

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 690/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

INDUSIND BANK LIMITED

Having registered office at: 2401 Gen
Thimmayya Road, Cantonment, Pune,
411001

.....Financial Creditor

Vs

SITI NETWORKS LIMITED

Unit 38, 1st Floor, A Wing, Madhu
Industrial Estate, P.B. Marg, Worli,
Mumbai- 400013

.....Corporate Debtor

Reserved for order on: 02.02.2023

Order delivered on : 22.02.2023

Coram:

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

Hon'ble Ms. Madhu Sinha, Member (Technical)

For the Applicant: Mr. Ashish S Kamat a/w Pratiksha Agarwal, Adv.
Vishnu Shriram i/b Khaitan & Co,

For the Respondent: Mr. Prathamesh Kamat a/w Shreni Shetty and
Antara Kalambi i/b ANB Legal.

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

1. This Company petition is filed by *INDUSIND BANK LIMITED* (hereinafter called as “Financial Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *SITI NETWORKS LIMITED* (hereinafter called as “Corporate Debtor”) by invoking the provisions of Section 7 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Financial Debt of Rs. 1,48,82,90,236.22/- (Indian Rupees One Hundred and Forty-Eight Crores, Eighty-two Lakhs, Ninety thousand, Two Hundred Thirty-Six and Twenty-two paisa only).
2. The brief submissions of Financial Creditor are as under:
 - 2.1. The Corporate Debtor, Siti Networks Limited (“SNL”) is a company within the meaning of the Companies Act, 2013 and is a multi-system operator and provides television services across India. Corporate Debtor is a part of the Essel-Zee Group promoted by Dr Subhash Chandra and family.
 - 2.2. The Corporate Debtor has availed and the Financial Creditor has advanced credit facilities to the Corporate Debtor comprising 2 (two) term loans of INR 250,00,00,000 (Indian Rupees Two hundred fifty crore) (Term Loan 1”) and of INR 150,00,00,000 (Indian Rupees One hundred fifty crores) which has a sublimit bank guarantee of INR 95,00,00,000 (Indian Rupees Ninety five crores) (Term Loan 2”) as per the terms of Sanction Letter dated 29 June 2018 bearing ref. No: IBL/CAD/987/2018-19 (“Sanction Letter 1”), Sanction Letter dated 29 June 2018 bearing ref. No: IBL/CAD/988/2018-19 (“Sanction Letter 2”) and Sanction Letter dated 29 June 2018 bearing ref. No. IBL/CAD/989/2018-19 (“Sanction Letter 3”) (collectively,

“Sanction Letters”). Annexed and marked as Exhibit “A” is a copy of Sanction Letter dated 29 June 2018 bearing ref. No: IBL/CAD/987/2018-19, as Exhibit “B” is a copy of the Sanction Letter dated 29 June 2018 bearing ref. No: IBL/CAD/988/2018-19, and as Exhibit “C” is a copy of the Sanction Letter dated 29 June 2018 bearing ref. No. IBL/CAD/989/2018-19.

2.3. In terms of the Sanction Letters, a Hypothecation Agreement for Multi-Facility Purpose dated 24 August 2018 (“Loan Agreement”) was executed between the Financial Creditor and the Corporate Debtor which inter alia set out the terms and conditions on which Term Loan 1 and Term Loan 2 (collectively referred to as “Facilities”) were granted to Corporate Debtor.

2.4. The following amounts were disbursed by the Financial Creditor to the Corporate Debtor under the Facilities:

Term Loan 1

Date of Disbursement	Amount (INR)
19 September 2018	32,00,00,000/-
17 October 2018	40,96,02,313/-

Term Loan 2

Date of Disbursement	Amount (INR)
31 August 2018	5,46,00,000
17 September 2018	2,03,00,000
18 September 2018	9,00,00,000

17 October 2018	15,89,00,000
26 October 2018	15,70,00,000
31 December 2018	35,00,00,000

2.5. In terms of the Sanction Letters, the Financial Creditor and Corporate Debtor entered into the DSRA Agreement whereby Corporate Debtor was inter alia required to:

