

(122)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

IBA/632/2019

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of M/s. Impel Health Care Private Limited

M/s. City Union Bank Limited

---Financial Creditor

V/s

M/s. Impel Health Care Private Limited

---Corporate Debtor

Order delivered on: 26.09.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Mr.R. Sivaraman, Advocate*

Mr.P. Ramesh Kumar, Advocate

Mr. Raghav Rajeev Menon, Advocate

Mr.Hasmukh S. Surana, Advocate

Mr. S.S. Sarat Chandra, Advocate

For the Corporate Debtor : **Non-Present** on the date of hearing

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order Pronounced on: 26.09.2019

It is an Insolvency and Bankruptcy Application filed u/s 7 of the
Insolvency and Bankruptcy Code, 2016 by Financial Creditor namely

M/s. City Union Bank Limited for initiation of Corporate Insolvency

Resolution Process (CIRP) against the Corporate Debtor namely M/s.



Impel Health Care Private Limited on the ground that the Corporate Debtor defaulted in making repayment of ₹8,49,27,900.94 as on 29.12.2017.

2. The learned counsel appearing on behalf of the Applicant submitted that the Corporate Debtor had availed credit facilities since 2011 from the Financial Creditor (City Union Bank Ltd., Purasawalkam Branch, Chennai) to meet the requirements of business working capital. Later, the said account was transferred to Chinmaya Nagar Branch, Chennai. The Creditor Bank sanctioned a sum of ₹8,50,00,000 with interest at the rate of 13% per annum to the Corporate Debtor. The Financial Creditor had sanctioned the above loan facilities to the Corporate Debtor against the Agreement of Loan Cum Hypothecation dated 27.07.2013, Promissory Note as collateral, Memorandum of Deposit of Title Deeds and other loan documents executed by the Corporate Debtor and Agreement of Guarantee executed by the Directors/Promoters of the Corporate Debtor Company in favour of Creditor Bank on 21.06.2016. The equitable mortgage/charge was extended from time to time for the credit facilities availed by the Corporate Debtor till 19.12.2017.



3. It is further submitted that despite repeated reminders and requests, the Corporate Debtor failed to adhere to the terms and conditions accepted while availing the said credit facilities and evaded to repay the outstanding amount with interest and thereby committed default in repayment of outstanding dues. The loan account was classified as NPA on 29.12.2017. The Financial Creditor sent notice, by hand, on 23.02.2018 under Section 13(2) of the SARFAESI Act, duly acknowledged by the Corporate Debtor, calling upon the Corporate Debtor to repay the entire outstanding amount within 60 days from the date of receipt of the said notice. The Financial creditor received no reply from the Corporate Debtor in this regard.

4. It is stated that the Creditor Bank having waited for a considerable period of time and having granted several opportunities to the Corporate Debtor to repay the legitimate dues, approached the Hon'ble Debt Recovery Tribunal-I at Chennai and filed Q.A.279/2018. The Corporate Debtor chose to remain ex-parte in the above proceedings. The Hon'ble Debt Recovery Tribunal allowed the original application vide order dated 07.02.2019 for



recovery of debt due from the Corporate Debtor (as Principal borrower & 1st Defendant,) together with interest as follows:

"the applicant bank is entitled for a recovery certificate against the defendants 1 to 4 jointly and severally to pay to the Applicant Bank a sum of ₹9,48,74,841.96 together with interest at the rate of 13% per annum with monthly rests in respect of OLCC Facility from the date of filing this original application till date of full and final realization".

5. On perusal of material placed before this Bench, it is seen that the Applicant relies upon the following documents to establish acknowledgement of debt and default:

Sl.No.	Documents relied upon
1.	<i>Agreement of Loan Cum Hypothecation of Goods dated 27.07.2013 in favour of Creditor Bank</i>
2.	<i>Registered Memorandum of Deposit of Title Deeds</i>
3.	<i>Registered Memorandum of Extension of Equitable Mortgage by way of Deposit of Title Deed</i>
4.	<i>Guarantee Agreement dated 21.06.2016 executed by the Promoters/Directors of the Corporate Company in favour of Creditor Bank</i>
5.	<i>Notice under SARFAESI Act</i>
6.	<i>Statement of accounts from 01.01.2016 to 18.02.2019 disclosing the transactions involved in the aforesaid loan accounts</i>
7.	<i>DRT-I, Chennai Order dated 07.02. 2019</i>

6. On looking at the facts available, we are of the view that this Applicant/Financial Creditor has proved existence of debt and default. Moreover, the Corporate Debtor neither gave any response



nor raised dispute after receiving the Notice under Section 13(2) of SARFAESI Act. It is the bounden duty of the Corporate Debtor (as Principal Borrower and 1st Defendant) to repay the outstanding amount of ₹9,48,74,841.96 together with interest at the rate of 13% per annum as per the Order of the Hon'ble DRT, Chennai on 07.02.2019. When this matter came up for hearing on 09.08.2019, 30.08.2019, 03.09.2019, 04.09.2019, 20.09.2019 and 23.09.2019, the Corporate Debtor chose to remain absent. This type of indifference on the part of Corporate Debtor conveys that he is not ready to repay the outstanding dues. Therefore, this Bench is inclined to admit this IBA/632/2019 by appointing Mr. Chandramouli Ramasubramaniam, as Interim Resolution Professional (IRP) looking at the consent given by the Financial Creditor stating that this Financial Creditor would pay remuneration to the IRP and the expenditure thereto until constitution of CoC.

7. In view of the aforesaid reasons, this IBA/632/2019 is hereby **admitted** with the following directions:



I. That Moratorium is hereby declared prohibiting all of the following actions, namely,

- 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 the possession of the corporate debtor.

II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

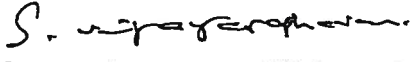


- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, 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 IBC.
- VI. That this Bench hereby appoints **Mr. Chandramouli Ramasubramaniam**, having Regn. No.[IBBI/IPA-002/IP-N00052/2016-2017/10096, RAJI, 3B1, 3rd Floor, Gaiety Palace, No.1L, Blackers Road, Mount Road, Chennai 600002, Mobile 9884068292, E-Mail: fcs.rms@gmail.com as Interim Resolution Professional to carry out the functions as





mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

8. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.


(S. VIJAYARAGHAVAN)
MEMBER (Technical)

KNP/TJS


(B. S.V. PRAKASH KUMAR)
MEMBER (Judicial)


23/5/18
N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
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