

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

CP (IB) -1222/I&BP/MB/2019
Under Section 7 of the I&B Code, 2016

In the matter of

Bank of Maharashtra
Lok Mangal, 1501, Shivajinagar, Pune -
411005

.... Petitioner

Vs.

Fabtech Projects and Engineers Limited
J-504, MIDC, Bhosari, Pune - 411026

.... Corporate Debtor

Order delivered on: 24.09.2019

Coram:

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

For the Petitioner: Mr. Raina Birla, Advocate

For the Corporate Debtor: Mr. Aditya Pimple and Mr. Kunal
Chedhe Advocates

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. Bank of Maharashtra (hereinafter called the 'Petitioner') has sought the Corporate Insolvency Resolution Process of Fabtech Projects & Engineers Ltd. (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 21.06.2018 in repayment of credit facilities granted to the Corporate Debtor to the extent of Rs. 4,05,93,52,569/- and the Bank Guarantees to the tune of Rs. 49,63,18,974/- issued for and on behalf of the Corporate Debtor, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the



'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petitioner had subscribed to the issue of Non-Convertible Debentures (NCD's) offered by the Corporate Debtor to the extent of Rs. 248,63,00,000/-. Further the Petitioner extended Term Loan facility to the extent of Rs. 20,66,59,553/- to the Corporate Debtor. The Corporate Debtor enclosed the following documents in support of the above said financial debts:

- a. Copy of detailed Computation containing the amount of loan sanctioned, amount of default, etc.
- b. Copies of list of Bank Guarantees issued on behalf of the Corporate Debtor which are outstanding.
- c. Copy of schedule of securities held by the Bank.
- d. Copies of valuation reports for immovable properties given as security to Bank issued by Bapat Engineers, V Nerelkar and Valuers Pvt Ltd on various occasions.
- e. Copy of list of loan documents executed from time to time.
- f. Copy of Petitioner's sanction letter issued to corporate debtor sanctioning various credit facilities.
- g. Copy of Resolution passed by Corporate Debtor to avail credit facilities from Bank of Maharashtra.
- h. Copy of Composite Deed of hypothecation for all facilities by Corporate Debtor in favour of Bank of Maharashtra.
- i. Copies of various Guaranties executed.
- j. Copy of Agreement for Term Loans executed by the Corporate Debtor.



- k. Copies of various Demand Promissory notes for Term Loans.
 - l. Copy of certificate regarding Mr. Bira Ananda Rupnar exclusively pledged 20,483,166 Shares held by him in Fabtech Projects & Engineers Limited in favour of Bank of Maharashtra.
 - m. Copies of various Mortgage deeds executed.
 - n. Copy of Revival Letter dated 09/07/2018 thereby confirming the execution of documents and admitting the Bank of Maharashtra and other lenders liabilities.
 - o. Copies of Entries in a Banker's Book dated in accordance with the Bankers Book Evidence Act, 1891.
 - p. Copies of Balance sheets of Corporate Debtor for the past Financial Years.
 - q. Copy of audited financial statements of the Corporate Debtor.
3. The Counsel for the Petitioner submitted that they have sanctioned credit facilities of Rs. 55,00,00,000/- (Consisting of four facilities Cash Credit of Rs. 5 crores, Term Loan for textile division Rs. 15 Crores, Bank Guarantee Limit Rs. 20 crores and LC Limit Inland and Import Rs. 15 Crores) to the Corporate Debtor on the terms and conditions mentioned therein which the Corporate Debtor accepted and after executing various loan and security documents availed for the same on 05.07.2007. The said credit facility was thereafter renewed and enhanced from 55 Crores to 95 Crores on 08.12.2008.
4. It is further submitted by the Petitioner that the Corporate Debtor again approached the Bank of Maharashtra for enhancement of credit facilities under multi Banking arrangement with State



Bank of India for an aggregate facilitates of Rs 456 Crores out of which Bank of Maharashtra had enhanced the credit facilities from Rs. 80 Crores to Rs. 230 Crores vide its sanction letter dated 30/12/09 and State Bank of India had sanctioned Rs 226 Crores to the Corporate Debtor and the Corporate Debtor and the guarantors all accepted the terms of said aggregate sanction.

