IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

IVN.P/2(KB)2022

IA(I.B.C)/1000(KB)2019

In

C.P. (IB)/56(KB)2019

In the matter of:

A Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:

State Bank of India

...Financial Creditor

Versus

In the matter of:

Simplex Projects Limited (CIN L45201WB1990PLC050101)

...Corporate Debtor

IVN.P/2/KB/2022

In the matter of:

ICICI Bank Limited

...Intervener/ Applicant

Date of Hearing: 09.02.2022

Date of pronouncing the order: 27.04.2022

Coram:

Shri Rohit Kapoor : Member (Judicial)

Shri Harish Chander Suri : Member (Technical)

Appearances (through Video Conferencing)

For Operational Creditor	:	Mr. Joy Saha, Sr. Adv.
	:	Ms. Suhani Dwivedi, Adv.
	:	Mr. Deepanjan Dutta Roy, Adv.
For Corporate Debtor	:	Mr. Ratnanko Banerji, Sr. Adv.
	:	Mr. Shounak Mitra, Adv.
	:	Ms. Rusha Mitra, Adv.
For ICICI Bank in IVN.P./2/2022	:	Mr. Rishav Banerjee, Adv.
	:	Mr. Avishek Guha, Adv.

ORDER

Per Harish Chander Suri, Member (Judicial)

1. The Court is convened *via* video conference.

2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ***('the Code')*** read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by State Bank of India (***'SBI'***) (***'Financial Creditor'***), represented by Mr. Pratap Mukherjee, Assistant General Manager, duly authorized by virtue of Regulation 76 and 77 of the State bank of India General Regulation, 1955 read with the Gazette notification dated 27 March, 1987 issued by the State Bank of India Central Office[1] for initiation of Corporate Insolvency Resolution Process ***('CIRP')*** against Simplex Projects Limited ***('Corporate Debtor'),*** a Company incorporated under the Companies Act, 1956 having its registered office at 12/1, Nellie Sengupta Sarani, Kolkata 700087, West Bengal.

3. The present Petition was filed on 10 January, 2019 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in a sum of

[1] Annexure – B of the Petition.

Rs.228,52,57,339.81/- including interest as on 31.12.2018, which was availed under various credit facilities. The date of default is stated to be 30.09.2016.[2]

4. It is submitted in the Petition, Part – II that the authorized share capital of the Corporate Debtor is Rs.15,00,00,000/- (Rupees Fifteen Crore only) with paid up Capital as Rs.126,003,780/- (Rupees Twelve Crore Sixty Lakh Three Thousand Seven Hundred Eighty only).

5. Submissions by the Ld. Advocate on behalf of the Financial Creditor:

a) *Vide* Loan Agreement dated 19 December, 2207, the Corporate Debtor availed working capital facility from the State Bank of Travancore, a body corporate of the Financial Creditor established under the State Bank of India (Subsidiary Bank) Act, 1959. The said Loan Agreement was subsequently amended *vide* Supplementary Agreements of Loan dated 19 March, 2009, 16 September, 2010 and 09 December, 2015.

b) Moreover, by way of an Agreement of Loan dated 30 October, 2009, the Corporate Debtor also availed working capital facility from the Financial Creditor. The Agreement of Loan was subsequently amended *vide* Supplementary Agreements of Loan dated 23 May, 2011, 14 June, 2014 and 26 March, 2015.

c) Further, on 16 December, 2014 a Working Capital Consortium Agreement dated 16 December, 2014 was entered between the Corporate Debtor and Financial Creditor along with other Financial Institutions i.e., UCO Bank, Axis Bank Limited, Bank of Baroda, IDBI Bank Limited, ICIC Bank Limited.

[2] Annexure – E of the Petition.

d) The Respondent has failed to make payment of the amounts owed to the Applicant under the facilities, and a recall letter was issued by the Applicant to the Respondent on June 6, 2018, for the total amount of Rs. 228,60,94,674/- (Rupees Two Hundred Twenty Eight Crores Sixty Lakhs Ninety Four Thousand Six Hundred Seventy Four) due and payable as on June 6, 2018. However, the Respondent has not made any payments pursuant to the aforesaid recall letter and a total debt of Rs. Rs. 228,52,57,339.81/- (Rupees Two Hundred Twenty Eight Crores Fifty Two Lakhs Fifty Seven Thousand Three Hundred Thirty Nine and Paisa Eight One) is due and payable by the Respondent as on December 31, 2018.

