

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
TP 12 of 2019 [CP(IB) 10 of 2019]

Proceedings under Section 7 IBC

IN THE MATTER OF:

IDBI Bank Ltd

.....Applicant

V/s

BP Bansal Agritech Pvt Ltd

.....Respondent

Order delivered on 01/12/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

Braj Mohan

Sd/-

**DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

TP 12 of 2019 [CP(IB) 10 of 2019]

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w.
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the Matter of:

IDBI Bank Limited

IDBI Tower, World Trade Complex
Cuffe Parade, Mumbai-400005.

**Applicant/
Financial Creditor**

Versus

BP Bansal Agritech Private Limited

20B, Maharajpura Industrial Estate
Pinto Park, Gwalior
Madhya Pradesh-474020

**Respondent/
Corporate Debtor**

Order reserved on: 04.11.2022

Order pronounced on: 01.12.2022

Coram: Dr.Madan B. Gosavi, Member (J)

Kaushalendra Kumar Singh, Member (T)

Present:

For the Applicant: Ld. Adv. Mr.Vishal Raval

For the Respondent: Ld. Adv. Ms. Natasha Dhruman Shah

ORDER

1. The instant Application is filed by IDBI Bank Limited (**Applicant**) under section 7 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, through Deputy General Manager-Shri Tarun Kumar Prasad, for initiation of Corporate Insolvency Resolution Process (**CIRP**) against M/s B.P. Bansal Agritech Private Limited (**Respondent**). The amount in default as on 01.10.2018 under fund based credit facility is Rs.48,16,75,872/-

(principal amount being Rs.40,28,15,013/- and interest being Rs.7,88,60,859/-); and default amount under bank guarantee or letter of credit is Rs.1,34,15,589/-. The date of default is 31.07.2017.

2. The facts as narrated by the applicant are that the applicant sanctioned various credit facilities to BP Food Products Private Limited (**Borrower**) for which the respondent was a guarantor and a guarantee agreement was executed for the same.

The said facilities were under consortium arrangement with State Bank of India, UV Asset Reconstruction Company Limited (Assignee of RBL Bank Limited) and Kotak Mahindra Bank Limited. The following are the facilities sanctioned and disbursed by the financial creditor to the borrower:

Nature of Assistance	Sanctioned Amount (Rs. in crore)
Cash Credit	10.00
Term Loan-I	15.00
Term Loan-II	10.00
Vendor Bill Discounting	5.00
NFB	
Bank Guarantee	10.00
Total	50.00

Further, the account of the borrower became NPA on 29.10.2017. The applicant through its notice dated 21.03.2018 recalled the facilities from the borrower to discharge their entire outstanding liabilities as on 01.03.2018 amounting to Rs.46,63,18,605/- (wherein principal amount of Rs.42,93,98,903/- and interest being Rs.3,69,19,701/-); and subsequently through its notice dated 04.04.2018 invoked the guarantee from the respondent asking them to repay the entire outstanding liabilities amounting to Rs.46,63,18,605/- along with the further interest w.e.f 01.03.2018.

The applicant also proposed the name of the Interim Resolution Professional (IRP) Mr. Keyur J Shah having registration No.IBBI/IPA-002/IP-N00244/2017-18/10729 and the consent of the IRP is also placed on record.

3. The defence taken by the respondent are summarised as under:

3.1 The deed of guarantee was executed between IDBI Trusteeship Services Limited and the respondent and no resolution authorizing the applicant to file the present application on behalf of the IDBI Trusteeship Services Limited has been passed.

3.2 The corporate guarantee of Rs.181.29 crores is in contravention of section 186 of the Companies Act, 2013 and the same is also qualified in the independent auditor's report dated 30.08.2017 for financial year 2016-17. Since, section 186 of the Companies Act, 2013 specifies that no company shall give loan or guarantee exceeding 60% of its paid-up share capital, free reserves and securities premium or 100% of free reserves and securities premium, whichever is more. However, the 60% of the paid-up capital, free reserves and securities premium of the respondent as on 31.03.2016 amounts to Rs.4,08,26,975/- and 100% of free reserves and securities premium amounts to Rs.5,79,43,959/-. Therefore, the respondent filed a petition dated 10.10.2017, before the Regional Director, Ahmedabad, for declaration of the guarantee deed as null and void.

3.3 Further, on an application filed by various creditors under section 7 & 9 of the Code against the borrower, the Adjudicating Authority vide order dated 08.08.2018 admitted one of the application filed under section 9 (bearing CP No.(IB) 209 of 2017)

and the CIRP proceedings were initiated against the borrower. The resolution plan of the resolution applicant Om Shri Subh Labh Agritech Private Limited was approved. As per that approved resolution plan, the resolution applicant proposed to pay Rs.18,90,59,537/- to the applicant against the admitted amount of Rs.47,02,44,204/-. The applicant being the member of the COC gave consent to the said resolution plan. Therefore, another application for the same set of claim and default cannot be admitted against the respondent.

