

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. (IB) No.4735/NCLT/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of:

TJSB Sahakari Bank Limited

...Financial Creditor/ Applicant

V/s

**Joshi Deodhar Engineering Company
Limited**

...Corporate Debtor / Respondent

Order Dated: 15th October 2019

Coram: Hon'ble Member (Judicial): Mr V.P. Singh
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: Advocate Nausher Kohli & Advocate Jyoti Muley

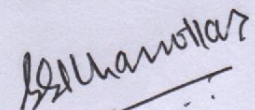
For the Respondent: None present

Per: V. P. Singh, Member (Judicial)

ORDER

1. This is an application being C.P. (IB) No. 4735/NCLT/MB/2018 filed by **TJSB Sahakari Bank Limited**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Joshi Deodhar Engineering Company Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Application is filed claiming a total default of **₹1,39,41,586.37/-** (Rupees One Crore Thirty Nine Lakh Forty One Thousand Five Hundred Eighty-Six and Paise Thirty Seven Only) along with interest as on 30.09.2018. The Application is filed by Mr Kishor Narayan Satpute; Manager HO Recovery of

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Financial Creditor duly authorised to file this Application vide Resolution dated 27.10.2018.

3. The Applicant submitted that it had sanctioned credit facilities to the tune of ₹1,12,00,000/- (Rupees One Crore and Twelve Lakh Only) to the Corporate Debtor. The said credit facilities were sanctioned by the Applicant as Cash Credit, Term Loan-I and Term Loan-II, vide Sanction Letter No. 42/05 dated 25.02.2013 and the Applicant disbursed the amount through Disbursement Orders dated 12.02.2013 and 25.02.2013. The Applicant along with Shamrao Vithal Co-operative Bank (SVC) entered into Consortium Agreement dated 12.06.2014 with the Corporate Debtor in respect of the said credit facilities. The said credit facilities were secured by Mortgage, Promissory Note, Deed of Hypothecation, Letter of Lien and Set Of and Deed of Guarantee. The Copies of the documents mentioned supra are annexed to the Application.
4. The Applicant submitted that the by the said credit facility loan was repayable on-demand or at the expiry of 365 days from the date of first withdrawal from the said credit facility, whichever is earlier, unless renewed. It is submitted that the said credit facility was renewed vide Disbursement Orders dated 01.03.2014 and 29.03.2014. The copies of Disbursement Orders are annexed to the Application.
5. The Applicant submitted that the Corporate Debtor has confirmed and acknowledged the said debt vide "Acknowledgment of Debt and Letter of Confirmation of Balance and Security" dated 01.03.2014 and 29.03.2014. Copy of the said letters are annexed to the Application.
6. The Applicant submitted that the Corporate Debtor defaulted in repayment of credit facilities and the Account of Corporate Debtor was classified as Non-Performing Asset (NPA) on 31.07.2014. Therefore, the Applicant issued Notice dated

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(Signature)

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25.02.2015 calling upon the Corporate Debtor, its Directors and Guarantors to pay the outstanding loan amount. Further, the SVC Bank, being the lead bank in the consortium, issued Notice dated 07.03.2015 under Section 13(2) of Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 calling upon the Corporate Debtor, its Directors and Guarantors to pay the outstanding amount due and payable to the lead bank and the Applicant. The copy of Applicant's Notice dated 25.02.2015 and SARFAESI Notice dated 07.03.2015 are annexed to the Application.

7. The Applicant has annexed Statement of Loan Account of Corporate Debtor prepared by the Applicant for period 01.09.2009 to 03.11.2018 reflecting the outstanding balance due from Corporate Debtor of ₹1,39,41,586.37/-. Bank Certificate under Bankers Books Evidence Act, 1891. The Applicant has further annexed Index of Charges for Corporate Debtor reflecting the name of Applicant as Charge Holder and CIBIL Report dated 15.07.2019 proving the default of Corporate Debtor and reflecting the classification of Corporate Debtor's account as 'doubtful'.
8. The Applicant filed the present Application on 21.12.2018. The Corporate Debtor filed its Reply on 04.04.2019 and admitted to the credit facilities availed from Applicant of ₹1,12,00,000/-. The Corporate Debtor in its Reply contended that the Application is barred by limitation as the period of three years has been elapsed from the date of default being 31.07.2014. The Corporate Debtor in its Reply also submitted that it had given One Time Settlement offer to the Applicant to settle the said dispute amicably.
9. No one appeared on behalf of the Corporate Debtor at the time of the hearing. We have heard the submissions of the Applicant and perused the records.

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10. During the argument, the Counsel for Applicant submitted that the Application is within limitation in pursuance of Section 18 of the Limitation Act, 1963, which states that 'fresh period of limitation shall be computed from the time of acknowledgement in writing'. The Counsel for Applicant submitted that the Corporate Debtor had acknowledged the debt in its Balance Sheet dated 31st March 2017, wherein the name of Applicant is reflected in Note B4 - Long Term Borrowings and Note B5 - Current Liabilities - Short Term Borrowings. The Applicant has annexed to the Application the Financial Statements of Corporate Debtor for year ending 31st March 2017. We have perused the records and have concluded that the Corporate Debtor, within three years from the date of default, i.e. 31.07.2014, has acknowledged the debt in its Balance Sheet dated 31st March 2017. Therefore, as per Section 18 of the Limitation Act, a fresh period of limitation shall be computed from 31st March 2017 and the Application being filed on 21.12.2018 is thus within limitation.
11. Further, on perusal of the documents submitted by the Applicant, it is clear that financial debt is amounting to ₹1,12,00,000/- is due and payable by the Corporate Debtor to the applicant as on the date of filing of this Application. The Corporate Debtor has also admitted the outstanding debt in Letter for Acknowledgment of Debt dated 01.03.2014 and 29.03.2014 and also in its Balance Sheet dated 31st March 2017. Therefore, an amount of more than ₹1,00,000/- is due and payable and there is default by the Corporate Debtor in repayment of the loan amount.
12. The credit facilities of ₹1,12,00,000/- is loan granted by the Applicant to the Corporate Debtor as the same is given for the time value of money, the said credit facility thus amounts to financial debt within the meaning of section 5(8) of the I&B, Code 2016. Copies of Sanction Letters along with Security Documents and Disbursement Letters are annexed to the Application. It is pertinent to mention that all the documents mentioned above establish financial debt.

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13. The Application is complete and has been filed under the proper form. The debt amount of more than Rupees One Lakh and default of the Corporate Debtor has been established and the Application deserves to be admitted.
14. The Applicant has proposed the name of Mr Sunil Khanolkar, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-003/IP-N00036/2017-18/10299] as **Interim Resolution Professional**, to carry out the functions of IRP along with his declaration in Form 2 that no disciplinary proceedings are pending against him, is annexed with the Application.
15. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 7 of I&B Code, 2016, filed by **TJSB Sahakari Bank Limited**, Financial Creditor / Applicant, against **Joshi Deodhar Engineering Company Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

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- I. That this Bench as a result of this prohibits:
 - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in 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 the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code 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 the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.

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VI. That this Bench at this moment appoints **Mr Sunil Khanolkar**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-003/IP-N00036/2017-18/10299]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

16. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

RAJESH SHARMA
Member (Technical)

Sd/-

V. P. SINGH
Member (Judicial)

15th October 2019

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