

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) -4332/MB/2018

Under Section 7 of the I&B Code,
2016

In the matter of

Dena Bank
Dena Corporate Centre C- 10, G
Block, Bandra Kurla Complex,
Mumbai- 400051

.... Financial Creditor

Vs.

M/s. Indian Treat Ltd.
A- 522, TTC Industrial Area,
Village Mahape, Navi Mumbai,
Thane 400701, Maharashtra

.... Corporate Debtor

Order delivered on: 30.01.2019

Coram:

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

For the Petitioner: S.K. Singhi & Co.

For the Respondent: Mr. Rishabh Agarwal. Advocate.

ORDER

Per: Bhaskara Pantula Mohan, Member (J)

1. The Petitioner Dena Bank filed this Petition against the Corporate Debtor M/s. Indian Treat Pvt Ltd. for initiation of Corporate Insolvency Resolution Process on the ground that Corporate Debtor defaulted on 31.12.2016 in making the payment of loan dues, which works out to ₹ 30,62,17,112/- as on 31.10.2018, under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petitioner vide sanction letter dated 20.01.2012 granted a Packing Credit Hypothecation (including PCFC) cum FBP/FBN (including REBA) facility upto a limit of Rs. 9,00,00,000/- at the applicable interest rate to the Corporate Debtor. The Guarantors, Mr. Hitesh Mittal, Mr. Sunny Mittal, Mr. Sahil Mittal, Mr. Nihar Mittal, Mr. Neeraj Mittal and Mr. Kushal Mittal duly accepted the terms and

conditions of the sanction letter by endorsing their signatures on the sanction letter.

3. The Petitioner vide sanction letter dated 23.10.2012 enhanced the said Packing Credit Hypothecation (including PCFC) cum FBP/FBN (including REBA) facility upto a limit of Rs. 14,50,00,000/- at the applicable interest rate to the Corporate Debtor. The Guarantors, Mr. Hitesh Mittal, Mr. Sunny Mittal, Mr. Sahil Mittal, Mr. Nihar Mittal, Mr. Neeraj Mittal and Mr. Kushal Mittal duly accepted the terms and conditions of the sanction letter by endorsing their signatures on the sanction letter.

4. The Petitioner vide sanction letter dated 23.08.2013 enhanced the said Packing Credit Hypothecation (including PCFC) cum FBP/FBN (including REBA) facility upto a limit of Rs. 25,50,00,000/- at the applicable interest rate to the Corporate Debtor. The Guarantors, Mr. Hitesh Mittal, Mr. Sunny Mittal, Mr. Sahil Mittal, Mr. Nihar Mittal, Mr. Neeraj Mittal and Mr. Kushal Mittal duly accepted the terms and conditions of the sanction letter by endorsing their signatures on the sanction letter.

5. The Petitioner vide sanction letter dated 22.01.2014 vide sanction letter renewed the existing Packing Credit Hypothecation (including PCFC) cum FBP/FBN (including REBA) facility upto a limit of Rs. 31,50,00,000/- at the applicable interest rate to the Corporate Debtor. The Guarantors, Mr. Hitesh Mittal, Mr. Sunny Mittal, Mr. Sahil Mittal, Mr. Nihar Mittal, Mr. Neeraj Mittal and Mr. Kushal Mittal duly accepted the terms and conditions of the sanction letter by endorsing their signatures on the sanction letter.

6. The Petitioner enclosed the following security documents in support of the loan:

(a) Demand Promissory Note dated 23.01.2012 whereby the Corporate Debtor promised to pay to the Petitioner on demand a sum of Rs. 9,00,00,000/- with interest.

(b) Letter of Continuing security dated 23.01.2012.

(c) General Letter of lien and set-off for borrowing arrangements dated 23.01.2012.

(d) Agreement of Hypothecation dated 23.01.2012 whereby the Corporate Debtor created hypothecation by first

charge on goods, book- debts, receivables and/ or movables, etc.

- (e) General Undertaking dated 23.01.2012 executed by the Corporate Debtor.
- (f) Letter of Guarantee dated 23.01.2012 executed by Mr. Hitesh Mittal, Sunny Mittal, Sahil Mittal, Nihar Mittal, Neeraj Mittal and Kushal Mittal in favour of the Petitioner.
- (g) Demand Promissory Note dated 25.10.2012 whereby the Corporate Debtor promised to pay to the Petitioner on demand a sum of Rs. 15, 00, 00 ,000/- with interest.
- (h) Letter of Continuing security dated 25.10.2012.
- (i) General Letter of lien and set-off for borrowing arrangements dated 25.10.2012.
- (j) Agreement of Hypothecation dated 25.10.2012 whereby the Corporate Debtor created hypothecation by first charge on goods, book- debts, receivables and/ or movables, etc.
- (k) General Undertaking dated 25.10.2012 executed by the Corporate Debtor.
- (l) Letter of Guarantee dated 25.10.2012 executed by Mr. Hitesh Mittal, Sunny Mittal, Sahil Mittal, Nihar Mittal, Neeraj Mittal and Kushal Mittal in favour of the Petitioner.
- (m) Demand Promissory Note dated 29.10.2013 whereby the Corporate Debtor promised to pay to the Petitioner on demand a sum of Rs. 25, 50, 00 ,000/- with interest.
- (n) Letter of Continuing security dated 29.08.2013.
- (o) General Letter of lien and set-off for borrowing arrangements dated 29.08.2013.
- (p) Agreement of Hypothecation dated 29.08.2013 whereby the Corporate Debtor created hypothecation by first charge on goods, book- debts, receivables and/ or movables, etc.

