

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

CP(IB)No.3456/NCLT/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

Oriental Bank of Commerce

...Financial Creditor/ Applicant
v/s

Topman Exports Limited

...Corporate Debtor

Order Dated 14th October 2019

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

For the Applicant: Adv. Anup Khaitan, Adv. Rohit R. Kanmurde.

For the Respondent: None Present.

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

ORDER

1. This is an Application being CP 3456(IB)/MB/2018 filed by **Oriental Bank of Commerce**, the Financial Creditor / Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Topman Exports Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) claiming a total default of ₹143,66,87,546/- (Rupees One Hundred and Forty Three Crore Sixty Six Lakh Eighty Seven Thousand Five Hundred and Forty Six only) as on 31.07.2018.
2. Mr Jay Shankar Kumar files the Application, the Senior Manager at Large Corporate Branch, Mumbai being duly authorised vide its 'Letter of authorisation' dated 09.08.2018 which is annexed to the Application.
3. The Applicant extended financial assistance by way of Working Capital: Cash Credit (Hypo) Facility, fund-based and non-fund based facilities. The Applicant claims that the Corporate Debtor has defaulted for a sum of ₹143,66,87,546/- (Rupees One Hundred and Forty-Three Crore Sixty Six Lakh Eighty-Seven Thousand Five Hundred and Forty-Six Only) as on 31.07.2018. Table of Computation of the total Claim is annexed to the Application.

4. The Applicant and the Corporate Debtor entered into the Term Loan Agreement dated 23.01.2004 for ₹1.90 Crore, and after that, the loan has been enhanced several times. A list of documents executed between the Applicant and the Corporate Debtor in respect of the credit facilities are provided below, and are annexed to the Application:
- 1) Term Loan Agreement dated 23.01.2004 for ₹1.90 Crores
 - 2) Term Loan Agreement dated 02.12.2004 for ₹4.25 Crores
 - 3) Term Loan Agreement dated 05.05.2008 for ₹6.15 Crores along with term Loan Agreement dated 05.05.2008 for ₹6.15 Crores against the immovable property;
 - 4) Term Loan Agreement dated 05.06.2008 for ₹19 Crores along with Term Loan Agreement dated 05.06.2008 for ₹19 Crores against immovable property
 - 5) Term Loan Agreement dated 11.12.2010 for ₹19 Crores along with Term Loan Agreement against the immovable property.
 - 6) Working Capital Consortium Agreement dated 20.03.2012; Joint Deed of Hypothecation dated 20.03.2012; Supplemental Memorandum of Deposit of Title Deeds by Debtor to financial Creditor; and Deed of Guarantee executed for ₹81.81 Crores; Inter-Se Agreement and Deed of Second Charge;
 - 7) Subsequent Working Capital Consortium Agreement dated 10.07.2013 along with Joint Deed of Hypothecation, Supplemental Memorandum of Deposit of Title Deed; Deed of Second charge; Deed of Guarantee
 - 8) Agreement for the pledge of shares/debentures dated 02.09.2013;
 - 9) Loan Agreement dated 01.10.2014; Deed of Guarantee.
5. The sanction letter dated 28.03.2013 issued by the Applicant for the corporate Debt Restructuring sought by the Corporate Debtor. The Letter of the CDR restructuring Agreement dated 30.03.2013 Master Restructuring Agreement dated 30.03.2013 are annexed to the Application.

