

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL  
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 21.11.2019 AT 10.30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.461/7/HDB/2019
NAME OF THE COMPANY	GKC Projects Limited
NAME OF THE PETITIONER(S)	State Bank Of India (Muscat Branch, Oman)
NAME OF THE RESPONDENT(S)	GKC Projects Limited
UNDER SECTION	7 of IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
G. Anwar	Advo for CD		

**ORDER**

Orders passed vide separate orders.

Petition is admitted.

**Member (T)**

Pavani

**Member(J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

CP(IB)No. 461/7/HDB/2019  
U/s.7 of the I & B Code, 2016  
r/w Rule 6 of the I & B (AAA) Rules, 2016

**In the matter of**

State Bank of India  
Muscat, Post Box No.268  
Ruwi, PC:112  
Sultanate of Oman

**Regd. Office:**

State Bank Bhavan  
Madame Cama Road  
Mumbai – Maharastra  
Rep.by its Chief Executive Officer  
Mr. AdabalaNarayana Raja

... Applicant/Financial Creditor

VERSUS

M/s. GKC Projects Limited  
Sy.No.9 (P)  
CII Green Building Lane  
HITEC City, Kondapur  
Hyderabad TG – 500 084

...Respondent/Corporate Debtor

**Date of Order: 21.11.2019**

**Coram:**

Hon'ble Shri Ratakonda Murali, Member (Judicial)  
Hon'ble Shri Narender Kumar Bhola, Member (Technical)

**Parties / Counsels Present**

For the Petitioner : Mr. Keshav Rao Saini,  
Mr. G.P.Yash Vardhan, Advocates

For the Respondent : Mr. Arun Gurralla, Advocate

**Per: Hon'ble Shri Narender Kumar Bhola, Member (Technical)**

Heard on: 12.09.2019, 25.09.2019, 24.10.2019, 04.11.2019,  
07.11.2019







- It is the case of Financial Creditor / the Principal Borrower, M/s. GKC Projects LLC had availed loan of Rs.9,05,00,000/- (Rupees Nine Crores Five Lakhs only) as on 30.04.2018 and the details of the loan are given as below:

S.No.	Limits	Amount of Facility in Riyals	Amount of Facility in (Rs.)	Amount f Facility disbursed in Rs.
1.	Fund Based Limits OD	500000.00	9,05,00,000.00	9,05,00,000.00
TOTAL		500000.00	9,05,00,000.00	9,05,00,000.00

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In pursuance of sanction of loan, the Principal Borrower and Corporate Guarantor executed various documents. The details of which are given in the application. The Financial Creditor finally issued legal notice dated 25.02.2019 to the Corporate Guarantor to repay the amount overdue and outstanding. The Financial Creditor also filed copy of Statement of Account shown as Annexure-4. The Financial Creditor recommended the name of Sri. G. Madhusudhan Rao as proposed IRP who has given consent in Form-2, who stated that there are no disciplinary cases pending against him.

Corporate Debtor / Corporate Guarantor reported no counter. Thus, Corporate Guarantor / Corporate Debtor has no objection for admitting the petition against it.

3. We have heard the Counsel for Financial Creditor and also the Counsel for Corporate Guarantor. This is an application filed by Financial Creditor under Section 7 of I & B Code, 2016 against Corporate Guarantor alleging Corporate Guarantor stood as Guarantor for the loans availed by the principal borrower, M/s. GKC Projects LLC. Learned Counsel for Financial Creditor would contend that Financial Creditor is entitled to proceed against Corporate Guarantor for the default of debt committed by the Principal Borrower, M/s. GKC Projects LLC. Counsel contended the liability of Principal Borrower as well the Corporate Guarantor are joint and several. It is open to the Financial Creditor to proceed against Corporate Guarantor for the default of debt. Counsel relied on Section 5A of I & B Code, which came into effect from 06.06.2018. Section 5A defines Corporate Guarantor as "a corporate person who is the surety in a contract of guarantee to the Corporate Debtor".

