IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-1343(PB)/2018

IN THE MATTER OF:

Dena Bank (now Known as Bank of Baroda) ......Financial Creditor

v.

One World Travel Solutions Limited ....Corporate Debtor

SECTION: UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

JUDGMENT DELIVERED ON 03.12.2019

CORAM:
CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT

SHRI S.K. MOHAPATRA
HON'BLE MEMBER (T)

PRESENT:

For the Financial Creditor: Mr. Sunil Sharma & Mr. Kanishk, Advocates
For the Respondent: Mr. Prabudh Singh & Ms. Aakanksha Kaul, Advocates

M.M. KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-Dena Bank (now Known as Bank of Baroda) has filed the instant petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of One World Travel Solutions Limited.

2. The Corporate Debtor-One World Travel Solutions Limited is a company registered under the provisions of the Companies Act, 1956 and was incorporated on 12.01.2011. The identification number of the Corporate Debtor is U63000DL2011PLC212486 and its registered office is situated at 506, Manisha Building, 76-76, Nehru Place, New Delhi-110019.

3. The Financial Creditor has proposed the name of Resolution Professional, Mr. Jatin Madan with the address Unit No. 25, DDA LSC, Block M1, Vikas Puri, New Delhi-110018 and email id – cajatinmadan@yahoo.com. His registration number is IBBI/IPA-001/IP-P00222/2017-18/10421. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

4. The details of financial debt advanced by the petitioner-Financial Creditor have been set out in Part-IV of the proforma. The total amount sanctioned/renewed cum enhanced in various forms namely Cash Credit (Book Debts), Term Loan & Bank Guarantee starting from 03.08.2011 to 30.10.2013 is claimed to be INR 14,93,17,000/-. The

amount claimed to be in default and the details of default have been given in sub para 2 of Part-IV which reads as under:

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH DEFAULT OCCURED	1. 2.	The total amount due and payable to financial creditor as on 28.9.2018 is Rs. 23,53,55,373/- along with interest. Date of default : 31.12.2014 Computation of Default is attached at Annexure : F

5. The details of the security held by, or created for the benefit of 'financial creditor' along with the certificate of registration of charge (Annexure-D) issued by the Registrar of Companies have been placed on record which fulfils the requirements of Section 77 & 78 of Companies Act, 2013.

6. The Petitioner-Financial creditor has asserted that the account of the Corporate Debtor was classified as NPA on 31.12.2014. In view of the repeated defaults on the part of the Corporate Debtor to comply with the schedule of repayment of the principal and interest dues, the Financial Creditor issued a notice dated 13.02.2015 (Annexure-H) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Corporate Debtor.

7. The petitioner has then placed reliance on a copy of the order dated 18.08.2018 (Annexure-J) passed in MCA No. 107/2018 by Chief Metropolitan Magistrate, South East District, New Delhi in a petition under Section 14 of SARFAESI Act, 2002 filed by it whereby learned Court had appointed one Mr. Tarun Gahlot, Advocate as a Receiver to take the physical possession of the hypothecated/secured property and afterwards same was to be handed over to the authorized officer of the Petitioner-Bank. Further reliance has also been placed on the order dated 17.09.2018 (Annexure-K) passed in S.A. No. 263/2018 by Debts Recovery Tribunal-I, Delhi in an application filed by the Respondent challenging the aforesaid order dated 18.08.2018 including two orders as well whereby learned DRT after hearing the arguments of the rival parties had dismissed the same.

8. The petitioner has then placed on record a letter of acknowledgment of debt (Annexure-L) sent by the Corporate Debtor with the signature of its Director and seal of the Corporate Debtor to the Petitioner-Bank. At this stage it would be profitable to read the relevant portion of the said letter which is as under:

> "I/We also do hereby admit, confirm and acknowledge my/our liability and accept/my our indebtedness to you that at the foot of my/our relative borrowal account/s, the following amount/s which includes interest upto 16.01.2015 is/are due and payable by me/us to you together with further interest, interest-tax, as

applicable, costs, charges and expenses and other moneys in terms of the security document/s. My/our liability shall remain in full force with all relative securities, agreements and obligations as mentioned therein.

Sr. No.	Nature of Credit Facility/ies	Amount Outstanding
1	CCH	Rs. 119530364.98
2	TERM LOAN	Rs. 4521698.00
3	DL-INVOKED BG	Rs. 1457375.00

....

9. The precise case of the Petitioner thus is that the total amount in default due and payable to the Petitioner by the Respondent-Corporate Debtor as on 28.09.2018 is Rs. 23,53,55,373/- along with interest.

