

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
AT HYDERABAD

CP(IB)No.294/7/HDB/2017

U/s 7 of the IBC, 2016 r/w Rule 4 of I & B
(Application to Adjudicating Authority) Rules, 2016

In the matter of:

State Bank of India
Having its Registered Office at
State Bank Bhavan, Madame Cama Road,
Mumbai – 400 021
Rep. by Mr. T.G. Vijayakumar, AGM,
CAG Branch, Ozone Commercial Complex,
2nd Floor, 6-3-669,
Punjagutta Main Road,
Hyderabad - 500 082.

.... Petitioner / Financial Creditor

Versus

IVRCL Limited
Having its Registered Office at
M-22/3RT, Vijayanagar Colony,
Hyderabad- 500 057.

.... Respondent / Corporate Debtor

Order pronounced on: 23.02.2018

CORAM:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties / Counsels Present:

Petitioner / Financial Creditor: Mr. Bishwajit Dubey along with
Mr. Gaurav Gupte, Mr. Praveen K Nair,
Ms. Naveena Varghese,
Mr. K. Priyadarshan Reddy,
Mr. M. Vigneswar Reddy,
Mr. Karan Talwar

Respondent / Corporate Debtor: Mr. S. Nagesh Reddy along with
Mr. G. Bhupesh
Mr. M. Jagadish Kumar

Per: Ravikumar Duraisamy, Member (Technical)

ORDER

1. The Application has been filed by State Bank of India to initiate Corporate Insolvency Resolution Process in the matter of IVRCL Limited under IBC 2016.
2. The State Bank of India having its Registered Office at State Bank Bhavan, Madame Cama Road, Mumbai- 400 021 and acting through its Branch Office at Corporate Accounts Group Branch(13039), Ozone Commercial Complex, 2nd Floor, 6-3-669, Punjagutta Main Road, Hyderabad – 500 082 representing by Mr.T.G.Vijayakumar, AGM, SBI, Hyderabad. (Hereinafter State Bank of India referred as Financial Creditor or SBI).



Brief facts of the case are as follows:-

3. IVRCL Limited is an existing company with the meaning of the Companies Act, 2013 and was incorporated on 16.11.1987 with Corporate Identity Number L45201AP1987PLC007959 having its Registered Office at M-22/3RT, Vijayanagar Colony, Hyderabad-500057 (Hereinafter referred as Respondent / Corporate Debtor).
4. The Authorised Share Capital of the Corporate Debtor is Rs.3,30,00,00,000/- (Rupees Three Hundred Thirty Crores only) and the Paid-up Share Capital is Rs.1,56,57,95,384/- (Rupees One Hundred Fifty Six Crores Fifty Seven Lakhs Ninety Five Thousands Three Hundred and Eighty Four only). *The Financial Creditor has furnished the above information based on Corporate Debtor's Master Data available on the MCA website as on 09.11.2017.*

5. SBI had granted certain credit facilities (both fund based and non-fund based) to the Corporate Debtor from time to time, which have been restructured on the terms and conditions set out under the Master Restructuring Agreement dated 30.06.2014 (Original MRA) entered into inter alia between the Corporate Debtor, SBI and certain other lenders (collectively, the CDR Lenders), as amended vide the Amended and Restated Master Restructuring Agreement dated 27.12.2014 (Amended and Restated MRA) and the First Amendment Agreement to the Amended and Restated Master Restructuring Agreement dated 21.09.2015 (First Amendment to Amended and Restated MRA, together with the original MRA and Amended and Restated MRA, collectively referred to as the "MRA"). Under the terms of the MRA, SBI had also sanctioned certain additional credit facilities to the Corporate Debtor.



