

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) -3747/I&BP/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

Bank of India, SARM Branch, 3rd Floor,
Sadhna Rayon House, D.N. Road, Fort,
Mumbai – 400 001.

.....Petitioner

Vs.

Sanghavi Exports International Pvt. Ltd.
402, Mehta Mahal, Mathew Road, Opera
House, Mumbai City, MH = 400 004.

.....Respondent

Order delivered on: 19.02.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V.Nallasenapathy, Member (T)

For the Petitioner: Mr. Manoj Kumar Gupta, Advocate

For the Respondent: None

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. Bank of India (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Sanghavi Exports International Pvt. Ltd. (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 21.10.2015 in repayment of facilities granted to the Corporate Debtor to the extent of Rs. 269,46,79,676/- 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 has enclosed the computation of amount due from the Corporate Debtor and date of default vide Exhibit 3 page 28 to 32 and sanction letters dated 28.02.2008, 11.09.2009, 11.04.2011, 24.06.2014 and 10.01.2016 which shows that the facilities were

granted/enhanced/renewed/reviewed to the Corporate Debtor by the Petitioner. The copy of the sanction letters are annexed with the petition. The followings are the facilities provided to the Corporate Debtor by the Petitioner to the extent of Rs. 180.00 Crores, the breakup being; Export Packing Credit of Rs.62.00 Crores; Post Shipment Credit facility of Rs.93.00 Crores and In built Adhoc Limit of Rs.25.00 Crore.

3. Also, the Bank of India as the leader of Consortium of Banks entered into Working Capital Consortium Agreement and an Inter-Se Agreement with the following Consortium Banks dated 18th September, 2007 ; ABN Amro bank, State Bank of India, ING Vysya Bank, State Bank of Travancore, Allahabad Bank, Standard Chartered Bank, State bank of Bikaner & Jaipur, Union Bank of India, Andhra Bank and Dena Bank.
4. The Petition reveals that the account of the Debtor has turned into Non-Performing Assets (NPA) on 16.01.2016.
5. The Petitioner enclosed the Certificate of Registration of Charge dated 21.05.2012, 17.12.2012 and 28.03.2013 with the Petition.
6. The Petitioner placed on record the legal /Recall Notice dated 8th September, 2016 to the Corporate Debtor demanding the outstanding amount of debts, but the debtor has failed in making the payment.
7. The Petitioner has also placed on record the Notice under Section 13(2) of the SARFAESI Act, 2002 dated 22.08.2016 to the Corporate Debtor and to the Guarantor and demanded the outstanding amount of Rs. 1,75,76,99,067.12 with further interest @18.75% per annum from 16.01.2016.
8. Since the Corporate Debtor defaulted in repaying the availed loan amount, the Petitioner has preferred this Petition before this Bench.
9. The Petitioner has enclosed the Statement of Accounts for the facilities granted to the Corporate Debtor which shows that the amount claimed in the Petition is in consonance with the Statement of Account.
10. The Petitioner has annexed the certificate dated 15.12.2016 under Section 2A(a) of Banker's Books Evidence Act, 1891.
11. The Petitioner also submitted that an O.A. No. 162/2018 is pending before the Hon'ble Debts Recovery Tribunal, Mumbai.
12. The Counsel for the Petitioner submits that no payment was made till date by the Corporate Debtor. The counsel for the petitioner emphasizes

on the fact that the Corporate Debtor has not denied the outstanding debt and its liability under the facilities granted to it by the lenders. Therefore, there is clear existence of a debt as defined in Section 3(11) of Code, also there is default in this case within the meaning of Section 3(12) of Code.

13.The Petitioner submits that Petition sent to the Corporate Debtor was returned with an endorsement "Office permanently closed". The Petitioner annexed the proof of service (RPAD Postal record). Since the Petition could not be served upon the Corporate Debtor, the Bench directed the Petitioner to take out substituted service by way of publication in two daily newspapers, one is in English and another in vernacular language. The Petitioner has annexed the Affidavit of Publication showing the publication in two newspapers. As directed by the Bench, the Petitioner has also sent e-mail to the Corporate Debtor informing the date of hearing and proof of the same is filed. However, the Corporate Debtor was absent.

14.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 19.02.2019 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.Vikas Prakash Gupta, Bagchi & Gupta, Chartered Accountants, 3rd Floor, Plot No. 16 B, Padmanabh Apartment, Tilak Nagar, Nagpur, Maharashtra – 440 010, E mail vikas.gupta@bngca.com having Registration No. IBBI/IPA-001/IP-P00501/2017-18/18/10889 as Interim Resolution Professional to carry out the functions as mentioned under Insolvency & Bankruptcy Code.

15. Accordingly, this Petition is admitted.

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

SD/-
V. NALLASENAPATHY
Member (T)

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SD/-
BHASKARA PANTULA MOHAN
Member (J)