

THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI

TIBA/3/KOB/19
(IBA/174/2019 – NCLT Chennai)

Under Section 7 of IBC 2016

Order delivered on 28.11.2019

Coram: 1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
2. Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

In the matter of

RBL Bank Limited.]	
Branch Office: No. 105/56,]	: Financial Creditor/Applicant
G.N Street, 6 th Floor, T. Nagar,]	
Chennai- 600 017.]	

Vs.

Hindustan Newsprint Limited.]	
News Print Nagar,]	: Corporate Debtor/Respondent
Marvellaorvaikum Taluk,]	
Kottayam, Kerala- 686 616.]	

Parties/Counsels Present:

For Operational Creditor/Applicant : Vinod P.V., Advocate

For Corporate Debtor/Respondent : V.Krishna Menon, Advocate

ORDER

1. The Financial Creditor/Applicant viz. '*RBL Bank Limited*' (hereinafter as 'Financial Creditor/ the Bank') has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" on

20.09.2018 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'M/s. Hindustan Newsprint Limited' (hereinafter as 'Corporate Debtor'). The registered office of the Corporate Debtor is stated to be News Print Nagar, Marvellaorvaikum Taluk, Kottayam, Kerala- 686 616.

2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted on 01.09.2016 is stated to be ₹10,00,00,000/- (Rupees Ten Crores Only), and the amount claimed to be in default is ₹ 9,33,30,086.48/- (Rupees nine crores thirty-three lakhs thirty thousand and eight six and forty-eight paisa only) as on 02.07.2018.
3. The Corporate Debtor is M/s. Hindustan Newsprint Ltd (hereinafter referred to as HNL), a central public sector undertaking under the administrative control of the Department of Heavy Industries. It is a wholly owned subsidiary of Hindustan Paper Corporation Limited (hereinafter referred to as 'HPCL').

Submissions by the Financial Creditor

4. The Ld. Counsel for the Financial Creditor/ Bank submitted that during the month of August, 2016, the corporate debtor had approached the Bank for availing certain credit facility. Considering the request and the documents submitted by the Corporate Debtor, the Bank had sanctioned the credit facilities vide Sanction Letter dated 23.08.2016 (Annexure I (4) of the

application). The terms of the sanction letter were amended vide addendum arrangement letters dated 24.08.2016 and 30.08.2016.

5. The counsel stated that the Corporate Debtor had passed a Board Resolution thereby approving the funding of the Credit Facilities to the extent of ₹ 10,00,00,000/- (Rupees Ten Crore Only) by the Bank and had further accepted all the terms and conditions of the sanction letter dated 26.08.2016.
6. The counsel further stated that pursuant to the acceptance of the terms and conditions, the Corporate Debtor had executed the Working Capital Facility Agreement dated 26.08.2016 (Annexure I (7) of the Application) in favour of the Bank. The said agreement contains the complete terms and conditions applicable to the Credit Facilities, by which the Corporate Debtor had hypothecated the entire current assets including receivables, as security for the Credit Facilities on first pari-passu basis.
7. The counsel for the Financial Creditor further submitted that the Credit Facilities amount must be utilized for the working capital requirement with a tenure period of 12 months. The rate of interest for the Credit Facilities is one-year MCLR + 0.30% p.a (i.e.) 10.70% p.a. The counsel stated that the corporate Debtor had also executed Omnibus Indemnity in the event for Irrevocable Documentary Letter of Credit in favour of the Bank to provide indemnity in the event of non-payment of the bills after discounting the same (Annexure I (8) of the application). The Corporate Debtor further executed a Letter of Lien dated 26.08.2016 confirming that the Bank will have a lien on

any amount kept by the Corporate Debtor from time to time with the Bank (Annexure I (9) of the application).

8. The Counsel for the Bank submitted that the Corporate Debtor had executed a Demand Promissory Note dated 26.08.2016 for a sum of ₹ 10,00,00,000/- promising to repay a sum of ₹ 10,00,00,000/- on demand by the Bank together with agreed rate of interest (annexure I (10) of the application). The Corporate Debtor further executed a letter of continuity for Demand Promissory Note on 26.08.2016 agreeing and confirming that the Demand Promissory Note for ₹ 10,00,00,000/- shall operate as a continuing security in favour of the Bank and will be enforceable for the repayment of any amount(s) now due or which may hereafter become due by Corporate Debtor to the Bank under the Credit Facilities including interest, discount, commission and other banking charges and expenses in connection therewith (Annexure I (11) of the application).