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4. The Learned Counsel for Financial Creditor filed number of documents to establish that Corporate Guarantor herein stood as guarantor for the loans availed by Principal Borrower, M/s. GKC Projects LLC. Counsel contended there is no dispute that Financial Creditor sanctioned various types of loans to M/s. GKC Projects LLC. Counsel stated that Corporate Guarantor executed Corporate Guarantee in favour of Financial Creditor for repayment of the financial facilities availed by M/s. GKC Projects LLC ('Principal Borrower'). The Financial Creditor relied on the following documents:

- i. The copy of Joint Venture Agreement dated 21.09.2012 entered between Corporate Debtor / Guarantor and M/s. Al. Habib and Co. LCC which is shown as Annexure-5 in the paper booklet.
- ii. The Financial Creditor further relied on the letter issued by GKC - Al. Habib Joint Venture to Public Authority for Electricity and Water, Muscat bringing to its notice that an assignment has been entered between GKC - Al. Habib Joint Venture and the Financial Creditor whereby GKC - Al. Habib Joint Venture has assigned all its rights and interest in the Agreement including all money which are payable etc. under the Agreement that has been entered between M/s. GKC Projects Limited and M/s. Al. Habib & Co. L.L.C. which is shown as Annexure-6.
- iii. The Financial Creditor relied on the Letter dated 24.03.2015 issued by GKC - Al. Habib Joint Venture acknowledging and confirming that all receivables into the GKC - Al. Habib Joint Venture - JV Account will be


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credited into the GKC Projects LLC account with State Bank of India which is shown as Annexure -7 (Colly.)

- iv. The Financial Creditor relied on the Sanction Letter dated 23.03.2015 issued by the Financial Creditor to M/s. GKC Projects LLC for providing Financial Assistance in the nature of Fund Based and Non-Fund Based which is shown as **Annexure-8.**
- v. The Financial Creditor relied on the Extracts of Minutes of Meeting of the Board of Directors of the M/s. GKC Projects LLC dated 24.03.2015 resolving to accept the sanction of the Working Capital Credit Facilities by the Financial Creditor which is shown as **Annexure-9.**
- vi. The Financial Creditor relied on the Extracts of Minutes of Meeting of the Board of Directors of the Corporate Debtor / Corporate Guarantor dated 24.03.2015 resolving to issue Corporate Guarantee for repayment of the Financial Assistance availed by M/s. GKC Projects LLC from the Financial Creditor which is shown as **Annexure-10.**
- vii. The Financial Creditor further relied on the Facility Agreement dated 23.03.2015 entered between M/s. GKC Projects LLC and Financial Creditor for availing financial assistance from the Financial Creditor which is shown as **Annexure-11.**
- viii. The Financial Creditor relied on the Deed of Corporate Guarantee dated 25.03.2015 executed by the Corporate Debtor / Corporate Guarantor in favour of the Financial Creditor which is shown as **Annexure-12.**

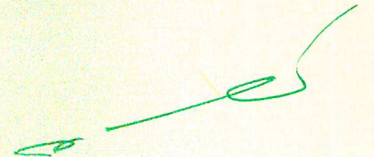






- ix. The Financial Creditor relied on Letter dated 07.04.2015 issued by the Public Authority for Electricity and Water to the Financial Creditor informing that all the payments to be made by it to GKC - Al. Habib Joint Venture will be remitted to the bank account of M/s. GKC Projects LLC account with State Bank of India which is shown as **Annexure-13.**
- x. The Financial Creditor relied on Sanction Letter dated 31.05.2016 issued by the Financial Creditor to M/s. GKC Projects LLC for providing Financial Assistance in the nature of Fund Based and Non-Fund Based which is shown as **Annexure-15.**
- xi. The Financial Creditor relied on Sanction Letter dated 22.06.2017 issued by the Financial Creditor M/s. GKC Projects LLC for providing Financial Assistance in the nature of Fund Based and Non-Fund Based which is shown as **Annexure-18.**
- xii. The Financial Creditor relied on Deed of Corporate Guarantee dated 27.06.2017 executed by the Corporate Debtor / Corporate Guarantor in favour of the Financial Creditor which is shown as **Annexure-21.**
- xiii. The Financial Creditor relied on Deed of Corporate Guarantee dated 20.07.2018 executed by the Corporate Debtor / Corporate Guarantor in favour of the Financial Creditor which is shown as **Annexure-24.**







