

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) -396/I&BP/MB/2018

Under Section 7 of the I&B Code,
2016

In the matter of

Reliance Commercial Finance
Limited, Reliance Centre 6th
Floor, South Wing, Off. Western
Express Highway, Santacruz
(East) Mumbai- 400055

.... Petitioner

Vs.

Fibertech Infracon Private
Limited, Flat No.604, 5th Floor,
Honey Archana Apartment,
Above Axis Bank, Near Med
Nagpur (Maharashtra) 400009

.... Respondent

Order delivered on: 17.01.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V.Nallasenapathy, Member (T)

For the Petitioner: Ms. Anjana Parveen, Advocate i/b Vidhi Partners.

For the Respondent: Mr. Roshan S. Tanna, Advocate.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Reliance Commercial Finance Limited (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Fibertech Infracon Private Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default in repayment of two loan facilities granted to the Corporate Debtor to the extent of Rs. 3,96,94,474/- including interest, 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 Reliance Capital Limited had granted a loan of Rs. 1,17,00,000/- on 31.12.2013 and another Loan for Rs. 3,85,00,000/- on 31.03.2014, for the purchase of Construction Equipment by the Corporate Debtor. The Corporate Debtor executed the following documents for the aforesaid credit facilities:-

- a. Reliance Construction Equipment Loan Agreements dated 31.12.2013 and 25.03.2014.
 - b. Demand Promissory Notes dated 31.12.2013 and 25.03.2014.
 - c. Letter of Continuity for Promissory notes dated 31.12.2013 and 25.03.2014.
 - d. Certificate of registration of mortgage under Section 132 of the Companies Act.
3. Reliance Capital Ltd. sent a notice dated 18.01.2016 through their advocates wherein the entire loan was recalled and a sum of Rs. 48,53,065/- was demanded from the Corporate Debtor in respect of the first loan of Rs. 1,17,00,000/-.
 4. Reliance Capital Ltd. sent a notice dated 11.06.2015 through their advocates wherein the entire loan was recalled and a sum of Rs. 3,19,98,165/- was demanded from the Corporate Debtor in respect of the second loan of Rs. 3,85,00,000/-.
 5. The Petitioner stepped into the shoes of Reliance Capital Limited by way of a demerger vide a scheme of arrangement approved by the Hon'ble Bombay High Court vide its order dated 09.12.2016.
 6. The Petitioner was directed to rectify the mistake in Form -1 wherein the date of default was wrongly mentioned and while filing the Form the Petitioner has enclosed the papers relating to Arbitration proceedings , the details are given below:
 - a. Reliance Capital Ltd. initiated Arbitration proceedings in respect of both the loans. The Petitioner enclosed the arbitration award dated 04.02.2017 in arbitration No. RCL/ARB/RSB/543 of 2016 in respect of the first loan for Rs. 1,17,00,000/- wherein an award was passed against the Respondents therein directing to deposit a sum of Rs. 69,40,770/- within 10 days of passing the award or to hand over the possession of the machinery to the Petitioner.
 - b. Reliance Capital Ltd. initiated Arbitration proceedings in respect of both the loans. The Petitioner enclosed the arbitration award dated 04.02.2017 in arbitration No. RCL/ARB/RSB/336 of 2016 in respect of the second loan for Rs. 3,85,00,000/- wherein an award

was passed against the Respondents therein directing to deposit a sum of Rs. 2,83,27,347/- as per the foreclosure statement within 10 days of passing the award or to hand over the possession of the machinery to the Petitioner.

7. The Corporate Debtor filed reply raising the following contentions:
 - a. The Petitioner has not approached the Tribunal with clean hands and indulged in suppression of material facts.
 - b. The required particulars in Form-1 were not provided and hence the Petition is incomplete.
 - c. The Petitioner suppressed the factum of Arbitration proceedings initiated by the Petitioner in respect of both the loans.
 - d. The Petitioner having obtained the arbitration awards against the Corporate Debtor they should have continued pursuing the remedy already availed by them i.e. by execution of arbitral awards including getting repossession of the property.
 - e. The security held by the Petitioner is more than enough to satisfy the debt of the Corporate Debtor and further the Petitioner has also initiated proceedings under Section 138 of Negotiable Instruments Act, 1881. In view of this, this proceeding against the Corporate Debtor will not lie.
8. The Corporate Debtor may be right in pointing out that the Petitioner has not disclosed the Arbitration Proceedings against the Corporate Debtor initially at the time of filing this Petition. However, that will not put the Corporate Debtor in an advantageous position to reject this Petition. The adjudicating authority has to see whether debt is due and is there any default on the part of the Corporate Debtor to admit a Petition under Section 7 of the Code. It is appropriate to refer the decision of the Hon'ble Supreme Court of India in the case "*Innovative Industries Ltd. Vs. ICICI Bank and Ors.*, - (2018) 1 SCC 407" wherein it was observed as below:

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is

prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."

9. This adjudicating authority having satisfied with the fact that the Corporate Debtor defaulted in making the payment towards the liability to the petitioner, the petition deserves to be admitted as held by the Hon'ble Supreme Court in the judgement cited supra.
10. 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 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 17.01.2019 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, Mr. Manoj Kulsrestha, having his address at 1003, Maker Chambers V, 221, Nariman Point, Mumbai-400021 having Registration No. IBBI/IPA-003/IP-N0005/2016-17/10024 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

11. Accordingly, this Petition is admitted.

12. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-

V. Nallasenapathy
Member (T)

Sd/-

Bhaskara Pantula Mohan
Member (J)