

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

C.P.(IB)556/MB/2021

Under Section 7 of the IBC, 2016

In the matter of

Union Bank of India

Stressed Asset Management Branch,
Bharat House, Ground Floor, 104, B. S.
Marg, Fort, Mumbai- 400023

... Petitioner

v/s.

Pandhe Infracons Private Limited

234, Praneet Jayant Palkar Marg, Opp
Poddar Hospital, Worli, Mumbai-
400030

... Corporate Debtor

Order Pronounced on: 06.09.2021

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioners: Adv. Nausher Kohli, Adv. Khushboo Agarwal, Adv. Akhil
Sarathyi

For the Corporate Debtor: Adv. Smita Durve, i/b Adv. Arshil Shah

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This Company Petition is filed by Union Bank of India (hereinafter called "Petitioner) seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Pandhe Infracons Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default to the extent of ₹300,78,65,961/- as provided under Section 7 of the

Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Submissions made by the Petitioner:

2. The Petition reveals that the Petitioner, through its Goregaon (east) Branch, sanctioned the following loan facilities to the Corporate Debtor from 2009 onwards which were renewed from time to time until the year 2016 as follows:
 - Cash Credit: ₹80,00,00,000/-
 - Bank Guarantee/ Invoked Bank Guarantee: ₹137,50,00,000/-
 - Devolved Letter of Credits: ₹30,00,00,000/-
3. The Counsel for the Petitioner further submits that on 31.03.2017, the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) in the books of the Petitioner. Subsequent to the loan account of the Corporate Debtor being classified as NPA by the Petitioner and default in paying the outstanding financial debt of ₹247.50 crores by the corporate Debtor, the Petitioner filed a Petition under Section 7 of the Code being CP(IB)2846/MB/2018 against the Corporate Debtor before NCLT, Mumbai which was admitted by an Order dated 26.06.2019.
4. Subsequent to the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor, the Managing Director of the Corporate Debtor, by way of a Letter of Proposal dated 29.07.2019 and undertaking dated 29.07.2019, undertook to settle the financial debt outstanding to the Petitioner by releasing the mortgaged securities valued at ₹215.89 crores against the total payment of ₹241.73 crores. The said letter of Proposal dated 29.07.2019 is extracted below:

WITHOUT PREJUDICE

29 July 2019

To,
Chief Manager,
Union Bank of India,
Goregoan (East) Branch
Mumbai

Sub- Sale of collateral security properties towards repayment of debt.

Ref- Our earlier letters dated 11th October 2018 & 5th November 2018 and our personal discussion with you.

Dear Sir,

With reference to our personal meeting with the officials of the bank now we are proposing to repay the debt of the bank by selling the collateral properties offered to the bank for your kind perusal and decision.

As mentioned in the various previous correspondences, the core EPC business has come to a standstill. In this tough situation, the company has decided to settle the bank's dues i.e. total principal outstanding amount of Rs. 215.00 crore along with an interest at 1-year MCLR on outstanding amount, through the sale of below properties charged with bank and the shortfall of interest, if any, will be paid by the Company:

- A. **Commercial Premises situated at Solapur-** These premises have a Hotel and few commercial shops. We have identified a buyer for the hotel and the same has been intimated to the bank. The buyer has already paid Rs 1 crore as advance amount to the bank. Balance amount shall be paid once NOC for release of property permitted by the bank. The other commercial shops are also of good commercial value and the same can be sold in a period of next 12 months. Quarterly repayment from the sale proceeds of Hotel & Commercial Shops are proposed as below:

Year	Already paid	Q1	Q2	Q3	Q4	Total
1 st	1.00	27.13	1.52	1.61	3.31	34.57
2 nd		1.16				1.16



IO 9001-2008

Corporate Office
Kakad Chambers Annexe, 132, Dr. A. B. Road, Worli, Mumbai - 400 018.
Tel: (022) 61483200 Fax: (022) 61483201

5. Thereafter, the Petitioner accepted and approved the proposal of the Corporate Debtor by way of a Letter dated 24.09.2019 provided the Corporate Debtor to pay an amount of ₹241.73 crores as per the schedule and terms and conditions mentioned therein. The said Letter of Acceptance/ One Time Settlement (OTS) dated 24.09.2019 is extracted below:

REF No. UBI/ADV/GOR (E)/019

Date: 24.09.2019

To,

M/s Pandhe Infracons Pvt Ltd
157/C, Railway Lines,
Solapur, Maharashtra
413001.

