

4

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 31.01.2020

PRIORITY CAUSE LIST – 1

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 305/BB/2019	For consideration of NCLAT Order	Sec 7 of I&B Code 2016	M/s Kotak Mahindra Bank	O P Agarwal, Advocate	M/s Arun Shelters Pvt Ltd	Venkatesh R Bhagat, Advocate

ADVOCATE FOR PETITIONER/s:


V.J. Achalanand
Adv for petitioner
9880187470

ADVOCATE FOR RESPONDENT/s:

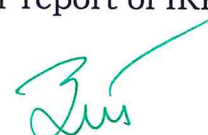

VENKATESH R BHAGAT
9448220575

ORDER

Heard Mr. V.J.Achalanand, learned Counsel for the Petitioner and Mr. Venkatesh R Bhagat, learned Counsel for the Respondent.

C.P(IB) No.305/BB/2019 is admitted by separate order.

Post the case for report of IRP on **06.03.2020**


MEMBER (T)


MEMBER (J)

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

C.P. (IB) No.305/BB/2019
U/s 7 of IBC, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of

M/s. Kotak Mahindra Bank Limited,
27 BKC, G Block, C 27,
Bandra Kurla Complex,
Bandra(East),
Mumbai- 400 051

- Petitioner/Financial Creditor/

Versus

M/s. Arun Shelters Private Limited
299, 6th Cross,
1st Main, R.T.Nagar,
Benagluru- 560 032

- Respondents/ Corporate Debtors

Date of Order: 31st January, 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri. V.J Achalanand
For the Respondent No.1 : Shri. Venkatesh R Bhagat

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P (IB)No.305 /BB/2019 is filed by M/s. Kotak Mahindra Bank Limited(hereinafter referred to as 'Petitioner/Operational Creditor) U/s 7 of the IBC, 2016, R/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate



Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Arun Shelters Private Limited, on the ground, that it has committed default for total amount of Rs.30,82,89,418.75/- (Rupees Thirty Crores Eighty Two Lakhs Eighty Nine Thousand Four Hundred And Eighteen and Seventy Five Paise Only) as on 30.06.2019.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

- (1) M/s. Kotak Mahindra Bank Limited (Petitioner/Financial Creditor) was incorporated on 21.11.1985 under the Provisions of the Banking Regulation Act, 1949 and existing under the provisions of the Companies Act, 2013 bearing the CIN: L65110MH1985PLC038137 and having its Registered Office situated at 27 BKC, G Block , C 27, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. Initially, the Corporate Debtor availed of a loan facility of INR 20,00,00,000/- from Corporation Bank Limited on 18.01.2014, and thereafter had defaulted in making repayment to the Bank. Subsequently, the debt came to be assigned in favour of the Financial Creditor (Kotak Mahindra Bank Ltd. vide Assignment Agreement dated 22.05.2018.
- (2) M/s. Arun Shelters Private Limited (Respondent/Corporate Debtor) was incorporated on 04.01.2005 having CIN: U07010KA2005PTC035372 and having its registered Office situated at 299, 6th Cross, 1st Main R.T.Nagar, Bengaluru – 560 032. Its Authorised Share Capital of Rs.2,00,00,000/- and Paid-up Share Capital of Rs.2,00,00,000/-
- (3) At the request of the Corporate Debtor, the Financial Creditor granted concession by way of additional time for re-payment of the loan amount vide Settlement Agreement dated 22.05.2018. The Settlement Agreement (to which the Corporate Debtor is a signatory) set out various terms and conditions of the facility



wherein the Corporate Debtor agreed to re-pay a sum of INR 23,50,00,000/- along with interest calculated at 25% compounded monthly in accordance with Clause 11 of the Settlement Letter, amounting to INR 37,51,20,000/-. Schedule III of the Settlement Letter accordingly set out a re-payment schedule for the Corporate Debtor according to which monthly instalments were to begin from 31 December 2018, and the last instalment was to be paid on 31 December 2021. As per Clause 27.2 of the Settlement Letter, the Corporate Debtor is liable to pay an additional penal interest at the rate of 3% per month compounded monthly in the event that the Corporate Debtor delays in payment of any single instalment. In addition to the Settlement Letter, the Corporate Debtor, on 22.05.2018 executed a Memorandum of Entry, Deed of Hypothecation, Declaration-cum-Indemnity in favour of the Financial Creditor in order to serve the debt amount of INR 23,50,00,000/-It has also admitted the debt and its inability to repay the same to the Financial Creditor by way of the Undertaking and letter dated 22.05.2018.

