

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) -2956/I&BP/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

Cosmos Co-Operative Bank Limited,
Cosmos Tower, Plot No.6, ICS Colony,
University Road, Ganesh Khind, Pune-
411007

.... Petitioner

Vs.

New Phaltan Sugar Works Limited,
Post Sakharwadital Phaltan, Sakharwadi,
Satara415522

.... Respondent

Order delivered on:20.02.2019

Coram:

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

For the Petitioner: Mr. Aditya Khandeparkar, Advocate, i/b Khandeparkar Law
Office

For the Respondent: Mr. Dhanshesh Vyas, Advocate a/w Mr. Akshay Bobadi,
Advocate i/b JH Ramugade & Ms. Priyanka Chandilya

Per:V. Nallasenapathy, Member (T)

ORDER

1. Dena Bank (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process (hereinafter called 'CIRP') of New Phaltan Sugar Works Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 30.06.2017 in repayment of facilities granted to the Corporate Debtor to the extent of Rs. 1255.17 Lacs, 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. On perusal of the Petition it reveals that the following facilities were granted to the Corporate Debtor by the Petitioner.

Sr. No.	Nature of Facility	Amount (in lacs)
1	Term Loan	1641.00
2	Term Loan	259.00
Total		1900.00

3. The Petitioner has enclosed the following loan and security documents connected with the sanction of loan:

- (a) Loan Agreement for working capital/term loans dated 21.11.2012.
- (b) Deed of Hypothecation of Stock, Book Debts & Machinery dated 21.11.2012.
- (c) Letter of Continuing Security, Promissory Note dated 21.11.2012.
- (d) Deed of Guarantee dated 21.11.2012.
- (e) Copy of Certificate of Registration of Mortgage dated 17.12.2012.

4. The Petitioner has enclosed the Statement of Account for the aforesaid Term Loans granted to the Corporate Debtor which shows that the amount claimed in the Petition is in consonance with the Statement of Account.

5. The Petitioner has enclosed notice under Section 13(2) of SARFAESI Act, 2002 dated 17.07.2017 issued to the Corporate Debtor demanding a sum of Rs. 10,80,06,881.06 as on 30.06.2017 with further interest, charges etc which shows that the Corporate Debtor defaulted in repaying the credit facilities availed by them.

6. The Petitioner also enclosed the order dated 26.06.2018 passed by the Dy. Commissioner of Sales Tax for attachment of the immovable properties of the Corporate Debtor under the Maharashtra Purchase Tax on Sugarcane Act, 1962 for the sales dues of Rs.14,70,30,599/-.

7. The Corporate Debtor in its reply submitted the following:-

- a. The Corporate Debtor was suffering huge financial crisis for last several years.
- b. The Corporate Debtor is running for the last 90 years, workers, and farmers supplying the sugarcane and their families are depending on the Corporate Debtor for their survival.

- c. An Application filed by the Corporate Debtor before DRT, Pune is pending for adjudication.
 - d. The Petitioner has taken symbolic possession of the machineries of the Corporate Debtor on 03.05.2018.
 - e. After the issue of Notice U/s 13 (2) of the SARFAESI Act, 2002, by the Petitioner, the Corporate Debtor has taken out an application before the DRT and the same is pending before the said Forum.
 - f. The Petitioner has wrongly charged interest of Rs.8,44,34,353/- and penal interest of Rs.8,73,475/- for the first Term Loan of Rs.16.41 Crores. Likewise, the Petitioner wrongly charged a sum of Rs.1,47,74,965/- as interest and Rs.91,177/- as penal interest for the second Term Loan of Rs.2.59 Crores.
8. The above contentions of the Corporate Debtor cannot be taken into account while considering the Petition for admission under section 7 of the code, in view of the decision of the Hon'ble Supreme Court of India in the case "*Innoventive 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. The issued raised by the Corporate Debtor in the reply as stated above cannot come in the way of admission of this Petition in view of the fact that the Petitioner has established debt and default beyond doubt.

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 loans 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 20.02.2019 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.Vishram Narayan Panchpor, B-506, 5th Floor, Building No.83, Chembur, Sindhoo CHS, Tilak Nagar, Chembur, Mumbai - 400089, Email:-vishramp@gmail.com, having Registration No. IBBI/IPA-002/IP-P00269/2017-18/10782 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 the Interim Resolution Professional within seven days from the date order is made available.

Sd/-

V. Nallasenapathy
Member (T)

Sd/-

Bhaskara Pantula Mohan
Member (J)