

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp App. (AT) (Ins) No. 794 of 2023

&

I.A. No. 2685 of 2023 & 1531 of 2025

IN THE MATTER OF:

Vikram Bhawanishankar Sharma
Member of the Suspended Board of Directors
of Supreme Manor Wada Bhiwandi Infrastructure Pvt. Ltd.
...Appellant

Versus

Union Bank of India & Anr. **...Respondents**

Present:

For Appellant: **Mr. Abhirup Das Gupta and Jayashree S. Das Gupta, Advocates.**

For Respondents: **Mr. Dhruvad Vaghani & Ajiz MK, Advocates for R2.**

Mr. Sunil Fernandes, Sr. Advocate with Ms. Shankari Mishra, Mr. Arun Kumar Shukla and Mr. Naman Shukla, Advocates for R1.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is filed by the suspended director of the Corporate Debtor (CD) to challenge the order dated 19.05.2023 by which CP (IB) NO. 3219/MB/2018, filed by the Financial Creditor (Union Bank of India) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') for initiation of the Corporate Insolvency Resolution Process against Supreme Manor Wada Bhiwandi Infrastructure Pvt. Ltd. (CD), has been admitted by the NCLT, Mumbai Bench (in short 'the Tribunal') and Sudip Bhattacharya was appointed as the Interim Resolution Professional (IRP).

2. This appeal came up for preliminary hearing on 21.06.2023. While issuing notice in this appeal, this court had directed that “if CoC has been constituted, no further steps shall be taken by the CoC”

3. Brief facts of this are that the FC has filed the petition under Section 7 of the Code on 23.08.2018 for the resolution of an amount of Rs. 168,83,00,000/- alleging the date of default as 31.07.2018.

4. The Financial Creditor had allegedly disbursed the following facilities to the CD:-

Types of Facilities granted		Amount in Rupees
Term Loan – I (“Term Loan – I”)		60,00,00,000/-
Term Loan – II (“Term Loan – II”)		83,66,00,000/-
Funded Interest Term Loan – I (“FITL - I”)		5,56,00,000/-
Funded Interest Term Loan – I (“FITL - II”)		7,16,00,000/-
Non-Convertible (“NCD”)	Debentures	12,45,00,000/-
Total		168,83,00,000/-
(Term Loan – I, Term Loan – II, FITL – I, FITL – II and NCD are hereinafter referred to as “Facilities”)		

5. The CD is a special purpose vehicle (SPV) promoted by Supreme Infrastructure India Ltd. The Govt. of Maharashtra (GoM) through its public works department granted a concession to the CD for a period of 22 years and 10 months by way of exclusive right, license and authority for construction, operation, maintenance and handing over of four laning of Manor Wada SH

No. 34 KM, 29.55 to 53.18 in Taluka Wada/Bhiwani/Palghar, District Thane (for short 'Project') on build, operate and transfer (BOT) basis. The GoM and CD executed a concession agreement (CA) for implementing the project.

6. The CD, in order to fund its project, availed a rupee term loan facility of Rs. 322,50,00,000/- from the Financial Creditor and other lenders forming part of the consortium which was led by the Financial Creditor (Union Bank Of India). This facility may be referred to as Term Lona I. The CD executed a common loan agreement dated 30.08.2010 with Allahabad Bank, Bank of India, Indian Overseas Bank, L&T Infrastructure Finance Company Ltd., Oriental Bank of Commerce, State Bank of India, State Bank of Patiala and Union Bank of India (FC). In this common loan agreement, the share of the present financial creditor was Rs. 60,00,00,000/- and in order to secure term loan I, various documents were executed, namely, (a) Lender's Agent Agreement dated 03.08.2019. (b) Security Trustee Agreement dated 30.08.2010. (c) Inter Creditor Agreement dated 30.08.2010. (d) Escrow Agreement dated 30.08.2010. (e) Indenture of Mortgage dated 23.09.2010. (f) Deed of Personal Guarantee dated 30.08.2010 executed by Vikas Sharma. and (g) Deed of Personal Guarantee dated 30.08.2010 executed by Vikram Sharma.