9. It is further submitted that the Corporate Debtor had also executed a letter of indemnity for fax/e-mails instructions given to the Bank on 26.08.2016 and an Agreement for bill purchase/ bill discounted limits, counter indemnity for buyers credit and counter indemnity for guarantee limit each dated 26.08.2016 (Annexure I (12) and Annexure I (13) of the application respectively).

10. The counsel stated that as per the working capital facility agreement, the Corporate Debtor was required to obtain No Objection Certificate (NOC) from other lenders from whom they are enjoying credit facilities under multiple banking systems. Despite many reminders the Corporate Debtor had failed to obtain the same.
11. The counsel for the Financial Creditor submitted that from February 5, 2018 to February 14, 2018, seven bills under bill discounting facilities fell due for payment, against which Corporate Debtor have issued two cheques for ₹ 45,76,335/- and ₹ 87,93,728/-. The cheques bearing No. 564746 for ₹ 45,76,335/- was cleared whereas the cheque bearing No. 564745 for ₹ 87,93,728/- was dishonoured for want of funds. It was again presented on 29.03.2018, but the same was dishonoured for the reason of 'stop payment'.
12. The counsel further stated that the entire said bill, i.e., ₹ 1,33,70,063/- along with the pending interest was debited to cash credit account and credited to bill discounting account and closed bill discounting account in the books of the applicant Bank.
13. The Financial Creditor submitted that the Corporate Debtor after availing the credit facilities had failed and neglected the following:
 - i. Provide NOC from the other lenders, i.e., perfection of the security;
 - ii. To maintain or route agreed level of cash flow through the Cash Credit Account maintained with the Bank; and

- iii. Make payment of principal and/ or interest, as case may be, when they fell due for payment, resulting in accumulation of huge outstanding and slipping account into overdues status.
14. It is submitted that as the Corporate Debtor failed to service the interest since April, 2018, the account has also been classified as non-performing asset (NPA) on 30.06.2018 as per Reserve Bank of India Circular. The Bank further issued a recall letter dated 15.05.2018 calling upon the Corporate Debtor to pay the outstanding dues of ₹ 9,26,41,745.37/- but they have failed to repay the same (Annexure I (19) of the application). The said outstanding amount as on 02.07.2018 including interest and penal interest the total amount due as on 24.07.2018 is ₹ 9,33,30,086.48/-.
15. The Financial Creditor has appended a certificate under Section 2 (A) (B) (C) of the Banker's Books of Evidence Act, 1891 has also been appended as Annexure I (21) to the application, which was duly certified and signed by, for and on behalf of the applicant Bank. The counsel also submitted that an Original Application has been filed before the Debt Recovery Tribunal, Chennai for recovery of money.
16. Hence the Financial Creditor filed this petition and prayed for admission and initiating Corporate Insolvency Resolution Process under section 7 of IBC.

Submissions by the Corporate Debtor

17. The Ld. Counsel for the Corporate Debtor in the counter affidavit stated that the parent company, HPCL is under liquidation as per Order passed by the NCLT, New Delhi on 02.05.2019. The counsel further stated that the Cabinet

Committee on Economic Affairs (CCEA for short) took a decision on 27.10.2016 on the proposal to disinvest 100% shareholding of HNL to a strategic buyer. Pursuant to this the Department of Asset Valuers and Inter-Ministerial Group (IMG for short) to appoint Transaction Advisor and Legal Advisor. The Board of Directors of HPCL at its meeting held on 30.01.2017 approved the proposal of strategic disinvestment of shareholding of HPCL in HNL.

18. The counsel submitted that the Corporate Debtor vide letter dated 15.03.2018 requested all the lender Banks for waiver of interest and allow the company to repay the principal amount outstanding as on 31.02.2017 in 180 equal instalments. However, banks did not agree to the proposal except IndusInd Bank Ltd. As a consequence, HNL has failed to service the interest and principal repayment commitment to the lender banks. Consequently, the entire Bank Accounts of HNL with the lender banks have been classified under NPA in the Financial year 2017-18.
19. The counsel further submitted that on July, 2019 HNL has an outstanding total loan amount including accrued interest is approximately ₹ 197.39 Crores. Meanwhile, the lending banks (RBL, SBI, Indusind Bank, Bank of Baroda and TNMBL) have already started legal proceedings against HNL for recovery of the loan through Debt Recover Tribunal (DRT) & National Company Law Tribunal (NCLT).
20. The counsel stated that the Corporate Debtor is facing unprecedented financial crunch and acute shortage of working capital. The entire working

capital limits sanctioned to HNL, including the Letter of Credit and Bank Guarantee facilities were blocked by all the bankers due to the classification of the assets under NPA.

