

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

CP (IB) - 2640/I&B/MB/2019
Under Section 7 of the I&B Code, 2016

In the matter of

Rattan India Finance Pvt. Ltd.
5th Floor, Tower-B, Worldmark 1, Aerocity,
New Delhi- 110 037

.... Petitioner

Vs.

M/s Cox & Kings Ltd.
1st Floor, Turner Morrison Building, 16
Bank Street, Mumbai-400 023

....Corporate Debtor

Order delivered on: 22.10.2019

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)
Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Shyam Kapadia, Vinod Kothari, Priyanka Shah,
Reshmi Nair, Advocates

For the Corporate Debtor:, Kazi Khalid, Advocate i/b C. K. Legal

Per: Shri Shyam Babu Gautam, Member (T)

ORDER

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I&B) Code, 2016 by Rattan India Finance Pvt. Limited (hereinafter called the 'Petitioner') seeking the Corporate Insolvency Resolution Process of M/s Cox & Kings Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed breach by making default in repayment of the loan agreement and credit facilities entered into both the parties.

2. The Petitioner is a finance company incorporated on 27/07/1995 bearing Company Identification Number U65100DL1995PTC071198 and has filed this petition through its authorised person named Mr. Krishna Bubna.

3. The Corporate Debtor is a company incorporated on 24/05/1980 bearing CIN U74999MH1980PLC022661, having

Authorised Capital of Rs. 1,10,00,00,000/- and a Paid-Up Share Capital of Rs. 88,28,24,450/-.

4. The counsel for the petitioner submits that for the purpose of augmenting the resources and for general corporate purpose, the Corporate Debtor in the month of May, 2019 approached the petitioner to avail loan facility of amount Rs. 30 Crores and Rs. 40 Crores by executing two loan agreements dated 24/05/2019 and 26/06/2019 respectively, totalling to Rs.70 Crores. Accordingly, an amount of Rs. 20,00,00,000/- (Rupees Twenty Crores Only) was disbursed to the Corporate Debtor by the Petitioner vide loan agreement dated 24/05/2019. Another Loan Agreement for the amount of Rs. 40,00,00,000/- dated 26/06/2019 was also entered into between the parties and an amount of Rs.10,00,00,000/- (Rupees Ten Crores) was disbursed by the petitioner. An interest @13.5% p.a. was also agreed upon the principal amount which is reflected in Article 1.1.40 of Loan Agreement. The maturity date of the loan amount was 31/08/2019 as is mentioned under Article 1.1.47 of the said Loan Agreement.

5. The counsel for the petitioner further mentioned that the Corporate Debtor executed a Demand Promissory Note dated 24/05/2019 in favour of the petitioner promising to repay on demand a sum of Rs. 30,00,00,000/- together with interest on the said amount at the rate of 13.5% per annum payable towards repayment of the term loan facility granted in accordance with Loan Agreement dated 24/05/2019.

6. There were Deeds of Guarantee entered into by the Corporate Debtor in favour of the petitioner which are made available as Annexure G of the copy of petition.

7. The petitioner also mentioned that the Corporate Debtor committed the first default by failing to pay the principal amount under Facility II of Rs. 2,50,00,000/- which was due and payable on 28/06/2019 and further the failed to pay the interest amount of Rs. 17,75,343/- which was due and payable under the Loan Agreement.

8. On account of the default committed by the Corporate Debtor, the petitioner recalled the Loan Facilities and requested the

Corporate Debtor to pay the entire outstanding amount under both the loan facility agreements, together with all other monies due and payable amounting to Rs. 30,21,45,206/- [Rs. 20,17,75,343 (1st Loan Agreement) and Rs. 10,03,69,863/- (2nd Loan Agreement)] being the total outstanding amount of the loan together with interest and other dues as on that date, together with further interest, until realization in full, under the Loan Agreement vide a letter dated 01/07/2019 which is annexed at Annexure B. Despite the loan recall notice, the Corporate Debtor did not make the payment.

