

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (IB) - 909/I&B/MB/2019
Under Section 7 of the I&B Code, 2016

In the matter of

Bank of India
Andheri Large Corporate Branch,
MDI Building, 1st Floor, 28 S V Road,
Andheri (West), Mumbai-400 058

.... Petitioner

Vs

RNA Corp. Pvt. Ltd.
RNA Corporate Park,
Next to Collectors Office,
Kalanagar, Bandra (E),
Mumbai 400 051.

....Corporate Debtor

Order delivered on: 26.11.2019



Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)
Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner: Ms. Savita Nangare i/b Law Focus

For the Corporate Debtor: Rafiq Peermohideen a/w Alok Mishra

Per: Shri Bhaskara Pantula Mohan, Member (J)

ORDER

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I&B) Code, 2016 by Bank of India (hereinafter called the 'Petitioner') seeking the Corporate Insolvency Resolution Process against RNA Corps. Pvt. Ltd. (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor has committed default in making the repayments of the term loan.
2. The petitioner is a Bank incorporated on 07/09/1906 having Identification Number U99999MH1906PLC000243 and filed this petition by its authorised person Mr. Rajender Kumar, Chief Manager of Andheri Large Corporate Bank whereas the Corporate Debtor is a company incorporated on 13/04/2010 bearing CIN U70102MH2010PTC202038, having Authorised Share Capital of Rs. 1,12,00,00,000/- and Issued, Subscribed and Paid-Up Capital of Rs. 1,11,11,00,000/-.

3. The counsel for the petitioner submits that a Corporate Term Loan of Rs. 75,00,00,000/- was granted to the Corporate Debtor vide Sanction Letter dated 24/10/2013. The said amount was also disbursed by them in favour of the Corporate Debtor. The counsel for the petitioner mentioned that there was Deed of Guarantee entered into dated 29th October 2013 and 9th December 2013. There were also registered mortgage deeds dated 29th October 2013, 10th December 2013 and 16th December 2013.
4. The counsel for the petitioner also submits that the date of default and that of declaration of NPA of the Corporate Debtor is 31/12/2014. The principal outstanding amount as on 10/02/2019 amounts to Rs. 40,58,23,360.83/- whereas the interest is Rs. 34,81,43,071.74/-, penal interest is Rs. 5,30,37,157.27/- and other legal expense etc. is amounting to Rs. 3,72,775.00/-. Therefore, the total amount claimed is Rs. 80,73,76,364.84/-.
5. The petitioner in support of his contentions made has annexed the following documents:
 - i. Copy of Power of Attorney dated 28/11/2016
 - ii. Copy of Sanction Letter dated 24/10/2013
 - iii. Statement of Accounts of the loan
 - iv. Particulars of claims showing computation
 - v. Copy of Board Resolution of Corporate Debtor dated 22/10/2013 in respect of Granting of Fund Base Financial Assistance.
 - vi. Copy of Demand Promissory Note dated 29/10/2013
 - vii. Copy of Term Loan Agreement dated 29/10/2013
 - viii. Copy of letter of general undertaking dated 29/10/2013
 - ix. Copy of Deed of Guarantee dated 29/10/2013 and 09/12/2013.
 - x. Copies of the Registered Mortgage dated 29/10/2013, 10/12/2013 and 16/12/2013
 - xi. Copy of Commercial Credit Information Report taken from CIBIL as on 06/02/2019
 - xii. Certificate under 2A Bankers Book Evidence Act
 - xiii. Copy of SARFAESI Notice u/s 13(2) dated 29/07/2015



6. The Corporate Debtor on the other hand denied all the contentions, submissions and allegations made by the petitioner on the ground that they are false, incorrect and baseless. However, the Corporate Debtor does not deny the fact that the money was borrowed by them from the petitioner.
7. The Corporate Debtor mentioned that they had requested the petitioner vide their letter dated 05/05/2015 for issuance of conditional NOC in favour of Kotak Mahindra Bank Ltd for release of collateral property, Flat No: 1701 admeasuring 5450 sq. ft. in RNA Mirage, Worli, Mumbai which was not considered to be favourable by the petitioner and hence rejected vide letter dated 28/07/2015.
8. Further the Corporate Debtor has also annexed the notice dated 27/07/2015, sent to them by the petitioner wherein the demand for initiating the process for Identification as "Wilful Defaulter(s)" as a last chance or else the right will be exercised by initiating proper proceeding.
9. The counsel for the Corporate Debtor contended that the Power of Attorney annexed by the petitioner does not give any authority to Mr. Rajendra Kumar to file petition against them. Moreover, the petitioner has failed to annex board resolution in support of the said Power of Attorney and hence he is not a properly authorised person as required under the rule 2(6) of the NCLT rules read with Section 432 and 176 of the Companies Act, 1956 to affirm the petition and hence the present petition is not maintainable.
10. Further it was contended by the Corporate Debtor that the petition is defective for want of Form II in the copy of the petition as it is a requisite condition under Section 7 of the IB Code, 2016.
11. The Corporate Debtor mentioned that they were regular in making payments to the petitioner but due to the death of Mr. Anil Kumar Aggarwal and also due to the slump in real estate market, their business was affected and the petitioner instead of acting like a prudent banker issued legal notice to them even



