

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

CP (IB) - 4321/I&BP/MB/2018

Under Section 7 of the I&B Code, 2016
In the matter of

Central Bank of India,
Chandramukhi, Nariman Point, Mumbai-
400021.

.... Petitioner

Vs.

Loyal Motors Private Limited,
102, Suraj Building, Gajdhar Bandh
Road, S. B. Patil Marg, Santacruz (West),
Mumbai – 400058.

.... Respondent

Order delivered on: 28.01.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Mrs. Maneesha R. Patel, Advocate.

For the Respondent: Mr. Vinay Bhanushali, Advocate.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Central Bank of India (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of Loyal Motors Private Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 28.02.2009 in making payment to the extent of Rs. 11,70,34,831/- 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 Petitioner has enclosed sanction letter dated 09.02.2008 which shows that the credit facilities were enhanced to the Corporate Debtor from Rs. 1,40,00,000/- to Rs. 3,95,00,000/- which comprises Cash Credit of Rs. 3,50,00,000/- and Overdraft facility of RS. 45,00,000/-.
3. The Petitioner submits that the Corporate Debtor created an equitable mortgage over various properties of the Corporate Debtor and the same is registered with the Registrar of Companies on 08.03.2008 and subsequently

there was modification of charge on 16.02.2015 for a sum of Rs. 3,95,00,000/-.

4. The Petitioner issued a demand notice on 21.03.2009 under Section 13 (2) of SARFAESI Act wherein the Corporate Debtor was informed that the account is classified as a non-performing asset and called upon to pay the dues of Rs. 4,10,77,445/- within 60 days from the date of receipt of the notice failing which the Petitioner will exercise SARFAESI Act. The Corporate Debtor replied to the SARFAESI notice saying that they are interested in discharging the liabilities and also offered some suggestions for the settlement of the dues.
5. The Petitioner enclosed the Statement of Account which shows that a sum of Rs. 11,70,34,832/- is payable by the Corporate Debtor as on 14.09.2018. The certificate under Section 2 A (a) of the Banker's Book of Evidence Act, 1891 is also submitted by the Petitioner.
6. The Corporate Debtor filed its reply to this Petition raising following objections which are dealt with herein below:
 - A) (i) It is submitted that the Petitioner has impleaded 4 corporate entities and two private persons in the list of Respondents. However, the reliefs sought are only against Respondent No. 1 and therefore arraigning other respondents as parties is misconceived and unfounded.

(ii) Even though the Petitioner has shown 6 respondents in the cause title, the Form 1 filed by the Petitioner has clearly stated the name of the Corporate Debtor as Loyal Motors Pvt. Ltd. The cause title portion filed along with Form 1 is not at all necessary in IB Petition and in view of this the objections raised by the Corporate Debtor will not survive.
 - B) (i) The Corporate Debtor contended that the Financial Creditor has not filed this application with proper Authority. The Power of attorney is unregistered and defective and cannot be relied upon as the document reflecting authorisation to the person who has filed this Petition.

(ii) The Form 1 is signed by the Assistant Manager of the Asset Recovery Branch of the Central Bank of India, Fort, Mumbai. The power of attorney dated 04.09.2014 was executed by two Directors of the Central bank of India in favour of the Mr. Ajay Purshottam Manore (Employee No. 050604) who is the Petitioner herein and the same is in order.

- C) (i) The Corporate Debtor submits that there are some discrepancies in the amount claimed by the Petitioner, interest charged and also disputes the date of NPA.

(ii) It is not the case of the Corporate Debtor that they have not borrowed the amount, there are certain discrepancies in some financial figures and date of NPA etc. This kind of objection can be raised by the Corporate Debtor during the time of admission of the claim by the Interim Resolution Professionals and this will not come in the way of admission of Section 7 Petition especially when the claim is for crores of rupees and the threshold limit is rupees one lac.

- (D) (i) The Corporate Debtor submits that the petitioner failed to provide the details of order passed by Chief Metropolitan Magistrate, final order passed by DRT etc.

(ii) While considering a Petition for admission under Section 7 the Adjudication Authority has to see whether there is debt and default. If the Adjudicating Authority is satisfied with the proof of debt and default, other issues as raised by the Corporate Debtor does not herein will not have any impact.

- (E) (i) The Corporate Debtor submits that in view of the pendency of SARFAESI proceedings/ DRT Proceedings/ proceedings under Maharashtra Protection of Interest of Depositors Act, this Petition is premature and is liable to be rejected.

(ii) 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 these proceedings is 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

- (F) (i) The Corporate Debtor submits that the Code takes away the fundamental rights of the Respondent to carry on the business without any reasonable restrictions and consequently the right of the Corporate Debtor is taken away.
- (ii) The Code was enacted after taking into various problems faced by the Financial Institutions and after due deliberation by the Parliament of India and as on date the Code is valid and enforceable and hence the grievance raised by the Corporate Debtor cannot be considered by this Adjudicating Authority. Further, the Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.* by an order dated 25.01.2019 upheld the constitutional validity of the I& B Code, 2016 in its entirety and hence this contention of the Corporate Debtor has to fail.

7. It is appropriate to mention the decision of the Hon'ble Supreme Court in "*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."

8. From the aforesaid decision, it is clear that the Adjudicating Authority is only to be satisfied that the default has occurred and that the 'Corporate Debtor' is entitled to point out that the default has not occurred in the sense that the debt is not due. In the case on hand, the documents enclosed with the Petition clearly shows the Corporate Debtor defaulted in repayment of the loan dues.
9. 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 28.01.2019 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. Tejas Jatin Parikh, 1203, Vishwadeep Heights, K. T. Soni Marg, Mahavir Nagar, Kandivali (West) Mumbai - 400067, Email:-tejas2704@gmail.com, having Registration No. IBBI/IPA-001/IP-P00004/2016-17/10012 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)