

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) -31/I&BP/MB/2018

Under Section 7 of the I&B Code,  
2016

In the matter of

Oriental Bank of Commerce,  
Corporate Office – Plot No. 5,  
Sector 32, Institutional Area,  
Gurgaon - 122001

.... Petitioner

Vs.

Hotel Reeva Private Limited,  
302, Manju Castle Church Road,  
Behind St. Xaviers Schools, Vile  
Parle (W), Mumbai - 400056

.... Respondent

Order delivered on: 31.10.2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Adv. Anup Khaitan a/w Umar Farooque Azam i/b  
Anup Khaitan & Co.,  
Bank representatives – Mr. C. Ramchandra Rao -  
Chief Manager, Legal, Mr. Ranbir Singh Sahrawat  
– Assistant General Manager

For the Respondent: Adv. Shilpan S. Gaonkar

Per: V. Nallasenapathy, Member (T)

ORDER

1. Oriental Bank of Commerce (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Hotel Reeva Private Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 01.10.2014 in repayment of facilities granted to the Corporate Debtor to the extent of 32,95,42,170/-, 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 Petitioner enclosed sanction letter dated 03.06.2013 which shows that following facilities were sanctioned to the Corporate Debtor;

Sr. No.	Nature of Facility	Amount
1	Term Loan I	63,00,000.00
2	Term Loan II	18,00,00,000.00
3	Term Loan III	4,00,00,000.00
4	Term Loan IV	3,00,00,000.00
5	Bank Guarantee	22,15,000.00
Total		25,85,15,000.00

3. The Petitioner had enclosed the following documents in respect of the facilities sanctioned to the Corporate Debtor;

- a) Agreement of Term Loan dated 18.06.2013 executed by the Corporate Debtor for Rs. 3 crores.
- b) Agreement of Term Loan for Immovable Property dated 18.06.2013 executed by the Corporate Debtor for Rs. 3 crores.
- c) Counter Guarantee Agreement dated 18.06.2013 executed by the Corporate Debtor for Rs. 22,15,000/-.
- d) Agreement of Guarantee dated 18.06.2013 executed by Mr. Rajendra Chand for Rs. 25,85,15,000/-.
- e) Agreement of Guarantee dated 18.06.2013 executed by Mrs. Priti R. Chand for Rs. 25,85,15,000/-.
- f) Common Agreement dated 18.06.2013 executed by Corporate Debtor.
- g) Certificate of registration of mortgage under Section 132 of the Companies Act, 1956 dated 29.02.2012;

- h) Balance and Security Confirmation Letter dated 18.06.2013, wherein the balance as on 31.03.2013 was confirmed by the Corporate Debtor and also confirmed the execution of various security documents and undertakings.
- i) Statement of Account of the Corporate Debtor for the period up to 30.11.2017.
4. The Petitioner issued notice under Section 13(2) of the SARFAESI Act, 2002 on 07.01.2015 demanding a sum of Rs.26,19,96,404/- including interest, wherein it was further mentioned that the loan accounts were classified as non-performing asset by the bank on 31.12.2013 in terms of RBI guidelines.
5. The Corporate Debtor assails the Petition on various grounds and let us discuss one by one.
- a. The counsel for the Corporate Debtor submitted that the petition is incomplete and suffers from various flaws. However, ongoing through Form 1 filed by the Petitioner, we are of the view that necessary details required under the Form 1 are provided by the Petitioner.
  - b. It is contended that the Petitioner failed to qualify the alleged financial debt within the parameters of the Code. However, since it is a term loan granted by a Financial Institution this argument is rejected in limine in view of Section 5(8)(a) of the Code which defines a Financial Debt as debt with interest, if any, which is disbursed against the consideration for the time value of money and includes money borrowed against payment of interest. Here in this case the sanction letter, loan agreement, other documents clearly show that the loan has been sanctioned which carries interest and hence it is clearly a financial debt.
  - c. It is submitted that petition was filed without issuance of any demand notice for the defaulted loan and hence the principle of natural justice being 'audi alteram partem' has been violated. Section 7 of the Code, unlike Section 9, does not provide for issue of any demand notice before filing a petition

by a Financial Creditor. Further the Corporate Debtor has raised all his defence before this Bench in this proceedings, and has already filed his reply and written submissions which were considered on merits and hence there is no question of violation of natural justice.

- d. It is submitted that the Petitioner has not disclosed a letter dated 14.03.2015 addressed to the Corporate Debtor wherein it was stated that the default occurred in July 2014 but in the petition the date of default was shown as 1.10.2014. The non-disclosure of the letter or even the mistake in the date of default cannot absolve the liability of the Corporate Debtor and the contention that this has been done to get favourable orders from this Bench does not hold water.
- e. The Corporate Debtor contends that the Petitioner by letter dated 20.10.2014 granted a fresh term loan of Rs.16.5 crores with effect from 24.09.2014 apart from renewing the other term loans to the extent of outstanding due as on that date, that being the situation the occurrence of default on 01.10.2014 that too just few days before the new sanction and renewal of loan is not correct and in fact at no point of time the Corporate Debtor defaulted. For this contention the Petitioner responded saying that even though the aforesaid sanction was granted, the loan was not disbursed. This Bench is of the view that since it was categorically said in the sanction letter dated 20.10.2014 that the bank has discretion to revoke or cancel, alter, vary, rescind or amend and of the conditions of the sanction, the Corporate Debtor cannot take shelter under the sanction letter and say that default has not occurred. The fact of the matter is that right from January, 2015 to till date no payment was made in respect of the Loan. The subsequent sanction of loan by the Petitioner and cancellation of the same will not erase the default that had occurred previously and is continuing till date.
- f. The Corporate Debtor further contended that in view of the new sanction of Rs. 16.5 crores, payment of Rs. 56 lakhs by the Corporate Debtor and execution and registration of

additional security, the classification of account of NPA by the Petitioner is against the policy framed by the RBI under its master circular dated 01.07.2018. While hearing this petition, the mandate under the Code to this Bench is to see whether there is a debt and default and hence this Bench cannot go into the niceties of the RBI circular to hold one way or the other. But the fact of the matter is that the debt is there and default is also writ large on the face of the documents placed before this Bench.

