

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

CP No.131/KB/2020

In the matter of

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

And

In the matter of:

ICICI Bank Limited having its registered Office at ICICI Bank Tower, Near Chakli Circle, Old Padra Road, Vadodara 390007, Gujrat, India and Regional Office at ICICI Bank Limited, ICICI House, 3A, Gurusaday Road, Kolkata-700019.

... Financial Creditor

Versus

In the matter of:

McNally Sayaji Engineering Limited, having its Registered office at Campus 2B, Ecospace Business Park, 11F/12, Rajarhat, Newtown, Kolkata-7001156.

...Corporate Debtor

Date of hearing : 12/01/2021

Order Pronounced on : 11/02/2021

Coram:

Mr. Rajasekhar V.K., Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

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| 1. Mr. Rishav Banerjee, Advocate | } For the Financial Creditor |
| 2. Mr. Avishek Guha, Advocate | } |
| 3. Ms.Kasturi Dasgupta, Advocate | } |

ORDER

Per: Harish Chander Suri, Member (T)

1. The Court is convened by video conference on 12/01/2021.
2. This Company petition being CP (IB) No. 131/KB/2020 has been filed by **ICICI Bank Limited**, having its registered office at Vadodara, Regional office at Kolkata (hereinafter referred as the Financial Creditor), who has authorised Mr. Ayush Bagri, vide Power of Attorney dated 6th February, 2019 along with Board Resolutions dated May 3, 2002, October 30, 2019 ,October 27, 2017 and July 27,2017 and July 27,2018 (Annexure-B) empowering him, *inter alia*, to sign, verify, and file all petitions or legal proceedings, including but not limited to initiation of Corporate Insolvency Resolution Process under the IBC Code ,2016. This petition has been filed against McNally Sayaji Engineering Limited, a corporate entity, having its office at Calcutta (hereinafter referred to as the Corporate Debtor).
3. It is submitted in the petition by the Financial Creditor that on the request of the Corporate Debtor, the Financial Creditor had granted and disbursed Rupee term loan facility of a cumulative value of Rs. 50,00,00,000/- comprising the following: -
 - (i) Rupee Term Loan facility of Rs.25,00,00,000/-(Rupees Twenty-Five Crores Only). ("Rupee Term Loan Facility I"); and date of disbursement dated June 18, 2015.
 - (ii) Rupee Term Loan facility of Rs.25,00,00,000/-(Rupees Twenty-Five Crores Only). ("Rupee Term Loan Facility II"); and date of disbursement dated June 27, 2015.
 - (iii) Working Capital facility, which was renewed from time to time. It is stated that the total amount in default in Facility I as on 31 December, 2019 is Rs.14,50,49,157.39 (Rupees Fourteen Crores Fifty Lacs Forty Nine Thousand One Hundred Fifty Seven and

Thirty nine Paise) and the date of default is January, 31,2019.

(iv) The amount of default under Facility II as on December, 31, 2019 is 14,50,75,502/- (Rupees Fourteen Crores Fifty Lacs Seventy-Five Thousand Five Hundred and Two) and the date of default is January 31,2019.

(v) The amount of default under the Working Capital Facility as on December 31, 2019 is Rs. 45,84,41,659.02 (Rupees Forty-Five Crores Eighty-Four Lacs Forty One Thousand Six Hundred Fifty Nine and Two Paise) and the date of default is January 28,2019.

