

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

**CP(IB)No. 372/7/HDB/2018**

**Under Section 7 of the Insolvency and Bankruptcy Code, 2016  
R/w Rule 4 of Insolvency & Bankruptcy  
(Application to Adjudicating Authority) Rules, 2016**

**In the matter of Indu Projects Limited**

Bank of India  
Large Corporate Branch  
PTI Building-1<sup>st</sup> Floor,  
10-1-1199/2, AC Guards,  
Hyderabad – 500 004.  
Telangana.

... Financial Creditor

**Versus**

Indu Projects Limited  
Having its registered office at  
1009, Indu Fortune Fields,  
13<sup>th</sup> Phase, KPHB Colony,  
Hyderabad – 500 072.  
Telangana.

... Corporate Debtor

**Date of Pronouncement of Order: 25.02.2019**

**Parties Present:**

For Financial Creditor :                      Shri N. Anand Rao, Advocate

For Corporate Debtor:                      Shri M. Anil Kumar, Advocate


**Per: K. Anantha Padmanabha Swamy, Member Judicial**

**ORDER**

1. Under consideration is a Petition filed by Bank of India  
(hereinafter referred to “**Financial Creditor**”) against Indu



Projects Limited (hereinafter referred to as “**Corporate Debtor**”) 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.

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 Corporate Debtor is engaged in the business of Engineering, Procurement and Construction in the fields of energy infrastructure and mining activities. It is also engaged in the business of Real Estate and Property Development activities, particularly in the development of Townships and Industrial Parks. In pursuance with the said businesses, the Corporate Debtor had from time to time availed of term loans, working capital limits and other Non-Fund based limits from the Financial Creditor. The properties so mortgaged include not only the properties of the Corporate Debtor but also those of its subsidiaries and other guarantors.
  4. The Corporate Debtor had availed various loan facilities from the Petitioner/Financial Creditor and other Financial Creditors to fund its operations under consortium banking arrangement as per the sanctioned terms and conditions specified therein.
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5. The Financial Creditor along with 9 other Banks, together with M/s L & T Infrastructure Finance Company Ltd and State Bank of India as Lenders, the Financial Creditor, as the Monitoring Institution and also the Financial Creditor as the Security Trustee thereafter entered into a Master Restructuring Agreement dated 28-09-2012 with the Corporate Debtor providing for the terms and conditions related to the said CDR Package. (A copy of the said Master Restructuring Agreement is enclosed as Annexure No VII Page Nos. 825 to 832.)
6. In terms of the CDR Package, the Financial Creditor and 12 other Banks and 1 NBFC, sanctioned additional loans to the Corporate Debtor and agreed for restructuring of the then existing loans as under:

Sl No.	Name of the Bank / Financial Institution	Fund Based Limits Rs. In Cr	Non-Fund based Limits Rs. In Cr	Total Rs. In Cr
1	Bank of India	108.89	271.87	380.76
2	State Bank of Hyderabad	131.77	266.11	397.88
3	IDBI Bank	272.71	140.23	412.94
4	Andhra bank	37.02	158.64	195.66
5	Indian Overseas Bank	90.59	198.77	289.36
6	State Bank of India	70.36	107.08	177.44

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7	State Bank of Patiala	125.22	113.39	238.61
8	Syndicate Bank	78.83	64.94	143.76
9	Canara Bank	96.13	73.57	169.70
1	Central Bank of India	65.10	-	65.10
1	Uco Bank	69.61	36.08	105.70
1	Punjab National Bank	61.23	79.32	140.55
1	L & T Infrastructure Finance Co Ltd	175.73	-	175.73
	TOTAL	1383.19	1510.00	2893.19

7. Despite the restructuring as stated above, there has been no improvement in the financial position of the Corporate Debtor. It has been defaulting in payment of interest and installments of principal on loans, to the Petitioner/Financial Creditor and other consortium banks. Consequently, the accounts of the Corporate Debtor have become Non Performing Assets (NPA) as per RBI guidelines. The Corporate Debtor has also defaulted in complying with several terms and conditions of the Master Restructuring Agreement. Therefore, the above acts constitute 'Events of Default' under Clause 7.1 of the aforesaid Master Restructuring Agreement. Clause 7.3 of the said Master Restructuring Agreement provides that if one or more of events of default occur, the Consortium members may declare that the principal of and accrued

