

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

CP No. 3632/IBC/NCLT/MB/MAH/2018

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

State Bank of India
..... Financial Creditor

V.

Soma Enterprises Limited.
..... Corporate Debtor

Heard on: 04.02.2019
Pronounced on: 12.02.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

For the Petitioner :

Advocate Aditi Mittal i/b K Law.

For the Respondent :

Advocate Ashish Pyasi i/b Dhir & Dhir Associates.

Per: M.K. Shrawat, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'State Bank of India' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "**Financial Creditor**" on 11.09.2018 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Soma Enterprises Limited' (hereinafter as '**Corporate Debtor**'). The registered address of the Corporate Debtor is stated to be Soma Heights, 3, Siddhivinayak Society, Karve Road, Pune.
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of **debt granted is ₹1600 Crores** approx. and the total amount claimed to be in default is stated to be **₹923,87,71,540/-** as on 03.09.2018. The Date of Default is stated to be 30.04.2018.

A) Brief History of the case:

3. The Financial Creditor, has granted financial limits to the tune of ₹15.00 Crores to the Corporate Debtor *vide* Sanction Letter dated 22.12.2000, which were subsequently

enhanced from time to time. As on the last sanctioned limits vide letter dated 06.12.2017, the total sanctioned limits stood at ₹450.47 Crores of Fund Based Limits and ₹756.75 Crores of Non-Fund Based Limits totally amounting to ₹1207.22 Crores in addition to Investment of ₹415.82 Crores in the form of Equity of ₹2.56 Crores and Optionally Convertible Debentures of ₹413.26 Crores.

4. The sanctioned limits were drawn and utilised by the Corporate Debtor on various dates in accordance to the sanctioned terms and conditions. The Corporate Debtor had been undergoing financial stress since long and in the year 2013 the financial limits were restructured under **CDR mechanism vide Master Restructuring Agreement dated 30.12.2013**. However, the CDR mechanism failed.
5. The financial distress continued even thereafter and the consortium lenders lead by the Financial creditor had to sanction another restructuring of the outstanding financial limits under **S4A scheme of RBI in the year 2017** vide Master Restructuring Agreement (MRA) dated **11.12.2017**. However, under this MRA, the Corporate Debtor continued to default and was unable to pay its debts. Hence, this petition.
6. After the first hearing of this petition, the Corporate Debtor filed a writ petition in the Hon'ble Supreme Court on 04.12.2018 under Article 32, challenging the constitutional validity of IBC, and hence, seeking discontinuance of the present proceedings before this Tribunal. The matter was tagged along with similar writ petitions as larger questions of law were involved. However, no stay order has been passed by the Hon'ble SC in the present proceedings before this Tribunal till date.

B) Submissions by the Financial Creditor

7. The Financial Creditor states that the above said loan facilities are secured by various security agreements such as Agreement dated 27.01.2014 along with Supplemental Agreement dated 21.02.2018 for pledge of shares, Two Personal Guarantee Agreements dated 30.12.2013 and 11.12.2017, Promoters undertaking dated 30.12.2013, Security Trustee Agreement dated 30.12.2013, Deed of Hypothecation dated 27.01.2014 along with Supplemental Deed of Hypothecation dated 11.12.2017, Trust and Retention Account Agreement dated 30.12.2013, Mortgage by Deposit of Title Deeds dated 20.02.2014, Debenture Trustee Agreement dated 11.12.2017 along with Debenture Trust Deed dated 08.03.2018 and Non-Disposal Agreement dated 19.02.2014.
8. The Financial Creditor has submitted that the loan account of the Corporate Debtor has been declared as an **NPA on 28.07.2018** (90 days after the date of default i.e. 30.04.2018). The Financial creditor intimated the Corporate Debtor about the default and classification into NPA vide letters dated 27.07.2018 and 08.08.2018. The

Financial Creditor has annexed to the petition, a Status Classification Report issued by CRILC dated 30.08.2018 relating to the Corporate Debtor, as a record of default.

9. The Corporate Debtor has acknowledged its liability vide letter COS 48 R issued to the State Bank of India, annexed in the petition. The credit facilities given by the Financial Creditor are in corroboration with the Bank Certificate along with Bank Statement dated 05.09.2018 for various Loan Accounts towards credit facilities upto 03.09.2018.
10. The Petitioner further argues that the petition is complete in all respects, the Corporate Debtor is not making the payment and all the procedural formalities have been complied with, this Petition/Application may be Admitted for the initiation of the CIRP.