- (a) Maintain in the DSRA Account, an amount till the 'Final Settlement Date', which should not be less than one quarter interest and next principal payment for the ensuing quarter ("DSRA Amount"). Further the Final Settlement Date is defined as the date on which all the dues of Corporate Debtor have been recovered and satisfied up-to the satisfaction of the Financial Creditor.
- (b) In case of any default in repayment of interest/principal amount due, the Financial Creditor has the right to appropriate the amount in the DSRA Account towards servicing Term Loan 1 and Term Loan 2, as the case maybe.
- (c) In the event of default, which includes non-payment of instalment/interest and non-maintenance of DSRA Amount in the DSRA Account, the Financial Creditor had the right to cancel the entire loan/facility and call upon Corporate Debtor to repay the entire outstanding under Term Loan 1 or Term Loan 2 or both within 30 calendar days or such period prescribed by Corporate Debtor.

2.6. In fact, Siti has not serviced the DSRA account since September 2019 when the first shortfall in maintaining funds in the DSRA Account occurred. Details of Interest recovered for Term Loan 2 from available balance in the DSRA Account (created at the time of loan disbursement in terms of the sanctioned terms) is as under:

Interest for the month of	Amount	Recovered on
June 2019	INR 67 lacs	6 th Sept 2019
Nov 2019	INR 33 lacs	31 st Dec 2019
Dec 2019	INR 68 lacs	27 th March 2020
Jan-March 2020	INR 1.97 cr.	18 th April 2020
Total Recovery from DSRA		INR 3.57 CR.

2.7. By an email and a letter dated 12 September 2019 addressed by the Financial Creditor to the Corporate Debtor and copied to the DSRA Guarantor, Corporate Debtor was once again informed of the non-compliance as mentioned previously in the letter dated 15 July 2019. It was notified that the Corporate Debtor has delayed the principal and interest on the Facilities amounting to INR 8.32 Cr (includes interest overdue from June, July and August 2019). It was also notified that as per the terms of the Facilities, an amount of INR 0.67 Crores had been utilised from the available DSRA balance towards payment of overdue interest. Accordingly, Corporate Debtor was immediately called upon to deposit

the said amount of Rs. 0.67 crore in the DSRA Account to restore the required DSRA balance immediately as per the sanctioned terms. Further, the DSRA Guarantor was specifically called upon to replenish the shortfall in the DSRA Account within three working days in the event of the Corporate Debtor failing to fund the DSRA Account.

- 2.8. Further again by a letter dated 2 March 2020, the DSRA Guarantor was put to notice that in view of the continuing defaults with respect to Term Loan 2, if the Financial Creditor were to issue an event of default notice, then the obligation under the DSRA Guarantee would stand revised to the entire outstanding amount under Term Loan 2.
- 2.9. By email dated 4 March 2020, the Corporate Debtor was once again inter alia notified of continuing payment defaults under the Facilities being an overdue amount of INR 6.29 Cr towards principal and an amount of INR 1.30 Cr as on 31 December 2019 with respect to Term Loan 1 and an overdue amount of INR 1.99 Cr towards interest as on 31 December 2019 with respect to Term Loan 2.
- 2.10. Further, by email dated 5 March 2020, the Corporate Debtor and the DSRA Guarantor were put to notice that the DSRA Amount and obligation under the DSRA Guarantee Agreement has been enhanced to the entire outstanding principal and interest due under Term Loan 2 in event of the Financial Creditor calling an event of default under Term Loan 2. It is pertinent to note that the DSRA Guarantor did not respond to the aforesaid correspondences. It is also pertinent to note that there was already a shortfall of Rs. 0.67 Crores in the DSRA Account as on 5 March 2020 along with the overdue interest amount of INR 1.99 Crores since

December 2019, which the Corporate Debtor was immediately called upon to replenish vide the email dated 5 March 2020.

