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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/73(CHE)2023

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

In the matter of M/s. Pink City Expressway Private Limited

STATE BANK OF INDIA

Stressed Assets Management Branch -1
12th Floor, Jawahar Vyapar Bhawan
STC Building, No.1, Tolstoy Marg
Janpath, New Delhi – 110 001.

... Financial Creditor

-Vs-

M/s. PINK CITY EXPRESSWAY PRIVATE LIMITED

No. 10 & 11, Dr. Radhakrishnan Salai
4th Floor, Chennai City Centre
Mylapore, Chennai – 600 004.
Tamilnadu, India

...Corporate Debtor

Order Pronounced on 17th November 2023

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Financial Creditor : A. V. Arun Kumar, Advocate
R. Sugumaran, Advocate*

*For Corporate Debtor : T.K. Bhaskar, Advocate
R. Ramasubramaniam Raja, Advocate*

ORDER

(Heard Through Physical Mode)

Under consideration, is an application filed by the Financial
Creditor viz. State Bank of India under Section 7 of Insolvency and

Bankruptcy Code 2016 (*hereinafter referred to as "IBC, 2016"*) against the Corporate Debtor viz. Pink City Expressway Private Limited seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

2. In Part I of the application it is stated that the Financial Creditor is a nationalised bank. In Part II of the application it is stated that the Corporate Debtor was incorporated on 02.04.2008 with the Authorised Share capital of Rs.710,00,00,000/- (Rupees Seven Hundred and Ten Crores only) and the paid up share capital of Rs.702,48,97,960/- (Rupees Seven Hundred and Two Crores Forty Eight Lakhs Ninety Seven Thousand Nine Hundred and Sixty Only).

3. In Part III of the Application the Financial Creditor has proposed a name of one Mr. Vikram Bajaj as the Interim Resolution Professional, who has also filed his written consent in Form 2.

4. In Part IV of the application the default amount is stated to be Rs.85,83,44,504/- (Rupees Eighty Five Crores Eighty Three Lakhs Forty Four Thousand Five Hundred and Four Only) and date of default is mentioned as 26.12.2013.

5. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor is engaged in the business of construction, management and collection of toll on highways and for its business purposes it approached the Financial creditor and other consortium members and submitted a proposal seeking credit facilities.

6. It is submitted that the Corporate Debtor has availed the credit facilities from the consortium of bankers including State Bank of Bikaner and Jaipur and State Bank of Hyderabad which are now amalgamated with State Bank of India. It is submitted that the lenders of the Corporate Debtor sanctioned an overall credit limit of Rs. 1900.19 Crores out of which the Financial Creditor vide letter dated 04.05.2009 sanctioned a sum of Rs. 100 Crores. It is submitted that the Corporate Debtor through its authorised representative executed the loan documents jointly in favour of the lenders.

7. Learned Counsel for the Financial Creditor submitted that at the request of the Corporate Debtor, the loan was reconstructed by all the lenders and the Corporate Debtor also executed the loan restructuring documents in favour of all the lenders on 28.03.2014. It is stated that the Corporate Debtor also confirmed its liability to the Financial Creditor by executing a debit balance confirmation letter on 16.03.2015.

8. It is submitted that the Corporate Debtor was awarded a contract of executing the work of six-lane of Gurgaon – Kotputli- Jaipur section of NH-8 from KM 42.70 to km 273 on Built Operate and Transfer basis (BOT) by NHAI. It is stated that since the Corporate Debtor could not commence its operation within the prescribed time frame, a tripartite agreement was entered into between the parties and the National Highway Authority of India (NHAI) on 24.03.2017 by which the time was extended for commencement of operation.

9. It is submitted that the credit facilities were availed by the Corporate Debtor for the above purposes and an escrow account was opened with the IDBI bank by which all the tolls were to be routed through the above account which in turn would be transmitted to the lenders on pro-rata basis for servicing the credit facilities.

