

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

C.P. (IB) No. 4164/NCLT/MB/C-IV/2019

Under Section 7 of the I&B Code, 2016

In the matter of:

BANK OF INDIA

...Financial Creditor/ Applicant

V/s

**TUTICORIN COAL TERMINAL PRIVATE
LIMITED**

[CIN: U61200MH2010PTC206696]

...Corporate Debtor / Respondent

Order Dated: 20.02.2020

Coram:

Mr. Rajasekhar V.K. : Hon'ble Member (Judicial)

Mr. Rajesh Sharma : Hon'ble Member (Technical)

For the Petitioner: Mr. Nirav Shah, Mr. Ryan D'Souza, Ms. Natasha Puri i/b DSK Legal, Advocates.

For the Respondent: Mr. Naved Askari a/w Ms. Vandana Singh i/b Lexridge Partners, Advocate.

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is an application being **C.P. (IB) No. 4164/NCLT/MB/C-IV/2019** filed by **Bank of India**, the Financial Creditor/Applicant,

under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Tuticorin Coal Terminal Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. The Application is filed by Mr. Manoj Kumar Gupta, authorised signatory of Financial Creditor vide its Power of Attorney dated 25.11.2013, claiming a total default of Rs.90,87,56,273/- (Rupees ninety crore eighty-seven lakh fifty-six thousand two hundred seventy-three Only) along with interest @15.45% p.a. and Penal Interest @2% p.a. to be added w.e.f. 01.11.2019. The date of NPA is 05.01.2019.
3. The Applicant submitted that the Applicant agreed to make available to Corporate Debtor Term Loan Facility for Rs.103,50,00,000/- (Rupees one hundred three crore fifty lakh only) inclusive of a Bank Guarantee of Rs.33,50,00,000/- (Rupees thirty-three crore fifty lakh only). The said loan facility was made available to the Corporate Debtor under the Reconstituted B.O.I. Consortium under the Common Loan Agreement dated 07.03.2011, in accordance with and subject the terms and conditions of the Sanction Letter. The copy of the Sanction Letter is attached at pp. 36-53, Exhibit 'E' of the Application.
4. The Applicant submitted that the Applicant issued a Revival Letter dated 05.07.2016 to the Corporate Debtor on behalf of the Consortium confirming the execution of certain security documents, for the purposes of section 18 of the Limitation Act, 1963, and in order to preclude any question being raised on limitation regarding

Corporate Debtor's liability to Applicant and the Member Banks. The said letter also gave notice of the outstanding debt owed by the Corporate Debtor being Rs.73,87,00,000/- (Rupees seventy-three crore eighty-seven lakh only) inclusive of interest up to 04.07.2016. The said Revival Letter was acknowledged by the Corporate Debtor. The said Revival Letter is attached at pp.67, Exhibit 'H' of the Application.

5. The Corporate Debtor acknowledged through Revival Letter dated 23.04.2018 to the Financial Creditor confirming the execution of further security documents, for the purpose of section 18 of the Limitation Act, 1963 and in order to preclude any question being raised on limitation regarding Corporate Debtor's liability to Applicant and the Member Banks. The said Revival Letter is attached at p. 83-84, Exhibit 'K' of the Application.
6. The Applicant submitted that the applicant had issued Loan Recall Notice/Demand Notice dated 31.05.2019 under section 13(2) of the SARFAESI Act to the Corporate Debtor demanding the total outstanding dues of Rs.83,65,00,000/- (Rupees eighty-three crore sixty-five lakh only) within 15 days of the receipt of the this Notice and informing that they were also liable to pay Rs.16,80,00,000/- (Rupees sixteen crore eighty lakh only) under the Bank Guarantee facility. The said Recall Notice/Demand Notice is attached at pp. 97-98, Exhibit 'M' of the Application.
7. The Applicant submitted that the IDBI Trusteeship Services Limited (ITSL), acting as the Security Trustee for inter alia the Applicant, issued a Notice of Invocation of Guarantee to ALBA-Asia Private

Limited informing that the Borrower, Corporate Debtor has not fulfilled its obligations under the financing documents and that as on 15.09.2019 an aggregate amount of Rs.3,55,79,93,748/- (Rupees three hundred fifty-five crore seventy-nine lakh ninety-three thousand seven hundred forty-eight only) is due and payable by the Guarantor to the Lenders, being the Member Banks. ITSL called upon the Guarantor to pay the said dues along with the default interest by 19.10.2019. the copy of the said Notice is attached at pp. 99-100, Exhibit 'N' of the Application.

8. The Applicant also submitted by way of Additional Affidavit the Particulars of Creations/Modification of Charge for Corporate Debtor reflecting the name of Applicant as Charge Holder and Commercial Credit Information Report (CIBIL) dated 07.02.2020 reflecting the classification of Corporate Debtor's account as Doubtful.
9. The Applicant filed present application on 20.11.2019. The Corporate Debtor filed its Affidavit in Reply dated 27.01.2020. the Corporate Debtor submitted that the Corporate Debtor has been facing a major financial crunch and is in critical financial position. From 2004-2017, the business operations and the Project management and execution had drastically deteriorated, causing the Project to come to a standstill since June 2018. There is delay in completion of project for several reasons such as delays in obtaining permissions, clearances, lack of business opportunities etc.
10. The Corporate Debtor also stated that it is keen to co-operate as needed with the Applicant. The Corporate Debtor is in fact attempting to salvage its business and protect its own interest. In the given

circumstances, the Corporate Debtor acknowledges and concedes that the Corporate Debtor has been unable to repay its debts to the Financial Creditor which are due and payable for the reasons mentioned above.

11. We have heard the parties at length and perused the records.
12. The Applicant has stated that Rs.90,87,56,273/- was due and payable by the Corporate Debtor to the Applicant as on 31.10.2019. The account of the Corporate Debtor 05.01.2019.
13. It is observed from that the Corporate Debtor has admitted the liability to pay the debt at page 7 of Affidavit in Reply dated 27.01.2020 filed by the Corporate Debtor.
14. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,000/- (Rupees One Lakh Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in repayment of the loan amount. Therefore, we do not have any objection on record against the application filed for initiation of CIRP against the corporate debtor.
15. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Lakh and default of the Corporate Debtor has been established and the application deserves to be admitted.
16. The Applicant has proposed the name of Mr. Dhiren Shantilal Shah, a registered insolvency resolution professional having Registration

Number [IBBI/IPA-001/IP-P00220/2017-2018/10419] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him

ORDER

This Application filed under Section 7 of I&B Code, 2016, presented by **Bank of India**, Financial Creditor/ Applicant against **Tuticorin Coal Terminal Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **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
- a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- 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 appoints **Mr. Dhiren Shantilal Shah**, a registered Insolvency Resolution Professional having Registration Number **IBBI/IPA-001/IP-P00220/2017-2018/10419** 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. The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.

VII. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

VIII. The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

17. The Registry is directed to immediately communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

18. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a

Compliance Report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this Order.

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
RAJASEKHAR V. K.
Member (Judicial)

Dated: 20.02.2020