

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) - 3739/I&BP/MB/2018

Under Section 7 of the I&B Code, 2016  
In the matter of  
Omkara Assets Reconstruction Pvt. Ltd.,  
No. 9, M. P. Nagar First Street, Kongu  
Nagar Extension, Tirupur, Coimbatore,  
TN - 641607

.... Petitioner

Vs.

Anoushka Hospital Consultancy and  
Management Services Pvt. Ltd.  
3 - Ashirwad, 51 - Vallabh Nagar, N. S.  
Road No. 2, JVPD, Vile Parle (W),  
Mumbai - 400083

.... Respondent

Order delivered on: 15.01.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V.Nallasenapathy, Member (T)

For the Petitioner: Mr. Kunal Kanungo, Advocate i/b Cogito Legal.

For the Respondent: Mr. S. P. Bharti, Advocate i/b Mr. Yadav PR, Advocate.

*Per: V. Nallasenapathy, Member (T)*

ORDER

1. Omkara Assets Reconstruction Pvt. Ltd. (hereinafter called 'Petitioner') as an assignee of New India Co-Operative Bank, Andheri Branch, has sought the Corporate Insolvency Resolution Process of Anoushka Hospital Consultancy and Management Services Pvt. Ltd. (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 30.11.2016 in making payment to the extent of Rs. 17,81,54,000/- 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, on 04.08.2015 New India Co-Operative Bank, Andheri Branch had sanctioned a term loan facility of Rs. 14 Crores to the Corporate Debtor repayable with interest @ 13% p.a. The tenure of the said loan was 8 years (including moratorium period of 9 months) and EMI of Rs. 24,93,011/- p.m.
3. The Petitioner enclosed the following documents in support of the loan sanctioned to the Corporate Debtor by New India Co-Operative Bank Ltd., the assignor of the Petitioner.

- a. Copy of sanction letter dated 04.08.2015 issued by New India Co-Operative Bank, Andheri Branch in favour of Corporate Debtor, wherein a sum of Rs. 14 crores was sanctioned as Term Loan.
  - b. Copy of Management Agreement dated 03.08.2015 executed between Mr. Nanubhai N. Desai (Guarantor/ Director of Corporate Debtor) with the Corporate Debtor.
  - c. Copy of Demand Promissory Note dated 07.08.2015 executed by the Corporate Debtor for Rs. 14 Crores.
  - d. Copy of registered Mortgage deed dated 12.08.2015 executed by Mr. Nanubhai N. Desai in favour of New India Co-operative Bank Ltd.
4. The New India Co-Operative Bank initiated Arbitration proceedings against the Corporate Debtor wherein the arbitrator passed a consent award in Arbitration Application no. 487/2016 for a sum of Rs. 14,58,72,257/- repayable with further interest @13% p.a. compounded monthly and penal interest @2% p.a. without compounding from the date of award i.e. 12.08.2016 till the date of realisation.
5. The Petitioner enclosed the Assignment Agreement between New India Co-Operative Bank Ltd. and the Petitioner dated 31.03.2018 wherein the said Bank assigned the loans of Corporate Debtor in favour of the Petitioner.
6. The Corporate Debtor filed reply contending that the Corporate Debtor had failed to disclose the execution proceedings filed by New India Co-Operative Bank on the file of District and Sessions Court, Valsad bearing No. 59/2017 wherein the said bank sought attachment on the properties of the Corporate Debtor. Further it is submitted that the said bank initiated execution proceedings in the Hon'ble High Court of Judicature, Bombay in Execution Application No. COMEX-15/2017 for attachment and sale of property belonging to the Corporate Debtor situated at Mumbai. The Corporate Debtor contends that the non-disclosure of execution proceedings is an abuse of process of Tribunal and misuse of provisions of Code. The Corporate Debtor further submits that the Petitioner cannot avail two remedies simultaneously based on one cause of action and hence the present proceedings is not maintainable and is liable to dismissed.
7. The above contention of the Corporate Debtor is totally devoid of merit in view of the fact that the petitioner has to disclose in the Form 1 the required documents to prove the existence of debt and default. It is not the case of

the Corporate Debtor that the Petitioner had realised the debt or a portion of the debt in the execution proceedings which will have some impact in this proceedings. Further the Petitioner has enclosed the copy of Execution Petition Extract, Warrant of Attachment dated 17.02.2018 issued by the Prothonotary and Senior master of the Hon'ble Bombay High Court. In view of this, the contention of the Corporate Debtor fails.

8. The Learned Counsel for the Corporate Debtor submitted that the default will occur only on sale of the mortgaged properties by the Petitioner and relied on para 15 of the judgement of the Hon'ble Supreme Court in the case of *Transmission Corporation of Andra Pradesh Ltd. v. Equipment Conductors and Cables Ltd.* (2018 SCC OnLine SC 2113). The sale of mortgaged properties by the Petitioner is the consequence of default on the part of the Corporate Debtor. Hence the contention of the Corporate Debtor that the default will occur only on sale of mortgaged properties cannot be accepted and the judgement relied on by the Corporate Debtor is of no avail to it. Hence this contention of the Corporate Debtor miserably fails.
9. The above discussion clearly shows that the Corporate Debtor is liable to pay the dues to the Petitioner and defaulted to make the payment as per the consent decree passed by the arbitrator.
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 15.01.2019 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. Vinod Kumar Ambavat, Room No. 40, 9/15, Morarji Velji Bldg, 1<sup>st</sup> Floor, Dr. M. B. Velkar Street, Kalbadevi Rd., Mumbai-400002. Maharashtra., having Registration No. IBBI/IPA-001/IP-P00420/2017-18/10743 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)