e) The Financial Creditor in support of its claim has annexed the following documents to prove the existence of financial debt:-

SI. No.	***Particulars***
1.	Sanction Letter of SBT dated December 18, 2007 bearing No. DGM/DEL/C&I/SPL
2.	Agreement of Loan for overall working capital limit dated December 19, 2007
3.	Sanction Letter of SBT dated March 02, 2009 bearing No. CGM/DEL/C&I/SPL
4.	Supplementary Agreement of Loan for increase in the overall working capital limit dated March 19, 2009
5.	Sanction Letter of SBT dated January 07, 2010 bearing No. DGM/DEL/C&I/SPL.
6.	Modification dated May 11, 2010 to Sanction Letter of SBT dated January 07, 2010 bearing No. DGM/DEL/C&I/SPL

7.	Modification dated August 28, 2010 to Sanction Letter of SBT dated January 07, 2010 bearing No. DGM/DEL/C&I/SPL
8.	Supplemental Agreement of Loan for increase in the overall working capital limit dated September 16, 2010
9.	Sanction Letter of SBT dated September 22, 2015 bearing no. DGM/CBNW/PCBL/AMT/2015-16
10.	Supplemental Agreement of Loan for increase in the overall working capital limit dated December 9, 2010
11.	Certificate of Registration of Charge along with Form 8 for modification of charge by way of hypothecation under Agreement of Hypothecation of Goods and Assets dated December 19, 2007.
12.	Sanction Letter of SBI dated October 27, 2009 bearing no. 242-254 RMII/09/175
13.	Agreement of Loan for overall limit dated October 30, 2009
14.	Sanction Letter of SBI dated April 7, 2011 bearing no. BK/RM-11/12/18
15.	Supplemental Agreement of Loan for increase in the overall working capital limit dated May 23, 2011
16.	Sanction letter of SBI dated March 22, 2013 bearing no. BK/RM-340-359I//13/710
17.	Sanction letter of SBI dated June 10, 2014 bearing no. BK/AMT-I/15/140
18.	Supplemental Agreement of Loan for increase in the overall working capital limit dated June 14, 2014
19.	Sanction letter of SBI dated March 19, 2015 bearing no. CBK/AMT-VIIV14-15/560

20.	Certificate of Registration of Charge along with Form 8 for creation of charge by way of hypothecation under Agreement of Hypothecation of Goods and Assets dated October 30 - 2009
21.	Certification of Registration of Charge along with Form 8 for modification of charge by way of hypothecation under Agreement of Hypothecation of Goods and Assets dated May 23, 2011
22.	Certification of Registration of Charge along with Form CHG-1 for creation of charge on immovable property by Simplex Housing by way of mortgage under Memorandum of Deposit for Creation
23.	Working capital consortium agreement dated December 16, 2014
24.	Form CHG-1 for creation of charge on current and movable fixed assets by the Corporate Debtor by way of Joint Deed of Hypothecation dated December 16, 2014
25.	Certificate of registration of charge along with Form CHG-1 for creation of charge on shares held by Jemtec Engineering Private Limited in Bharat Gypsum Pvt. Ltd. by way of Deed of Pledge of Shares dated December 14, 2017
26.	Certificate of registration of charge along with Form CHG-1 for creation of charge on shares held by Kirti Vinimay Pvt. Ltd. in Prozen Merchants Pvt. Ltd. and Simplex Fiscal Holdings Put. Ltd. by way of Deed of Pledge of Shares dated December 14, 2017
27.	Pledge Master Reports for the shares pledged by Mr. Balkrishnandas Mundhra, Mr. Sudarshandas Mundhra, Simplex Fiscal Holdings Pvt. Ltd., Prozen Merchants Pvt. Ltd. and Bharat Gypsum Pvt. Ltd. by way of Deed of Pledge of Shares dated

	October 15, 2014
28.	Recall letter dated November 16, 2017

6. The Corporate Debtor has filed its reply affidavit, wherein the Corporate Debtor submits as follows:

a) The Corporate Debtor is a renowned Civil Engineering and Construction Company listed on the BSE Limited and NSE Limited having constructed numerous road, bridges, etc.. over the years, the Corporate Debtor has undertaken various projects. In 2009-2010, the Corporate Debtor secured orders worth Rs.3,764.60 Crore from the Organizational Development of Administrative Centers ***('ODAC')*** on behalf of government of Libya for construction of 4000 housing units and related infrastructure. However, due to political issues the project was suspended since 2021 because of which the Corporate Debtor is unable to realize payments.

