

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

C.P. (IB)-01(MB)/2018

Under section 7 of the IBC, 2016

In the matter of
State Bank of India

....Petitioner

v/s.

Videocon Telecommunications Ltd.

....Corporate Debtor

Order delivered on 11.06.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner : Mr. Animesh Bisht
Mr. Dhanajay Kumar
Ms. Saloni Kapadia
Ms. Surbhi Pareekh
i/b Cyril Amarchand Mangaldas

For the Respondent : Mr. Zal Andhyarujina, Adv. a/w
Mr. Sandeep Ludda, Adv.
Mr. Avrup Dasgupta, Adv.
Mr. Hursh Meghani, Adv.
Mr. Shrey Shah, Adv.
i/b Jhangiani Narula & Associates

Mr. Gandhal Raikar – for Intervener.

Per: B.S.V. Prakash Kumar, Member (Judicial)

ORDER

Order pronounced on 08.06.2018

It is a Company Petition filed u/s 7 Insolvency & Bankruptcy Code by a Financial Creditor namely; State Bank of India (SBI) against the Corporate Debtor for the Corporate Debtor having defaulted in making repayment of ₹234.36 crores as on 27.12.2017 seeking initiation of Corporate Insolvency Resolution Process (CIRP) against this Corporate Debtor.

2. The case of the Petitioner is, the Financial Creditor along with its associate banks and other banks entered into a Rupee Facility Agreement on 31.05.2010 as amended by the Agreement of Modification dated 30.08.2010 wherein the Corporate Debtor agreeing that the erstwhile SBI would provide sanction limit of ₹1,400 crores and Letter of Credit facility up to limit of ₹840 crores, that State Bank of Bikaner & Jaipur (SBB&J) would provide ₹100 crores of rupees original Rupee Facility Agreement, that State Bank of Mysore (SBM) would provide ₹100 crores original Rupee Facility and LoC facility up to ₹50 crores, and State Bank of Patiala (SBP) would provide ₹100 crores Rupee Facility Loan and ₹60 crores as LoC facility, as reflected in the table mentioned below:

Facility	Sanctioned Amount (In INR Cr.)	Disbursed Amount (In INR Cr.)	Date(s) of Disbursement (Page No.*)	Amount Outstanding (Principal+ Interest) as on December 27, 2017 (In INR Cr.)
SBI Term Loan [31686776458]	1400	517	25.03.2011 (Page No. 546)	Principal: 475.05 Interest: 80.53
		136	02.11.2011 (Page No. 548)	
Total	1400	653	-	
SBBJ Term Loan [61119586439]	100	39	11.11.2010 (Page No. 616)	Principal: 34.46 Interest: 5.10
		9	12.12.2011	
Total	100	48	-	39.56
SBM Term Loan [64061145632]	100	39	11.11.2010 (Page No. 574)	Principal: 35.25 Interest: 5.37
		10	24.12.2011 (Page No. 577)	
Total	100	49	-	40.62
SBP Term Loan [6509991765]	100	39	12.11.2010 (Page No. 594)	Principal: 35.61 Interest: 5.54
		10	15.11.2011 (Page No. 596)	
Total	100	49	-	41.15

3. Apart from the aforesaid loan facility, this Corporate Debtor stood as co-obligor towards other loans granted to its associated company, however, this case is limited to the claim made by the petitioner against the Corporate Debtor in respect to Rupee Facility Agreement.

4. For the associate banks of SBI have already merged with SBI, it has made this claim aggregating the amounts payable not only to the SBI but also to other erstwhile Banks namely SBB&J, SBM and SBP. As details of the sanctioned limits, disbursed amounts and dates of disbursements and amounts outstanding (principal + interest) as on 27.12.2017 have been disclosed in the table mentioned above, for the sake of avoiding repetition, it has not been mentioned again.

5. Though Bank Guarantee (BG) facility has also been shown in the table above, since the petitioner has not raised any claim against the amount outstanding against BG facility, therefore the present discussion is limited to the facilities provided under Rupee Facility Agreement. As to repayment is concerned, it has been said in the Schedule-2 of the Rupee Facility Agreement that if, for any reason, the amount finally disbursed by the Rupee Lenders (or any of them) under this Agreement is less than the amount of the Rupee Commitment of such Rupee Lenders, the Repayment Instalments shall stand reduced proportionately, but shall be payable on the same Repayment Dates as specified in the Repayment Schedule. In Schedule-9 of this agreement, it has been said as to how much percentage of the principal amount along with interest is payable to the lenders by the corporate debtor has been decided in it. According to the repayment schedule, the Corporate Debtor shall pay the entire amount of the rupee loans to the lenders in the instalments as detailed in it. The last repayment instalment of each rupee lenders rupee loan together with all other outstanding owe to such rupee lenders shall be repaid in full to such rupee lender on the date identified for the repayment of the last repayment instalment in the respective repayment schedule.

6. On looking at the Company Petition filed by the petitioner, it is evident that this Corporate Debtor defaulted making repayment on 31.01.2017, for the Corporate Debtor having failed to make repayment as agreed, since non-payment of the instalment as mentioned in the agreement amounts to default in making repayment, this Petitioner, ultimately on the direction given by

Reserve Bank of India, filed this case aggregating the loan amount payable to the Petitioner and erstwhile associate banks who merged with SBI for initiation of CIRP against this Corporate Debtor. Since the petitioner has incorrectly calculated the amount of default, date of default in Exhibit-5 annexed to this Company Petition, the petitioner filed an additional affidavit rectifying all those mistakes showing the first default under this facility as SMA on 31.05.2016, again on 31st January 2017.