21. The counsel submitted that in addition to this the Central Pollution control Board (CPCB in short) dated 04.07.2018 directed HNL to close the operations of the mill till de-sludging of lagoons area so as to comply with the norms. Accordingly, the Corporate Debtor stopped its manufacturing operations w.e.f. 16.07.2018 to 04.10.2018. Even though CPCB has permitted to resume production on 18.04.2019 at installed capacity, the Corporate Debtor was not able to start production due to shortage of working capital to arrange new raw materials.
22. It was further submitted that HPCL is holding 100% shares of the Corporate Debtor. In case No. 418/2018 of NCLT, New Delhi, by Order dated 13.06.2018, appointed Shri. Kuldeep Verma, as IRP and ordered the commencement of CIRP against Hindustan Paper Corporation Ltd. As the CIRP was not successful, the parent company (HPCL) was admitted for liquidation vide Order dated 02.05.2019 by National Company Law Tribunal, New Delhi. Therefore, the Board power is now vested with CoC/ Liquidator.
23. It is further submitted that the Corporate Debtor had submitted a detailed proposal on 28.04.2019 to Government of Kerala for term loan of ₹ 200 Crores for restructuring of debt and working capital. It was stated that the Additional Secretary, Government of Kerala requested to seek clear

direction/permission from NCLT, New Delhi regarding the mortgage of land for raising of term loan of ₹ 200 Crore.

24. The Ld. Senior counsel representing Government of Kerala (hereinafter referred as 'State/ applicant') filed an impleading petition (IA/38/KOB/2019) on 15.10.2019 and an Interlocutory Application to accept additional documents (IA/59/KOB/2019) on 08.11.2019. The counsel submitted that in October 1974, HPCL contracted with them for establishing the Kerala Newsprint Project. For this purpose, the State acquired vast extents of land for establishing the Hindustan Newsprint factory in terms of the Kerala Land Acquisition Act, 1961. Agreements were entered into between HPCL and the State, whereby, parcels of land were transferred by them to HPCL. As per the agreement, 'the Company shall not be entitled to transfer the land acquired or any part thereof by sale, gift, lease or otherwise except with the previous sanction of the Government. Thus, any transfer of the lands provided to HPCL by the State can only be done by the Company with the prior sanction of the State.
25. It is further submitted that the State of Kerala is keen, especially in public interest, to take over and revive HNL. The intention of the State is to purchase the share capital of HNL and to retain it as a public sector unit, and to protect HNL from being privatised. The applicant, at its highest level, is currently engaged in formulating a proposal for the takeover of HNL. However, the same is a time-consuming process in view of the various factors/issues that are required to be considered before a concrete proposal may be approved. The applicant believes that the Government of Kerala will require at least

three months' time to devise and approve a concrete proposal for the take-over of HNL.

26. Therefore, the State prayed to implead them as a party to the proceedings of this Tribunal under rule 11 of NCLT Rules, 2016 and permit them to formulate a concrete proposal for taking over the shares and assets of the Corporate Debtor within a period of three months and such other time frame as may be deemed appropriate.
27. It was further submitted that Government of Kerala, have also filed an application before NCLT Delhi, permitting to proceed with negotiating the purchase of shares held by the HPCL in the Corporate Debtor.
28. On 27.11.2019, the learned senior counsel for the impleading applicant mentioned that the issue relating to HNL share purchase by Government of Kerala from HPCL, which is under liquidation has been decided by the Principal Bench of NCLT, New Delhi and prayed to postpone the pronouncement of Orders by this Bench.