- (4) The Corporate Debtor failed to make monthly instalments to the Financial Creditor on 31.12.2018, 31.02.2019 and 28.02.2019. The Corporate Debtor's failure to make payment of any three instalments of the debt qualifies as an 'Event of Default' in terms of Clause 38 of the Settlement Agreement. The Financial Creditor, therefore, issued a Notice of Default dated 08.03.2019 by calling upon the Corporate Debtor to re-pay the entire debt amount along with interest and penal interest. However, the Corporate Debtor has neither made part-payments nor has responded to the Notice of Default, and thus committed continues as 31.03.2019, 30.04.2019, 31.05.2019, 30.06.2019, 31.07.2019 & 31.08.2019.



- (5) The Corporate Debtor is liable to pay a total amount of INR 30,82,89,418.75/- as on 31.07.2019 being INR 23,50,00,000/- due toward principal, INR 6,99,77,107.85 due towards interest calculated at the rate of 25% compounded monthly in accordance with Clause 11 of the Settlement Letter and INR 33,12,310.90 due towards penal interest calculated at the rate of 3% per month, compounded monthly in accordance with Clause 27 of the Settlement Letter. It is asserted that the Corporate Debtor is insolvent due to its inability to repay its debt.
- (6) Due to defaults committed by the Respondent, the Petitioner has initiated action under SARFAESI, 2002 and thus issued possession Notices even dated 10th December, 2019 in respect of properties mortgaged by Personal Guarantors and Auction notice dated 26th December, 2019 in respect of mortgaged properties. Accordingly, E-Auction is scheduled to be held on 25th February, 2020. However, independent or subjection to E-auction, the instant Petition is still maintainable under the provisions of Code.
3. Heard Shri V. Achalanand, learned Counsel for the Petitioner, and Shri Venkatesh R Bhagat, learned Counsel for the Respondent. We have carefully perused the pleadings of both Parties, and the extant provisions of the Code, the Rules made there under, and the law on the issue.
4. Shri V. Achalanand, the Learned Counsel for the Petitioner, while reiterating various averments made in the Company Petition, as briefly stated supra, has further stated that admittedly debt and default in question is not in dispute, and the instant Petition is filed strictly in accordance with law and eligible Resolution Professional, namely, Mr. Pankaj Srivastava having Registration No. IBBI/IPA-001/IP-P00245/2017-18/10474, is suggested as IRP, who has filed



his written Communication in Form 2, dated 29th July, 2019 declaring that he is qualified Resolution Professional in all respects and willing to accept the assignment if Adjudicating Authority nominate him to the CIRP initiated in respect of Corporate Debtor. The Adjudicating Authority has also given ample opportunities to the Respondent to settle the issue. However till now, there is no concrete settlement proposal came from the Respondent, and thus he urged the Adjudicating Authority to admit the case by initiating CIRP, appointing IRP etc.

5. Shri. Venkatesh R. Bhagat, learned Counsel for the Respondent, though not filed any statement of objection till today, in spite of several adjournments, has submitted that they are still trying to settle the issue with Respondent. He has also place a Memo dated 30.01.2020 by inter alia stating as follows:

(1) In pursuance to the discussion held with the Financial Creditor, Corporate Debtor herein handing over the Demand Draft for a sum of Rs.2,00,00,000/- favour of Financial Creditor as under:-

a.) A sum of Rs.75,00,000/- (Rupees Seventy Five Lakh Only) drawn on Axis Bank Ltd favour of Kotak Mahindra Bank Ltd bearing Demand Draft No.036071 date 13.01.2020.

b.) A sum of Rs.25,00,000/- (Rupees Seventy Five Lakh Only) drawn on Axis Bank Ltd favour of Kotak Mahindra Bank Ltd bearing Demand Draft No.036079 date 14.01.2020.

c.) A sum of Rs.50,00,000/- (Rupees Seventy Five Lakh Only) drawn on Axis Bank Ltd favour of Kotak Mahindra Bank Ltd bearing Demand Draft No.036084 date 16.01.2020.

