by Respondent No. 2.</p> <p>iii. Letter of Authorization for debiting operating Account/s of the Borrower/s in the Event of his/ their failure to pay the Amount due under Letter of Credit <i>dated</i> 04.06.2015 for Rs. 15,00,00,000/-.</p> <p>iv. [NF 446] Counter Indemnity <i>dated</i> 04.06.2015 for Rs. 75,00,00,000/-</p> <p>v. [NF 444] Subordination Agreement <i>dated</i> 04.06.2015 for Rs. 60,94,23,2333/-</p> <p>vi. [NF 447] Agreement for Opening Inland Irrevocable Letters of Credit <i>dated</i> 04.06.2015 for Rs. 15,00,00,000/-</p> <p>vii. Supplemental Common Hypothecation Agreement <i>dated</i> 04.06.2015 for Rs. 150,00,00,000/-.</p>
Third Sanction
<p>i. [NF 493] Letter of Renewal <i>dated</i> 24.01.2017.</p>
Fourth Sanction
<p>i. [NF 493] Letter of Renewal <i>dated</i> 15.01.2019.</p> <p>ii. [NF 444] Subordination Agreement <i>dated</i> 15.01.2019 for Rs. 31,84,00,000/-.</p>

- iii. [NF 447] Agreement for Opening Inland Irrevocable Letters of Credit dated 15.01.2019 for Rs. 15,00,00,000/-.
- iv. Supplemental Common Hypothecation Agreement dated 15.01.2019 for Rs. 140,00,00,000/-.

Additionally, the Financial Creditor submits that in order to further secure the aforesaid credit facilities, the Personal Guarantor and Corporate Guarantors herein executed/ delivered Guarantee Agreements *dated* 30.12.2013, 04.06.2015 and 24.01.2017, and deposited title deeds in respect of certain properties with an intention to create equitable mortgage in favour of the Financial Creditor herein.

4. The Financial Creditor submits that owing to Corporate Debtor's continuous defaults in its payment obligations under the terms and conditions pertaining to the afore-stated facilities, the Financial Creditor issued Overdue/ Recall Notices to the Corporate Debtor *dated* 02.01.2018 and 28.08.2019 seeking forthwith payment of outstanding dues. On account of inaction by the Corporate Debtor with regards to the same, its account was classified as 'NPA' on 31.10.2019.
5. Furthermore, the Financial Creditor submits that it issued a Notice *dated* 02.11.2019 *u/s.* 13(2) of SARFAESI Act and thereby contends that the Corporate Debtor has not instituted any repayment(s) whatsoever under the said Agreement(s) and all amounts remain due and payable thereunder.

Hence, the present petition.

Findings

6. Heard the Learned Counsel(s) for the Financial Creditor and the Corporate Debtor.
 - 6.1. Upon going through the record files, it is observed that while restoring the captioned petition, and in consonance with para (1.2) hereto; This Tribunal *vide* Order *dated* 04.01.2024 granted liberty to the Corporate

Debtor herein to file Reply in the captioned petition. Despite not filing the same, the Counsel for the Corporate Debtor was duly heard on 01.03.2024 in conformance with judicial prudence. The matter-at-hand is therefore, being dealt solely on merits.

7. Upon perusal of all records, we are of the considered view that:

7.1. This Petition has been filed within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition bearing C.P. (IB) No. 36 of 2021 filed by the Financial Creditor.

7.2. We note that in light of the OTS Proposal *dated* 27.06.2023, the resultant breach thereof by the Corporate Debtor herein duly falls within the ambit of ‘acknowledgement of debt’ in consonance with the position adopted by the Hon’ble Supreme Court’s in *Dena Bank (now Bank of Baroda) Vs. C. Shivkumar Reddy and Anr.* [(2021) 10 SCC 330].

7.3. The application made by the Financial Creditors is complete in all respects as required by law. It clearly shows that the Corporate Debtor herein is in default of a debt due and payable, and the default is more than minimum amount stipulated under section 4(1) of the IBC, 2016. The two essential qualifications *i.e.* existence of ‘debt’ due and ‘default’, for admission of a petition under Section 7 of the IBC, 2016, have been met in this case.

7.4. The Financial Creditor has proposed the name of Mr. Prashant Jain, Registration No. IBBI/IPA-001/IP-P01368/2018-2019/12131, as the Interim Resolution Professional of the Corporate Debtor. He has duly filed his written communication in Form-2 *dated* 25.08.2023 as required under Rule 9(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, and the same has been taken into due consideration.

ORDER

It is accordingly hereby ordered as follows:

8. The above **Company Petition No. (IB) 36/MB/2021** is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s. Timblo Drydocks Pvt. Ltd.
9. This Bench hereby appoints **Mr. Prashant Jain**, Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01368/2018-2019/12131, with Address at A501, Shanti Heights, Plot No. 2, 3, 9B/10 , Sector 11, Koparkharine, Thane , Navi Mumbai, Maharashtra-400709 and E-mail: ipprashantjain@gmail.com; as the Interim Resolution Professional to carry out the functions as mentioned IBC, 2016.
10. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the Resolution Professional in terms of section 17 of the IBC, 2016. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
11. The Financial Creditor shall deposit a sum of **INR 5,00,000/-** (Rupees Five-lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
12. There shall be a moratorium under section 14 of the IBC, 2016 in regard to the following:

- (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 (SARFAESI) Act, 2002;
- (iv)* The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

13. Notwithstanding the above, during the period of moratorium:

- (i)* 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;
- (ii)* That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

14. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the Resolution Plan under sub-section (1) of section 31 of the IBC, 2016 or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016 as the case may be.

15. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
16. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
28.03.2024

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)