9. The counsel for the petitioner mentioned that on 03/07/2019, despite having the loan recall notice, the Corporate Debtor did not make the payment and hence preferred this petition.

10. The counsel for the petitioner further mentioned that the contentions made by the Corporate Debtor in its reply are neither supported by any document nor is maintainable under law and therefore, the same is liable to be rejected.

11. The Corporate Debtor stated in his reply the R.B.I. Circular dated 07/06/2019 bearing reference RBI/2018-19/203 and DBR.No.BP.BC.45/21.04.048/2018-19 with heading "Prudential Framework for Resolution of Stressed Assets" wherein it is mentioned that "*The ICA (Inter-Creditor Agreement) shall provide that any decision agreed by lenders representing 75% by value of total outstanding credit facilities (fund based as well non fund based) and 60% of lenders by number shall be binding upon all lender*". It is further mentioned in the reply filed by the Corporate Debtor that they have signed the ICA with the State Bank of India as the Lead Banker. The Corporate Debtor mentioned that he may produce the copy of the ICA if the same is provided by the Lead Banker to the Corporate Debtor. Reliance is placed on the minutes of the meeting dated 15/07/2019 and 23/07/2019 between majority of lenders and representatives of the Corporate Debtor.

12. The Corporate Debtor stated that the ICA has been signed by 70% of the lenders of the Corporate Debtor who together hold over 90% value of the total debt of the Corporate Debtor and that the Corporate Debtor is pursuing with the other Lenders in respect of they too signing the ICA. He mentioned that the execution of the ICA is

further evident and highlighted from the email dated 19/08/2019 addressed by the Lead Banker to Corporate Debtor.

13. The Corporate Debtor further stated that in accordance with the disclosure requirements of Securities Exchange Board of India (S.E.B.I.) the Corporate Debtor has on 12/08/2019 intimated the Bombay Stock Exchange Ltd. and the National Stock Exchange of India Ltd. about the signing of the ICA and that the Corporate Debtor has achieved stand still in respect of over 90% value of its total debts held by over 70% of its lenders for a period of 180 days as per the ICA.

14. But later, on 14/10/2019 i.e. on the last date of hearing, the Corporate Debtor was willing to settle the matter amicably, but the petitioner denied this request made by the Corporate Debtor and in consequence, the corporate debtor accepted the liability as well as default. Therefore, this court is pleased to pass the following order:

ORDER

15. 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 an express Loan Agreement entered between both the parties which is also admitted by both of them. A total amount of Rs. 30,00,00,000/- was disbursed by the petitioner in favour of the corporate debtor vide two Loan Agreements dated 24/05/2019 and 26/06/2019. Therefore, both the parties shared a relationship of creditor and debtor.

16. Further, the amount payable to the financial creditor amounts to Rs. 30,24,98,023/- including the interest at the rate of 13.5% p.a. as was agreed by both the parties and payable by the corporate debtor.

17. After perusing all the documents on record and hearing both the parties, we have come to the conclusion that there is a default on the part of the corporate debtor in making the payment towards the liability to the Petitioner. Despite repeated requests and

reminders in form of notices, the Corporate Debtor failed to repay the dues.

18. The Corporate Debtor in his reply had placed on record their communication with the BSE Ltd. and the National Stock Exchange of India Ltd. and relied upon the RBI Circulation dated 07/06/2019. But later, on the date of final hearing i.e. on 14/10/2019, the counsel appearing on behalf of the corporate debtor has himself admitted the liability as well as default.

19. Also, it is to be noted that this petition fulfils all the requisite conditions to admit a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 and therefore, the petition deserves to be admitted.

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 22.10.2019 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, Mr. Alok Kumar Agarwal, having office at 605, Suncity Business Tower, Golf Course Toad, Sector 54, Gurugram, Haryana – 122 002 and having Registration No. IBBI/IPA-001/IP-P00059/2017-18/10137 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/-
Shyam Babu Gautam
Member (Technical)

Sd/-
Bhaskara Pantula Mohan
Member (Judicial)