The same was agreed to be accepted before the Hon'ble Tribunal.

- (2) Apart from making the above payment, the Corporate debtor had also agreed to be making payment of Rs.5,00,00,000/- at the end of February, 2020.

- (3) Thereafter, within months, the Corporate Debtor has agreed to repay the entire dues. It is also assured by the Financial Creditor not to initiate any action against the Corporate Debtor during this period. Hence, this Memo.
6. In pursuance to the submissions made on behalf of Respondent, the Bench by an order dated 30.01.2020 directed the Bank to file necessary affidavit as to whether they are going to consider the proposal of settlement as stated by the Respondent. Accordingly, Mr. Harish Kumar Acharya, Vice President of the Petitioner Bank, has filed an Affidavit dated 30.01.2020 by inter alia stating that aggrieved by delay in deciding the matter by the Adjudicating Authority, they have filed Company Appeal (AT)(Ins) No. 138 of 2020 before the Hon'ble NCLAT and it was disposed of by an order dated 24.01.2020 by observing the Adjudicating Authority would take decision as soon as possible; subsequently, the Promoter of Corporate Debtor has met the officials Financial Creditor and expressed willingness to settle the matter amicably. Howsoever, the CD did not submit any concrete proposal in writing to them till date and thus there is no proposal of settlement pending with them. Therefore, they have the Adjudicating Authority to decide the matter on merits.
7. The record shows that the instant Company Petition was filed as early as on 08.08.2019, and it was listed before Bench on various dates viz., 24.09.2019, 22.10.2019, 11.11.2019, 21.11.2019, 12.12.2019, 16.01.2020, 30.01.2020 & 31.01.2020, and adjourned the matter mainly at the request of Respondent in order to explore for settlement of the issue, as material facts are not in dispute. In the light of Hon'ble NCLAT observation as stated supra, further cannot be granted to the Respondent as earnestly urged by its learned Counsel.



8. As stated supra, the Debt and Default in question, are admittedly not in dispute and the Respondent has also not opposed the Petition by way of filing statement of objection. The instant Petition is filed strictly in accordance with the extant provisions of the Code, and also suggested a qualified Resolution Professional namely Shri Pankaj Srivastava, with Registration No.IBBI/IPA-001/IP-P00245/2017-18/10474, who has filed his written Communication as per provisions of Code. Therefore, we are of the prima facie opinion that the proposed Resolution Professional is provisionally eligible to be appointed as IRP in this case. And the instant case is fit one to be admitted by initiating CIRP as prayed for, however, subject to SARFAESI proceedings as stated supra. As per Law, IRP/RP can file appropriate Application for withdrawal of the instant proceedings, if the issue in question is settled, while making the business of Corporate Debtor as a going concern.
9. In view of the above facts and circumstances of the case, by exercising powers conferred on this Adjudicating Authority, U/s 7(5)(a) and other extant provisions of the IBC, 2016, we hereby admitted C.P.(IB)No.305/BB/2019 by initiating Corporate Insolvency Resolution Process (CIRP) in respect **M/s. Arun Shelters Private Limited**, the Respondent/Corporate Debtor, with the following consequential directions:
- 1) **Shri Pankaj Srivastava**, bearing **Registration No. IBBI/IPA-001/IP-P00245/2017-18/10474**, who is qualified Resolution Professional, is hereby appointed as Interim Resolution Professional, in respect of the Respondent/ Corporate Debtor namely M/s. Arun Shelters Private Limited to carry out the CIRP as mentioned under the Insolvency and Bankruptcy Code, 2016 and various rules issued by IBBI from time to time;



- 2) The following moratorium is declared prohibiting all of the following, namely:
- a) the institution of suits or continuation of pending suits or proceedings against the Respondent/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;
 - 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;
 - e) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
 - f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process;
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016, and all extant rules including fees rules as framed by IBBI from time to time. The IRP is hereby directed to file



progress reports to the Adjudicating Authority from time to time.

- 4) The Board of Directors and all the staff of Respondent/ Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 5) Post the case for report of IRP on **06.03.2020.**

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Brunda