- (q) General Undertaking dated 29.08.2013 executed by the Corporate Debtor.
- (r) Letter of Guarantee dated 29.08.2013 executed by Mr. Hitesh Mittal, Sunny Mittal, Sahil Mittal, Nihar Mittal, Neeraj Mittal and Kushal Mittal in favour of the Petitioner.
- (s) Memorandum of Entry of Mortgage dated 30.08.2013.
- (t) Demand Promissory Note dated 26.02.2014 whereby the Corporate Debtor promised to pay to the Petitioner on demand a sum of Rs. 25, 50, 00 ,000/- with interest.
- (u) Letter of Continuing security dated 26.02.2014.
- (v) General Letter of lien and set-off for borrowing arrangements dated 26.02.2014.
- (w) Agreement of Hypothecation dated 26.02.2014 whereby the Corporate Debtor created hypothecation by first charge on goods, book- debts, receivables and/ or movables, etc.
- (x) General Undertaking dated 26.02.2014 executed by the Corporate Debtor.
- (y) Memorandum of Entry of Mortgage dated 20.02.2014.

7. The Corporate Debtor and the guarantors vide its Revival Letter dated 02.04.2016 acknowledged and admitted the debt granted by the Petitioner from time to time.

8. On 31.12.2016, the Petitioner declared the account of the Corporate Debtor as a Non- Performing Asset in accordance with the guidelines issued by the Reserve Bank of India.

9. The Petitioner has enclosed the recall notice dated 01.03.2017 issued by it recalling the outstanding dues amounting to ₹ 31, 30, 80,091/- payable by the Corporate Debtor.

10. Further, on 31.03.2017, the Petitioner issued SARFAESI notice calling upon the Corporate Debtor to pay the outstanding dues of ₹ 31, 30, 80,091/- (as on 28.02.2017) along with future interest within 60 days of receipt of this notice failing which the Petitioner will

exercise his right of enforcement of security interest, is also enclosed.

11. The Petitioner has enclosed Statement of Accounts from the period 01.12.2013 to 29.10.2013 which shows total principal outstanding amounting to Rs. 23,62,97,335/-.

12. The Petitioner enclosed the certificate under Section 2A (a) of Banker's Book of Evidence Act, 1891.

13. The Corporate Debtor filed its reply on 23.01.2019 and raised the following objections:

- a. The Petitioner has initiated recovery proceeding against the Corporate Debtor by filing an original application in DRT to recover dues amounting to Rs. 32,72,67,680.24/- under Section 19 of the Recovery of Debts due to Bank and Financial institution Act, 1993. The said application is pending before the Debt Recovery Tribunal and hence the liability of the Corporate Debtor has not been crystallised.
- b. During the pendency of the original application before the Debt Recovery Tribunal, the Petitioner has taken over the possession of the mortgaged properties and has realized certain amounts via E-auction.
- c. There is a discrepancy in the principal amount mentioned in Part IV of Form I in the Petition as the amount realised through E-auction should be deducted as it is already recovered by the Applicant.

14. The defence raised by the Corporate Debtor that liability of the Corporate Debtor is not crystallised as recovery proceedings are pending before the Debt Recovery Tribunal would not bar admission of this petition as the Hon'ble Supreme Court in *Innoventive Industries v. ICICI Bank, 2017* in Para 27 held that

"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount."

15. The same point of law was reiterated in Unigreen Global Private Limited v. Punjab National Bank & Ors, Company Appeal (AT) (Insolvency) No. 81 of 2017 to hold that under Section 7 debt and default has to be proved. 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. Pendency of civil proceedings in any court or tribunal would not be a bar for admission of a petition under Section 7 of the Code.
16. Further, the Hon'ble NCLAT in Mr. Ajay Kumar Agarwal v. Central Bank of India & Satae Bank of India, Company Appeal (AT) (Insolvency) No. 180 of 2017 held that mismatch of debt amount due in the petition is not a ground for dismissal of a petition under Section 7 of the Code. As long as the Corporate Debtor does not dispute that some debt is due and payable to the Financial Creditor, the petition under Section 7 must be admitted.

Hence none of the defences raised by the Corporate Debtor stand in the way of admission of this petition as "debt due" and "default" is clearly established from the documents on record.

17. This Adjudicating Authority, on perusal of the documents filed by the Petitioner, 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 30.01.2019 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. Sameer Kakar Chartered Accountant, 105, Gulmohar Complex, Near Bus Depot, Station Road, Goregaon (East), Mumbai - 400063, Email:- sameerkakar@gmail.com, Mobile No. 9920522110 having Registration No. IBBI/IPA-001/IP-P00218/2017-18/10418, as an 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 IRP within seven days from the date order is made available.

sd/-

V. NALLASENAPATHY
Member (Technical)

sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)