

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

CP No. 1329/IBC/NCLT/MB/MAH/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

Bank of India

..... Financial Creditor
(Petitioner/Applicant)

V.

B.E. Billimoria & Company Limited.

..... Corporate Debtor
(Respondent)

Heard on: 05.09.2019

Pronounced on: 20.09.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Chandra Bhan Singh, Member (T)

For the Petitioner : Advocate Rohan Agrawal, i/b MDP & Partners

For the Respondent : None Present

Per: Chandra Bhan Singh, Member (T)

ORDER

1. The Petitioner/Applicant viz. 'Bank of India' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 01.04.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'B.E. Billimoria & Company Limited' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be 2nd Floor, "A" Block, Shivsagar Estate, Dr. Annie Besant Road, Worli, Mumbai-400018.
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹313,00,00,000/-, and the amount claimed to be in default is ₹283,44,41,788/- as on 28.02.2019. The date of default is stated to be 27.12.2015. The loan account of the Corporate Debtor was declared as Non-Performing asset on 31.12.2015.

BRIEF HISTORY OF THE CASE

3. The Financial Creditor has sanctioned certain financial facilities to the Corporate Debtor vide Sanction Letter dated 14.11.2013 granting Fund Based Facilities to the tune of ₹109.00 Crore, and Non-Fund Based Facilities to the tune of ₹204.00 Crore. The loan amount was secured by hypothecation of Machinery & Equipments, inventory of assets etc. The loan documents and security documents are duly annexed to the petition.
4. The loan facilities were further secured by the personal guarantee given by one Mr. Digant Kapadia vide Deed of Guarantee dated 02.08.2016. The immovable properties of the Corporate Debtor are mortgaged in favour of Bank of India and IDBI Bank Ltd. vide 'Deed of Mortgage (Without Possession)' dated 17.09.2016 for securing the loan facilities. The Pledge Agreement dated 02.09.2016 and Hypothecation cum Loan Agreement dated 18.12.2013 have also been executed in order to secure the loan facilities.

SUBMISSIONS BY THE FINANCIAL CREDITOR

5. The Financial Creditor submits that the loan was duly granted and disbursed pursuant to the Sanction Letter dated 14.11.2013 executed between the Financial Creditor and the Corporate Debtor. The relevant loan documents are produced on record.
6. It is submitted that the amount claimed in this application also includes the amount invoked by the beneficiaries under Bank guarantees given by the Financial creditor. To prove the existence of debt, the Financial Creditor submits that the Corporate Debtor has issued a Trust Receipt dated 18.12.2013 for the advances made by the Financial Creditor to the Corporate Debtor. The Corporate Debtor, on 18.12.2013, has further issued General Counter-Guarantee & Indemnity covering several guarantees within the sanctioned guarantee limit. On the same date, a Demand Promissory Note was issued by the Corporate Debtor for an amount of ₹28,03,36,482/-, which further substantiates the claim of the Financial Creditor.
7. The loan account of the Corporate Debtor was declared NPA on 31.12.2015 and the relevant NPA Certificate dated 05.10.2018 issued by the Financial Creditor has been produced on record.
8. The Financial Creditor has issued a Demand Notice dated 25.04.2016 for claiming the outstanding dues of the Corporate Debtor. However, nothing fructified. Hence, the Financial Creditor initiated DRT proceedings against the Corporate Debtor. The parties entered into an OTS under the DRT arrangement. Consequent thereto, a Consent Decree dated 27.09.2018 was passed by the DRT, New Delhi for recovery of ₹149,96,55,753/- as per the consent application.

9. However, the Corporate Debtor defaulted in making payment under the OTS proposal. Therefore, the Financial Creditor sent a letter to the Corporate Debtor on 09.10.2018 requesting outstanding payment under the consent decree passed by the DRT, New Delhi. No response was received from the side of the Corporate Debtor. Hence, this petition.
10. The Financial Creditor submits that the Statement of Accounts of the Corporate Debtor have been produced on record in order to corroborate the claim filed by the Corporate Debtor. The Financial Creditor has annexed a Certificate under section 2A of the Banker's Book Evidence Act, 1891.
11. Hence, the petitioner submits that the petition is complete in all respects, the default has been corroborated by enough substantial evidences, therefore, the petition ought to be admitted and the Corporate Debtor's Corporate Insolvency Resolution process be initiated.

SUBMISSIONS BY THE CORPORATE DEBTOR

12. No one was present from the side of the Corporate Debtor on the date of final hearing of this petition. No reply to this petition has been received on record till date. The Corporate Debtor has nothing to say in its defence except the fact that there is possibility of amicable settlement between the parties.

FINDINGS

13. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt even after entering into a settlement before the DRT New Delhi. The Corporate Debtor has acknowledged the disbursement of loan and its liability to repay on several occasions. However, the Corporate Debtor failed to pay. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
14. It is considered that the Credit facilities have been sanctioned to the Corporate Debtor under Multiple Banking Arrangement. The total debt outstanding of the Corporate Debtor under Multiple Banking Arrangement appears to be ₹592 crore as on 28.02.2017. However, out of which, the share of Bank of India is ₹313 crore as on 28.03.2017. Hence, it is a fit case for admission.

15. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.
16. Considering the above facts, we come to conclusion that the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of ‘debt’ and ‘default’, for admission of a petition under section 7 of the I&B Code, have been met in this case.
17. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘**Admission**’.
18. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
19. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Hiten Mukundbhai Parikh, having registration No. IBBI/IPA-002/IP-N00309/2017-18/10898, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
20. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
21. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
22. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

23. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
24. Ordered Accordingly.

SD/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Dated : 20.09.2018

SD/-

M.K. SHRAWAT
MEMBER (JUDICIAL)