

NATIONAL COMPANY LAW TRIBUNAL
GUWAHATI BENCH, GUWAHATI

Dy. No.3 (211) of 2018

CP(16) No- 18 / GB / 2019

Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of:

Bank of India : ... Financial Creditor

-Versus-

M/s. RNB Cements (P) Ltd. : ... Corporate Debtor

Order delivered on 13th June, 2019

Coram:

Present: Hon'ble Member (J), Shri Jinan K.R

For the Financial Creditor : Mr. Subrata Dutta, Advocate

For the Corporate Debtor : None

ORDER

1. This is an application filed under Section 7 Insolvency & Bankruptcy Code, 2016 (in short "Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (in short "Rule") by the Bank of India / Financial Creditor for initiating Corporate Insolvency Resolution Process (in short CIRP) as against M/s. RNB Cements Pvt. Ltd., the Corporate Debtor (in short "CD") claiming that an amount of Rs.22,59,77,397.10 (Rupees Twenty Two crores Fifty Nine Lacs Seventy Seven thousand Three hundred Ninety Seven and paise Ten only) is the outstanding amount due from the CD and despite demand the CD failed in repayment of the debt and, therefore, filed this application for initiating CIRP.

2. The averments in brief, for consideration of this application are the following. The FC has sanctioned & disbursed a term loan –I of Rs.7.00 crores (Rupees Seven crores only) and term loan – II

of Rs.7.80 crores (Rupees Seven crores Eighty thousand only) aggregating to Rs.14.80 crores (Rupees Fourteen crores Eighty thousand only) sanctioned by Consortium banks with the State Bank of India being the lead bank [SBI - Rs.50.00 crores (Rupees Fifty crores only), Indian Bank – Rs.12.73 crores (Rupees Twelve crores Seventy Three lacs only), NEDFi – Rs.21.50 crores (Rupees Twenty One crores Fifty lacs only) and Bank of India – Rs.14.80 crores (Rupees Fourteen crores Eighty lacs only)].

Besides the above consortium loan facilities sanctioned by the consortium member banks, the State Bank of India had sanctioned a Cash Credit Loan of Rs.21.00 crores (Rupees Twenty One crores only), Bank Guarantee of Rs.3.00 crores (Rupees Three crores only) Corporate Term Loan – I of Rs.7.50 crores (Rupees Seven crores Fifty lacs only) and Corporate Term Loan –II of Rs.10.00 crores (Rupees Ten crores only) individually on standalone basis.

NEDFi has also sanctioned Corporate Rupee Term Loan – I of Rs.3.50 crores (Rupees Three crores Fifty lacs only) and Corporate Rupee Term Loan –II of Rs.7.50 crores (Rupees Seven crores Fifty lacs only).

Likewise, the Indian Bank had also sanctioned a Term Loan of Rs.4.50 crores individually on standalone basis.

The Bank of India as one of the FCs had sought to lodge this application under the Code with respect to its share of finance in the form of Term Loan –I of Rs.7.00 crores (Rupees Seven crores only) and Term Loan – II of Rs.7.80 crores (Rupees Seven crores Eighty lacs only) aggregating to Rs.14.80 crores (Rupees Fourteen crores Eighty lacs only).

The said consortium loan which included the Term Loan –I and II aggregating to Rs.14.80 crores (Rupees Fourteen crores Eighty lacs only) sanctioned by the FC are secured.

3. The CD has executed deed of hypothecation, created equitable mortgage and deed of lease etc. by securing the amount due to the FC. The CD committed default in repayment of the loan on 30-06-2014, 30-07-2017, 31-08-2014 and 28-11-2017. The loan account maintained by the FC in respect of the CD also has become NPA (non-performing asset) as on 30-09-2014. Since the CD committed default in repayment of the amount due to the FC along with the consortium member banks, the FC issued a demand notice under Section 13 (2) of the SARFAESI Act on 19-11-2016. The CD did not send their reply, thereby the FC along with the other consortium member banks (i) SBI as lead bank, (ii) India Bank and NEDFi as applicant before the Debt Recovery Tribunal (in short DRT) has filed OA No.34 of 2017 for recovery of the debt due from the CD, Corporate Guarantors and Personal Guarantors for an amount