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interest on the Facilities sanctioned by them to the Corporate Debtor have become due and payable forthwith and the security furnished by the Corporate Debtor in terms of Section III of the Master Restructuring Agreement has become enforceable and the Consortium members shall be entitled, inter alia, to proceed against the Corporate Debtor as per law.

8. The Petitioner/Financial Creditor has placed on record various documents in support of its claim as detailed below:
    - a. Copies of the Sanction Letters
    - b. Copies of Loan Documents
    - c. Certificate under Bankers Book of Evidence Act
    - d. Letter of Approvals and other related documents placed at Annexure VII at Page No.696-845 to the Petition.
  
  9. The Corporate Debtor filed counter and denied all the material averments made in the Petition except those which are specifically admitted. It is mentioned that this Petition is not maintainable either in law or on the facts of the case and the same is liable to be dismissed. It is further mentioned that CDR has been approved to overcome the financial stress faced by the Corporate Debtor for the following reasons that –
    - (a) Slowdown in the power sector and constructing industry;
    - (b) Adverse political situation and
    - (c) Increase in interest cost Rupee depreciation and delaying realization of receivables.
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It is further submitted that after the approval of the CDR package by the Lenders, the Corporate Debtor started facing difficulties in conducting its business as the lenders were not performing their part as contemplated under the CDR package. Further, the Financial Creditor agreed to release fresh facilities under the CDR Package, but delayed the release of the priority debts on the ground that it had over exposure in the Bank Guarantee Facilities. Further, the entire receipts were routed through Trust Retention Agreement (TRA) and other escrow accounts approved by the lenders and the lenders have not co-operated and adhered to the terms of the CDR in providing timely priority debt, etc., due to delay in documentation etc., the Corporate Debtor lost lot of time and the projected receivables could not be achieved as the limits, etc. were not properly released for want of execution of document.

10. It is further mentioned that the Corporate Debtor is not insolvent and it is having positive net worth for which they have filed Annual Financial Statements. Further, except the Petitioner/Financial Creditor herein, the other parties in the common agreement have not chosen to file any application under the Code.
11. It is further stated that the Financial Creditor is well aware that Enforcement Directorate has initiated proceedings against Corporate Debtor and issued provisional attachment order. Subsequently, a complaint had filed by ED and attached the properties of M/s Lepakshi Knowledge Hub





Private Limited and other properties of the Corporate Debtor was allowed by the concern Adjudicating Authority vide order dated 24.07.2015 and the same was not disclosed by the financial creditor. In view of the above, it is clear that the Petitioner/Financial Creditor filed the present petition with ulterior purposes/motives and prayed this Adjudicating Authority to dismiss the Petition.

12. The present Petition came up for hearing before this Adjudicating Authority from time to time and this Adjudicating Authority vide Order dated 17.12.2018 noticed that there is an Order of attachment of properties of Corporate Debtor by ED in relation to some investigation process transpired earlier and directed the parties to clarify the status of such attachments by the ED and the pending proceedings. This Adjudicating Authority vide its order dated on 07.01.2019 recorded that *"Since it is brought to the notice of Adjudicating Authority that the properties of Corporate Debtor were attached in some proceedings initiated by ED, I feel it proper to issue notice to the concerned Authorities of ED. Therefore, Registry is directed to issue notice to concerned Authorities of ED to make submissions in this regard."*
13. The Financial Creditor filed an Appeal i.e. Company Appeal (AT) (Insolvency) No.125 of 2019 before the Hon'ble National Company Law Appellate Tribunal (NCLAT) challenging the above said order. The Hon'ble NCLAT vide Order dated 06.02.2019, while disposing the appeal passed the Order, which is extracted below:



