

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

CP (IB) - 4658/I&BP/MB/2018
Under Section 7 of the I&B Code, 2016

In the matter of

Reliance Asset Reconstruction Company
Limited
6th Floor, South Wing, Off Western Express
Highway, Santacruz (East), Mumbai – 400
055

.... Petitioner

Vs.

Kosak Engineering and Rubber Products
Private Limited
A-3, Shankar Shail Raj Kunj,
Co.Op.Housing Society Ltd. Chembur,
Mumbai – 400 077

.... Corporate Debtor

Order delivered on: 25.09.2019

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)
Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Mr. Jayanta Kumar, Advocate

For the Corporate Debtor: None

Per: Shyam Babu Gautam, Member (T)

ORDER

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I & B) Code, 2016 by Reliance Asset Reconstruction Company Limited (hereinafter called the 'Petitioner') seeking the Corporate Insolvency Resolution Process against Kosak Engineering and Rubber Products Private Ltd. (hereinafter called the 'Corporate Debtor') a Corporate Guarantor of Specific Engineering Corporation Limited (hereinafter called the 'SEC'), on the ground that the SEC committed default during October, 2014 in repayment of credit facilities including overdraft facility alongwith Term Loan facility and Bank Guarantee aggregating to Rs. Three Crores, Seventy-Three Lakhs Thirty-One Thousand One hundred and twenty-four as on 15.10.2018.

2. The petitioner contends that there have been successive defaults in payment of instalments on behalf of SEC despite of several intimations of the outstanding amount due and payable given to them by the Petitioner, even after the declaration of the loan facility as an NPA there have been no response from SEC. The last instalment which was received from the SEC was in October 2014.
3. In support of all the contentions made by the learned counsel for the petitioner, the documents have been annexed and paid reliance upon which are as follows:
 - a. Copy of Company Master Data of the Corporate debtor.
 - b. Copy of computation of the amount claimed to be in default and days of default.
 - c. Copy of sanction letter dt. 22/04/2010 issued by SVC to the SEC.
 - d. Copy of the Loan Agreement between the by SEC in favour of SVC dt. 28/09/2010.
 - e. Copies of various Demand Promissory Notes made between the SEC and SVC.
 - f. Copies of various Continuing Security bond dated 29/04/2010.
 - g. Copy of the Declaration by the Directors of Corporate Debtor dt. 29/04/2010.
 - h. Deed of Guarantee executed by the Corporate Debtor in lieu of the credit facilities sanction to SEC dt. 29/04/2010.
 - i. Copy of the No Lien/Charge-Declaration executed by the principal borrower dated 28/04/2010.
 - j. Copy of the Indemnity cum Declaration dt. 29/04/2010 & 27/07/2010.
 - k. Copy of the Power of Attorney dt. 29/04/2010.
 - l. Copy of Tripartite agreement between MIDC, SVC and SEC dt. 22/09/2010.
 - m. Copy of Composite Deed of hypothecation for all facilities by Corporate Debtor in favour of SVC.

