

1


**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL  
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**


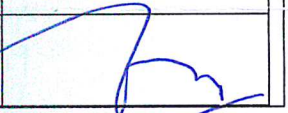
**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 02.12.2019 AT 10.30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB)No.375/7HDB/2019
NAME OF THE COMPANY	Bartronics India Ltd
NAME OF THE PETITIONER(S)	India Bank
NAME OF THE RESPONDENT(S)	Bartronics India Ltd
UNDER SECTION	7 of IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
V. Ravi Kumar	Advocate	9963067404	

**Counsel for Respondent(s):**

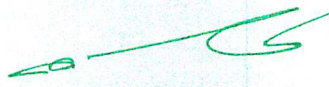
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
B. RAMACHANDER RAO	ADV	98495 19459	
K. PURNACHANDRARAO	ADV	6929001234@ gmail.com 98492 77808	

**ORDER**

Orders passed vide separate orders.

Petition is admitted.

  
**Member(T)**

  
**Member(J)**



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

CP (IB) No.375/7/HDB/2019

U/s 7 of IBC, 2016  
R/w Rule 4 of I & B (AAA) Rules, 2016

**In the matter of:**

Indian Bank  
Stressed Assets Management Branch  
5010679, Surabhi Arcade  
Bank Street, Koti  
Hyderabad – 500001.

...Petitioner/  
Operational Creditor

**VERSUS**

Bartronics India Limited  
(CIN: L29309AP1990PLC011721)  
Sy No.351, Raj Bollaram Village  
Medchal Mandal  
Telangana – 501401.

Respondent/  
Corporate Debtor

**Date of order: 02.12.2019**

**Coram:**

Hon'ble Shri Ratakonda Murali, Member (Judicial)  
Hon'ble Shri Narender Kumar Bhola, Member (Technical)

**Parties / counsels present:**

For the Petitioner : Shri V.K. Sajith  
For the Respondent: Shri K. Purnachandra Rao.

**Per: Hon'ble Shri  
Narender Kumar Bhola, Member (Technical)**

Heard on: 11.06.2019, 14.06.2019, 10.07.2019, 02.08.2019,  
21.08.2019, 05.09.2019, 20.09.2019, 17.10.2019,  
04.11.2019 & 21.11.2019.







## **ORDER**

The Present Petition is filed by Indian Bank, Bank Street, Koti, Hyderabad, which is the financial creditor stating that Messrs Bartronics India Limited, the Corporate Debtor defaulted in paying an amount of Rs.39,96,14,714.61 (Rupees thirty nine crores ninety six lakhs fourteen thousand seven hundred and fourteen and paise sixty one) as on 20.02.2019. Hence this petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking commencement of Corporate Insolvency Resolution Proceedings (CIRP) against the Corporate Debtor.

2. The averments in the petition filed by the petitioner/financial creditor stated in brief are:

2.1 The corporate debtor has been sanctioned, inter alia, various financial assistances, viz., term loan of Rs. 1400.00 lakhs, foreign currency loan of Rs. 800.00 lakhs and DPG of Rs. 850.00 lakhs vide sanction letter dated 04.05.2007 (page 85). The corporate debtor had defaulted in payment of interest and the principal instalments of the said advances and had failed and neglected in making such payments. The amount defaulted as on 02.05.2019 was Principal amount: Rs. 11,99,41,277.00, interest amount: Rs. 27,95,71,588.61, legal and other expenses: Rs.1,01,849/-. Thus, total dues amounted as on 20.02.2019 were Rs.39,96,14,714.61.

3 The matter came up for hearing on 14.06.2019 and none appeared for the respondent. The matter got adjourned to 10.07.2019. On 20.09.2019 the corporate debtor reported that there was likelihood of settlement. However, such a settlement could not get through. The corporate debtor has filed counter affidavit dated 20<sup>th</sup> August 2019 and written submissions dated 21<sup>st</sup> November 2019, which will be dealt with hereinafter.

nmol





4. The respondent/corporate debtor filed Counter Affidavit. The objections raised in the counter, in brief, are as under:-

4.1 The respondent has raised the following preliminary objections in para 3 of the Counter:

(A) VALIDITY OF POWER OF ATTORNEY

The power of attorney was executed on **15.09.2012**, viz. much before enactment of the I & B Code, 2016. The Code was enacted on 28.05.2016 and came into effect on 01.12.2016. However, the applicant has signed the petition on 03.05.2019 on behalf of the financial creditor on the strength of the said power of attorney dated 15.09.2012, which is invalid.

