IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI

CP(IBC)/57/KOB/2022

(Under Section 7 of IBC, 2016)

In the Matter of:

An application under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

In the Matter of:
Thesaurus Project Private Limited

MEMO OF PARTIES:

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA, SIDBI Tower, 15 Ashok Marg, Lucknow – 226 001

… Petitioner/Financial Creditor

-Versus-

THESAURUS PROJECT PRIVATE LIMITED, 12/481-5, Second Floor, Puthur Road, Koppam, Palakkad, Kerala – 678 001

… Respondent/ Corporate Debtor

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Appearances (through video conferencing)

For Petitioner	:	Mr A G Sathyanarayana Advocate
For Respondent	:	*Ex Parte* vide order dated 01.02.2023

Order reserved on: 01.02.2023

Order pronounced on:16.03.2023

O R D E R

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,

2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **THESAURUS PROJECT PRIVATE LIMITED.** The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is a regulatory Financial Institution supervised by Reserve Bank of India formed under the Act of Parliament having PAN: AABCS3480N. As per Part II of the application, the Corporate Debtor is a private Limited Company with Corporate Identification Number U45200KL2011PTC028924 and with registered office at 12/481-5, Second Floor Puthur Road, Koppam, Palakkad 678001. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. K J Vinod, IBBI Registration Number: IBBI/IPA-003/IP-N00291/2020-2021/13451 as the Interim Resolution Professional.

3. Part IV of the application signifies the amount of debt to the tune of Rs. 1,41,00,000/- as on 31.10.2022. Part V of the application describes the particulars of Financial Debt; documents, records and evidence of default as described below:

    a) Loan Agreement dated 05.02.2016 with Exon Projects Pvt Ltd for Rs.115 Lakh

    b) Board Resolution dated 05.02.2016

    c) Letter of Intent/sanction and modified Letter of Intent/sanction dated 04.02.2016 and 10.02.2016 respectively

    d) Loan disbursement Letter dated 11.02.2016

    e) Recall Notice dated 16.06.2019

f) Proof of change of name of Corporate Debtor to Thesaurus Projects Pvt Ltd.

g) NESL certificate of default in Form D evidencing default on 06.01.2019

h) Certificate of registration of Charge with registrar of companies dated 12.06.2018

i) MCA Master data showing register of charges dated 11.02.2022

j) Letter invoking guarantee dated 14.07.2022

k) CIBIL Report dated 03.11.2022

l) Statement of Loan Account from 04.02.2016 till 02.11.2022 dated 02.11.2022

m) Certificate as to Bankers Book Evidence Act dated 07.11.2022

n) SARFAESI demand Notice dated 05.08.2022

o) CIRP Intimation Notice dated 20.07.2022

4. **Brief fact of the case are:**

i. The present application is filed by Small Industries Development Bank of India (SIDBI), the Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, THESAURUS PROJECT PRIVATE LIMITED.

ii. The Financial Creditor sanctioned the loan facility for Rs.1,15,00,000/- to Exon Projects Pvt Ltd by way of term loan agreement dated 03.02.2016 which was duly acknowledged by the Corporate Debtor, its Directors and its Subsidiary. A Board Resolution dated 05.02.2016 was passed to avail the loan facility by the CD by mortgaging the properties of Mr. K Prem Shaji and personal guarantees of Mr. Sukesh MK, Mukesh MK and K Prem Shaji. The loan was disbursed vide letter dated 11.02.2016. Pursuant to this, the CD defaulted in repayment of loan and

the account of CD turned NPA in the books of Financial Creditor on 06.01.2019.

iii. The Corporate Debtor has acknowledged the loan liability in their Balance sheet. CIBIL Report evidencing dues is attached with the petition. Extracts of Board resolution authorising the Director of CD to borrow the said loan has also been submitted.

iv. Loan recall Notice was issued dated 16.07.2019 to CD which was not satisfied.

v. SARFAESI demand notice was issued against the CD by the FC on 05.08.2022. The FC has also submitted the record of default dated 06.01.2019 with NESL, the information utility.

vi. On failure of the Corporate Debtor to settle the debts on time, the FC caused a CIRP Intimation Notice to CD dated 20.07.2022. Since no action to settle the debt has been made by the CD, the FC proceeds under IBC to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

vii. The application was filed by the FC on 07.11.2022 and state that he has filed the petition within the period of limitation under the IBC.

5. On the respondent side, despite multiple notices being sent to the CD from petitioner and registry, no one appeared on behalf of the respondent and hence on 01.02.2023 the respondent was set *ex-parte* by this Tribunal.

6. Heard the Counsel for petitioner, and perused the documents placed on record. As to the matter of limitation in the case, the date of default of debt by the CD was 06.01.2019 when the account of CD turned NPA in books of FC. The Apex Court in Suo moto case W.P. No. 3 of 2020 by order dated 10.01.2022 excluded period from 15.03.2020 to 28.02.2022. This petition was filed on 07.11.2022. Hence this petition is made well within the period of limitation under the law.

7. Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial

Debt is owed and includes a person to whom such debt has been legally assigned or transferred to; thereby, the applicant herein, is a Financial Creditor. From records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8) of IBC, 2016. Also, the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor.

8. So, in light of the case's facts, circumstances, and legal situation, we believe that this application, as submitted by the Applicant—Financial Creditor, must be admitted under Section 7(5) of the IBC, 2016.

9. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.

   a) The petition bearing CP (IB) No. 57/ KOB /2022, Small Industries Development Bank of India, the Financial Creditor, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules 2016 for initiating CIRP against **THESAURUS PROJECT PRIVATE LIMITED**, (CIN: U45200KL2011PTC028924), the corporate debtor is **ADMITTED**.

   b) There will be a moratorium under section 14 of the Code.

   c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority 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 the Code, as the case may be.

   d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.

e) The Financial Creditor has proposed the name of one Mr. K J Vinod, IBBI Registration Number: IBBI/IPA-003/IP-N00291/2020-2021/13451, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.

f) During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. 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 one week from the date of receipt of this order, in default of which coercive steps will follow.

g) The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

h) The financial creditor shall deposit a sum of Rs.2,00,000/- (Two Lakhs Only) with the IRP to meet the expenses arising out of issuing publication

and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).

i) In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.

j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means 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 Tribunal within seven days from the date of receipt a copy of this order.

10. CP (IB) No.57/ KOB /2022 to come up on 20.04.2023 for progress report.

11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

12. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD Date: 2023.03.16 14:39:40 +05'30'

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ Date: 2023.03.16 14:50:22 +05'30'

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj
Member (Judicial)

Signed on this 16th day of March, 2023.

Rohit.