

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-V, MUMBAI BENCH**

C.P. No. 106/IBC/MB/2022

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

State Bank of India,
Stressed Asset Branch II
Raheja Chambers, Ground Floor,
“B” Wing, Free Press Journal Marg,
Nariman Point, Mumbai- 400 021.

.....Financial Creditor/Petitioner

Vs

**M/s. Setubandhan Infrastructure Limited
(formerly Known as Prakash Constrowell Ltd)**
Registered office at:

The Exchange, Near Ved Mandir, Tidke Colony,
Trimbak Road, Nashik, MH- 422002 IN

.....Corporate Debtor/ Respondent

Order Reserved on: 14.11.2022

Order Pronounced on: 28.11.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner: Ms. Rathina Maravarman, Advocate

For the Respondent: Mr. Ashwin Poojari, Advocate

Per: H.V. Subba Rao, Member (Judicial)

ORDER

1. The Petitioners/Applicant viz. 'State Bank of India'. (hereinafter as **Petitioner**) has sought the Corporate Insolvency Resolution Process (hereinafter called 'CIRP') of 'M/s. Setubandhan Infrastructure Limited' (formerly Known as Prakash Constrowell Ltd) (hereinafter as '**Corporate Debtor**') on the ground, that the Corporate Debtor committed default in repayment of facilities granted to the Corporate Debtor to the extent of Rs. 95,60,36,160.13/- along with interest, the date of default is stated to be 05.04.2019, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the '**Code**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition reveals that the Corporate Debtor availed certain credit facilities from the Petitioner Bank and the same were sanctioned and granted to the Corporate Debtor. The cash credit facilities were renewed on various dates (a) 20.03.2013; (b) 26.04.2014; (c) 10.12.2014; (d) 02.07.2016; (e) 23.09.2016; (f) 28.03.2017; (g) 21.01.2019. The Original sanction was given on 20.03.2013 and further loan was last renewed on 02.01.2019. The details of the same are as follows:

Loan A/c No.	Date of Loan	Loan Amount	Principal o/s as on
32899386345 (Cash Credit)	20/03/2013	35,00,00,000.00	66,09,83,638.45
32943850277 (Bank Guarantee)		40,00,00,000.00	9,35,28,942.00
FACILITY	PRNCIPLE O/S	TOTAL INTEREST	TOTAL DUES
CC	66,09,83,638.45	20,15,23,579.68	86,25,07,218.13
BG	9,35,28,942.00	0.00	9,35,28,942.00

Total	75,45,12,580.45	20,15,23,579.68	95,60,36,160.13
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3. The Petitioner enclosed the following security documents respect of sanctioning the loan facilities to the Corporate Debtor:
 - a) A copy of Letter of Arrangement (Sanction Letter) dated 20.03.2013; 26.04.2014; 10.12.2014; 02.07.2016; 23.09.2016; 28.03.2017;
 - b) A copy of Agreement of Loan Cum Hypothecation dated 21.03.2013;
 - c) A copy of Guarantee Agreement dated 21.03.2013; 12.12.2014; 02.07.2016; 04.07.2016; 23.09.2016; 28.03.2017
 - d) A copy of Omnibus Counter Guarantee dated 21.03.2013; 23.09.2016;
 - e) A copy of Letter of Confirmation for Creation of Mortgage by Deposit of Title Deeds dated 05.06.2013;
 - f) A copy of Non-Encumbrance Certificate dated 26.02.2014;
 - g) A copy of Supplemental Agreement of Loan-Cum-Hypothecation dated 12.12.2014 and 28.03.2017;

4. The Corporate Debtor have also executed Revival Letter dated 21.06.2017. However, the account of the Corporate Debtor became NPA on 03.07.2019.

5. The Petitioner has enclosed notice under Section 13(2) of SARFAESI Act, 2002 dated 05.07.2019 demanding a sum of Rs. 87,56,32,615/- with interest and incidental expenses, costs which shows that the Corporate Debtor defaulted in repaying the credit facilities availed by them. The Petitioner also enclosed the Legal Notice dated 07.11.2019 requiring the Corporate Debtor to pay a sum of Rs. 70,92,19,433.67/- comprising of Principal and Interest upto 07.11.2019. The Petitioner has also annexed the Certificate under Section 2A(a) of Banker's Books Evidence Act, 1891.

6. The Corporate Debtor filed the affidavit in reply of Mr. Prakash Pusaram Laddha opposing the above Company Petitioner on the following grounds:
 - a. The Form 1 is incomplete and unreliable.
 - b. Copy of the present Petition not served upon the IBBI.
 - c. Statement of account annexed to the present petition is false, incorrect and misleading.
 - d. No proof of disbursement of alleged debt and/or default in payment thereof.
7. Heard the arguments of Ms. Rathina Maravarman, Advocate appearing for the Petitioner and Mr. Ashwin Poojari, Advocate appearing for the Corporate Debtor and perused the record.
8. The Learned Counsel appearing for the Petitioner invited the attention of this Bench to the various loan documents including Sanction letters executed by the Corporate Debtor from time to time. The Petitioner further invited the attention of this Bench to the charges Registered with the MCA against the properties of the Corporate Debtor.
9. The Petitioner also invited the attention of this Bench to the Revival letter dated 21.06.2017 executed by the Corporate Debtor reviving the outstanding dues. The Petitioner also invited the attention of this Bench to the Demand Notice dated 05.07.2019 issued under SARFAESI Act, 2002 to the Corporate Debtor. The Petitioner also invited the attention of this Bench to the Balance sheet and Annual Report of the Corporate Debtor for the Financial Years 2017-18, 2018-19, 2019-20 under which the amount due to the Petitioner is shown as advance under the heading liabilities. The Petitioner also invited the attention of this Bench to the NESL Report dated

21.01.2021 wherein the loan amount sanctioned by the Petitioner was recorded. Therefore, the Petitioner sought for admission of the above Company Petition.

10. Mr. Ashwin Poojari, Advocate appearing for the Corporate Debtor except submitting that the above Petition is incomplete, did not raise any serious legal issue opposing the above company Petition so also in the reply. The objection of the Corporate Debtor with regard to the incompleteness of the Petition is very trivial and technical in nature and no credence can be given to such objection when once the debt and default are established in a Section 7 Application filed by the Financial Creditor. Except the above plea which is trivial in nature and which will not cause prejudice to the Corporate Debtor, Counsel appearing for the Corporate Debtor did not raise any substantial legal plea in opposing the above company Petition.
11. After hearing the submissions and upon perusing the above documents relied by the Petitioner including the Balance sheet, this Tribunal has no hesitation in holding that the Petitioner has successfully established the existence of “debt” and “default” in this case. The above company petition being filed on 01.02.2022 is well within limitation since the Corporate Debtor has acknowledged the liability not only by means of executing the revival letter but also by showing the same in their Balance sheet and thus, it is within limitation.
12. The petitioner has also suggested the name of proposed Interim Resolution Professional in Part-III of the Petition along with his consent letter in Form-2. Thus, the above Company Petition satisfies all the legal requirements for admission and this Bench did not find any reason to dismiss the same.

13. Accordingly, the above Petition is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) 106 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Setubandhan Infrastructure Limited (formerly Known as Prakash Constrowell Ltd).**
- b. This Bench hereby appoints **Mr. Sandeep D. Maheshwari** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00640/2017-18/11093 residing at Shree Ram Laxmi Niwas CHS, Near Anthony Bakery, Kolbad, Thane (West)-400601, Maharashtra as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee.
- d. That this 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 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 the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order 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, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, CP 106 of 2022 is **admitted**.

l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)