6. The Balance confirmation by the Corporate Debtor on the Company letters dated 31.07.2013 and 31.08.2017 and the Statement of Accounts of the Corporate Debtor for the period 01.04.2017 to 31.07.2018 and the record of Company with the Central Repository of Information on Large Credits (CRILC Report) is annexed to the Application.
7. The account of the Corporate Debtor was declared as Non-Performing Asset on 30.09.2015, and the same is the date of default. The Applicant issued Notice dated 01.12.2016 under Section 13(2) of the SARFAESI Act, 2002, which is annexed to the Application.
8. The Corporate Debtor in its Affidavit in Reply contends that the documents relied upon by the Applicant are not duly stamped and the said documents do not have any evidentiary value to substantiate any debt before any courts of law or Tribunals.
9. The Corporate Debtor states that it has availed a sum of ₹80.37 Crores from the year 2003 till 2013 and that it has repaid a sum of Rs.119.60 crores till the year 2018 and that the debt needs to be proved by the Applicant.
10. The Corporate Debtor submits that an OTS offer was made to the Applicant in terms of Letter dated 09.02.2018 to which the Applicant has not responded. Further, it is submitted that the Application is premature and not maintainable.
11. We have heard the parties and perused the records.
12. On perusal of the records, it is noted that the Corporate Debtor has in the Reply and the written submissions harped on the point that the Documents produced by the Applicant are not duly stamped and that the same does not have evidentiary value, however, surprisingly, the Corporate Debtor has not denied the fact that it has availed the credit facilities. In other words, it is not the contention of the Respondent that the debt does not exist or the default has not occurred. The Corporate Debtor has only raised technical defences as to incomplete Form-1 and the validity of documents being not duly stamped. The Corporate

Debt has relied on *Garware Wall Ropes v. Coastal marine, 2019 SCC Online SC 515*, wherein the Hon'ble Supreme Court has held that by virtue of section 2(h)c of the Indian Contract Act, 1872 an agreement becomes contract only if it is enforceable by law and that an agreement which is not duly stamped does not become a contract enforceable by law.

13. It is imperative to mention here that, even if the agreements, as alleged, are not admissible as an evidence of debt and default, several other documents show the acknowledgement of the debt by the Corporate Debtor.
14. The copy of the record of the Company with the Central Repository of Information on Large Credits (CRILC Report) establishes that the Corporate Debtor has been reported as a defaulter on 23.02.2018 in its report. The Bank statement of the Corporate Debtor is annexed to the Application, along with Certificate under the provisions of Bankers Book of Evidence Act, 1891 shows the disbursement of debt and the unpaid balance in the account.
15. The Balance and Security Confirmation from guarantors dated 29.03.2012, 31.07.2013; Balance Confirmation on Company Letter Head executed by the Guarantors Ashok Agarwal, Satish Agarwal and Kishan Goyal dated 31.08.2017 and the OTS Letter dated 09.02.2018 is acknowledgement of debt given by the Corporate Debtor.
16. It is relevant to mention here that the other contentions raised by the Corporate Debtor that the Applicant has not responded to the OTS Letter and that the Corporate Debtor is not a wilful defaulter, that the different entries of Principal and interest, higher rate of interest etc. are unsustainable as this Tribunal need not venture into adjudication of dispute regarding the debt. It is only for this Tribunal to ascertain the debt of more than One Lac Rupees and default in payment for a proceeding being admitted under section 7 of the Insolvency and Bankruptcy Code, 2016.

17. In this regard, it is relevant to mention that in the case of **M/s Innoventive Industries Limited v. ICICI Bank & Anr in Civil Appeal No.8337-8338/2017**, the Hon'ble Supreme Court of India has held that

"...in the case of a corporate debtor who commits a default of financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due," i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date..."

18. In the light of the above judgement and as per section 7 of the I&B Code, 2016, the contention of the Corporate Debtor that the debt is disputed is not maintainable as the existence of a dispute is of no consequence in an application filed under section 7 of the Code.
19. The Applicant has proposed the name of **Mr Vishal Bidawatjika**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P00125/2017-18/10267]** as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code 2016, along with his declaration in Form 2, that no disciplinary proceedings are pending against him.
20. The Application filed 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 **Oriental Bank of Commerce**, Financial Creditor /Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Topman Exports 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:

- 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.
- VI. That this Bench at this moment appoints **Mr Vishal Bidawatjika**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P00125/2017-18/10267]** 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.
21. 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)

14th October 2019