6. Under the MRA, SBI's exposure to the Corporate Debtor is as follows:-
- a. The aggregate principal amount sanctioned by SBI under the Restructured Working Capital Term Loan-1 Facility is Rs.125,28,00,000/- (Rupees One Hundred Twenty Five Crores Twenty Eight Lakhs only) (**SBI Facility-1**);
 - b. The aggregate principal amount sanctioned by SBI under the Funded Interest Term Loan (FITL) Facility is Rs.58,61,00,000/- (Rupees Fifty Eight Crores Sixty One Lakhs only) (**SBI Facility-2**);
 - c. The aggregate principal amount sanctioned by SBI under the Term Loan (Priority Loan) Facility is Rs.18,71,00,000/- (Rupees Eighteen Crores Seventy One Lakhs only) (**SBI Facility-3**);
 - d. The aggregate principal amount sanctioned by SBI under the Revised Working Facilities (Cash Credit Facility) is

Rs.215,75,00,000/- (Rupees Two Hundred Fifteen Crores, Seventy Five Lakhs only) (**SBI Facility-4**);

- e. The aggregate principal amount sanctioned by SBI under the Bank Guarantee Facility is Rs.689,58,00,000/- (Rupees Six Hundred EightyNine Crores Fifty Eight Lakhs only) (**SBI Facility-5**), with a sub-limit for Restructured Working Capital Term Loan-II aggregating to Rs.25,78,00,000/- (Rupees Twenty Five Crores Seventy Eight Lakhs only) (**Sub-Limit of SBI Facility-5**);

- f. The aggregate principal amount sanctioned by SBI under the Letter of Credit Facility is Rs.37,94,00,000/- (Rupees Thirty Seven Crores Ninety Four Lakhs only) (**SBI Facility-6**);

The above mentioned facilities are collectively referred to as the “SBI Facilities”.



7. In relation to the amount sanctioned for the SBI Facilities:
- i) The entire amounts outstanding under SBI Facility-2 aggregating to Rs.52,94,78,875.90 (Rupees Fifty Two Crores Ninety Four Lakhs Seventy Eight Thousand Eight Hundred and Seventy Five Paise Ninety only) have been converted into 2,17,08,851 (Two Crores Seventeen Lakhs Eight Thousand Eight Hundred Fifty One) fully paid up equity shares of the Corporate Debtor in tranches as per letters dated 16.01.2015, 27.04.2015, 06.08.2015 and 27.11.2015.
- ii) Part of SBI Facility-1 aggregating to Rs.1,25,03,728 (Rupees One Crore Twenty Five Lakhs Three Thousand Seven Hundred and Twenty Eight only) and the entire amount outstanding under Sub-limit SBI Facility-5 aggregating to Rs.23,02,96,264/- (Rupees Twenty Three Crores Two Lakhs Ninety Six Thousand Two Hundred and Sixty Four only) have been converted into 2,77,01,083 (Two Crores Seventy Seven Lakhs One Thousand Eighty Three) fully paid up equity shares of the Corporate Debtor as per letter dated 10.03.2016.

The total debt sanctioned by SBI to the Corporate Debtor under the SBI Facilities is Rs.1145,87,00,000/- (Rupees One Thousand One Hundred Forty Five Crores Eighty Seven Lakhs only) and the total debt disbursed in relation to the SBI Facilities is Rs.898,49,08,395/- (Rupees Eight Hundred Ninety Eight Crores Forty Nine Lakhs Eight Thousand Three Hundred and Ninety Five only).

8. **Mortgage:**

- i) A charge over 152 (One hundred and Fifty Two) Acres of land situated at Sriperumbadur Taluk, Kancheepuram District, Tamilnadu was created pursuant to the Deed of Mortgage dated 12.09.2014 (**Mortgage Deed-I**);
- ii) A charge over 201(Two hundred and One)Acres 16 (Sixteen) Cents of land situated at Tiruvallur Taluk & District, Tamilnadu was created pursuant to the Deed of Mortgage dated 12.09.2014 (**Mortgage Deed-II**);
- iii) Equitable mortgage has been created by the Corporate Debtor over the properties executed by Mr.Balaji Sethuramanan, for and on behalf of Absorption Aircon Engineers Private Limited, Gajuwaka Developers Private Limited, IVRCL Steel Construction and Services Limited and Tirumani Developers Private Limited in favour of SREI Equipment Finance Limited, acting on behalf of the CDR Lenders;
- iv) Second charge over 247(Two hundred and Forty Seven)Acres 14 (Fourteen) Cents of land situated at Sriperumbadur Taluk, Kancheepuram District, Tamilnadu was created pursuant to the Deed of Mortgage dated 12.09.2014 (**Mortgage Deed-III**);
- v) Equitable mortgage was created by the Corporate Debtor over the properties executed by Mr. R. Balarami Reddy in favour of Tamilnadu Mercantile Bank Limited (TMB), who acted on behalf of other lenders. Pursuant to the letter dated