*“After hearing the learned counsel for the appellant, I am of the view that the appellant is concerned about the inordinate delay in consideration of his application under Section 7 of the I & B code which is stated to have been filed on 7<sup>th</sup> June, 2018 and no order in regard to its admission or otherwise has been passed by the Adjudicating Authority though it is claimed by the appellant that the application is complete and conforms to all the requirements of law in terms of dictum of Hon’ble Supreme Court in “Innoventive Industries Limited Vs. ICICI Bank – (2018) 1 SCC 407. In the give circumstances, it would be appropriate to direct the Adjudicating Authority to consider the application filed by the appellant under Section 7 of the I&B Code on its merit and in terms of provisions of law as explained by the Hon’ble Apex Court in ‘Innoventive Industries Ltd.,’ (Supra) without further loss of time.*

*The effect of moratorium, if the application is admitted, on the properties of the ‘Corporate Debtor’ said to have been attached by the ED can be considered after consideration of the application and passing of an appropriate order thereon.*

*The Adjudicating Authority is accordingly directed to pass appropriate order on the application of the appellant under Section 7 of the I&B Code by 25<sup>th</sup> February, 2019.*


*The appeal is accordingly disposed off.”*

14. In compliance with the specific directions of the Hon’ble NCLAT, the matter was posted and heard submissions of counsel representing both parties. Perused documents.





15. The Financial Creditor had initially granted fund based limit to the Corporate Debtor to the tune of Rs. 75.00 Crores on 27.06.2008, which was enhanced on various dates and subsequently, the limits were restructured vide letter of approval dated 20.09.2012 and the exposure of the Financial Creditor stood as fund based limits to the tune of Rs. 108.89 Crores and non-fund based limits to the tune of Rs. 271.87 Crores amounting to total of Rs. 380.76 Crores. The Respondent/Corporate Debtor averred that all the Consortium of Banks including the present Financial Creditors approved the scheme of CDR and under the said scheme, all the receipts were routed through Trust Retention Agreement (TRA) and there was no co-operation from the said lenders. The Respondent/ Corporate Debtor neither denied the receipt of the said fund based and non-fund based limits nor denied the default of the same. The only contention raised by the Corporate Debtor is with regard to the implementation of CDR by Consortium of lenders which is an untenable ground for rejection of the Instant Petition under Section 7 of IB Code, 2016. Financial Creditor has placed documentary evidence reflecting the default of debt amount. This Adjudicating Authority is satisfied that a default has occurred and the Application is complete. Thus, Petitioner has made out a fit case for initiation of CIRP against the Respondent. The instant Petition is admitted.



16. 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. Further, 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.*

17. 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.

18. As envisaged under section 12. (1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process. This Adjudicating Authority has found that the IRP proposed by the Financial Creditor Dr. K. V. Srinivas who gave his written consent in Form –II (at Annexure 2 at page 40 of the Petition) wherein he stated that he is not an IRP or an RP in any matters, on verification it is found that he is already acting as an Liquidator in CP(IB)No.172/10/HDB/2017, in the matter of M/s. Super Agri seed Limited and also acting as IRP/RP in CP(IB)No.278/7/HDB/2018 in the matter of Corporate Debtor M/s. BS Limited. CIRP proceedings are time bound and the proposed IRP is already been entrusted with the Job in the above two matters as an IRP/RP and a Liquidator and as the proposed IRP is already preoccupied, further entrusting the job to the proposed IRP will overburden him for looking into the affairs of the present Corporate Debtor and in view of the same, this Adjudicating Authority deems it just and proper to refer the matter to IBBI for proposing a name of another IRP in the place of IRP proposed by Financial Creditor for smooth running of CIRP. Therefore, IBBI is requested to propose a name of the IRP for the present Corporate Debtor. The Registry is also directed to communicate a copy of this order to the IBBI to propose some other name to appoint as IRP.
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19. The Registry is directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
20. For confirmation and appointment of IRP, Put up the matter on 05.03.2019.



**K. ANANTHA PADMANABHA SWAMY**  
**MEMBER JUDICIAL**