

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. III
MUMBAI BENCH**

CP (IB) - 775/I&B/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

ICICI Bank Limited,
Regd. Office at ICICI Bank Tower,
Near Chakli Circle, Old Padra Road, Vadodra-
390007 and Corporate Head Office at ICICI
Bank Towers, Bandra Kurla Complex, Bandra
(East) Mumbai-400051

.... Financial Creditor

Vs.

Tuljabhavani Cold Storage Private Ltd,
Regd. Office at Krushna Plot No. 56, Avdhoot
Nagar, Baramati, Tal-Baramati, Pune-413102

....Corporate Debtor

Order Delivered On: 24.02.2020

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)

Hon'ble Shri V Nallasenapathy, Member (T)

For the Petitioner: Mr. Supriya Majumdar, Advocate i/b Vidhi Partners

For the Corporate Debtor: Mr. Rohit Gupta, Advocate i/b R.V. Bankar

Per: V Nallasenapathy, Member (T)

ORDER

1. This is an application filed by ICICI Bank Limited (hereinafter called the 'Petitioner') seeking to set in motion the Corporate Insolvency Resolution Process of Tuljabhavani Cold Storage Private Limited (hereinafter called the 'Corporate Debtor') alleging that the Corporate Debtor committed default in making payment to the extent of ₹9,46,51,018/- as on 15.02.2014 under

Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter referred to as the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Financial Creditor was incorporated on 05.01.1994 bearing Identification Number L65190GJ1994PLC021012 whereas the Corporate Debtor is a company incorporated on 30.06.2003 and bearing CIN U63022PN2003PTC018082 and having Authorised Share Capital of ₹5,00,000/-.
3. On Perusal of the Petition it is revealed that a Loan Agreement dated 01.10.2012 was executed between the Petitioner and the Corporate Debtor for availing financial assistance of ₹500 Lakhs for the purpose of undertaking a project seeking expansion of cold storage facility by 6000 MT with an additional facility of blast freezing of 30 MT/day at D-19, MIDC Baramati Dist. Pune. It is submitted that the Corporate Debtor agreed to repay the aforesaid loan in 22 quarterly instalments with a moratorium of 2 quarters commencing from 15.08.2013 and ending on 15.05.2018 along with interest @7.6% p.a.
4. The Corporate Debtor availed the Term Loan and executed various loan and security documents in favour of the Petitioner:-
 - a. Deed of Hypothecation dated 01.10.2012.
 - b. Personal Guarantee Agreement dated 01.10.2012.
 - c. Documents in respect of creation of mortgage.
5. The Petitioner further submits that the Corporate Debtor vide letter dated 04.07.2013 requested the Petitioner to increase the moratorium period by 6 months to begin repayment of loan. The Petitioner Bank, vide letter dated 10.07.2013, considered the said request of the Corporate Debtor and thus

amended repayment schedule of loan agreement dated 01.10.2012 and increased the moratorium period for further 6 months.

6. The Corporate Debtor, vide their letter dated 15.06.2015, assured to repay the outstanding dues within a period of 3 weeks to 1 month.
7. Further, vide letter dated 03.08.2016, the Corporate Debtor accepted the OTS proposal sanctioned by the Petitioner as requested by the Corporate Debtor. The accepted OTS proposal reveals that the Corporate Debtor agreed to make a payment of ₹65 million by 31.08.2016 towards the full and final settlement of the dues. This Petition was filed on 21.02.2019, within 3 years from 31.08.2016 and the same is within limitation.
8. The Petitioner has annexed the Auditor's Report comprising of the Balance Sheet as on 31.03.2017 and Profit and Loss account of the Corporate Debtor. The said Financial Statements reflect the debt of the Petitioner.
9. The Petitioner further submits that despite repeated requests, the Corporate Debtor failed to repay the outstanding dues as a result of which, the Petitioner issued final notice to the Corporate Debtor on 07.01.2019 demanding for repayment of ₹91,599,506/- inclusive of interest as on 15.11.2018 within 7 days.
10. Further, vide letter dated 13.01.2019, the Corporate Debtor replied requesting the Petitioner to provide a month's time upto 31.01.2019.
11. The Petition came up for hearing on 24.06.2019 whereby Corporate Debtor submits that there is a likelihood of settlement in this matter as they are getting some funds by 15.07.2019. The Bench considered the request of the Corporate Debtor and adjourned the matter to 16.07.2019 making it very clear if they failed to do so, the matter shall be decided. However, on

16.07.2019, when the matter was taken up for hearing, the Counsel Mr. Rohit Gupta i/b R.V Bankar, appearing on behalf of the Corporate Debtor candidly admitted the debt as well as default.

12. We have heard both the parties at length, taken all their submissions into account and perused the documents and evidences placed on record by them. It has become very clear that the loan disbursed by the Financial Creditor to the Corporate Debtor and the Corporate Debtor failed to make the repayment of the said amount. Moreover, there has been an admission on the part of the Corporate Debtor on 16.07.2019 in the Court.
13. Also, it is to be noted that this petition fulfils all the requisite conditions to admit a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 and therefore, the petition deserves to be admitted.
14. 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. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of a petition under section 7 of the I&B Code. 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 24.02.2020 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.Gaurav Adikia, having office at Sumedha Management Solutions Private Limited, 703, C-Wing, Marathon Innova Off G.K Marg, Lower Parel (W), Mumbai-400013 and having Registration No. IBBI/IPA-002/IP-N00457/2017-18/11293 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

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

Sd/-

V Nallasenapathy
Member (Technical)

/Rohit/

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)