4. The Financial Creditor had in fact secured the loan by execution of various documents and by way of various securities held against the aforesaid facilities granted to the Corporate Debtor which are enumerated in Para-V of the application, copies whereof are annexed with the application. The Financial Creditor has also submitted a summarized computation of amount of default on the part of the Corporate Debtor and days of default which are as under: -

Sr. No.	Facility	Total Overdue at December 31,2019 (Rs.)			Date of Default	No. of days of default till / December, 31,2019
		Principal	Interest	Total		
1	Rupee Term loan 1	125,000,000.00	2,00,49,157.39	14,50,49,157.39	January,31, 2019	334
2.	Rupee Term Loan 2	125,000,000.00	2,00,75,502.00	14,50,75,502.00	January,31, 2019	334
3.	Cash Credit	23,23,64,561.78	3,79,09,345.00	27,02,73,906.78	January,28,2019	337
4.	Letter of Credit	14,65,75,511.22	2,69,02,250.26	17,34,77,761.48		
5.	Bank Guarantee	1,16,84,511.76	30,05,479.00	1,46,89,990.76		
	Total	64,06,24,584.76	10,79,41,733.65	74,85,66,318.41		

5. The Financial Creditor has filed various documents in support of its application **Annexure-‘A’** to **‘J’** and has taken us through each one of them to prove its case.

6. Notice of this application was issued to the Corporate Debtor vide orders

dated 14th January, 2020, for 7th February, 2020 when the Ld. Counsel for the Corporate Debtor sought time to file Vakalatnama along with the Board Resolution and reply affidavit. The time was granted for reply and rejoinder as well and the matter was directed to be listed on 27th March 2020. Thereafter, due to Lockdown, the matter could not be listed before 3rd November, 2020. On 3rd November, 2020, Ld. Counsel for both sides appeared but the Corporate Debtor had not filed reply and sought further time to do so. Time was granted subject to payment of Rs. 25,000/- as cost. Rejoinder was also directed to be filed within one week after the filing of the reply. Then the matter was listed on 26th November, 2020. However, on 26th November, 2020, none appeared for the parties because there was a resolution of the Bar Association requesting the members to abstain from appearing. The matter was then posted for 1st December, 2020. On 1st December, 2020, Ld. Counsel for the parties appeared and sought time to settle the matter. The matter was thus listed on 8th December, 2020 either to report settlement or to advance final arguments. On 8th December, 2020, it was noticed that in spite of order dated 3rd November, 2020, the reply affidavit had not been filed, and was filed quite late i.e. 7th December, 2020. The matter had to be listed on 16th December, 2020 for arguments.

7. The matter has thus been heard on behalf of both the parties. The Ld. Counsel for the Financial Creditor has taken us through the application and the annexures filed in support of the application. We find that the application is complete in all respects in terms of the provisions of the Code, and admittedly no limitation issue is involved therein.
8. The Ld. Counsel for the Financial Creditor has submitted that the loan was granted and duly disbursed in the shape of various facilities mentioned above. The Financial Creditor has also been able to prove that the default in repayment occurred on January 28, 2019 and January, 31, 2019. The CIBIL Report filed with the application reflects delinquent outstanding as “sub-standard”.

9. The Financial Creditor has proposed the name **of Mr. Jitendra Lohia**, to act as IRP with Registration No. **IBBI/IPA-001/IP-P00170/2017-18/10339** and the proposed IRP has also given Form-2 dated 31st December, 2019, consenting to act as the RP in the matter and mentioning therein the usual mandatory clause.
10. The Corporate Debtor has filed an affidavit in opposition, though late, sworn on 7th December, 2020 by Shri Purajit Roy, the Chief Financial Officer of the Corporate Debtor submitting that the Management of the Corporate Debtor has been relentlessly pursuing several debts restructuring initiatives for Corporate Debtor in the past year. ANGCC capital management, Iceland had actively considered investing in the Corporate Debtor's having evaluated its business prospects in the presence of the Corporate Debtor's lenders since November, 2019. As a matter of fact, the lenders, including the Financial Creditor herein, had sought some further improvement in the offer at that point in time.
11. It is stated that due to outbreak of the Covid-19 pandemic, the Resolution Plan could not be implemented but the said company has never walked away from their offer.
12. It is submitted on behalf of the Corporate Debtor that a revised Resolution Plan dated August 14, 2020 which was discussed by the lenders amongst themselves in September, 2020 would be sent to the Corporate Debtor for further consideration and clarification.
13. It is submitted that the Financial Creditor has been actively involved in negotiating with the Corporate Debtor along with all lenders. It is submitted that the Corporate Debtor is a running company with more than 1000 employees.
14. The Corporate Debtor filed another supplementary affidavit on 15th December, 2020, while apologizing for the undue delay in filing the

