IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP 970 (IB)/MB/2019
Under Section 7 of the I&B Code, 2016
In the matter of
Bank of India Limited
…Financial Creditor/ Applicant
v/s
Poonam Drums and Containers Private Limited
...Corporate Debtor

Order Dated 20.09.2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh
Hon'ble Member (Technical) Mr Rajesh Sharma

For the Applicant: Adv. Prajakta Menezes.
For the Respondent: Adv. Rajesh Dubey.

Per Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being CP 970/2019 filed by **Bank of India Limited**, Financial Creditor or Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Poonam Drums and Containers Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**). The application is filed on 08.03.2019.

2. This application is filed by Mr Harikumar, Chief Manager and Constituted Attorney of the applicant Bank, duly authorised vide Letter of Authority dated 06.08.2018.

3. The Applicant had sanctioned various credit facilities to the Corporate Debtor that were restructured for an aggregate of ₹37 crore as per the latest sanction letter dated 19.09.2014. The said credit facilities were initially disbursed to the Corporate Debtor on 25.02.2006. The said credit facilities were secured, inter alia, by

Hypothecation of Stocks and Book Debts and Equitable Mortgage over fixed assets of the Corporate Debtor. Accordingly, the charge created over the said securities in favour of the Applicant for an amount of ₹37crore was registered and the Certificate of Registration of Charge dated 01.11.2014 is annexed to the application.

4. The Applicant submits that as on 22.01.2019, the total outstanding amount in default is ₹55,75,16,707.33/- including penal interest w.e.f. 29.09.2015 i.e. the date of classification of the account of the Corporate Debtor as Non-Performing Asset (NPA). The Applicant has stated the date of default as 11.06.2015.

5. The Applicant has annexed an NPA Certificate dated 31.01.2019 declaring that the account of the Corporate Debtor has been classified as NPA on 29.09.2015.

6. The Applicant has filed extracts of Commercial Credit Information Report (CIBIL) dated 31.01.2019 reflecting the outstanding amount of ₹37,18,75,561/- against the facility offered by the Applicant and classification of the Corporate Debtor's account as non-standard. The Applicant has also submitted a statement of account of the Corporate Debtor along with a certificate of the Applicant Bank under Banker's Book Evidence Act, 1991, dated 31.01.2019, certifying the account statement of the Corporate Debtor for the period for the period 01.06.2015 to 22.01.2019 showing an outstanding amount of ₹37,18,75,560.88.

7. The Applicant sent a notice dated 05.10.2015 under section 13 (2) of SARFAESI Act claiming an outstanding amount of ₹37,41,75,836.74/- including interest. The Corporate Debtor replied to the said notice vide its reply dated 30.11.2015 admitting the debt therein.

8. The Corporate Debtor appeared before this Tribunal but have not submitted any maintainable objection against admission of this application.

9. On perusal of the documents submitted by the financial creditor, it is clear that debt aggregating to ₹37crore is due and payable by the Corporate Debtor to the Applicant.

10. The debt of ₹37crore was sanctioned vide sanction letter dated 19.09.2014 and disbursed to the Corporate Debtor. The Corporate Debtor has not disputed the sanction letter. The Debt is secured by Equitable Mortgage over immovable property of the Corporate Debtor and the period for enforcing payment for such debt is prescribed as Twelve Years from the date when the money sued for becomes due. Therefore, the application is within limitation period as the date of default is 11.06.2015.

11. The statement of account of the Corporate Debtor for the period 01.06.2015 to 22.01.2019 reflects an outstanding amount of ₹37,18,75,560.88. The Commercial Credit Report dated 31.01.2019 reflects an outstanding amount of ₹37,18,75,561/- against the facility offered by the Applicant to the Corporate Debtor. Thus, the default in repayment of more than ₹1,00,000/- is also established.

12. The application filed by the financial creditor is on proper Form 1, as prescribed under the Adjudicating Authority Rules and application is complete.

13. The Applicant has proposed the name of Mr Devarajan Raman, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00323/2017-18/10928] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that there are no disciplinary proceedings pending against him.

14. The Application under sub-section (2) of Section 7 of I&B Code, 2016 filed by the financial creditor for initiation of CIRP in prescribed Form No1, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing 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 application filed under Section 7 of I&B Code, 2016, filed by **Bank of India Limited**, against **Poonam Drums and Containers Private Limited**, for initiating corporate insolvency resolution process is at this moment **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 activity 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 at this moment appoints Mr Devarajan Raman, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-002/IP-N00323/2017-18/10928] 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.

15. The Registry is at this moment 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/-
V.P. SINGH
Member (Judicial)

20th September, 2019