7. Since the CD missed the original commercial operation date qua the project, therefore, scope of the project was changed by the GoM vide its order dated 20.07.2013. The CD was to undertake construction and development of the bypass state Highway at Vishwabharti Phata Bhinnar Vdpa Junction from 0.000 KMs to 7.900 KMS District Thane, State of Maharashtra on BOT basis (Bypass Project).

8. The CD, in order to finance the bypass project, executed another common loan agreement on 30.07.2013 with financial creditor (new Lenders), the lender's agent and the security trustee for availing the additional facility of Rs. 83,66,00,000/-. This is called term loan II for which various documents were executed for securing it, namely, (a) Security Trustee Agreement dated 20.07.2013 (b) Lender's Agent Agreement dated 30.07.2013 (c) Indenture of Mortgage dated 05.09.2013 (d) Deed of Personal Guarantee dated 30.07.2013, executed by Vikram Sharma (e) Deed of Personal Guarantee dated 30.07.2013, executed by Vikas Sharma and (f) Escrow Agreement dated 30.07.2013.

9. Since the CD faced various difficulties in meeting its debt obligation in prescribed time, therefore, consortium lenders approved a restructuring package on 18.02.2015 by which it was agreed upon to restructure the debt of the CD and to provide loan for an aggregate principal amount not exceeding Rs. 414,18,00,000/-. This arrangement is called JLF Restructuring Package (Package).

10. In this package, the share of the FC is as under:-

(a) Term Loan I INR 59,65,37,049.22 (b) Debenture Loan INR 12,45,00,000/- (c) -Term Loan II INR 76,98,28,676.05 and (d) FITL Facility - INR 12,72,00,000/-.

11. All the aforesaid facilities were collectively called as 'Facilities'.

12. The Financial Creditor issued sanction letter dated 23.03.2015 to approve the terms of the Package in pursuance to which a master restructuring agreement was executed on 27.03.2017 between the CD, FC,

other Consortium Lenders, SBICAP Trustee Company Ltd. (acting as the project security trustee, by pass security trustee and debenture trustee, bypass debenture trustee and debenture trustee. These trustees called as 'Security Trustee'. A Debenture Trust Deed was also secured between the CD and SBICaP Trustee Company Ltd. on 27.03.2015.

13. As per the master restructuring agreement, the CD was required to issue to the FC secured, unlisted, redeemable, non-convertible debentures in consideration of the package, therefore, CD allotted to the FC NCDs of an aggregate nominal value of Rs. 12,45,00,000/- on 06.03.2015.

14. It is pertinent to mention that for the purpose of securing the package, following documents were executed, namely, (a) Escrow Agreement dated 30.07.2013 (New Escrow Agreement), as amended by a supplemental agreement to the common loan agreement. (b) Indenture of Mortgage dated 16.09.2015 (New Indenture of Mortgage), executed by and between the Corporate Debtor in favour of the Security Trustee as the Project Security Trustee), Security Trustee (as the Bypass Security Trustee) and Security Trustee (as the Debenture Trustee). (c) Pledge Master Report dated 16.09.2015 (Pledge Master Report), with respect to the Compulsory Convertible Debentures executed by Supreme Infrastructure BOT Private Limited in favour of the Security Trustee. (d) Deeds of Personal Guarantee dated 27.03.2015 (New Deeds of Personal Guarantee), each executed by Vikram Sharma and Vikas Sharma respectively in favour of the Security Trustee, to secure the various term loans and rupee term loans availed by the Corporate Debtor from the Consortium lenders.

15. The CD failed to pay the debt mentioned herein above, therefore, it was declared as Non-Performing Asset (NPA) on 24.11.2016. The CD also acknowledged its debt which was due and payable by executing and signing a revival letter on 22.01.2018 to the FC and the other consortium lenders. Since, CD failed to discharge its debt, therefore, the FC issued recall notice on 01.06.2018, recalling the entire facilities and demanding the payment of Rs. 160,80,69,112/- on 30.04.2018.

16. According to the FC, the CD had admitted its debt due and payable in the balance sheet for the financial year 2016-17.