22.12.2015 from the Corporate Debtor to TMB read together with the letter dated 31.12.2015 from TMB to SBI, the Corporate Debtor extended the equitable mortgage created pursuant to MOE-II to all CDR Lenders;

- vi) A charge over 01(One)Acre 02 (Two) Cents of land situated at Santhavellur Village, Sriperumbadur Taluk, Kancheepuram District, Tamilnadu was created pursuant to the Deed of Mortgage dated 29.04.2015 (**Mortgage Deed-IV**);

9. **Hypothecation**:Pursuant to the Deed of Hypothecation dated 24.11.2014 (Deed of Hypothecation) read together with Amendment to the Deed of Hypothecation dated 25.01.2016 (Amended Deed of Hypothecation), the Corporate Debtor has created charge by way of hypothecation in favour of SBICAP Trustee Company Limited (Security Trustee) over movable assets of the Corporate Debtor.



10. **Pledge**:
- a. Pursuant to the Share Pledge Agreement dated 30.06.2014, the Pledgers have created pledge in favour of the Security Trustee, over 4,20,32,166 (Four Crores Twenty Lakhs Thirty Two Thousand One Hundred Sixty Six) of the Pledgers in the Corporate Debtor.
- b. Pursuant to the Share Pledge Agreement dated 24.11.2014, executed by the Corporate Debtor in favour of the Security Trustee(for the benefit of the CDR Lenders), the Corporate Debtor has created pledge over its shareholding in the entities listed in Schedule 1 of the Deed of Pledge-II. The Corporate Debtor has placed a deposit of Rs.42,00,000/-(Rupees Forty Two Lakhs only) with TMB (acting on behalf of its consortium members including inter alia the Financial Creditor) vide its letter dated 22.11.2004. The copies of

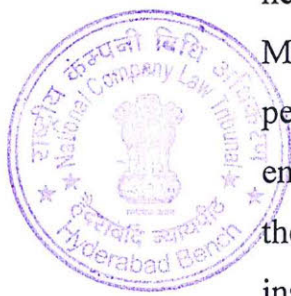
certificates of registration of charge with respect of the aforementioned securities created for the benefit of the Financial Creditor is available in the records.

11. Pursuant to the Deed of Guarantee dated 30.06.2014, executed by Mr. E. Sudhir Reddy in favour of the Security Trustee, Mr. E. Sudhir Reddy has guaranteed the due and punctual payment of the SBI Facilities by the Corporate Debtor.
12. The estimated value of the aforementioned securities (except the corporate and personal guarantees) as on 22.10.2017 is approximately Rs.547,96,00,000/- (Rupees Five Hundred Forty Seven Crores Ninety Six Lakhs only).
13. There is an amount of Rs.604,15,36,434/- (Rupees Six Hundred Four Crores Fifteen Lakhs Thirty Six Thousand Four Hundred Thirty Four only) is due and payable by the Corporate Debtor under the SBI Facilities to the Financial Creditor as on 22.10.2017.
14. We have carefully perused all pleadings along with material papers filed in their support.
15. The case was listed on various dates on 05.12.2017, 11.12.2017, 13.12.2017, 22.12.2017, 08.01.2018, 05.02.2018, 09.02.2018, 15.02.2018 and finally on 23.02.2018.
16. The Counsel for the Financial Creditor filed a Memo dated 05.01.2018 proposing another IRP viz. Mr. Sutanu Sinha (Registration No. IBBI/IPA-003/IP-N00020/2017-2018/10167). Form No.2 is also submitted by the proposed IRP.
17. Upon perusal of the Petition and the documents submitted in support by the Financial Creditor we are satisfied that the Petition is filed in accordance with Section 7 of IBC and debt and default is also proved. Therefore, the Adjudicating Authority is of the



considered view to accept the Company Petition filed under Section 7 of IBC for institution of CIRP.