(B) APPLICABILITY OF INSOLVENCY AND BANKRUPTCY CODE:

The petition proceeds on the premise that the Insolvency and Bankruptcy Code, 2016 is meant for recovery of money claim rather than initiation of Corporate Insolvency Resolution process.

(C) APPLICABILITY OF LAW OF LIMITATION TO PROCEEDINGS BEFORE NCLT/ NCLAT:

4.2 The respondent relied on a decision of the Hon'ble Apex Court in the case of BK EDUCATIONAL SERVICES PRIVATE LTD Vs. PARAG GUPTA AND ASSOCIATES (CIVIL APPEAL No.23988 of 2017). The respondent submitted that in order to dispel the contradictions created by various decisions of NCLT/ NCLAT Insolvency and Bankruptcy (Second Amendment) Act, 2018 has been enacted by introducing section 238A to the Code. Such stance has further been reaffirmed in the decision of the Hon'ble Apex Court in the case of BK EDUCATIONAL, wherein the Hon'ble Supreme Court observed that from the commencement of Code the legislature intended to apply

Amol





limitation period on applications instituted under sections 7 and 9 of the Code. The Hon'ble Apex Court interpreted clarificatory intention from 2018 amendment that expressly made the Limitation Act applicable to the Code. In said judgment the Hon'ble Supreme Court has pronounced the common law of maxim, namely, "vigilantibus et non dormientibus jura subveniunt", which means the law helps those who are vigilant and not those who sleep over their rights.

4.3 The respondent has brought out the following in para 4 of the Counter as CORRECT FACTS:

(i) The corporate debtor has been facing severe cash flow problems due to various external factors from the financial year 2011-12. The respondent/ corporate debtor, having explored various options to revive its business, has proposed One Time Settlement (OTS) through a third party investor, namely, M/s Triterras Smart ID Systems India Pvt Ltd. (Triterras). Said Triterras has come forward and deposited a sum of Rs.38 lacs being 10% of the proposed settlement. It was in response to the acceptance of the compromise offer proposed by the corporate debtor on 07.03.2017 and 07.08.2017 for settlement of loan accounts with petitioner/ financial creditor and in respect of three other banks, namely, Bank of Baroda, Andhra Bank and Bank of India (Copies of letters are at Annexures 'R-2' and 'R-3'). The OTS could not get through as there was delay in accepting OTS offer by Andhra Bank and Bank of India. Joint Lenders Meetings were held on various dates with the participation of Strategic Investor, who conveyed its final offer. The corporate debtor as conveyed the proposal vide letter dated 21.09.2016 (copy at Annexure 'R-9'). The financial creditor has conveyed its acceptance of OTS vide letter dated 08.12.2017 (copy at Annexure 'R-10'). The respondent/ corporate debtor has paid the agreed OTS amount to Bank of India on 11.03.2019 and settled the dues. (Copies of relevant communications are at Annexures 'R-12 to R-14').





(ii) It is averred in the counter that all the above facts have been suppressed by the petitioner/ financial creditor

4.4 The respondent/ corporate debtor has answered, in para 5 of the counter, the application filed by the petitioner/ financial creditor as under:

4.5 The strategic investor has made initial payment of Rs.38 lacs to the financial creditor and the amount was kept in 'No Lien Account' on 02.06.2016. The corporate debtor has addressed letters dated 20.12.2011 and 23.05.2012 (copies at Annexure 'R-17 and R-18') for restructuring the credit facilities. The strategic investor made a consolidated offer of Rs.54 crore to the consortium of banks including the petitioner-bank. The investor has clarified that only if all the banks accept the proposal it would be feasible for him to proceed with the transaction.

4.6 It is submitted in the counter that though the account has been classified as NPA on 11.12.2012, an amount of Rs.39,96,14,714.61 has been claimed by the financial creditor with exorbitant interest.