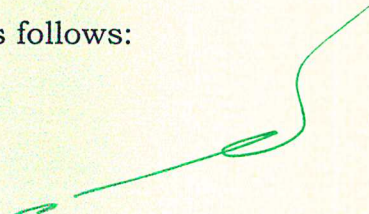
- xiv. The Financial Creditor relied on Legal Notice dated 25.02.2019 issued by the Financial Creditor to the Corporate Debtor / Corporate Guarantor which is shown as **Annexure-29**.
5. The Learned Counsel appearing for Corporate Guarantor reported no counter. Thus, it goes without saying that there is a default committed by the Corporate Guarantor and that there is also no dispute about the default and the debt.
6. The Financial Creditor has also suggested the name of proposed Interim Resolution Professional (IRP), Mr.Madhusudhan Rao G., having Registration No.IBBI/IPA-001/IP-P00181/2017-2018/10360, Mobile No. 9177715558, e-mail Id: [madhucs1@gmail.com](mailto:madhucs1@gmail.com) as Interim Resolution Professional, who has given his consent in Form-2. Section 5(8) of the Insolvency & Bankruptcy Code, 2016 defines "Financial Debt". The relevant clause is 5(8)(i) which is reproduced hereunder:

*" the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause;"*

Liability arising under Guarantee is also Financial Debt. Thus, liability arising under any of the guarantee falls within the definition of financial debt.

Hon'ble National Company Law Appellate Tribunal had held in the decision M/s. Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd. in Company Appeal (AT) (Insolvency) No.92 of 2017, in para 34, which is as follows:







*"The provision of the I & B Code do not bar a 'Financial Creditor' from initiating 'Corporate Insolvency Resolution Process' against the 'guarantor', who comes within the meaning of 'Corporate Debtor'. The aforesaid matter can be noticed from the statutory inter-se rights, obligations and liabilities of:*

- i. A surety qua the Creditor (the relationship as defined under the Indian Contract Act); or*
- ii. Guarantor qua financial creditor".*

The Hon'ble National Company Law Appellate Tribunal (NCLAT) further held in para 39 which is as follows:

*"In view of the aforesaid decision of the Hon'ble Supreme Court, we hold that it is not necessary to initiate 'Corporate Insolvency Resolution Process' against the 'Principal Borrower' before initiating 'Corporate Insolvency Resolution Process' against the 'Corporate Guarantor'. Without initiating any 'Corporate Insolvency Resolution Process' against the 'Principal Borrower', it is always open to the 'Financial Creditor' to initiate 'Corporate Insolvency Resolution Process' under Section 7 against the 'Corporate Guarantors', as the creditor is also the 'Financial Creditor' qua 'Corporate Guarantor'. The first question is thus answered against the Appellant".*

7. It is not the case of Financial Creditor that it had initiated proceedings against principal borrower under I & B Code in respect of the same amount. Simultaneous proceedings are not initiated against principal borrower as well against Corporate Guarantor. Therefore, present petition by Financial Creditor against Corporate Guarantor is Maintainable. Therefore, Financial Creditor is entitled to proceed against Corporate Debtor. The petition is in order.

The petition is therefore liable to be admitted.

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8. Hence, the Adjudicating Authority admits this Petition under Section 7 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions:-

- i. The 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- ii. 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.
- iii. 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.
- iv. That the order of moratorium shall have effect from 21.11.2019 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the

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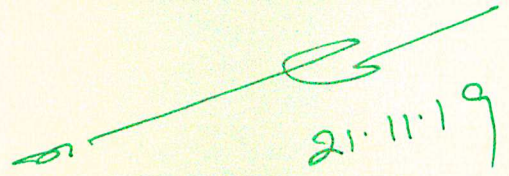


Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

- v. We hereby appoint Mr.Madhusudhan Rao G, as proposed Interim Resolution Professional (IRP), having Registration No.IBBI/IPA-001/IP-P00181/2017-2018/10360, Mobile No.9177715558, e-mail Id: madhucs1@gmail.com, who has given his consent in Form-2.
- vi. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

Accordingly, petition is admitted.

  
NARENDER KUMAR BHOLA  
MEMBER (TECHNICAL)

  
RATAKONDA MURALI  
MEMBER (JUDICIAL)

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