

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) -2698/I&BP/MB/2018

Under Section 7 of the I&B Code,  
2016

In the matter of

IVL Finance Limited,  
M-62 & 63, First Floor, Connaught  
Place, New Delhi-110001

.... Petitioner

Vs.

Living Waters Hospitality Private  
Limited,  
Sn. 207/1, Landmark Garden, Pl-78,  
Kalyaninagar, Yerwada, Pune,  
Maharashtra-411006

... Respondent

Order delivered on: 14.12.2018

**Coram:**

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

For the Petitioner: Mr. Manish Gala, Advocate i/b Law Square.

For the Respondent: Mr. Subhash Menon, Advocate.

*Per: V. Nallasenapathy, Member (T)*

**ORDER**

1. IVL Finance Limited (hereinafter called the 'Petitioner') has sought the Corporate Insolvency Resolution Process of Living Waters Hospitality Private Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 05.03.2018, 05.04.2018 and 05.05.2018 in making payment of equated monthly instalments and hence the Petitioner recalled the entire balance due of Rs. 25,74,876/- which the Petitioner failed to repay, under Section 7 of Insolvency and

Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petition reveals that the Corporate Debtor sought a business loan of Rs. 25,25,000/- in September 2017 and the Petitioner sanctioned the said amount as loan on 12.09.2017. The Petitioner enclosed the Loan agreement dated 31.08.2017 executed by the Corporate Debtor. The Petitioner enclosed the Statement of Account of the Corporate Debtor which shows that the cheque issued by the Corporate Debtor for Rs. 92,557/- on 05.03.2018 towards EMI was dishonoured. Further, the calculation of the amount due on the foreclosure of the loan was also given which shows that Corporate Debtor is liable to pay a sum of Rs. 25,74,876/-.
3. Clause 12.2 of the Loan Agreement dated 31.08.2017 provides that on the occurrence of an event of default the lender may with or without any notice cancel/recall the loan where upon the borrower's dues shall become immediately repayable/payable. The Petitioner on 17.04.2018 issued a notice u/s 25 of the Payment and Settlement Systems Act, 2007 to the Corporate Debtor calling upon to pay a sum of Rs. 92,557/- within 15 days of the receipt of the notice failing which proceedings will be taken against the Corporate Debtor under the said Act. Further, the Petitioner on 24.04.2018 issued a notice to the Corporate Debtor calling upon him to clear the entire outstanding of Rs. 25,50,411/- within 7 days failing which proceedings will be taken against the Corporate Debtor under the Code. Further, on 27.04.2018 an advocate notice was issued to the Corporate Debtor recalling the entire dues. The above facts clearly establishes the debt and default.
4. The Corporate Debtor filed a reply to the Petition wherein it is contended that the Corporate Debtor received only a sum of Rs. 23,97,143/- on

06.09.2017 and not the amount of Rs. 25,25,000/- on 31.08.2017 as specified in the Petition and hence the application is defective and incomplete. In support of this contention the Corporate Debtor relied on the decision of the NCLT, Allahabad Bench in "Surendra Trading Company vs. Juggilal Kamplatt Jute Mills Company Ltd." wherein the Petition u/s 9 of the Code was dismissed since the defects in the Petition was not rectified within a period of 7 days holding that the rectification of defects in the Petition within a period of 7 days is mandatory, in accordance with the order passed by the Hon'ble NCLAT. However the Hon'ble Supreme Court subsequently held that the period of 7 days given for rectification of defects is only directory and not mandatory. In view of this, the judgement quoted by the Corporate Debtor is of no avail. Further, the Petitioner mentioned that the Loan Agreement is dated 31.08.2017 and the loan amount was Rs. 25,25,000/- and the same is in accordance with the Loan Agreement. The statement of account attached with the Petition shows that the date of disbursement was 06.09.2017 and the amount sanctioned was Rs. 25,25,000/- and after adjustment of Rs. 59,590/- as processing fee, Rs. 38,117/- as a short payable, Rs. 5,150/- as stamp duty and Rs. 25,000/- as paid by cheque no. 000188, a sum of Rs. 23,97,143/- was paid to the Corporate Debtor vide cheque no. 000187. Hence the claim is in order and there is no defect in the Petition and question of rectification does not arise.

5. The next contention of the Corporate Debtor is that the Petitioner is not entitled to charge 5% as foreclosure charges since the agreement provides for foreclosure charges only if the borrower makes any part or full pre-payment. Schedule 1 to the Loan Agreement at Sr. No. 10 provides for pre-payment/foreclosure charges, which states that *"In case any prepayment/foreclosure of the Loan or any part thereof is made by the Borrower(s) at any time during the Tenure of the Loan, then the Borrower(s) shall be liable to forthwith pay to the Lender a prepayment/foreclosure charge/penalty of 5% (five percent) of the*

*amount prepaid/foreclosed. All such prepayment/foreclosure shall be made only after giving at least 15 (fifteen) days prior notice in writing by the Borrower(s) to the Lender."* In common parlance, foreclosure is a legal process in which a lender attempts to recover the balance of a loan from a borrower who has stopped making payments to the lender by forcing the sale of the asset used as the collateral for the loan. In this case due to the failure on the part of the Corporate Debtor to pay the EMI's the Petitioner foreclosed the loan and hence the Petitioner is entitled to charge foreclosure charge as agreed. In view of this, the Corporate Debtor can put forth this argument before the Interim Resolution Professional at the time of admission of the claim, however the initiation of Corporate Insolvency Resolution Process cannot be stalled on this ground.

6. The Corporate Debtor relying on the decision in "*Urban Infrastructure Trustee Ltd. vs. Neelkanth Township and Construction Pvt. Ltd.*" wherein it was observed that amount claimed and the default amount cannot be two different amounts and hence the Petition is not maintainable. The facts of the above cited case are different from the case on hand wherein on default of one EMI the Petitioner is entitled to recall the entire loan as provided in the Loan Agreement and accordingly the Petitioner recalled the entire loan. Hence this objection also fails.
7. The Corporate Debtor quoting para. 43 of the judgement of the Hon'ble Supreme Court dated 23.10.2018 in the case of "*Transmission Corporation of Andhra Pradesh Ltd. vs. Equipment Conductors and Cables Ltd.*", Civil Appeal No. 9597 of 2018 to say that a company being unable to pay its debts is no longer a ground for winding up of a company. The Corporate Debtor is under a misconception that Insolvency and Bankruptcy proceedings are proceedings for winding up of the company. The proceedings under the Code are for resolution of the Corporate Debtor and not for winding up. Hence, this objection also fails.

8. This Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring Moratorium with the directions as mentioned below:

- (a) That this 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) 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.
- (c) 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.
- (d) That the order of moratorium shall have effect from 14.12.2018 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.

- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
  - (f) That this Bench hereby appoints Mr. Pawan Kumar Agrawal, L2/37A, Ground Floor, Ekta Square, DDA, Kalkaji, New Delhi - 110019 having Registration No. IBBI/IPA-001/IP-N00852/2017-2018/11435, email id: Pawan1007@gmail.com as an interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.
9. Accordingly, this Petition is admitted.
10. The Registry is hereby directed to communicate this order to both the parties and also to the Interim Resolution Professional.

SD/-  
V. Nallasenapathy  
Member (Technical)

SD/-  
Bhaskara Pantula Mohan  
Member (Judicial)