5. The Corporate Debtor approached both the Banks for enhancement of credit facilities from Rs. 456 Crores to Rs. 798.70 Crores and to form a consortium. Accordingly Bank of Maharashtra formed a Consortium with State Bank of India and Bank of Maharashtra enhanced the credit facilities of the Corporate Debtor from Rs. 230 crores to Rs. 447 crores vide sanction letter dated 23/09/2010 and similarly the joint lender State Bank of India also enhanced credit facilities from Rs. 226 crores to Rs. 396.70 crores vide its sanction letter dated 06/12/2010 and the aggregate credit facilities sanctioned stood at Rs 798.70 crores on the terms and conditions mentioned in their respective sanction letters on 23.09.2010.
6. We have been apprised by the Petitioner that after this the Financial Creditor on 10.09.2011 sanctioned an extra overdraft facility of Rs. 50 Lakhs for a period of 3 months and the Corporate Debtor and the guarantors executed the loan documents and availed the said extra overdraft facility.
7. Thereafter, the Corporate Debtor approached the consortium for enhancement of credit facilities from Rs. 798.70 Crores to Rs. 878.70 Crores. Bank of Maharashtra enhanced the credit facilities under consortium funding from Rs. 402 crores to Rs. 486 crores vide sanction letter dated 02/02/2012 and the joint lender State Bank of India reduced the credit facilities from Rs. 396.70



crores to Rs. 392.70 crores vide sanction Letter date 04/04/2012 on the terms and conditions mentioned in their respective sanction letters. Bank of Maharashtra had in addition sanctioned certain limits outside the consortium and they were continued.

8. Herein, it was interestingly pointed out that, the Corporate Debtor approached the consortium for enhancement of credit facilities from Rs 878.70 Crores to Rs. 995.10 Crores. However, the consortium members Bank of Maharashtra and State Bank of India did not enhance the credit facilities as required by the Corporate Debtor and the Corporate Debtor approached Allahabad Bank and got sanctioned the Credit Facilities for an amount of Rs 80 crores and by virtue of said sanction the aggregate credit facilities stood at Rs 995 .10 Crores.
9. After this, time and again various enhancements of the credit facilities were again sort, which were provided and at times even the Directors of the Corporate Debtor give personal guarantee for the same.
10. However, the Corporate Debtor failed to repay the cash credit and term loan as per terms of sanction. Due to non-payment of loan amount the loan account of the Corporate Debtor became irregular. Therefore, the account was termed as Non-Performing Assets in the books of account of my client as per RBI Guidelines on 21.06.2018.
11. The Corporate Debtor and other guarantors then executed Revival Letter dated 09/07/2018 and thereby confirmed the execution of documents and admitted the Bank of Maharashtra and other lenders liability.



12. Therefore, vide notice dated 17th January 2019 Petitioner herein, recalled the entire advance and asked the Corporate Debtor to repay the entire loan (Including bank guarantees issued) with interest amounting to Rs. 452,81,01,764/-.
13. The Bankers Book of Evidence shows the Bank Statement of the Corporate Debtor with the amounts outstanding under the various loan's accounts which have been annexed with the Petition.
14. 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.
15. The Corporate Debtor vide his reply denied the claims made by the Petitioner in his Petitioner and challenged the Petition on various ground which are as follows:
- a) It is submitted by the Corporate Debtor that the dues payable to the Petitioner are not currently due and payable and that there has not been any default in accordance with section 7 of the Code.
 - b) Further, it is argued by that Corporate Debtor that Since the present petition has been filed pursuant to notification dated 12.02.2018 issued by the RBI and which was struck down by the Hon'ble Supreme Court vide Order dated 02.04.2019 in the case of **Dharani sugars and Chemicals Ltd. v/s Union of India and Others**. Therefore, this petition is liable to be dismissed.
 - c) It was also argued that, other banks requested the Petitioner to withdraw/withhold the petition filed by them