- 2.11. By letter and email dated 21 April 2020, the Corporate Debtor and the DSRA Guarantor were notified of the non-compliance of the sanction terms including the failure of the Corporate Debtor to maintain the DSRA amount as per the DSRA agreement since September 2019 and calling upon to pay an amount of INR 1,96,17,865.75 (INR One crore, ninety-six lakhs, seventeen thousand, eight hundred sixty-five and seventy-five paisa only).
- 2.12. Again by letter dated 21 April 2020, the Corporate Debtor and the DSRA Guarantor were notified of the various non-compliance that had occurred with respect to delay in servicing of interest dues; failure to maintain the required debt service reserve amount in accordance with the terms of the DSRA Agreement dated 24 August 2019 executed between the Corporate Debtor and the Financial Creditor for a continuous period since September 2019; failure to perfect security as per the transaction documents executed in relation to the facility for a continuous period since 30 November 2018; and downgrade in external credit rating of the Corporate Debtor since April 2019. The Financial Creditor and the DSRA Guarantor were called upon to rectify the abovementioned non-compliance, failing which the Corporate Debtor and DSRA Guarantor would be liable to forthwith repay in full the entire principal amount of INR 83,08,00,000 (Indian Rupees Eighty-three crore and eight lakhs only) in respect of Term Loan 2.

- 2.13. By an email dated 17 June 2020, the Financial Creditor had again notified the Corporate Debtor and the DSRA Guarantor of the continuous shortfall along with the event of default in the Corporate Debtor's account. The Financial Creditor vide this mail had asked the CFO to take note of the non-payment and ensure that the DSRA Guarantor complies with the executed commercial contracts failing which the Financial Creditor will take all possible legal recourse in the matter.
- 2.14. Without prejudice to its right to seek payment of the entire outstanding amount under Term Loan 2 from the DSRA Guarantor under the DSRA Guarantee, in view of the Corporate Debtor's statement in its letter dated 14 September 2020 that it is liable to fund the DSRA Account by INR 2 crores, the Financial Creditor called upon Corporate Debtor to fund the DSRA Account by INR 2 crores vide its email dated 17 September 2020. However, by an email dated 21 September 2020, Corporate Debtor has conveyed its inability to make payment of even the amount of INR 2 crores. It is submitted that this itself shows that the Corporate Debtor have no intention whatsoever of honouring their legal and contractual obligations to make payment to the Financial Creditor in respect of the Facilities.
- 2.15. By a letter dated 24 September 2020, the DSRA Guarantor responded to the Financial Creditor's letter dated 1 September 2020, for the very first time reiterating the erroneous stand taken the Corporate Debtor in its letter dated 14 September 2020 that the liability under the DSRA Guarantee was limited to INR 2 crores. The Financial Creditor has responded to the Corporate Debtor's letter

dated 14 September 2020 reiterating that as per the terms of the DSRA Guarantee, in view of the various events of default that have occurred in respect of the Facilities, including but not limited to failure to maintain the requisite amount in the DSRA account, the liability of the DSRA Guarantor under the DSRA Guarantee stood enhanced to the entire outstanding amount payable under Term Loan 2.

- 2.16. In view of the failure to rectify the various event of defaults under the Loan Agreement as notified from time to time, including default in payment of principal and interest amounts the Financial Creditor issued a Notice of Demand dated 1 October 2020, in terms of which the Financial Creditor accelerated the repayment BANK of Term Loan 2 and called upon the Corporate Debtor and the DSRA Guarantor to make payment of the entire outstanding amount under Term Loan 2 within a Period of 30 days.
- 2.17. Further, by an email dated 27 October 2020, the Corporate Debtor and the DSRA Guarantor were notified of the continuing defaults and called upon the DSRA Guarantor to immediately deposit the said amount failing which the Financial Creditor will take all consequent remedies without any further notice to the Corporate Debtor or the DSRA Guarantor.
- 2.18. By a notice of demand dated 25 April 2022, the Financial Creditor has called upon the Corporate Debtor to make the payment of an aggregate outstanding amount of INR 1,48,82,90,236.22 (Indian Rupees One hundred and forty-eight crores, eighty-two lakhs, ninety thousand, two hundred thirty-six and twenty-two paisa only) due and payable as on 31 March 2022 under the Facilities within 1

(one) business days of the issuance of the notice of demand. The Corporate Debtor has failed to make payment of the outstanding amounts under the Facilities.

2.19. In view of the above, it is manifestly evident that the Corporate Debtor has defaulted in its payment obligations to the Financial Creditor. All necessary pre- requisites of Section 7 are fulfilled, being existence of financial debt and an admitted default in payment by the Corporate Debtor of over INR 1 crore. The loans availed by the Corporate Debtor from the Consortium Lenders are public monies. The Financial Creditor, therefore, submits that this is a fit case for admission and commencement of corporate insolvency resolution process against the Corporate Debtor.