to the tune of Rs.91,41,59,592.94 (Rupees Ninety One crores Forty One lacs Fifty Nine thousand Five hundred Ninety Two and paise Ninety Four only) and the said application is pending for disposal. In order to prove the record of default the FC has produced the statement of bank account, financial statement of the CD for the financial year ended on 31st March, 2017 and CIBIL report. The CD along with the Corporate Guarantors and Personal Guarantors had also signed and executed acknowledgement of debt dated 03-02-2016 for Term Loan – I and Term Loan – II in favour of the FC confirming all the security documents executed in favour of consortium members banks including the FC. Despite demand of the debt due from the CD, the FC has also issued loan recall notice dated 06-01-2015, however, no payment has been received by the FC towards liquidation of the outstanding dues for an amount of Rs.22,59,77,397.10 (Rupees Twenty Two crores Fifty Nine lacs Seventy Seven thousand Three hundred Ninety Seven and paise Ten only) as on 28-11-2018 and, thereby the FC has filed this application claiming the outstanding amount due as per Term Loan - I and Term Loan – II.

4. To support the contentions raised by the FC several documents were seen produced on the side of the applicant. The below mentioned documents are the relevant documents for the consideration of the application.

Sr. No.	Particulars	Annexure	Page No.
1	Copy of power of attorney dated 28.04.2017, Board approvals dated 14.06.2016, 02.03.2017, 19.12.2017 and copy of letter of authorization dated 26.06.2018 of the FC authorizing Sri Angom Ramchandra Singh	I-1, I-2, I-3, I-4 and I-5	23 to 55
2	Copies of Statements of Accounts along with Memorandums of Interest and Loan Installments Reports (in case of Term Loans)	I-A, I-B, I-C, I-D, I-E & I-F	56 to 78
3	Copy of request letter dated 28.06.2008 by the CD requesting financial assistance from the FC	I-J	144 to 150
4	Copy of sanction letter dated 11.02.2009 issued by the FC to the CD	I-K	151 to 160
5	Copy of sanction letter dated 25.08.2012 issued by the FC to the CD (restructured (Term Loan – I))	I-L	161 to 164
6	Copy of sanction letter dated 25.01.2013 issued by the FC to the CD (Term Loan – II)	I-M	165 to 171
7	Copy of Common Loan Agreement dated 09.06.2009	I-Q	188 to 278
8	Copy of Joint Deed of Hypothecation dated 09.06.2009	I-R	279 to 304
9	Copy of Agreement of Hypothecation and Charge dated 31.12.2009	I-S	305 to 322
10	Copy of Declaration cum Undertaking dated 09.06.2009	I-U	324 to 325
11	Copy of Deed of Personal Guarantee dated 09.06.2009 signed and executed by Sri Banwarilal Bajaj, Sri Rahul Bajaj, Sri Gaurav Bajaj, Smti. Madhu Bajaj ad Smti. Sweta Bajaj	I-V	326 to 340

12	Copy of Deed of Guarantee dated 31.12.2009 executed by M/s. RNB CARBIDES & FERRO ALLOYS (P) LTD.	I-W	341 to 356
13	Copy of acknowledgement of debt dated 01.02.2016 signed and executed by the CD and the Corporate Guarantor	I-AX	763 to 766
14	Copy of acknowledgement of debt dated 03.02.2016 signed and executed by the CD and the Corporate Guarantor	I-AY	767 to 770
15	Copy of the CIBIL Report	I-AAB	779 to 828
16	Copy of loan recall notice dated 06.01.2015 to the CD	I-AAD	830 to 831
17	Copy of demand notice dated 19.11.2016 under Section 13 (2) of the SARFAESI Act, 2002	I-AAE	832 to 833
18	Copy of balance sheet cum financial statements of the CD for the financial year ending 2016-17	I-AAF	834 to 1002
19	Copy of consent of the proposed Interim Resolution Professional in Form -2 and declaration regarding eligibility for appointment as IRP	II and II (a)	1059 to 1060

5. The CD entered appearance upon receipt of the notice, however, not contested the application. Though, several opportunities have been granted for filing reply affidavit, the CD after entering appearance did not turned up for filing reply affidavit and to contest and remained absent during the course of hearing. However, the CD approached before the Hon'ble High Court of Meghalaya at Shillong by filing CR (P) No.4 of 2019 in which the Hon'ble High Court vide order dated 18-02-2019 directed this Bench to keep the proceeding in abeyance and to transmit the records to the Hon'ble High Court. In compliance of the said direction, this Bench transmitted the entire file to the Hon'ble High Court of Meghalaya at Shillong. However, the FC challenged the said order/direction before the Hon'ble Supreme Court in SLP (C) No.8739 of 2019 in which the Hon'ble Supreme Court has stayed the interim order of the Hon'ble High Court of Meghalaya dated 18-02-2019 and thereby the Hon'ble High Court of Meghalaya re-transmitted the records to this Bench and the case was called again on 17th May, 2019. On that day also the CD had not turned up. However, opportunity has been given to the CD to file reply affidavit, if any, and to contest the matter and this case again come up on 06-06-2019 for final hearing. In the above circumstances the learned counsel appearing for the FC was heard. Perused the records.