4.7 It is further submitted by the respondent that post JLM Meetings, the corporate debtor vide letter dated 27.09.2016 submitted revised OTS proposal to all the banks/ lenders including the petitioner- financial creditor (Revised proposal is at Annexure 'R-19'). OTS approval has been received from Indian Bank on 08.12.2017 (copy of said letter is at ANNEXURE 'R-1'). However, the corporate debtor/ strategic investor was waiting for other banks/ lenders to approve the OTS.

4.8 It is submitted in the counter that in order to show the bona fides of strategic investor in settling the liabilities of the corporate debtor, the strategic investor has cleared some of the debts as per the books of the corporate debtor besides

Apple





depositing in 'no lien account' of the financial creditor as detailed hereunder :

Deposited on	In the account of	Amount
02.06.2016	Indian Bank	Rs.00.38 crore
31.12.2014	IDBI (Receipt at Annexure 'R-23')	Rs.01.10 crore
15.03.2019	Bank of India	Rs.11.00 crore
22.01.2015	Standard Bank (Mauritius) Ltd. (NOC at Annex. R-24)	USD 3.28 Million
03.09.2014	HPFS (Letter at Annexure R-25).	Rs.06.01 crore

4.9 It is submitted that if this application under section 7 of the IB Code, 2016 is admitted it will affect about 6000 direct/indirect employees working with the corporate debtor and their respective families.

5. We have heard the Counsel for Financial Creditor and the counsel for the corporate debtor. This is a Petition filed on behalf of Financial Creditor under Section 7 of the IBC, 2016 stating that the Corporate Debtor had defaulted in making payment to the tune of Rs.39,96,14,714.61 (Rupees thirty nine crores ninety six lakhs fourteen thousand seven hundred and fourteen and paise sixty one) as on 20.02.2019

6. The Corporate Debtor availed loans from the petitioner/financial creditor in the shape of financial assistances, viz., term loan of Rs.1400.00 lakhs, foreign currency loan of Rs.800.00 lakhs and DPG of Rs.850.00 lakhs vide sanction letter dated 04.05.2007 (page 85). The financial creditor/ petitioner herein has to establish that there is a financial debt and the corporate debtor committed default. The financial creditor has filed documents in support of its claim that Indian Bank disbursed

Alkhya G.





various types of loan to the corporate debtor. The financial creditor filed Form-1 with details and also documents.

7. We have gone through the Counter Affidavit filed on behalf of corporate debtor. The counsel for corporate debtor would contend that it entered into Concession Agreement

8. There is no dispute that financial creditor/ Indian Bank sanctioned loans in favour of corporate debtor and disbursed the loan amounts to the corporate debtor. We have gone through the documents filed on behalf of financial creditor. We are of the view that financial creditor has established through various documents about sanctioning of various types of loans to the corporate debtor from time to time and that the corporate debtor committed default.

9. The grounds stated by corporate debtor will not prevent the financial creditor from initiating CIRP against corporate debtor. As already stated, the corporate debtor is not disputing sanction of various types of loan to it by the financial creditor from time to time to the tune of Rs.11,99,41.277.00, which got mounted to Rs.39,96,14,714.61 due to default committed by the corporate debtor and accrual of interest. There are grounds to admit the petition. No tenable objections are raised by the corporate debtor. The financial creditor suggested the name of the IRP and filed his consent in Form-2. The petition is complete and therefore deserves to be admitted.

10. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

(A) The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or

nmh





order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

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


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

(D) That the order of moratorium shall have effect from **02.12.2019** till the 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, whichever is earlier.

(E) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.

(F) That this Bench hereby appoints Shri Chinnam Poorna Chandra Rao, residing at Flat No.101, TVS Mahathi Apts, Lanco Hills Road, Manikonda, Ranga Reddy District, West

OPM






Marredpally, Telangana – 500089, having IBBI Registration No. IBBI/IPA-003/ IPA-000119-18/ 2017-18/11298, as Interim Resolution Professional to carry ON the functions as mentioned under the Insolvency & Bankruptcy Code.

(G) Accordingly, this Petition is admitted.

(H) Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

  
**NARENDER KUMAR BHOLA**  
**MEMBER (TECHNICAL)**

  
**RATAKONDA MURALI**  
**MEMBER (JUDICIAL)**

*Karim*