18. The Adjudicating Authority sought various clarifications with reference to the substantial fee charged by the IRP, not as an individual but as a firm/company and his experience in handling EPC companies. The Learned Counsel could not convince the Adjudicating Authority. However, during the subsequent hearings, Learned Counsel of Financial Creditor clarified vide Memo wherein fee for IRP in his individual capacity is Rs.5 lakhs per month and the balance amount is towards his team of employees (35-40 nos.). Further the Learned Counsel stated that the fee will be paid by the Financial Creditor/CoC. Therefore, insisted to approve the name of IRP.



19. Though IDBI Capital Markets and Securities Limited, an Operational Creditor filed a Company Petition bearing No. CP(IB)No.249/09/HDB/2017 under Section 9 of the IBC, 2016 against the same Corporate Debtor i.e. IVRCL Limited for claim of Rs.3.15 Crores, wherein the Corporate Debtor raised various defects in application filed by Operational Creditor. Further the amount of claim of Financial Creditors in the present case is very high and debt and default is also established. Therefore, we have taken the present CP filed by the Financial Creditor for initiating CIRP process.

20. In view of the clarifications/memos and Form 2 filed by the IRP and no disciplinary proceedings pending against IRP and foregoing discussions, the proposed IRP is appointed.

By invoking the powers under Sections 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 25 and other applicable provisions of Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority passes the following order:-

i) Appointed Mr. Sutanu Sinha (Registration No. IBBI/IPA-003/IP-N00020/2017-2018/10167), Floor No.4, Duck Back House, 41, Shakespeare Sarani, Kolkata – 700 017 to act as Interim Resolution Professional with a direction to initiate appropriate action contemplated in CIRP in accordance with extant provisions of IBC, 2016 and other relevant rules.



ii) The IRP/CoC is directed to strictly ensure the fee payable to IRP/RP is in accordance with IBC, 2016 Rules/Regulations/Circulars/Directions issued by IBBI from time to time.

iii) We hereby declare the following Moratorium U/s 14(1) of IBC in respect of 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 Corporate Debtor.
- e) This order of moratorium shall have effect from the date of communication of this order till completion of CIRP or till passing an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- f) Direct to cause a public announcement of the initiation of CIRP immediately as prescribed under Section 15(1) and (2) of Insolvency and Bankruptcy Code, 2016, on www.ibbi.gov.in (designated website of Insolvency and Bankruptcy Board of India, circulated vide IIBI/IP/PUBLIC ANN/221 dated 01.02.2017) and email to public.ann@ibbi.gov.in in addition to other accepted modes of publication immediately and call for submission of claims as per Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Company is also directed to publish the same in its official website.
- g) The IRP is directed to follow all extant Code of IBC and all the Rules and Regulations framed by Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Afford full opportunity to all concerned parties to the issue by duly following Principles of Natural Justice;



- h) Both the Petitioner and Respondent are directed to extend full co-operation to the IRP to discharge his statutory functions;
- i) Direct the personnel of IVRCL Limited, its promoters or any other person associated with the management of IVRCL Limited, to assist and co-operate with Interim Resolution Professional to provide access to documents and records and management of the affairs of the Company.



- iv) Post the case on 19.03.2018 with a direction to the IRP to appraise the Tribunal, about steps taken by him from time to time, in instant CIRP, by way of filing an affidavit.
- v) The IRP is also directed to schedule meeting(s) of concerned parties, verification etc., in such a way that CIRP shall be completed well before the prescribed period of 180 days as per the IBC Code.

Sd/-
RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

Sr. Anantha Subrahmanya
For Dy. Regr./Asst. Regr./Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER *CRC(D)/No. 294/7/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *23.2.2018*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *1.3.2018*