

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

CP 2525 (IB)/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

Oriental Bank of Commerce

...Financial Creditor/ Applicant

v/s

Vivita Limited

...Corporate Debtor

Order Dated 19.09.2019

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

Hon'ble Member (Technical) Mr Rajesh Sharma

For the Petitioner: Adv. Anup Khaitan.

For the Respondent: Adv. Adv. Vivek V. P.

Per V.P. Singh, Member (Judicial)

ORDER

1. This application has already been admitted vide our order dated 19.09.2019.
2. This is an application being CP 2525/2019 filed on 01.07.2019. by, **Oriental Bank of Commerce**, Financial Creditor or Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Vivita Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
3. This application is filed by Mr Muntazeer Ahmed Firoz Khan, Senior Manager of the Applicant, who is duly authorised to do so vide authorisation dated 27.06.2019.
4. The Applicant had extended certain fund based as well as Non-fund based credit facilities to the Corporate Debtor for ₹9.50 crore sanctioned on 13.10.2001. Also, the Corporate Debtor availed bank guarantee of ₹13 crores from Global Trust Bank Limited sanctioned

on 26.03.2002, which subsequently merged into the Applicant Bank along with all its assets.

5. The Applicant has claimed an amount of ₹4,29,09,49,609.93 as due and payable and outstanding as on 31.05.2019.
6. The Applicant has submitted on record a legal notice dated 17.11.2003 sent on behalf of Global Trust Bank Limited to the Corporate Debtor recalling an amount of ₹14,20,39,026.40 due on 15.11.2003 against the Advance Payment Bank Guarantee. The Applicant sent a legal notice dated 04.03.2003 to the Corporate Debtor recalling an amount of ₹9,60,98,397.56 due against various credit facilities as outstanding on 31.12.2002. The MCA records as on 29.06.2019 reflect Two charges registered under the name of the Applicant aggregating to ₹4,86,00,000/- dated 18.10.2001 and one charge registered under the name of Global Trust Bank Limited for ₹13,00,00,000/- dated 18.02.2003.
7. The Applicant has also submitted CRILIC Report of the Corporate Debtor dated 28.06.2019, wherein the date of default is reported by the Applicant as 02.04.2002, and the status of the Corporate Debtor's account is classified as "Moved To Default". The Applicant has also submitted Commercial Credit Information Report of the Corporate Debtor issued by TransUnion CIBIL Limited dated 31.03.2018 which records that the Applicant files two suits for ₹10,18,61,211/- and ₹14,31,54,000/- on 30.04.2003 and 08.12.2003 respectively.
8. The Applicant has submitted the certificate under Banker's Book Evidence Act, 1891 dated 28.06.2019 along with the loan account of the Corporate Debtor as maintained by it showing an outstanding balance of ₹4,29,06,49,609.93 as on 31.05.2019.
9. The Corporate Debtor has tendered its Affidavit in Reply raising objections that the present application is barred by Limitation Act, 1963 as filed beyond the stipulated limitation period. This objection of the Corporate Debtor is not maintainable as the Applicant has filed Original Application no. (L) 106 of 2003 before the Ld. Debt Recovery Tribunal-I Mumbai on 23.04.2003 and the Global Bank Trust Limited had filed Original Application no. 09 of 2004 before the Ld. Debt Recovery Tribunal-II Mumbai. As the Applicant had

initiated legal proceedings against the Corporate Debtor for the impugned debt before a Court of Law within limitation, and the same being pending till date. The application cannot be said to be filed beyond limitation as the period for which the said legal proceeding is pending before the Ld. DRT and this period has to be excluded for calculating the statutory period of limitation.

10. On perusal of the documents submitted by the financial creditor, it is clear that debt amounting to ₹4,29,09,49,609.03 is due and payable by the Corporate Debtor to the Applicant. The debt and default both are established by the sanction letters dated 13.10.2001 and 26.03.2002; the Bank Statement of the loan account of the Corporate Debtor as certified by the Banker's certificated dated 28.06.2019; and the CRILIC as well as the CIBIL Reports dated 28.06.2019 and 31.03.2018 respectively. The Corporate Debtor was called to repay the amount of ₹23,81,37,420.96 including interest payable to the Applicant vide legal notices dated 17.11.2003 and 04.03.2003. The Applicant has filed Original Application before Ld. DRT Mumbai being O.A. No. (L) 106 of 2003 and O.A. 09 of 2004 for the impugned loan. Since the said applications before the Ld. DRT was filed within limitation and the same being pending till date, the present application cannot be said to be barred by limitation. The outstanding amount that is in default is more than ₹1,00,000/-.
11. The application filed by the financial creditor is on proper form 1, as prescribed under the Adjudicating Authority Rules and application is complete.
12. The Applicant has proposed the name of Mr Subrata Monindranath Maity, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00884/2017-18/11481] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
13. The Application under sub-section (2) of Section 7 of I&B Code, 2016 filed by the financial creditor for initiation of CIRP in prescribed Form No1, as per the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 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 petition 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 petition filed under Section 7 of I&B Code, 2016, filed by **Oriental Bank of Commerce**, against **Vivita Limited**, 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:

- 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 activity 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.
- VI. That this Bench at this moment appoints Mr Subrata Monindranath Maity, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00884/2017-18/11481] 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.
14. 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)

19th September 2019