3. The Corporate Debtor filed very brief reply with routine pleas. The important paras of the reply are extracted hereunder for ready reference:

3.1. The Corporate Debtor states that the 'debt' and 'default' arise under the Loan Agreement dated 24th August 2018. However, the said Loan Agreement is insufficiently stamped under the provisions of the Maharashtra Stamp Act, 1958. As per sections 33 and 34 of the Maharashtra Stamp Act, insufficiently stamped documents cannot be looked into by the Court or tribunal in evidence. The Court or Tribunal has to examine the documents so produced to ascertain the stamp duty paid on them and if same are insufficiently stamped, the documents are to be impounded. The Loan Agreement therefore is legally inadmissible and unenforceable and are liable to be impounded by this Tribunal. As such, the Petitioner cannot claim that it is owed a 'financial debt' and that it is a 'financial creditor' under the

Code on the basis of a document that is legally unenforceable. Hence, the present petition filed for a debt/default arising out of an inadmissible document is not maintainable and liable to be dismissed.

- 3.2. Further, it is claimed by the Financial Creditor that the alleged default for Term Loan 2 has occurred on 01st November 2020. Hence, the present petition being filed for a default that has occurred on 1st November 2020 is hit by Section 10A of the Code, which provides that no petition under Section 7, 9 and 10 of the Code can ever be filed against a Corporate Debtor for any default occurring between the period 25th March 2020 and 24th March 2021 (“period of Suspension”). Therefore, the present petition under Section 7 of the Code, is not maintainable against the Corporate Debtor since the purported debt squarely falls within the cut-off date as per Section 10A of the Code.
- 3.3. It is submitted by the corporate debtor that a conference meeting was held on or about 15th April 2021 between several lenders including the Financial Creditor and representatives of the Corporate Debtor and discussions have been going on for restructuring of the debt facilities granted to the Corporate Debtor Company. The said debt restructuring model is at a proposal stage and majority of the lenders of the corporate debtor including the Financial Creditor have provided their approval for proceeding with the same.
- 3.4. At the further outset, without prejudice to the other submissions, it is submitted that assets mortgaged, hypothecated and/or pledged (as the case may be) to the petitioner are of a very high value and hence, the dues are

appropriately secured by the said assets. In light of the same, it is the humble submission of the Corporate Debtor that there is no need for commencement of the process of corporate insolvency resolution so far as the Corporate Debtor is concerned.

- 3.5. Upon perusal of the above submissions and objections, it is clear that the captioned petition deserves to be rejected.

FINDINGS

1. Heard Mr. Ashish S. Kamat, counsel appearing for the Financial Creditor and Mr. Prathamesh Kamat, counsel appearing for the Corporate Debtor and perused the record.
2. As mentioned above in the forgoing paras, the Corporate Debtor is resisting the admission of the above Company Petition mainly on the following grounds:
 - i. The loan agreement is insufficiently stamped under the provisions of Maharashtra Stamp Act and the above Company Petition being filed on such insufficiently stamped document is not maintainable.
 - ii. The present Company Petition is signed and filed by Mr. Vipin Jagawat under specific Power of Attorney executed by another power of attorney holder Mr. Sushil Kumar Jain which amounts to sub-delegation of power by Sushil Kumar Jain and therefore the above CP needs to be dismissed for lack of “specific authorization” to Mr. Vipin Jagawat from the board.
 - iii. The default for term loan-II has occurred during covid period on 01.11.2020 and therefore the above CP is hit by Section 10A of the Code.
3. Mr. Prathamesh Kamat, counsel appearing for the Corporate Debtor fairly conceded that he is not pressing the argument on the

issue of insufficiency of stamp duty on the term loan agreement in view of the settled proposition of law on this aspect.