- g. The Corporate Debtor further contended that there is no financial debt against the Corporate Debtor, per contra, the Petitioner defaulted in disbursing the loan as sanctioned due to which the Corporate Debtor suffered losses and damages and the Petitioner should be held liable for the same. The non-disbursement of loan had happened in the year October 2014, we are now in October 2018, the Corporate Debtor kept quiet for the last four years and when a Petition under Section 7 is filed, it cannot take this defence at this belated juncture.
- h. The next contention of the Corporate Debtor is that the Petitioner claimed a sum of Rs. 32,95,42,170/- in the petition whereas the amount mentioned in the SARFAESI notice dated 07.01.2015 is Rs. 26,96,96,404/- hence there is no uniformity in the amount claimed and the amount stated to be in default. This difference is due to the interest for the subsequent period and hence this contention will not hold good.
- i. The Corporate Debtor submitted that there is some discrepancy in the interest calculation. This kind of grievance of the Corporate Debtor can be made to the Insolvency resolution professional at the time of the admission of the claim of the Petitioner and this cannot come in the way of admission of this petition.
- j. The Corporate Debtor submits that the claim is barred by limitation. However, a mortgage was registered on 29.02.2012 in favour of the Petitioner by the Corporate Debtor and hence, the claim is not barred by limitation. Further there was a payment of Rs. 56,00,000/- on 19.12.2014 by the Corporate

Debtor and also the Corporate Debtor executed and registered the Deed of Extension of Mortgage on 20.12.2014. In view of this, the Corporate Debtor's reliance on the decision of the Hon'ble Supreme Court in the case of "B. K. Educational Services Private Limited vs. Parag Gupta and Associates" (2018 SCC OnLine SC 1921) which holds that Limitation Act, 1963 is applicable to IBC proceedings, is of no assistance to the Corporate Debtor.

- k. The Corporate Debtor relying on the judgment of the Hon'ble Supreme Court in the case of "S. P. Chengalvaraya Naidu vs. Jagannath and Ors." (1994) 1 SCC 1 submits that, Petitioner's case is based on falsehood and it has no right to approach this court and this Petition can be summarily thrown out. The Corporate Debtor contends that the Petitioner wilfully suppressed the latest sanction letter dated 20.10.2014 wherein a sum of Rs. 16.5 crores was granted to the Corporate Debtor apart from restructuring the pending loans. It was also contended that the date of default as mentioned in the petition is 01.10.2014 and in order to substantiate this claim the sanction letter dated 20.10.2014 was purposely suppressed by the Petitioner. It is not the case of the Corporate Debtor that they have repaid the loan or there is no outstanding in the loan account but their case hangs on the non production of a sanction letter which will alter the date of default at the most but the fact is that there is a continuing default in the payment of the loan and the starting point of default is 01.10.2014. In view of this this, petition cannot be thrown out as contended by the Petitioner.
- l. The Corporate Debtor submits that there already exists an ongoing/ pending efficacious legal remedy adopted by the Petitioner for recovery and therefore this application cannot be allowed. Prior to the advent of Insolvency and Bankruptcy Code, 2016, under the provisions of Recovery of Debts (due to Banks and Financial Institutions) Act, 1993 and under the provisions of SARFAESI Act, 2002, the Petitioner is entitled to take proceedings for recovery of its dues. The Code entitles the

Financial Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor who defaulted in making the payment of the debt due by filing Petition under Section 7 of the Code. Neither the proceedings pending before the Debt Recovery Tribunal nor the SARFAESI proceedings would be a bar to initiate CIRP under the Code and hence the contention of the Corporate Debtor that pendency of SARFAESI proceeding will be a bar to initiate proceedings under Section 7 of the Code fails. Further, the aforesaid submissions cannot be accepted in view of the decision of Hon'ble NCLAT in "M/s. Unigreen Global Private Limited v. Punjab National Bank & Anr. Company Appeal (AT) (Insolvency) No. 81 of 2017", wherein it was held that pendency of SARFAESI proceedings or the DRT proceedings or DRAT proceedings, or suit proceedings cannot be a ground to reject the Insolvency and Bankruptcy petition. Further, it was held that I & B Code shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force including DRT Act, 1993; SARFAESI Act, 2002; money suit etc." Hence this contention also fails.

6. 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 and has also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, 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 31.10.2018 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.
- (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 Ms. Dipti Mehta, 201-206, Shiv Smriti, 2nd Floor, 49A, Dr. Annie Besant Road, Above Corporation Bank, Worli, Mumbai, Maharashtra, 400 018, Email: - dipti@mehta-mehta.com, having Registration No. IBBI/IPA-002/IP-N00134/2017-18/10350 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

10. Accordingly, this Petition is admitted.



11. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional within seven days from the date order is made available.

Sd/-

V. NALLASENAPATHY  
Member (Technical)

Sd/-

BHASKARA PANTULA MOHAN  
Member (Judicial)