6. This is a case filed by the FC under Section 7 of the Code. The FC contents that the CD has availed loan from the FC as well as from the members of the consortium banks and has committed default in repaying the loan and thereby the loan was recalled and demand notice under Section 13 (2) of the SARFAESI Act has been issued. However, the CD failed to repay the loan and thereby filed this application for initiating CIRP. The learned counsel appearing for the FC submits that an amount of Rs.22,59,77,397.10 (Rupees Twenty Two crores Fifty Nine lacs Seventy Seven thousand Three hundred

Ninety Seven and paise Ten only) is the outstanding amount due from the CD and the loan account has become NPA on 30-09-2014 and are still continuing as NPA account. According to him, an amount to the tune of Rs.91,41,51,592.94 (Rupees Ninety One crores Forty One lacs Fifty One thousand Five hundred Ninety Two and paise Ninety Four only) has been disbursed by the FC along with other consortium member banks namely (i) State Bank as lead bank, (ii) Indian Bank and (iii) NEDFI. He also submits that in view of nonpayment of the amounts due to the FC, the FC initiated revenue recovery proceedings before the DRT at Guwahati as OA No.34 of 2017 and it is pending for consideration.

Since the CD did not turn up for defending the case, first of all I have to look into whether the FC has complied all the requirements to be met out under Section 7 of the Code. Under Section 7 (5) of the Code, if the Adjudicating Authority is satisfied that the default has occurred and the application under Sub Section 3 of the Code is complete and there is no proceeding pending against the proposed Resolution Professional, it may, by an order admit such an application.

The application has been verified at length. Upon scrutiny of this application I am satisfied that all the requirements to be met out under Sub Section 3 of Section 7 of the Code have been complied with by the FC. The loan sanction letters (Annexure I-L and I-M) along with acknowledgement of liability/debt dated 03-02-2016 (Annexure I-AX and I-AY) prove that the amount claimed by the FC is still due. In order to prove that the CD has committed default, the FC has produced CIBIL report (Annexure I-AAB) and copies of statement of bank account (Annexure I-AZ-1 & I-AZ-2). To prove that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional, the applicant/FC has also produced Form -2 [Annexure II and II (a)]. Reference to Form-2 proves that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

7. Upon hearing the learned counsel appearing for the FC and on perusal of the records, I am satisfied that all the information required for maintaining an application filed under Section 7 of the Code are met out by the FC. Though, the FC is a member of the consortium banks lent money to the CD, consent of the joint lenders in filing an application of this nature by the members of the consortium banks is not at all a requirement to be met out in a case of this nature. The FC being succeeded in proving all elements required to admit the application of this nature, this application deserves to be allowed. Accordingly, it is allowed upon the following amongst other orders:

- (i) The petition filed by the financial creditor under Sec.7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process in

respect of M/s. RNB Cements (P) Ltd., and declare a moratorium and public announcement in accordance with Sec.13 and 15 of the IBC, 2016.


- (ii) Moratorium is declared for the purposes referred to in Sec.14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Sec.15 Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - (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 (54 of 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.
- (iv) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- (v) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vi) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.
- (vii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section

(1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

- (viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made.
- (xi) Mr. Kamalesh Kumar Singhnia, Registration No. IBBI/IPA- 002/IP No.No0023/2016-17/10050, resident of Bajarng Kunj, Room No.412-413, Grant Lane, 4th Floor, Kolkata 700012 [email ID: info@vipgroup.co.in] as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- (xii) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
- (Xiii) The copies of the order is to be communicated to the financial creditor, corporate debtor and IRP by the registry forthwith.

Certified copy of the order may immediately be issued to the Financial Creditor, Corporate Debtor and IRP.

- 8. List the matter on 18th July, 2019 for submission of progress report by IRP.
- 9. In view of the above, the Application is admitted and accordingly stands disposed of.


Adjudicating Authority
National Company Law Tribunal
Guwahati Bench, Guwahati

Signed on this 13th day of June, 2019
/Deka//06-06-2019//