- till a decision is taken on the Resolution Plan dated 29th March 2019 which was likely in the 2nd week of June 2019.
- d) It is also submitted that as per RBI notification dated 07.06.2019, the Petitioner alongwith the other lenders would be obligated to review the account of the borrower and decide on a resolution strategy and that on a true and proper construction of the said notification, the Petitioner and the other Consortium members are obligated to act together and review the resolution strategy.
- e) The Corporate Debtor has further submitted that the goal of the IBC is not the death of the Company, but its revival and the Resolution Plan submitted by the Corporate Debtor clearly demonstrates that it is viable to keep its Company running keeping in mind the maximisation of assets and balancing the interests of all stakeholders.
- f) We have been apprised by the counsel for the Corporate Debtor that the Petitioner, issued a notice on 27.08.2018 intending to declare the Company as a wilful defaulter under the RBI guidelines which was responded to by the Corporate Debtor by its letter dated 14.09.2018. However, inspite this the Petitioner declared the Corporate Debtor as a wilful defaulter. It is said that since there was huge liquidity crunch due to non-support of the Lenders, the Corporate Debtor could not serve the liabilities of the banks hence, the account has slipped in NPA.
- g) Our attention has been drawn towards RBI Notification dated 07.06.2019 which says that lenders representing 75% by value of the total outstanding credit facilities and 60% of the lenders by number would have to consent to filing the proceedings for insolvency without undertaking of such a Resolution Plan. Since the Petitioner claim is less



than 75% by value and less than 60% by number and the Petitioner does not have the consent of the other consortium members and hence the present petition is not maintainable.

16. Petitioner has also filed a Rejoinder, wherein he has rebutted all the defences and arguments raised by the Corporate Debtor. Primarily, it is argued that the Petition was not in pursuance to the RBI notification dated 12.02.2018, but because of the default committed and thereafter admitted by the Petitioner.
17. Next argument is with regards to the the Resolution Plan dated 29.03.2019, the Petitioner has said that the Corporate Debtor has not been very effective in meeting its obligations and hence the account has slipped on many occasions and the counsel for the Petitioner further apprised us with the fact that the Petitioner and other lenders have rejected the Resolution plan dated 29th March 2019 with the modifications suggested by the Corporate Debtor. Therefore, it is the prayed by the Petitioner that this petition deserves to be admitted.

ORDER

18. Herein, it is to be noted that Corporate Debtor's account was declared an NPA on 21.6.18 and further in the month of September 2018, the Corporate Debtor was declared a wilful defaulter and consequently, the Petitioner started action under SARFAESI Act, on 04.09.2018. After this, the Petitioner even served a notice on 19.01.2019 to the Corporate Debtor to clear all the dues and when it failed to do so, it filed the present petition.



19. Further, we draw our attention towards the arguments raised by the Corporate Debtor with regards to RBI Notification dated 07.06.2019. For better understanding of this Notification, relevant para of the same is reproduced herein:

“Para 10 In cases where RP is to be implemented, all lenders shall enter into an inter-creditor agreement (ICA), during the above-said Review Period, to provide for ground rules for finalisation and implementation of the RP in respect of borrowers with credit facilities from more than one lender. The ICA shall provide that any decision agreed by lenders representing 75 per cent by value of total outstanding credit facilities (fund based as well non-fund based) and 60 per cent of lenders by number shall be binding upon all the lenders. Additionally, the ICA may, inter alia, provide for rights and duties of majority lenders, duties and protection of rights of dissenting lenders, treatment of lenders with priority in cash flows/differential security interest, etc. In particular, the RPs shall provide for payment not less than the liquidation value⁶ due to the dissenting lenders.”

A mere reading of the above paragraph makes it clear that, this Notification is with reference to when a Resolution Plan is to be implemented during the review period. Herein, as we can see the default had already occurred, therefore review period is out of question and thereafter steps had already been taken to file proceedings before this Hon'ble Tribunal much before the Notification was issued by RBI. Furthermore, the argument of the Corporate Debtor that the Petitioner should have had reviewed



the account is during the review period of 30 days before the default occurred is not tenable since in this case the default had occurred in June 2018 almost one year prior to the issuance of said Notification.

20. After going through all the pleadings filed and hearing the arguments advanced by both the side, this bench is of the view that, the Corporate Debtor defaulted in making the payment towards the liability to the Petitioner and therefore this petition deserves to be admitted. An amount was disbursed by the Petitioner, however, there is default in debt servicing by the Corporate Debtor. Despite repeated requests and reminders, the Corporate Debtor failed to repay the dues and the account was classified as NPA.

21. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, 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 24.09.2019 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. Vijay Pitamber Lulla, having office at 501, Arcadia Building, 195 NCPA Marg, Nariman Point, Mumbai – 400 021; having Registration No. IBBI/IPA-001/IP-P00323/2017-



18/10593 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

22. Accordingly, this Petition is admitted.
23. 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)



Certified True Copy
Copy Issued "free of cost"
On 11/01/19
B. A. Patel,
Deputy Registrar
National Company Law Tribunal Mumbai Bench
Government of India