Reply by the Financial Creditor

29. The Financial Creditor vehemently objected against the aforesaid Impleading Petition stating inter alia that the Respondent No.1/ Financial Creditor filed the petition under section 7 of Insolvency and Bankruptcy Code 2016. According to the Financial Creditor, the applicant in this Impleading Petition is an intervener/third party to the proceedings initiated by the Financial Creditor against the Corporate Debtor. The Financial Creditor points out that an application by a third party or intervener is not

maintainable at the stage of hearing of an application filed under Section 7 of the Code and the Impleading Petition is liable to be dismissed at its threshold. The Hon'ble NCLAT in the matter of *IDBI Bank Limited Vs. Odisha Slurry Pipeline Infrastructure Ltd (CA (AT) (Insolvency) No. 51 of 2019* by referring the decision of the Hon'ble Supreme Court in the matter of *Innovative Industries Ltd Vs. ICICI Bank Ltd – (2018) 1 SCC 407* has held that if there is a 'debt' and 'default' and the record is otherwise complete, the application is to be admitted. The adjudicating authority has merely to see the records of information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. The Court further held that except the financial creditor and corporate debtor, there is no requirement of hearing a third party or intervener at the stage of admission. The extract from the Judgement is as follows:

Page 6 "Further, we may observe that except the applicant (financial creditor) and the 'corporate debtor', there is no requirement of hearing a third-party including Intervener at the stage of admission. The order is required to be passed as per the decision of the Hon'ble Supreme Court as quoted above. The appeal stands disposed of with aforesaid observation and directions. No cost".

30. The financial Creditor has also submitted that they have filed the application under Section 7 of the Code, since the Corporate Debtor has committed default in repayment of the debt of Rs.9,33,30,086.48 which includes the principle due of Rs.9.26 crores as on 24.7.2018. The Corporate Debtor has admitted in its counter statement that an amount of Rs.9.26 crores is due to the Financial Creditor towards principle as on 28.2.2019 excluding unapplied

interest in the statement produced at pages 20 along with the letter issued to the State of Kerala at pages 15-19. Therefore, it has been proved beyond doubt, in addition to the evidence filed by the Financial Creditor, that the amount is due to the Financial Creditor and is not repaid, hence the matter deserves to be admitted.

31. However, according to the Financial Creditor, the Corporate Debtor has succeeded in adjourning the application by misleading the NCLT Chennai that it has filed two applications being CA 198 OF 2019 and CA 288 of 2019 in CP(IB) No.418/ND/2018, in the CIRP application/process of the parent company, HPCL, seeking permission of the NCLT Delhi to alienate or mortgage the land and to negotiate with State of Kerala and other financial institutions to liquidate the liabilities respectively and one of such application being CA 288 of 2019 was allowed by the NCLT Delhi. It is submitted that NCLT Delhi has only allowed the application to the extent to explore the possibility of raising funds without entering into agreement and without any stay of proceedings of the application filed before NCLT Chennai by the Financial Creditor.
32. The Financial Creditor submits that statement of Government of Kerala, also filed an application before NCLT Delhi, permitting to proceed with negotiating the purchase of shares held by the HPCL in the Corporate Debtor. However, no order has been passed in the said application. The right to sell the shares of HPCL held with the liquidator and it can exercise such function only following the due process prescribed under the Code. It was further submitted that if the State purchases such shares, the consideration shall

form part of the liquidation assets of the HPCL and shall not reduce the debt of the Financial Creditor.

33. The Financial Creditor has also pointed out that in the year 2002, Government of India decided to privatise the Corporate Debtor, however due to employee's agitation, it did not happen. Later in the year 2017, the Central Government invited global tender for disinvestment of the Corporate Debtor, against the said tender, the workers moved before the Hon'ble High Court of Kerala and the Hon'ble High Court of Kerala held that it cannot interfere with the policy decision of the Central Government.

34. Under these circumstances, the Financial Creditor prayed for dismissing the Impleading Petition and admitting the application to initiate Corporate Insolvency Resolution Process.

National company Law Tribunal, New Delhi Order

35. The Ld. Senior Counsel for the State of Kerala draw the attention of the Bench to the Order of NCLT, New Delhi in this regard. He has produced the copy of the Order dated 25.11.2019, wherein, the approval was given and permission was granted to Liquidator of HPCL to sell HPCL's holding in HNL to the State to the tune of 25 Crores within the time lines permitted as per IBBI (Liquidator Process) Regulation, 2016.

Findings:

36. Both the sides have been heard at length. Case record is perused carefully along with the evidences as well as the case laws referred. Certain facts as discussed above are not in dispute and summarised

hereinbelow with the purpose of addressing the claim and counter claim of both the sides. A Petition is filed in the capacity of a 'Financial Creditor' for a 'Financial Debt' of ₹ 9,33,30,086.48/- (Rupees nine crores thirty-three lakhs thirty thousand and eight six and forty-eight paisa only) recoverable from the Corporate Debtor- Hindustan Newsprint Limited. Whereas, the Corporate Debtor in their counter argument did not state that they have not availed any loan or the due amount do not fall within the definition of Financial Debt. Instead they have mentioned that the parent company is under liquidation as per the Order of NCLT, New Delhi dated 02.05.2019.