b) Pursuant to the suspension of the housing project, the Company continued to incur overhead and interest costs with no returns leading to significant increase in the interest costs which adversely affected the after-tax profit margin of the Company. The gearing ratio also increased due to the significant liabilities under the said housing project in Libya. Meanwhile, the Libyan Organization for Development of Administrative Centres (ODAC) continued to press for extension of the Bank Guarantees from 2011 till 2016, leading to SPL incurring huge Bank Guarantee commission and charges from its Banks.

c) Accordingly, due to devolvement of buyer's credit; recovery of huge Bank Guarantee commission and charges by the banks; and the failure on the part of ODAC to make payments since 2011, SPL has had to face an increase in interest burden and a higher rate of interest due to deterioration of its credit

ratings. By 2014, the External Credit Rating was withdrawn leading to abrupt increase in financing costs by the Banks.

d) In such aforesaid circumstances, the lenders insisted on promoter funding for maintaining liquidity and even took personal guarantees and indemnity to secure debts of the Company. Further, in 2015, the Consortium Lenders led by State Bank of India proceeded to conduct Joint Lenders Meeting from time to timr to ensure corrective measures.

e) The Consortium Lenders are continuing to hold JLF Meeting and the Company has been continuing to take all necessary steps in working out a restructured solution as initiated by the Banks with the consent and approval of the Consortium Lenders since 2017. Further, in June 2019, Company requested the Consortium Lenders to reconsider a restructuring proposal in view of the revised Prudential Framework for Resolution of Stressed Assets of Reserve Bank of India dated 7 June 2019.

f) Additionally, in terms of the said meeting of the Joint Lenders of the Company held in June 2019, the Consortium Lenders had further agreed to execute an Inter-Creditor Agreement amongst themselves, as aforesaid, in connection with the Circular dated June 7, 2019 of the Reserve Bank of India.

g) In June 2017, the Corporate Debtor that also decided to initiate arbitration proceeding against the Libyan Government for the deferred housing project which was supported by the Consortium Lenders and as per the said meeting, the Lenders led by SBI have accorded their approval to obtain finance for the said arbitration proceeding as initiated by the Company. Progress has been made in the arbitration proceeding as well and Statement of Claim has been filed claiming a sum of USD 108.30 Millions (approximately Rs.754 Crores)

against the Libyan Government. It is extremely important that such arbitration proceeding is pursued by the respondent so that moneys are recovered from the Libyan Government. Recovery of money would ensure that the company's financial stress will be immediately solved. In the event, insolvency proceeding is admitted as against the Corporate Debtor, the entire arbitration proceeding may become a failure and will result in irreparable loss and prejudice to the respondent company and its claim.

h) State Bank of India is the only bank which has filed the insolvency proceeding against the respondent. The other members of the Joint Lenders Forum have not taken such steps.

i) The said Petition has been filed in abuse of process of law and is liable to be rejected *in limine* with exemplary costs. The Financial Creditor has suppressed and misrepresented material facts in the petition which warrants immediate dismissal of the same.

j) The petition has been filed by the Financial Creditor in contravention of the settlement which was arrived at in the minutes of the Joint Lenders Forum held on 21 April, 2019, the Financial Creditor has voted in favour of a restructuring proposal and now is taking contrary stand and pushing the Corporate Debtor into Corporate Insolvency Resolution Plan ***('CIRP').***

k) Further, from this Petition it does not appear that the purported intention of the Financial Creditor to approach this Adjudicating Authority has the consent or approval of other consortium banks, the lead Bank cannot on its own approach this Adjudicating Authority to seek any relief against the Corporate Debtor.

l) The Financial Creditor has suppressed the vital fact i.e., the issue of restructuring discussed and agreed upon between the lenders and the Corporate Debtor in 2017 and last in the Meeting on 24 June, 2019.

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7. This is an Application filed under section 60(5) of the Code, by the ICICI Bank Limited **('Applicant')** inter alia, praying for the following reliefs;

(i) To be impleaded as a Party to the C.P. (IB)/56(KB)2019, filed under section 7 of the Code

(ii) Direct the Corporate Debtor to disclose the source of its funds it has disbursed as a part-payment towards the settlement of its dues to the SBI and also not to disburse any further amount.