10. It is submitted that the above recoveries made by the Financial Creditors did not meet the projected collection of tolls and as such there was a shortage in servicing of the credit facilities. Hence the loan account of the Corporate Debtor slipped into a Non Performing Asset (NPA) on 29.12.2018. Thereafter, the account was migrated to the Stressed Assets Management Branch-I, New Delhi.

11. It is submitted that the Financial Creditor has also filed O.A. No. 409 of 2020 under section 19 of the Recovery of Debts and Bankruptcy Act 1993 before the DRT-2, New Delhi and the same is pending adjudication. It is submitted that as per the balance sheet of the Corporate Debtor for the year ending 31.03.2020, the Corporate Debtor has admitted that it owes an amount of Rs. 77,06,70,000/- (Rupees Seventy Seven Crores Six Lakhs Seventy Thousand Only) to the Financial Creditor. It is submitted that the present application has been filed on 15.02.2023 which is within a period of three years from the date of said balance sheet.

12. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor is unable to repay its dues and as such CIRP against the Corporate Debtor be initiated.

REPLY OF THE RESPONDENT

13. The Learned Counsel for the Respondent submitted that the present application filed by the Financial Creditor is barred by limitation, since the date of default mentioned in the present company petition is 26.12.2013. It is submitted that even as per the Record of Default of the Information Utility, the date of default is mentioned as 26.12.2013 and the present company petition which is filed on 15.12.2023 is barred by limitation.

14. The Learned Counsel for the Corporate Debtor submitted that the Financial Creditor has failed to establish the default on the part of the Corporate Debtor. It is submitted that the statement made by the Learned Counsel for the Financial Creditor that the account of the Corporate Debtor was classified as NPA on 29.12.2018 is false and baseless. It is submitted that the classification of the account of the Corporate Debtor as NPA is illegal and is in gross violation of the guidelines issued by the Reserve Bank of India (RBI).

15. It is submitted that Financial Creditor already filed O.A. No. 409 of 2020 before DRT-2, New Delhi and the same is pending adjudication and as such the said recovery proceedings is to be dealt with on merits and IBC proceedings cannot be invoked for recovery of the amount. It is also submitted that the present Application has not been filed by a competent person and no Board resolution or supporting Power of Attorney (POA) has been placed on record which empowers the Financial Creditor to file the present Company Petition.

16. The Learned Counsel for the Corporate Debtor submitted that the consortium of lenders wrongly and illegally declared the account of Corporate Debtor as NPA on 31.12.2023. No intimation was given to the

Corporate Debtor. It is submitted that the declaration of the account of the NPA was completely wrong and contravention of various agreements.

17. It is submitted that on 03.06.2022 NHAI took illegal and forcible possession of the project Highway even though the concession period was subsisting till 26.08.2023 and as such the Corporate Debtor filed a petition under section 9 of the Arbitration and Conciliation Act 1996 before the Hon'ble High Court of Delhi. It is submitted that all the lenders of the Corporate Debtor have also filed a Writ Petition No. 7806 of 2022 before the Hon'ble High Court of Delhi against illegal conduct of NHAI.

18. Learned Counsel for the Corporate Debtor submitted that the present application filed by the Financial Creditor is liable to be dismissed.

FINDINGS OF THIS TRIBUNAL

19. Heard the submissions made by the Learned Counsel for both the parties and perused the record.

20. During the course of arguments, the Learned Counsel for the Corporate Debtor submitted that the present application filed by the

Financial Creditors comes within the purview of section 10A of IBC 2016. He submitted that on 05.08.2020, the Financial Creditor had issued a Loan Recall Notice (*appended at page No. 313 to 319 of the Application*) and the said Loan Recall Notice dated 05.08.2020 is required to be considered as the date of default and as such the present Application falls under Section 10A period.