17. On the other hand, the case set up by the CD is that the concession agreement (CA) was executed on 08.03.2010 by GoM and to facilitate the project, a substitution agreement (SA) was entered into on 31.08.2010 amongst GoM, FC as lead bank and the CD. It was alleged by the CD that as per the SA, debt stand assigned to GoM and was to be paid by it to the lenders. It is also the case of the CD that as per clauses of Article 16 of CA in which events of default and termination was provided, GoM was liable to pay the FC by way of termination payment. The CD also referred to clauses of SA but it emphasised that upon the termination of CA the debt would stand taken over by the GoM and nothing was due from the CD to the FC. It is further the case of the CD that CA was terminated by the GoM on 11.10.2019. The CD invoked arbitral proceedings in which huge amount was recoverable from the GoM, therefore, the case was covered by the decision of the Hon'ble Supreme Court in the case of Vidarbha Industries Power Limited vs. Axis Bank Limited, Civil Appeal No. 4633 of 2021.

18. It is also alleged that the CD vide its letter dated 12.07.2022 offered OTS of Rs. 128 Cr. by inducting an investor, by change in the management via substitution route under the SA and the same was at the advanced stage. It was also alleged that FC alongwith other lenders had agreed to the request of the CD for OTS and revised proposal was pending.

19. However, the Tribunal came to a conclusion that CD has not disputed the disbursal of the amount and the default in repayment. The CD had tried to shift its liability on the basis of provisions of CA and SA to GoM and came to a firm conclusion that once the debt and default has been proved and also admitted by the CD in its revival letter, the petition under Section 7 has to be admitted in terms of the decision of the Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. Vs. ICICI Bank & Ors.*, 2018 1 SCC 407. The Tribunal has held that the decision in the case of *Vidharbha Industries (Supra)* is also not applicable merely on the basis that the arbitral proceedings are pending with GoM and admitted the application.

20. Aggrieved against the impugned order, the present appeal has been filed in which Counsel for the Appellant has submitted that with the termination of the CA and as per the terms of the CA the debt stand transferred to the GoM and nothing was payable by the CD. It is submitted that as per the terms of CA, event of default provides that an event of default can be either a concessionaire event of default or a GoM event of default. Termination Payment and Mode of payment makes it clear that irrespective of concessionaire event of default or GoM event of default, the GoM was liable to pay termination payment directly to the lenders. It is further submitted that in the arbitration proceedings the CD has made a claim of Rs. 456.71 Cr. and

the GoM, during the pendency of the arbitration proceeding, made an offer of Rs. 174 Cr. which according to him the CD is at least entitled to an amount of Rs. 174 Cr. which is sufficient to pay the debt of the FC. He has further submitted that the decision in the case of Vidarbha Industries (Supra) is squarely applicable because in that case when the application under Section 7 was filed, a civil appeal filed by the Maharashtra Electricity Regulatory Commission was pending before the Hon'ble Supreme Court by which the order passed by the Appellate Tribunal for Electricity in favour of the CD (Vidharbha Industries), entitling it to receive a sum of Rs. 1730 Cr. was under challenge. The Supreme Court after taking into account the fact that even though such amount has not been materialised, but the CD in that case was entitled to Rs. 1730 Cr. which was sufficient to pay the debt of the FC and dismissed the order of NCLT initiating the CIRP.

21. It is further submitted that the Tribunal has decided the main petition without deciding the pending application. It is contended that the Tribunal reserved the order in the application filed under Section 7 on 01.03.2023, however, on 06.03.2023 the CD filed I.A No. 1248 of 2023 to apprise the Tribunal of the pending arbitration proceedings and that the GoM had proposed a settlement on 03.11.2021 at an amount of Rs. 173.3701 Cr. which was sufficient to discharge the debt of the FC. It is submitted that notice was issued in the application which was adjourned to 27.04.2023 and thereafter on 15.06.2023, without considering the said application the main petition was admitted and later on the said application was dismissed as infructuous.