C) Submissions by the Corporate Debtor :

11. The Corporate Debtor's objection is that the matter is sub-judice before the Supreme Court being a writ filed by the Corporate Debtor. The Learned Counsel for the Corporate Debtor has placed a cause list before this Bench stating that the Writ Petition (Civil) No. 1411 of 2018 was clubbed along with W.P.(C) No. 99 of 2018 and others. Though the decision in W.P.(C) No. 99 of 2018 has already been passed by the apex court, however, W.P.(C) No. 1411 of 2018 is listed in another batch of similar petitions and the decision is yet to come.

D) Rejoinder by the Financial Creditor:

12. The petitioner has argued in the rejoinder that admittedly there is no stay by the Top Court in respect of proceedings pending under the Code. Therefore, in view of latest verdict of the **apex court, in *Swiss Ribbons Pvt. Ltd. & Ors. V. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]***, this petition having high stake involved be decided today itself.

E) Findings :

13. On perusal of the arguments of both the sides and the documents and evidences placed on record, this Bench is of the view that in the absence of stay in respect of any Writ Petition filed by the Corporate debtor, the proceedings under IBC must not be deferred anymore, especially when the Hon'ble Supreme court has affirmed the constitutional validity of Sec.7 of IBC. Earlier, on this ground that the constitutional validity is yet to be decided, this Bench had already deferred the final adjudication. Now it is no more possible especially when the debt amount involved is ₹923 Crores (approx.).
14. The liability in the present case in hand is an admitted liability by the Corporate Debtor and so far no objection has been raised against the admission of the present petition except the request to defer the decision in this matter till the decision of the apex court, that too the controversy stood resolved vide order referred *supra*. The

statement of accounts produced on record prove the disbursement of various loan facilities granted by the Financial Creditor

15. Furthermore, Section 7 petition does not leave any scope for the Corporate Debtor to raise a dispute unlike in Section 9. As long as there is a 'Debt' and a 'Default' has occurred, I am consciously inclined to admit the petition after the landmark judgement of the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Ors. V. Union of India & Ors. [Writ Petition (Civil) No. 99 of 2018]* upholding the constitutional validity of Sec, 7 of the Code. For ready reference, few portions be permitted to be reproduced below:-

“Most importantly, financial creditors are, from the very beginning, involved with assessing the viability of the corporate debtor. They can, and therefore do, engage in restructuring of the loan as well as reorganization of the corporate debtor’s business when there is financial stress, which are things operational creditors do not and cannot do. Thus, preserving the corporate debtor as a going concern, while ensuring maximum recovery for all creditors being the objective of the Code, financial creditors are clearly different from operational creditors and therefore, there is obviously an intelligible differentia between the two which has a direct relation to the objects sought to be achieved by the Code.”

16. In the present case, by not replying to the letters dated 27.07.2018 and 08.08.2018, for intimation of default and classification of Corporate Debtor's account into an NPA, sent by the Financial Creditor, and by not filing an affidavit in reply to this petition for contesting its liability, the Corporate Debtor has admitted its liability. Moreover, there is an acknowledgement of the Corporate Debtor for admission of its liability on record.
17. The Petitioner's claim of existence of debt and default has been corroborated with ample evidence and is enough to hold a view in its favour. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.
18. Considering the above facts, I come to conclusion the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor.
19. As a consequence, keeping the admitted facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, I am of the conscientious view that this Petition deserves '**Admission**'.

20. Further that, I have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
21. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the petitioner, it is hereby held that this Petition/Application is **Admitted**.
22. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, **Mr. Om Prakash Agarwal**, 1/1, Hardutt Rai Chamaria Road, Ambika Vihar, Flat No. A-24, 2nd Floor, Howrah-711101, having registration No. IBBI/IPA-001/IP-P00906/2017-18/11506 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
23. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
24. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
25. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
26. The Petition is hereby “**Admitted**”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
27. Ordered Accordingly.

Dated : 12.02.2019

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SD/-
M. K. SHRAWAT
MEMBER (JUDICIAL)