21. In order to countenance the said argument made by the Learned Counsel for the Corporate Debtor, upon perusing the Application, it is seen that the Applicant / Financial Creditor in his application has mentioned the date of default as 26.12.2013. Thereafter on 28.03.2014, a Master Restructuring Agreement was entered into between the lenders and the Corporate Debtor.

22. It is required to be noted here that on 31.03.2014, the Corporate Debtor had confirmed that a sum of Rs.82,43,77,660/- (Rupees Eighty Two Crores Forty Three Lakhs Seventy Seven Thousand Six Hundred and Sixty Only) is due to the Financial Creditor and the said letter dated 31.03.2014 issued by the Corporate Debtor would amount to acknowledgment of debt under Section 18 of the Limitation Act, 1963.



23. The Corporate Debtor had issued similar letters on 31.03.2015, 31.03.2016, 31.03.2017 and 31.03.2018 by which it has acknowledged the debt amount which is due and payable by the Corporate Debtor to the Financial Creditor. Further it is also seen from the Balance sheet of the Corporate Debtor for the year ending 31.03.2019 and 31.03.2020 that the Corporate Debtor acknowledged in its financial statements, the amount which is due and payable to the Financial Creditor.

24. Thus, it could be seen from the year 2014 onwards till the year 2020, the Corporate Debtor has been acknowledging its default and the debt amount which is due and payable to the Financial Creditor. That being the case, the argument of the Learned Counsel for the Corporate Debtor that the default in the present case occurred only when the Loan Recall Notice dated 05.08.2020 was issued, is without any merit.

25. The Financial Creditor has also filed record of default issued by the NeSL on 12.12.2022, from which it is seen that the status of authentication is shown as "**Authenticated**".

26. Upon considering the facts and circumstances of the present case, we are of the view that the Corporate Debtor from the year 2014 onwards has been consistently acknowledging the amount which is due and

payable by the Corporate Debtor towards the Financial Creditor and as such it cannot be said that the present application is barred by limitation. Further, it is also factually incorrect to state that the present application is hit by section 10A of IBC 2016.

27. The Financial Creditor has proved that there is a financial debt which is due and payable by the Corporate Debtor and also Corporate Debtor has committed default in repayment of the said financial debt. Further, the issue as to the classification of the account of the Corporate Debtor as NPA as illegal or unlawful cannot be decided before this forum. The Corporate Debtor ought to have challenged the same before the appropriate forum.

28. The Hon'ble Supreme Court in the case **Innoventive Industries Limited -Vs- ICICI Bank & Anr.**, (2018) 1 SCC 407 has held that Tribunal is required to see whether there is a 'debt' which is due and payable under the law and whether the default is more than Rupees One Lakh (now Rupees One Crore). The moment when default amount exceeds rupees one crore, this Tribunal is required to initiate a Corporate Insolvency Resolution Process as against the Corporate Debtor.



29. Since, the Financial Creditor has proved that there is a debt. The default is more than Rs.1 crore which satisfies the mandate under Section 7 of the Insolvency & Bankruptcy Code, 2016. We therefore **admit** this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

30. The Financial Creditor has proposed the name of **Mr. Sh. Vikram Bajaj**, having Reg. No. IBBI/IPA-002/IP-N00003/2016-2017/10003; Email ID: bajaj.vikram@gmail.com as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 18.10.2024. **Mr. Sh. Vikram Bajaj**, is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

31. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other

law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

32. However, during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such

supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

33. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

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 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.

34. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

35. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

36. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or

any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

37. The IRP shall take custody of the records of information relating to the assets, finances and operations of the Corporate Debtor referred in clause (a) of section 18 and such other information required under regulation 36; and also the assets recorded in the balance sheet of the Corporate Debtor or in any other records referred in clause (f) of section 18 of IBC, 2016 and the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall provide to the IRP, the list of assets in terms of Regulation 3A of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016.

38. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

39. Based on the above terms, the Petition stands admitted in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

40. Accordingly, CP(IB)/73(CHE)/2023 stands **admitted**.



VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Raymond