37. In our view, the present application filed by the financial Creditor is satisfying all the definitions of "Financial Creditor", "Default" and "Financial Debt" and qualifies for filing an application under Insolvency and Bankruptcy Code.

38. Therefore, except the Financial Creditor and Corporate Debtor, there is no requirement of hearing a third-party including Intervener at the stage of admission as held by the Hon'ble Supreme Court in the matter of *Innovative Industries Ltd Vs. ICICI Bank Ltd - (2018) 1 SCC 407*. Under such circumstances the impleading application cannot be considered and hence rejected.

39. We have also considered the additional arguments advanced by the Ld. Counsel for Corporate Debtor, representing counsel for Government of Kerala and the rebutted arguments by the Ld. Counsel of Financial Creditor

on 27.11.2019. The submission that the issue relating to Corporate Debtor's share purchase by Government of Kerala from HPCL (parent company), which is under liquidation has been decided by the NCLT, New Delhi on 25.11.2019. the representative of the State also submitted a media coverage on this subject and requested to postpone the pronouncement of this Order. In our view, the Order of NCLT, New Delhi only reflected the change in ownership and this does not invalidate the right of the Financial Creditor to recover the debt. In any event, if State of Kerala purchases such shares, the consideration for such shares shall form part of the liquidation assets of the HPCL and shall not address the default of the Financial Creditor. Therefore, Ld. Counsel for the Financial Creditor has pleaded for immediate admission of the application without any further delay as sufficient time was already given to the Corporate Debtor to sort out the matter.

40. We have also perused the copy of the Order of the NCLT, New Delhi regarding sale of HPCL's holding in HNL to Government of Kerala. We are of the view that the Order of the NCLT, New Delhi is in the matter of HPCL's Liquidation proceedings. It only reflects change of ownership. The Order speaks of Government of Kerala has assured to repay the dues and pump in more funds to revive the company without giving any clear plan of action. In this regard, we have no choice except to agree with the counsel of Financial Creditor that this is not addressing the default to the Financial Creditor.

41. We are of the view that, Government of Kerala should have taken these measures long back, instead of coming at the last moment seeking to implead

in the application. They should have taken steps to arrive at an amicable understanding with the Financial Creditor. Instead, they are praying for deferring this application for which Financial Creditor is not agreeable. As such, our hands are tied in this scenario and we have to go by the Rule Book only. Even at this juncture, if Government of Kerala is serious in continuing HNL as a State Government Undertaking, they can still take steps till the Resolution Plan is approved by the Adjudicating Authority.

ORDER

42. Taking into account the interests of all the stakeholders, we are of the view that there is an urgent need to find a resolution to the long pending saga of Hindustan Newsprint Limited. In the aforesaid background, and after thoroughly perusing the records, we are of the view that, the application filed on behalf of financial creditor/ Applicant is complete. Therefore, the application filed under Section 7(5)(a) of the I & B Code, 2016 deserves to be Admitted.

43. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc.

44. The Financial Creditor has suggested the name of Mr. Navneeth Vasudevan, IBBI/IPA-001/IP-P01048/2017-18/11731, email id: navneethv@ gmail.com, residing at No.12, 1st Street, Raghavan colony,

Ashok Nagar, Chennai- 600 083 for appointment as Interim Resolution Professional (IRP). He has filed a declaration in Form-2 (As per Rule 9 sub-rule (1) of the I & B (Application to Adjudicating Authority) Rules, 2016) affirming that he is a registered Insolvency Professional and no disciplinary proceedings are pending against him.

45. Accordingly, the IRP proposed by the Financial Creditor, Mr. Navneeth Vasudevan, IBBI/IPA-001/IP-P01048/2017-18/11731 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
46. However, the supply of essential services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
47. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
48. That the Interim Resolution Professional shall perform the duties as assigned under Section 15 and Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

49. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order of admission.

50. IA/38/KOB/2019- Impleading petition is dismissed and IA/59/KOB/2019 in IA/38/KOB/2019 in TIBA/3/KOB/2019 is also disposed of.

51. Accordingly, TIBA/3/KOB/2019 is disposed of as Admitted.

Dated this the 28th day of November, 2019.

Sd/-
Veera Brahma Rao Arekapudi
Member (Technical)

Sd/-
Ashok Kumar Borah
Member (Judicial)