(iii) To direct the Corporate Debtor to make proportionate payments to the Applicant if the Corporate Debtor has used the security charged in favour of the consortium to make payment to the SBI

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8. This is an Application filed under section 60(5) of the Code, by the Corporate Debtor, *inter alia*, praying for an order dismissing the C.P. (IB)/56(KB)2019 filed by the Financial Creditor

Analysis & Findings

9. We have heard the Ld. Counsel appearing for the parties and perused the records and the concerned documents annexed to the Petition.

10. The Corporate Debtor has raised four objections to the present proceedings: (a) The Section 7 petition has been filed in breach of settlement; (b) There is no consent from other consortium lenders for proceeding under IBC; (c) The Section 7 petition has been filed pursuant to the 12 February 2018 circular; and (d) The-Section 7 petition has not been filed by a duly authorised signatory

11. With regard to contention (a): the Joint Lenders Forum ("JLF") in its Minutes of Meeting dated 29 January 2018 had observed that restructuring was unviable since (i) the financials of the Corporate Debtor did not support; (ii) Corporate Debtor had not paid the Bank Guarantee commissions; (iii) the restructuring plan proposed by the Corporate Debtor was for a tenure of 15 years and thus was not feasible under the RBI mandate and (iv) No concrete source of promoter's fund contribution has been demonstrated till date [Annex - B at pg. 31 of Reply of Corporate Debtor]

12. With regard to contention (b): The right to initiate corporate insolvency resolution process against the corporate debtor under Section 7 of the IBC is a statutory right. The lenders in the JLF dated 5 November 2018 had also unanimously agreed to invoke IBC and approach the NCLT. [Annex - D at pg. 46 of Reply of Corporate Debtor]

13. With regard to contention (c): The decision to file the Section 7 petition was independent of the 12 February 2018 circular. There is no document to prove to the contrary. No correspondence, pre-dating the filing of the present CIR Application, has been put on record to show that the IBC was invoked pursuant to 12 February 2018

circular. Furthermore, none of the JLF meetings refers to the 12 February 2018 circular.

14. With regard to contention (d): The petition under Section 7 of the IBC has been filed by the Assistant General Manager - Mr. Pratap Mukherjee, a Scale V officer of the Financial Creditor Bank. In terms of Gazette notification dated 27 March 1987, Mr. Pratap Mukherjee was authorized to initiate the present proceedings by way of filing the main company petition under Section 7 of the IBC on behalf of the Financial Creditor Bank. [Annex - C, pgs. 75 to 77 of the Section 7 petition]

15. The Financial Creditor has exercised its statutory right under Section 7 of the IBC and filed the present proceedings against the Corporate Debtor on 10 January 2019 for initiation of CIRP. The Corporate Debtor has availed of several opportunities for settlement outside IBC and has sought adjournments on several occasions in the present proceedings, however, even after 2 years of filing the present proceeding, the debt has not been paid. It seems that Corporate Debtor has exhausted the object of the Code.

16. The Financial Creditor has successfully satisfied this Adjudicating Authority of the existing ***debt*** and ***default***. Hence, in light of the above facts and circumstances, it is, accordingly, hereby ordered as follows:-

(a) The application bearing *C.P. (IB)/56(KB)2019* filed by *State Bank of India*, the Financial Creditor, under section 7of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Simplex Projects Limited, the Corporate Debtor, is ***admitted***.

(b) There shall be a moratorium under section 14 of the IBC.

(c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

(d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(e) ***Mr. Sutanu Sinha*** registration number ***IBBI/IPA-003/IP-N00020/2017-2018/10167***, email: ***sutanusinha@bdo.in***, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

(f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

(g) The IRP/RP shall submit to this Adjudicating Authority progress reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

(h) The Financial Creditor shall deposit a sum of ***Rs.5,00,000/-*** (Rupees Five Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

(i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

(j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

17. ***C.P. (IB)/56(KB)2019*** to come up on ***16 June, 2022*** for filing the progress report. Since, the ***C.P. (IB)/56(KB)2019*** is admitted, the ***IVN.P/2/KB/2022*** filed by the ICICI Bank and ***IA(I.B.C)/1000(KB)2019*** filed by the Corporate Debtor stands ***dismissed*** as ***infructuous***. However, the ICICI Bank is at liberty to file its claim before the Resolution Professional.

18. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

19. File be consigned to record.

Harish Chander Suri) **(Rohit Kapoor)**
Member (Technical) **Member (Judicial)**

Order pronounced on 27 day of April, 2022

SA, LRA