affidavit in opposition followed by a supplementary affidavit. It was submitted that the Corporate Debtor's Resolution Plan was at an advanced stage and would be evident from email and correspondence. A vague reference has been given to lenders' consortium equally eager to complete the process as soon as possible.

15. We have heard the Ld. Counsel for the parties at length. This is a case where the Financial Creditor ICICI Bank Limited had granted a total loan by way of three facilities totaling up to Rs.45,84,41,659.02 (Rupees Forty Five Crores Eighty Four Lacs Forty One Thousand Six Hundred Fifty Nine and two paise), which was duly disbursed on June 18, 2015, June 27,2015, December 29,2009, (as renewed from time to time), Retail loan June 30, 2016 and retail loan facility to July 18,2016. The Financial Creditor has placed on record various documents proving that the default has been committed by the Corporate Debtor to the tune of Rs.45,84,41,659.02 (Rupees Forty Five Crores Eighty Four Lacs Forty One Thousand Six Hundred Fifty Nine and Two paise) as on January 28, 2019, which liability the Corporate Debtor has failed to discharge in spite of demand-cum-loan recalling notice dated 3rd January, 2020.
16. On one side, Ld. Counsel for the Financial Creditor has proved its case on the basis of various documents placed before the Bench and has satisfied the Bench step by step from the date of sanction of loan to the date of recalling of the said loan by way of demand-cum-recalling notice, on the other side, Ld. Counsel for the Corporate Debtor has raised all vague grounds, which cannot stand the test of reasonableness or any justification. The Corporate Debtor having committed default in making the payment of the loan amount of Rs.45,84,41,659.02 (Rupees Forty Five Crores Eighty Four Lacs Forty One Thousand Six Hundred Fifty Nine and Two paise) and having failed till date to make the re-payment of the said loan with interest, being Rs.**74,85,66,318.41** (Rupees Seventy Four Crores Eighty Five Lacs Sixty Six Thousand Three Hundred Eighteen and Forty One paise), this application deserves to be admitted.

17. From the aforesaid facts, it is clear that on the request of the Corporate Debtor, the Financial Creditor had sanctioned the loan, which was duly disbursed to the Corporate Debtor in its Bank Account and was duly acknowledged. It is also not denied that the default has not occurred resulting in triggering the process of insolvency. Section 7(1) of the Code expressly envisages “a default” is in respect of financial debt, that is owed to any financial creditor by the Corporate Debtor. The Financial Creditor has made this application in the prescribed form and manner. This Adjudicating Authority has to simply satisfy itself that the default has actually occurred. Even, though the Corporate Debtor has the right to point out that the default has not occurred, but there is no such plea in its affidavit in opposition, which tantamounts to a clear cut admission that the default had occurred.
18. In these circumstances, we find that the application of the Financial Creditor being complete in all respects and there being no denial of the default having taken place in repayment of the debt due to the Financial Creditor
19. In these circumstances, we have no hesitation in admitting the application and in ordering initiation of CIRP against the Corporate Debtor.
20. In view of the observations and directions, we hereby admit the petition and pass the following Orders:-

O R D E R S

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor **McNally Sayaji Engineering Limited** is hereby **admitted**.

- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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.

- v) The supply essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Jitendra Lohia**, registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI /IPA-001/IP-P00170/2017-19/10339]** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

- xi) The Financial Creditor/Applicant is directed to deposit **Rs 2,00,000/- (Rupees Two Lakhs only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on 27/04/2021 for the filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V.K.)
Member (Judicial)

Order signed on 11/02/2021

Pj