7. On filing this Company Petition, the Corporate Debtor counsel Mr. Zal Andhyarujina has submitted that no workings have been provided in the Company Petition though there is a specific mandate in Form- 1 (Part IV) to attach the workings disclosing computation of amount and date of default in tabular form. He also submits that for there is no demand from the petitioner notifying that the Corporate Debtor defaulted in making repayment of the loan amount as agreed by it, no default could be ascribed to the outstanding payable because default amount has not been crystalized and notified to the Corporate Debtor before filing this Company Petition.

8. On hearing the submissions of either side, the point for discussion is as to *whether any defect is present in the Company Petition filed u/s 7 of Insolvency & Bankruptcy Code by the petitioner or not.*

9. On looking at the balance confirmation details given by the Corporate Debtor on 30.01.2017 to SBI saying that such and such amount payable to SBI under different heads, the corporate debtor now cannot say that debt and default are not in existence. Of course, the counsel has not stated that loan has not been disbursed to the Corporate Debtor, the only argument of the counsel appearing on behalf of the Corporate Debtor is that workings have not been given as mandated in part IV of Form 1 of Adjudicating Authority Rules. As to this point, if we go through this record, we do not find anywhere as to what is meant by "*workings*", but in furtherance of the word "*workings*", it has been further detailed as "*workings for computation of amount and days of default in tabular form*", which the petitioner

has done computation putting due outstanding the corporate debtor defaulted and days of default until before filing this Company Petition. They are supported by statement of accounts, certificate under Bankers Book Evidence Act disclosing how much is payable by this Corporate Debtor to the petitioner. Intriguing is the corporate debtor or its counsel has not disputed either in respect to availing loan facilities or about defaulting in repaying the dues outstanding. It could be understood that if the case of the Corporate Debtor is that it has been regularly repaying the loan amount along with interest as mentioned in schedule 9 of the Rupee Term Loan Agreement, then this Corporate Debtor can say that default has not been in existence, but no such averment anywhere present.

10. Another argument made by the Corporate Debtor counsel is no notice has been given to the Corporate Debtor notifying that the Corporate Debtor defaulted in making repayment of the loan amount as agreed by the Corporate Debtor. For which, the petitioner has already stated it has been very much tabulated how much percentage of the loan has to be paid by the Corporate Debtor on instalment basis in the Schedule-9 itself. It is not the case of the corporate debtor that it has paid instalments as per the schedule-9. The petitioner having mentioned the corporate debtor defaulted in making repayment on 31.01.2017, and to the same, there being no categorical denial from the corporate debtor, it has to be concluded that the corporate debtor defaulted in making repayment of the dues outstanding. In the Code, it is nowhere elucidated that it has to be separately notified to the Corporate Debtor that it has defaulted in making repayment to the Financial Creditor, it only says in sub-section 7(3)(a) of the Code that "record of the default recorded with the information utility or such other record or evidence of default as may be specified". To fulfil this mandate, the petitioner filed the report of the Central Repository Information on large credits dated 28.12.2017 reflecting this asset is classified as substandard, apart from this, it has also filed entries in the bankers books in accordance with Bankers Book Evidence Act, revival letter dated 26.04.2016 issued by the Corporate Debtor to the SBI Cap Trustee company

limited in relation to Rupee Facility Agreement, balance confirmation details as on 30.06.2017 issued by the Corporate Debtor and finally the letter dated 28.08.2107 issued by RBI in relation to resolution of stressed assets including this account.

11. In the same breath, if you see the definition of default in section 3(12) of this Code, it will could be understood that default means non-payment of debt when whole or any party or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the Corporate Debtor as the case may be. In this definition, it has not been said anywhere prior notice is required to be given to establish that the Corporate Debtor defaulted in making repayment to the creditor. It only says that non-payment of instalment of the amount of debt will become due and such due will become default as mentioned in this definition. In fact, in the balance confirmation given by the Corporate Debtor on 30.06.2017, it has been said that this Corporate Debtor has to pay so and so amount towards the loan account.

12. In view of the reasons aforementioned, on looking at the agreements and other documents, we are hereby satisfied that debt and default is in existence, therefore this Company Petition is hereby **admitted** with reliefs as follows, prohibiting all of the following item-I, namely: -

- I (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(SARFAESI Act);

(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.

(II) That supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(III) That the provisions of sub-section (1) Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

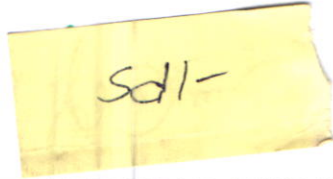
(IV) That the order of moratorium shall have effect from 08.06.2018 till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-Section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, as the case may be.

(V) That the public announcement of the Corporate Insolvency Resolution Process (CIRP) shall be made immediately as specified under section 13 of the Code.

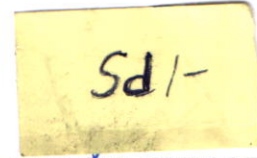
(VI) That this Bench hereby appoints, Mr. Anuj Jain, having Registration No.: IBBI/IPA-001/IP-P00142/2017-18/10306, address: 1st Floor, Lodha Excelus, Apollo Mills Compound, N.M. Joshi Marg, Mahalaxmi, Mumbai - 400 011, as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

13. Accordingly, the Petition is **admitted**.

14. The Registry is hereby directed to communicate this order to both the parties within seven days from the date order is made available.



**RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)**



**B.S.V. PRAKASH KUMAR
MEMBER (JUDICIAL)**