Sub: Proposal for release of collateral securities

Dear Sir,

We wish to inform you that the competent authority has approved your proposal for release of collateral securities valued at Rs 215.89 crores against total payment of Rs 241.73 crores within a period of 2 years on following terms and conditions:

1. The company has to pay amount of Rs 241.73 crores as below mentioned schedule:
 - Upfront amount of Rs 2.00 crore to be deposited immediately after receipt of the letter.
 - Schedule of payment as under:

Year	Quarter	Commercial premises at Solapur	Commercial & residential land at Vasant Vihar Solapur	Commercial & residential land at Kumbhari, Solapur	Total
1 st Year	Q1	2.52	3.00	2.75	8.27
	Q2	27.13	5.00	2.75	34.88
	Q3	1.61	5.00	2.75	9.86
	Q4	3.31	8.00	2.75	14.06
2 nd Year	Q1	1.16	15.00	18.00	34.16
	Q2	--	20.00	20.00	40.00
	Q3	--	25.00	23.00	48.00
	Q4	--	27.00	26.00	53.00
Total		35.73	108.00	98.00	241.73

2. In case of invocation of Bank Guarantees of Rs 6.98 crores, borrower to deposit 100% amount of the invoked BGs.
3. Bank will issue a conditional NOC subject to receipt of entire amount of consideration before release of security.
4. Security charge/ charge over title deeds to be released only after receiving of proposed amount against the respective security.
5. Amount offered towards value of securities should be equal to fair market value and should be directly deposited to borrower loan account maintained with our Goregaon East branch by prospective/ borrower. Any shortfall i.e. amount proposed against release of each securities less sale amount will be brought by the borrower upfront, then only conditional NOC for release of properties should be given to the borrower.
6. Bank reserves all the rights to recover remaining outstanding with all applicable recovery norms.
7. Any default in depositing the amount within the stipulated time would result in automatic cancellation of conditional NOC so issued.
8. No Personal Guarantee/ Corporate Guarantee will be released. Personal Guarantee/ Corporate Guarantee will continue for the remaining debt.
9. Company to submit undertaking to deposit arbitration claim (if settled in favor of the company) directly in the account maintained with our branch.

A duplicate copy of this letter returned to us duly signed in token of having accepted the terms and conditions.

6. The Counsel for the Petitioner further submits that thereafter, the Corporate Debtor, by way of its Letter dated 27.09.2019, acknowledged the acceptance of proposal approved by the Petitioner and requested the Petitioner to issue a Conditional NOC for sale of an immovable property of the Corporate Debtor which was issued by the Petitioner on 27.09.2019. Additionally, the Petitioner also issued another Conditional NOC dated 05.12.2019 in respect of other collateral securities to be released against the outstanding of 241.73 crores payable by the Corporate Debtor to the Petitioner.
7. Pursuant to the above arrangement, the Petitioner filed an Application being MA/3164/2019 under Section 12A of the Code in admitted Petition CP(IB)/2846/(MB)/2018 with a view to withdraw the admitted Petition in NCLT, Mumbai. This Application under Section 12A of the Code was allowed by way of an Order dated 30.09.2019.
8. The Counsel for the Petitioner further submits that the Corporate Debtor, thereafter, made certain payments to the tune of ₹3,39,80,579/-, out of which the last payment was made on 23.09.2020 and thereafter, no payments were made towards the outstanding financial debt. Hence, the Corporate Debtor failed to adhere to the schedule of repayment and terms and conditions stipulated in Petitioner's acceptance of proposal Letter dated 24.09.2019 which the Corporate Debtor accepted by its Letter dated 27.09.2019. Thus, the Corporate Debtor defaulted again in paying the outstanding financial debt to the Petitioner. Thereafter, the Petitioner issued notices dated 08.10.2020 and 02.02.2021 calling upon the Corporate Debtor to deposit the amounts as per the payment schedule mentioned in Petitioner's OTS as the same was not being complied with. The last Notice dated 02.02.2021 is extracted below:

Ref: SAMV/PIPL/ *Sgy* /2020-21

02.02.2021

To
M/s Pandhe Infracons Pvt Ltd
157/C, Railway Lines,
Solapur, Maharashtra- 413001

Subject: Your OTS sanctioned dated 21.09.2019.

Dear Sir,

The competent authority has sanctioned release of property proposal and the same is conveyed to you vide our letter no UBI/ADV/GOR (E)/ 019 dated 24.09.2019 and you are accepted the same on 27.09.2019. As per the terms and conditions of sanction, the company has to pay Rs 8.27 crores in the 1st quarter of sanction i.e. 01.10.2019 to 31.12.2019, Rs 34.88 crores for the period 01.01.2020 to 31.03.2020 and so on, however till date we have received only Rs 3.39 crores.