4. The next issue is with regard to authorization. In this regard, this Bench hereby observes that the specific power of attorney in favour of Mr. Vipin Jagawat executed by Mr. Sushil Kumar Jain clearly mentions that Mr. Sushil Kumar Jain was conferred upon such powers and authorities as are therein contained including the power to substitute and appoint one or more attorney or attorneys as the case may be for specific powers conferred upon him by the said power of attorney dated 27.04.2012 and both the said Mr. Sushil Kumar Jain and Mr. Vipin Jagawat are still in service of the bank. This specific power of attorney further authorises Mr. Vipin Jagawat to commence proceedings by or against the bank before any court/appellate court/DRT or any other tribunal or authorities. Therefore, the argument of Mr. Prathmesh Kamat with regard to sub-delegation of power by Sushil Kumar Jain does not arise in this case since Sushil Kumar Jain is empowered to appoint one or more attorney or attorneys under his power of attorney by the bank and it does not amount to sub-delegation of power by Mr. Sushil Kumar Jain. It is appropriate to mention here that the Hon'ble Supreme Court in *Rajendra Narottamdas Sheth an another Vs. Chandra Prakash Jain* and another after analysing the judgment of Hon'ble NCLAT in *Palogix Infrastructure* held that the power of attorney given to an officer of the Financial Creditor would amount to an "authorization" within the meaning of the "Code" and the bank officer can certainly file an application under Section 7 of the Code under a power of attorney. Therefore, the above plea with regard to lack of authorization to Mr. Jagawat also needs to be rejected.

5. The next plea is with regard to Section 10A of the code. It is the contention of the Corporate Debtor that the default for term loan-2 has occurred on 1st November 2020 during Covid period and therefore no Company Petition can be filed basing on such default as per law laid down by the Hon'ble Supreme Court in *Ramesh Kaymal Vs. M/s Siemens Gamesa Renewable Power Pvt. Ltd.* In this context it is appropriate to mention here that the present Company Petition is filed not only in respect of term loan-II but also in respect of term loan-I which default occurred on 30.06.2021. It is also appropriate to mention here that there was overdue amount of Rs. 1.40 cores towards interest for July and August 2019 in terms loan-2 which also constitutes a default and which empowers the financial creditor to claim entire amount in the event of default of either the interest or the principal amount and therefore the default in respect of term loan-2 is from September 2019 onwards till date. In this regard it is also appropriate to mention here that the Financial Creditor filed another Company Petition bearing CP No 221/2022 against Zee Entertainment Enterprises Ltd. who is the guarantor on behalf of Corporate Debtor herein i.e. Siti Network Ltd. in respect of term loan-2 basing on DSRA guarantee dated 24.08.2018 executed by Zee Entertainment Enterprises Ltd which was also admitted today along with the present company petition against Zee Entertainment Enterprises Ltd observing that date of default in respect of term loan-2 is September 2019 and therefore the above plea of the corporate debtor in this case with regard to term loan-2 is also not legally sustainable.
6. In view of the above and for the forgoing reasons, this tribunal is of the considered opinion that there is no merit in any of the above defences raised by the Corporate Debtor. This bench further

observes that the “debt” and “default” in this case duly stands proved and the petitioner has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2 and thus, the present Company Petition satisfies all the necessary requirement for admission and this bench did not find any reasons to dismiss the same. It is appropriate to mention here that the Final arguments in the above matter were concluded on 02.02.2023 and the matter was reserved for orders. Thereafter, the counsel appearing for the Corporate Debtor appears to have filed Additional Affidavit along with some documents without leave of this tribunal or notice to other side and made a mention to list this matter on board on 10.02.2023. Accordingly, the matter was taken on board on 14.02.2023 on which date the counsel appearing for the Financial Creditor was also present and opposed for taking the additional affidavit and documents on record after reserving the matter for orders. At this juncture, this tribunal orally clarified that it will not look into or consider the additional affidavit and documents without following procedure for filing appropriate application to reopen the matter and to take the documents on record which was not complied by Corporate Debtor. Therefore, this tribunal is deciding the above Company Petition basing on the material available on record.

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

ORDER

- a. The above Company Petition No. (IB) 690 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against *Siti Networks Limited*.
- b. This Bench hereby appoints **Rohit Mehra** (rohitmehra@hotmail.com) Insolvency Professional, Registration

No: IBBI/IPA-001/IP-P00799/2017-218/11374 having registered office at: Tower A 3403, Oberoi Woods, Oberoi Garden City, Goregaon East, Mumbai City, Maharashtra 400063 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 only towards expenses and not towards fee till his fee is decided by COC.
- 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, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

MADHU SINHA
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)