4. In 2007, Specific Engineering Corporation Limited requested the original lender i.e. Vijaya Bank to sanction various credit facilities of Rs. 350 Lakhs, after which these facilities were revised time and again by the SVC Co-operative Bank Limited. The sanctioned credit facilities to the tune of Rs. 350 Lakhs include cash credit facility, Term Loan facility and Bank Guarantee.
5. These said facilities were subsequently taken over by SVC Co-Operative Bank Limited on 22.04.2010. Thereafter, on the same date several promissory notes were executed by and between SVC Bank and Specific Engineering Corporation Limited in respect of overdraft facility for the sum of Rs. 150,00,000/- and Bank Guarantee of Rs. 50,00,000/-.
6. It is apprised by the Petitioner that these facilities were guaranteed by the Corporate Debtor through Mr. Kewal Kanlekar and Ms. Nita Kanlekar by executing a Deed of Guarantee dated 29.04.2010. in lieu of Credit facilities sanctioned.
7. Thereafter, on 27.07.2010, a hypothecation deed was entered between SVC Bank and Specific Engineering Corporation Limited for securing all the movable properties, book debts etc in favour of SVC bank. During this a Loan Agreement was also executed between them on 28.09.2010.
8. As per the request of Specific Engineering Corporation Pvt. Limited on 03.04.2013, the SVC Bank renewed the Credit Facilities availed by SEC from Rs. 350 Lakhs to Rs. 279.01 Lakhs. Furthermore, on 17.04.2013, a Loan Agreement and a Promissory Note for overdraft facility of Rs. 120 lakhs were executed between the said parties. Thereafter, a similar process was followed once again wherein the Credit facilities were renewed from Rs. 279.01 Lakhs to Rs. 268 Lakhs. All these facilities were guaranteed by the Corporate Debtor through Mr. Kewal Kanlekar and Ms. Nita Kanlekar by executing Deed of Guarantees on both the occasions.
9. During October 2014 Specific Engineering Corporation Limited committed default in payment of instalment towards the said credit facilities, with irregular payments and the last payment was received in October 2014.

10. Therefore, after successive defaults in payment on behalf of Specific Engineering Corporation Limited, the loan facility was declared as a Non-Performing Asset in the books of SVC Bank, and by a Notice dated 20.03.2015 under section 13 (2) of the SARFAESI Act, 2002 against the Corporate Debtor and called upon him to pay a sum of Rs. 2,30,45,568.3 as on 28.02.2015 with applicable interest from 01.03.2015.
11. As on 15.09.2016, the said Credit Facilities were assigned to the Petitioner herein vide an Assignment Agreement. Also, vide a registered agreement dated 01.03.2017 executed between SVC Co-operative Bank Limited and the Petitioner, as Trustee of RARC SVC 023 Trust, SVC Bank has assigned financial assets/debts including loan accounts along with right, title and interest together with underlying securities in favour of the Petitioner under SARFAESI Act, 2002.
12. The Petitioner company is a reconstruction company formed under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
13. The Petitioner enclosed the statement of account for the loan wherein it was found that the amount claimed in the Petition is as per the statement of account. The statement of account further reveals that there are defaults in payment of dues.

ORDER

14. Primarily, it is to be noted herein that on the previous occasions whenever the matter was listed for hearing, the petitioner had made various attempts to serve the copy on the Respondent. Vide order dated 11.03.2019, this Tribunal was also pleased to direct the Petitioner to go for Substituted Service by way of publication in two newspaper which was also done by the Petitioner. However, even then the Corporate Debtor has chosen not to tender appearance before this Tribunal. Therefore, since there was no representation on part of the Corporate Debtor, we have proceeded on merits and have heard the Petitioner at length.

15. Upon perusal of all the documents and evidences produced by the petitioner, we believe there has been default on the part of the SEC (the original borrower) and since the Corporate Debtor herein, had vide various Deed (s) of Guarantee (s) decided to act as a Guarantor on behalf of the Corporate Debtor, this Petition has been filed against them.

16. We have gone through all the pleadings filed and heard the arguments advanced by the petitioner. Based on the same, above facts shows that the SEC defaulted in making the payment towards the liability to the Petitioner and the petition deserves to be admitted. An amount was disbursed by the Petitioner, however, there is default in debt servicing by the SEC.

17. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that SEC defaulted in repaying the loan availed. Therefore, the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- (I) (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 (SARFAESI Act);
 - (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 the 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 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 25.09.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, 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 the Code.
- (VI) That this Bench hereby appoints, Mr. Pankaj Sham Joshi, having office at Omega Business Solutions Pvt. Ltd., Unit 12, Kakad Industrial Estate, Lady Jamsheedji Cross Road No. 3, Mahim (West), Mumbai - 400016; having Registration No. IBBI/IPA-002/IP-N00507/2017-18/11556 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

18. Accordingly, this Petition is admitted.

19. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-
Shyam Babu Gautam
Member (Technical)

Sd/-
Bhaskara Pantula Mohan
Member (Judicial)