Please note that as per terms and conditions of the sanction letter, any default in depositing the amount within stipulated time would result in automatic cancellation of conditional NOC so issued.

You are advised to deposit the amount as per mentioned schedules immediately and give us suitable reply within 15 days otherwise there are chances that OTS sanctioned likely to be cancelled.

Please give your reply immediately.


Deputy General Manager

9. As the Corporate Debtor herein failed to meet the payment schedule in the OTS and failed to make payment of first installment of Rs. 8.27 crores which was due and payable in the 1st quarter of sanction, i.e., period of default (1.10.2019 to 31.12.2019) and also failed to make the subsequent quarterly installments as per payment schedule, and accordingly the terms and conditions of the OTS were breached, and the OTS failed. Hence, the Petitioner filed the present Petition.
10. The Counsel for the Petitioner submitted the following documents evidencing the default committed by the Corporate Debtor:

- a. Sanction/Renewal/Enhancement of Limit letter dated 24.02.2016 bearing number UBI/ADV/GOR(E)/2016 issued by the Financial Creditor in favour of Corporate Debtor Company
- b. Simple Mortgage Deed dated 29.03.2016
- c. Demand Promissory Note dated 21.03.2016
- d. Letter of Continuity dated 21.03.2016
- e. Omnibus- Counter Indemnity for Letter of Guarantee Limit dated 21.03.2016
- f. Letter of Undertaking not to alienate hypothecated goods dated 21.03.2016
- g. Supplementary Agreement to Hypothecation Agreement dated 21.03.2016
- h. Letter of Guarantee dated 21.03.2016

Submissions made by the Corporate Debtor:

11. The Counsel for the Corporate Debtor contended that the Petitioner issued two Conditional NOCs dated 27.09.2019 and 05.12.2019 for sale of immovable property and other collateral securities of the Corporate Debtor. However, the sale of the immovable property failed to commence and effectuate on account of economic conditions prevailing on account of the COVID-19 pandemic. The Corporate Debtor was willing to conduct a distressed sale, but no potential buyers could be found. In the due course of the proceedings, a few buyers have indicated interest in purchasing the said immovable property and therefore, the Corporate Debtor requested some additional time to commence, conduct and effectuate the sale so as to clear the debt and liability.

Findings:

12. The Bench notes that the present Petition is an undoubtedly clear case of the debt and default. The Corporate Debtor has once again defaulted in

paying and clearing its outstanding dues which is successfully established by the Petitioner once again. Earlier, the CIRP against the same present Corporate Debtor was initiated by the Order dated 26.06.2019 of NCLT, Mumbai in CP(IB)2846/MB/2018 which was later withdrawn by way of an Order dated 30.09.2019 on the basis of amicable settlement between the parties. The parties came to settled the matter amicably as per OTS dated 24.09.2019. However, the Corporate Debtor breached the terms and conditions of OTS dated 24.09.2019 and defaulted in the payment of the outstanding amount again.

13. This Bench, on perusal of the Bank Statements filed by the Petitioner, found that the Corporate Debtor was unable to abide by the terms and conditions of OTS subsequent to its acknowledgment of OTS on 27.09.2019. The Corporate Debtor made payment of Rs. 3.39 crores (approx.) only out of the total outstanding of ₹300,78,65,961/-, which is also lesser than even the first quarterly installment of Rs. 8.27 crores as required to be paid by the Corporate Debtor as per the payment schedule of OTS. Even after sanctioning the Conditional NOCs for two times by the Petitioner since 2019, the Corporate Debtor did not effectuate the sale of its immovable property and other collateral security so as to enable it to pay the outstanding debt amount.
14. It is also to be noted that the Corporate Debtor in its Reply to the Petition did not deny the fact that an amount of ₹300,78,65,961/- is outstanding which is payable to the Petitioner by the Corporate Debtor. However, the Corporate Debtor asked for granting it some time for effecting the sale of its immovable property so as to clear its debt and liability for which the Bench outrageously denies as more than enough time is already been taken by the Corporate Debtor but it is of no avail.
15. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Petitioner as a major constituent

for admission of a Petition under Section 7 of the Code. Therefore, the Petition under sub-section (2) of Section 7 is taken as complete, accordingly this Bench here by 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 Securitization 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 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 maybe.

(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. Brijendra Kumar Mishra, having Registration No. IBBI/IPA-002/IP-N00109/2017-2018/10257 as an Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

16. The Petition is hereby “Admitted”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of order.
17. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)