when they were informed by the Corporate Debtor about the downturn in the market condition and were requested time to make repayments.

12. The Corporate Debtor submitted that vide its letter dated 10/12/2015, it had proposed to repay the credit facilities in instalments and accordingly, payments of Rs. 7,50,00,000/- were made by them in instalments.
13. Further the Corporate Debtor mentioned that in the mean time the petitioner took symbolic possession of the secured assets of the Corporate Debtor and its directors. Against this action of the petitioner, the Corporate Debtor had filed Securitisation Application No: 91 of 2016 before the Debt Recovery Tribunal and infact thereafter the Corporate Debtor had made payments towards the outstanding dues and the same were accepted by the petitioner.
14. We have heard both the parties at length, taken all their submissions into account and perused the documents and evidences placed on record by them. It has become very clear that there was Loan Agreement between both the parties which is not denied by both of them. A total amount in default is Rs. 80,73,76,364.84/- including interest, penal interest and other expenses. Therefore, there is no doubt that both the parties shared a relationship of creditor and debtor.
15. The Counsel for the Petitioner has apprised us of the fact that the Corporate Debtor had deposited various amounts against the loan taken. The latest payment made by the Corporate Debtor was on 04.04.2016 for Rs. 19,400/-. Therefore, it is clear that this Petition has been filed within limitation, because of the fact that from the first date of default, the Corporate Debtor has been making regular payments to the Petitioner against loan amount.
16. Herein it is important to note that a mere verbal acknowledgement without any evidentiary document does not extend the limitation period, but any payment made by the debtor or any acknowledgement of the debt by the debtor in his books of account is a sufficient cause to extend the limitation period as per



section 18 of the limitation act. In the present case payments have been made regularly even after the first date of default up until April, 2016 and this petition has been filed in February, 2019 making this petition well within the limitation period.

17. The Corporate Debtor has prayed to dismiss this petition and has stated that the said petition is incomplete due to want of Form II. But later the petitioner has submitted copy of Form II and therefore, the matter can be very well proceeded.
18. The technical objection raised by the Corporate Debtor regarding the absence of a Board Resolution in the petition holds no water, because this issue has already been settled by the National Company Law Appellate Tribunal in the case of Palogix Infrastructure Private Limited VS ICICI Bank Limited (Company Appeal (AT) No. 30 of 2017), the Hon'ble NCLAT in this case held that:

“38. This apart, if an officer, such as senior Manager of a Bank has been authorised to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan, in such case the 'Corporate Debtor' cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of debt.

39. If a plea is taken by the authorised officer that he was authorised to sanction loan and had done so, the application under section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the 'Financial Creditor' in favour of such officer designate.”



It is important to point out that the abovementioned defence is the sheet anchor of the argument of the Corporate Debtor. However, the same cannot be of any assistance to the Corporate

Debtor since this issue has already been settled by the NCLAT and the officers who have filed this petition are fully empowered to do so. Furthermore, the petitioner has already filed a Power of Attorney in the name of Mr. Rajender Kumar, Chief Manager of Andheri Large Corporate Bank.

19. The requisite conditions for admission of a Section 7 petition are found to be fulfilled inhere. There is debt and default on the part of the Corporate Debtor which they themselves have not denied.

20. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of a petition under section 7 of the I&B Code. Therefore, the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- (I) (a) 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;
- (b) transferring, encumbering, alienating or disposing of by the Corporate Debtor 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 Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the 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 26.11.2019 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.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints, Debashis Nanda and having Registration Number: IBBI/IPA-003/IP-N00040/2017-2018/10316 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

21. Accordingly, this Petition is admitted.

22. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
V. Nallasenapathy
Member (Technical)

Sd/-
Bhaskara Pantula Mohan
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 06/12/2019


Assistant Registrar
National Company Law Tribunal Mumbai Bench