4. We have heard the learned counsel for the applicant as well as for the respondent and perused the relevant documents available on record. It is noted that the credit facilities amounting to Rs.181.29 crores were given to the borrower BP Food Products Private Limited, by the lenders- IDBI Bank Limited, State Bank of India, UV Asset Reconstruction Company Limited (Assignee of RBL Bank Limited) and Kotak Mahindra Bank Limited under consortium arrangement; for which IDBI Trusteeship Services Limited acted as security agent. Out of the said credit facility Rs.50 crore was lended by the applicant-IDBI Bank Limited to the borrower.

The respondent being a group concern of the borrower company gave guarantee amounting to Rs.181.29 crores and the corporate guarantee deed was executed between the IDBI Trusteeship Services Limited and the respondent.

The borrower committed default and was declared NPA on 29.10.2017. Subsequently, in the year 2018 the applicant recalled the facilities from the borrower and also invoked the guarantee from the respondent.

5. It is further noted that the applicant filed an application under section 7 against the borrower, however, the borrower was admitted

into CIRP proceedings by the Adjudicating Authority vide its order dated 08.08.2018, on another application filed by the operational creditor bearing CP No.(IB) 209 of 2017; and subsequently, the resolution plan of Om Shri Subh Labh Agritech Private Limited was approved in the said matter, wherein the applicant was proposed a sum of Rs.18,90,59,537/-. The applicant filed an application under section 7 against the respondent being the guarantor on 15.11.2018.

6. The respondent in its defence has taken a plea that the guarantee deed itself was null & void since that was executed in contravention of provisions of section 186 of the Companies Act, 2013, as the section provides that no company shall give loan or guarantee exceeding 60% of its paid-up share capital, free reserves and securities premium or 100% of free reserves and securities premium, whichever is more; the said limit can be exceeded only if authorised by a special resolution passed in the general meeting.

However, we are of the view that the plea so taken by the respondent is quite misplaced as the non-compliance of provisions of section 186 of the Companies Act, 2013 has nothing to do in respect of the proceedings under the Insolvency & Bankruptcy Code, 2016.

For the said contravention the company may be held liable for penalties under section 186(13) or any other action that may be initiated by the RD/ROC under the Companies Act as it deem fit. But having given the corporate guarantee for securing the loan from the lender banks by its own group concern, the respondent (being guarantor) cannot disown its liability on the ground of contravention of section 186 of the Companies Act, 2013. The lender bank will be well within its right to proceed against the respondent being a guarantor.

7. Another contention of the respondent was that the guarantee deed was executed between the IDBI Trusteeship Services Limited and the respondent and therefore, the applicant has no locus to file the present application without the authorization from the Trusteeship is also misplaced. The lenders bank had at the request of the borrower deputed the Trustee (IDBI Trusteeship Services Limited) as security agent through Security Trustee Agreement dated 10.06.2016. It was in furtherance of that agreement the Trustee had entered into the corporate guarantee deed on behalf of the banks.

8. Further, as per the provisions of the Code, once the resolution plan is accepted by the Committee of Creditors (CoC) and subsequently gets approved by the Adjudicating Authority as per Section 31 of the Code, the CIRP comes to an end. Thereafter, the debt which was owed by the Corporate Debtor is settled and no proceedings against the Corporate Debtor can be initiated in relation to the debt that has been settled. Further, the resolution plan so approved is binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

It is, therefore, understood that once the Resolution Plan is approved by the Adjudicating Authority, the liabilities of the Corporate Debtor come to an end. However, the creditors may retain the right to proceed against the guarantors of the Corporate Debtor. It is a settled position of law that the liabilities of guarantors are co-extensive with the borrower. Therefore, if the borrower is unable to clear the debt, then the right is accrued in favour of the creditor to proceed against the guarantor. This liability is independent in itself as the contract of guarantee is an independent contract.

9. Considering the facts, the debt due after setting off the amount payable under the resolution plan (of the borrower) to the applicant is

within the threshold as per the Section 4 of the Code and the Financial Creditor has established the existence of financial debt payable by the corporate guarantor. This application is filed within limitation and is defect free.

10. In view of the above, we are of the considered opinion that the respondent herein has committed default in paying the debt of the applicant and therefore, we admit this application and pass the order as under:

(i) The Corporate Debtor M/s BP Bansal Agritech Private Limited is admitted in Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

(ii) The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- 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 Securitisation 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.*

(iii) 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

(iv) We hereby appoint Mr. Keyur J Shah having registration No.IBBI/IPA-002/IP-N00244/2017-18/10729, having address at: 408, ChitraRath Complex, B/h President Hotel, Off C.G. Road, Navrangpura, Ahmedabad-380009, to act as an Interim Resolution Professional under Section 13(1)(c) of the Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(vi) This Adjudicating Authority directs the IRP to make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

(vii) It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Financial Creditor is directed to pay an advance of **Rs.1,00,000/-** (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(ix) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

11. Accordingly, TP 12 of 2019 [CP(IB) 10 of 2019] stands admitted.

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Kaushalendra Kumar Singh
Member (Technical)

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Dr.Madan B. Gosavi
Member (Judicial)