22. On the other hand, Counsel appearing on behalf of the FC has submitted that for the purpose of admission of an application, the Court has

to consider as to whether there is a debt and default on the part of the CD. It is submitted that the debt has been duly acknowledged by the CD in its revival letter dated 22.01.2018. The debt due and payable was also reflected in the balance sheet for the FY 2016-17 of the CD. It is further submitted that default on the part of the CD existed for a period of 7 years as the account was classified as NPA in November, 2016. It was also submitted that the arbitration proceedings were initiated in 2020 because of the termination of the CA by GoM and has no relation with the default in repayment of the dues of the FC. It is also submitted that CD has wrongly claimed that GoM had offered Rs. 174 Cr. which was allegedly sufficient to discharge the debt because, firstly, no material has been placed on record to substantiate the existence of such an offer, secondly, even if it is presumed to be there, though without admitting the same, the said offer is grossly insufficient because the total debt as on 19.05.2023 stands at approximately Rs. 824,72,95,922/- out of which Rs. 249,06,39,613.51 belongs to the FC alone.

23. Counsel for the FC has further submitted that the Tribunal has rightly relied upon the decisions of the Hon'ble Supreme Court in the case of E.S Krishnamurthy Vs. Bharath Hi-Tech (P) Ltd., (2022) 3 SCC 161 and Innoventive Industries Ltd. (Supra) for deciding the application filed under Section 7 of the code.

24. It is further contended that the decision in the case of Vidharbha Industries (Supra) is not applicable to the facts of this case because in that case there was already an award whereas in the present case the proceedings are still pending.

25. In the end, it is submitted that the CD has not disputed the debt and default which is pre-requisite for admitting the application filed under Section 7 of the Code.

26. Counsel for the Respondent No. 2 (IRP) has submitted that the application under Section 7 was admitted on 19.05.2023 and after his appointment as such, he issued public announcement on 21.05.2025 for inviting the claims from the creditors. It is further submitted that he received 7 claims from the financial creditors and after collating their claims, the first CoC meeting was convened on 19.06.2023 with the following CoC members:-

Members of Committee of Creditors

Sl. No.	Name of Creditors	Amount claimed	Amount admitted provisionally
1	Union Bank of India	2,49,06,39,614	2,49,06,39,614
2	Bank of India	1,33,57,58,156	1,33,57,58,156
3	JM Financial Asset Reconstruction Company Limited	1,22,53,19,331	1,22,53,19,331
4	Punjab National Bank	1,05,03,42,054	1,05,03,42,054
5	Indian Bank	97,96,45,638	97,96,45,638
6	State Bank of India	87,00,27,563	87,00,27,563
7	Indian Overseas Bank	29,55,63,567	29,55,63,567

27. It is further submitted that agenda was put to e-vote in the 1st CoC meeting held on 19.06.2023 but could not materialise because stay was granted by this Court on 21.06.2023. It is also submitted that in the past two-year, Respondent No. 2 has incurred expenses of Rs. 62,59,704/- which may be ordered to be paid.

28. We have heard Counsel for the parties and perused the record with their able assistance.

29. In so far as the facilities are concerned, the CD has not denied the same. The CD has also acknowledged the debt which is evident from the revival letter dated 22.01.2018 which was addressed not only to the FC (Lender) but to all the lenders. The default is also proved because the account of the CD was declared as NPA in November, 2016 itself. The debt has also been proved from the balance sheet of the CD in the FY 2016-17. Once, the debt and default has been duly proved, the Tribunal has to admit the petition as has been held by the Hon'ble Supreme Court in the case of Innoventive Industries (Supra).

30. The argument of the Appellant that the termination of CA has resulted into shifting of liability upon the GoM, the same cannot be made the basis for dismissing the application because the liability was enjoined upon the CD to make the payment to the FC.

31. The last argument of the Appellant is based upon the decision of the Hon'ble Supreme Court in the case of Vidharbha Industries (Supra) which is also not applicable to the facts and circumstances of this case because in the said case the award was already there but in the present case there is no such award and the amount which has been allegedly offered by GoM of Rs. 174 Cr. is neither here nor there because of non-production of any proof. Even if, it is presumed, for the sake of argument, that offer was made of Rs. 174 Cr. yet it will not discharge the entire debt of the CD which is more than 824 Cr. and even the debt of the FC is more than 200 Cr. whereas the application

under Section 7 can be admitted if the debt crosses the threshold of Rs. 1 Cr. as provided under Section 4 of the Code.

32. Thus, in our considered opinion, looking from any angle, there is hardly any merit in the present appeal for the purpose of interference and hence, the appeal is found without any merit and the same is hereby dismissed. No costs.

I.A,s if any, pending are hereby closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)