

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

CP 4434 (IB)/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

The Cosmos Cooperative Bank Limited

...Applicant

v/s

Sanghvi Land Developers Private Limited

...Corporate Debtor

Order Dated 20.09.2019

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

Hon'ble Member (Technical) Mr Rajesh Sharma

For the Petitioner: Adv. Ami Jain

For the Respondent: Adv. Asadullah Shaikh

Per V.P. Singh, Member (Judicial)

ORDER

1. This is an application being CP 4434/2018 filed by **The Cosmos Cooperative Bank Limited**, Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Sanghvi Land Developers Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. The Applicant had extended certain credit facilities to one Brainer Impex Limited (Principal Debtor) which was reviewed and sanctioned on 28.10.2013 for ₹50crores for which the Corporate Debtor executed a Deed of Corporate Guarantee dated 05.03.2013.
3. The Applicant has sent a notice under section 13(2) of SARFAESI Act, 2002 dated 08.07.2015 intimating the default to the Corporate Debtor and recalling an outstanding amount of ₹71.70crore including interest as on 01.07.2015. The Applicant has filed this

application claiming default in repayment of ₹75.99crores including interest as on 31.10.2018.

4. Before proceeding further, it shall be noted that the Applicant has already filed an application under section 7 of I&B Code against the principal borrower in CP (IB)-4134(MB)/2018 that has already been admitted by the Ld — Adjudicating Authority.
5. It is pertinent to note the Judgment of Hon'ble NCLAT in ***Dr Vishnu Kumar Agarwal vs M/s. Piramal Enterprises Ltd. in Company Appeal (AT) (Insolvency) No. 346 of 2018 dated 08.01.2019*** wherein it was held that two CIRP could not be initiated against two different Corporate Debtors for the same set of debt and default. The relevant portion is reproduced below:

"There is no bar in the 'I&B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'. However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'), second application by the same 'Financial Creditor' for the same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one 'Corporate Guarantor', or 'Principal Borrower' or two 'Corporate Guarantors' or one 'Corporate Guarantor' and other 'Corporate Guarantor'), till it is shown that the 'Corporate Debtors' combinedly are joint venture company."

6. In light of the above judgment, when already an application under section 7 is admitted against the principal borrower, i.e. Brainer Impex Limited, then the present application under section 7 for the

same debt and default cannot be admitted and therefore deserves to be rejected.

ORDER

This petition filed under Section 7 of I&B Code, 2016, by **The Cosmos Cooperative Bank Limited**, Applicant, against **Sanghvi Land Developers Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process is at this moment **rejected**.

We further make it clear that we have not decided upon the merit of the claim of the Applicant and the Applicant is at liberty to proceed before appropriate authority as per law.

The Registry is at this moment directed to immediately communicate this order to the Financial Creditor 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)

20th September 2019