

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

CP(IB)No.1900/NCLT/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

**Mumbai District Central Cooperative
Bank Limited (MDCC)**

...Financial Creditor/ Petitioner
v/s

Latakisan Infra Private Limited

...Corporate Debtor

Order Dated 06th November 2019

Coram: Hon'ble Member (Judicial) : Mr. Bhaskara Pantula Mohan
Hon'ble Member (Technical): Mr Rajesh Sharma

For the Petitioner : Adv. Navid Memon

For the Respondent: None Present

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an Application being CP 1900(IB)/MB/2019 filed by **Mumbai District Central Cooperative Bank Limited**, the Financial Creditor or Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Latakisan Infra Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) claiming total default of ₹13,78,35,621/- (Rupees Thirteen Crore Seventy Eight Lakh Thirty Five Thousand Six Hundred and Twenty One Only) as on 08.05.2019.
2. This Application is filed by Mr Satish H. Patankar, the Assistant General Manager of the Financial Creditor, duly authorised by Board Resolution dated 30.04.2019, which is annexed to the Application.
3. The Applicant Bank has provided financial assistance to the Corporate Debtor under the Sanction Letter dated 01.08.2017 issued by the Applicant to the Corporate Debtor sanctioning a sum of ₹12 Crore only. Pursuant to the Sanction Letter, the Applicant and the Corporate Debtor entered into Term Loan Agreement dated 17.10.2017. Copies of the Sanction Letter and

the Term Loan Agreement mentioned above are annexed to the Application.

4. The Applicant has annexed copy of Facility Loan Agreement dated 14.08.2017 for project term loan entered by the Applicant along with four other banks forming part of the Consortium with the Corporate Debtor for a sum of ₹44Crore, the exposure of the Applicant Bank being ₹12 Crore only to establish the financial debt. The dates of disbursements of the loan are 17.10.2017, 06.11.2017 and 07.12.2017. The Corporate Debtor agreed to repay the aggregate term loan facility of ₹44 Crore along with interest at 13% p.a thereon within 72 months.
5. The Corporate Debtor mortgaged properties to secure the credit facilities sanctioned by all the Banks. The charge was registered with the Registrar of Companies, Mumbai on 04.10.2017 vide the Certificate of registration of charge. The certificate of Registration for modification of charge dated 04.10.2017 is annexed to the Application.
6. The Applicant has annexed Demand Promissory Note dated 17.10.2017 for a sum of ₹12 Crore along with an interest of 12.5% per annum issued by the Corporate Debtor in favour of the Applicant. The Applicant has also annexed hand written acknowledgment dated 08.10.2018 wherein the Corporate Debtor has acknowledged the amounts due and assured payments of the amounts due to establish Corporate Debtor's admission of liability to repay the financial debt.
7. The Applicant states that the Corporate debtor defaulted to repay the amounts in terms of the Term Loan Agreement on 01.04.2018 and the Applicant classified the Corporate Debtor's account as NPA on 01.06.2018 in its Books.
8. The Applicant has also annexed to the Application, Notice dated 04.06.2019 under section 13(2) of SARFAESI Act, 2002 issued by Nagpur Nagarik Sahakari Bank Limited, which is the lead bank in the Consortium of Banks demanding payment of ₹49,86,88,561/- along with interest to establish the loan amounts being recalled.

9. The Applicant has filed its Affidavit of Service showing that the Court Notice issued against the Corporate Debtor has been returned with postal remark "Door Locked", further the notice was served by newspaper publication and an affidavit of service is filed by the Applicant.
10. The Corporate Debtor has not entered appearance and has not tendered its Affidavit in Reply despite having been provided sufficient opportunity to do so.
11. We have heard the Applicant and perused the records.
12. On perusal of the Sanction letter dated 01.08.2017, Term Loan Agreement 17.10.2017 and the Facility Agreement dated 14.08.2017 along with the Bank Account Statements annexed to the Application and the registration of charge certificate it is established that the Corporate Debtor has received the debt amount of ₹12 crore from the Applicant.
13. On perusal of the Demand Promissory Note dated 17.10.2017 issued by the Corporate Debtor in favour of the Applicant and letter of Acknowledgement dated 08.10.2018, it is clear that the Corporate Debtor has admitted to its liability to repay the debt amount.
14. On perusal of the bank statement of the Corporate Debtor along with certificate under section 2A of the Bankers Books Evidence Act, 1891 it is seen that the Corporate debtor has not made any payments to the Applicant. The date of default being 01.04.2018 and the date of NPA being 01.06.2018
15. The debt amount of more than Rupees One Lakh and default by the Corporate Debtor has been established. The application is filed on proper Form 1 and is complete.
16. The Applicant has proposed the name of Mr. Ajay Gupta, a registered insolvency resolution professional having Registration Number [IBBI/IPA-001/IP-P00192/2017-18/10371] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code, and given his declaration; no disciplinary proceedings are pending against him.

17. The Application under Section 7 of I&B Code, 2016 is complete. The existence of financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the Application filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This petition filed under Section 7 of I&B Code, 2016, presented by **Mumbai District Central Cooperative Bank Limited**, Financial Creditor / Applicant against **Latakisan Infra Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
- 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;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in 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 the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code 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 the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.
- VI. That this Bench appoints **Mr.Ajay Gupta**, a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P00192/2017-18/10371]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
18. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp.
Compliance report of the order by Designated registrar is to be submitted today

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
BHASKARA PANTULA MOHAN
Member (Judicial)

06th November 2019