10. It is pertinent to mention that initially present petition was filed by Dena Bank. However, subsequently an application for substitution of cause title was filed with a prayer to substitute with Bank of Baroda in place of Dena Bank and amended petition under Section 7 of the Code was filed vide diary dated 26.04.2019. A prayer to change its name from 'Dena Bank' to 'Bank of Baroda' was made in light of the notification issued on 02.01.2019 in the Gazette of India allowing the merger of Dena Bank-Petitioner with Bank of Baroda and the same was allowed.

11. Learned counsel for the Corporate Debtor has advanced numerous arguments to oppose the admission of the petition which are as under: -

1. The purported letter of authority dated 28.09.2018 is unstamped and does not confer any specific authority upon Mr. S.M. Wasnik, Assistant General Manager to prefer the present petition. The said letter has been authored by Mr. K.V. Singh, Zonal Manager. It has neither been pleaded nor been established that Mr. K.V. Singh, Zonal Manager was authorized and empowered to execute the alleged letter of authority in favour of Mr. S.M. Wasnik, Assistant General Manager.

2. The proceedings under the Code are not for effecting recovery of contractual dues but for resolution of the insolvency of the Corporate Debtor. The petitioner-Bank to leverage its position in its unwarranted endeavour to recover its dues, has already taken recourse to SARFAESI Act, 2002. The said proceedings have challenged by the Corporate Debtor before the DRT-1, Delhi by filing S.A. No. 263/2018 which is pending adjudication.

3. The petitioner-Bank, without any justifiable reason and support from its indigenous policies and relevant guidelines of RBI, coerced, compelled and induced the Corporate Debtor and its Directors, to deliver the original title deeds of their joint property.

4. At the time of sanction/renewal/enhancement of credit facilities, the corporate debtor and its directors were compelled to append their respective signatures on various unfilled and undated formats/forms without being afforded any opportunity of understanding and comprehending the contents, intent and purport thereof.

5. The Corporate Debtor and its sister concern namely Airworth Travel & Tours Pvt. Ltd., in the financial years 2014-14, were cheated and defrauded by one of their vendors namely Easy Trip Planner Pvt. Ltd. The said acts of egregious fraud and cheating exposed the Corporate Debtor to immense and insurmountable business losses as also unwarranted litigation with others. One of the proceeding for recovery of an aggregate amount of Rs. 57 crores against Easy Trip Planner Pvt. Ltd. is pending before Hon'ble High

Court of Delhi and the Corporate Debtor thus anticipate that with its success in the aforesaid litigation and further it would succeed in recovering substantial amounts. Reliance has also been placed on a FIR lodged by it against some booking agents/sub-agents. Information with respect to aforesaid litigations pending before various Courts, lodging of FIR and business losses suffered by it on these counts, was also given to the petitioner-Bank between whiles.

6. The Petitioner-Bank, in violation of prudential guidelines and rules relating to income recognition, illegally declared and classified the credit facilities as NPA.

7. In the petition the Financial Creditor has averred that as on 28.09.2018, it is entitled to recover a sum of Rs. 23,53,55,373/- along with interest whereas in the sale notice dated 20.12.2018 it has claimed that its dues as on 30.11.2018 is Rs. 1250.35 lacs.

8. The petitioner-Bank unreasonably and arbitrarily rejected the proposal of Restructuring of the loan accounts of the Respondent and the compromise proposal sent by it.

9. In para 9 of the synopsis, the petitioner-Bank has prayed for winding up of the Corporate Debtor instead of seeking commencement of CIRP. The said averments establish that it has, with an ulterior motive, filed the present petition to pressurize the Corporate Debtor in order to leverage its alleged case for recovery of its dues.

12. A rejoinder to the reply has been filed by the Financial Creditor reiterating the submissions made in the petition and controverting the assertions in the reply.

13. Having heard learned counsel for the parties we are of the considered view that the Financial Creditor-Bank has succeeded in establishing a case for triggering the Corporate Insolvency Resolution Process.

14. There is a vital document placed on record namely Letter of Authority (at pg. 65 of the petition) dated 28.09.2018 signed and executed by Mr. K.V. Singh, Zonal Manager of the Bank and specifically addressed to the Bench Officer of this Tribunal establishing authority in favour of Mr. S.M. Wasnik, Assistant General Manager of the Bank to prepare and file the application and to accept the service of process on behalf of Dena Bank, Reply, Rejoinders and Affidavits/all other

documents and to make corrections, file and take documents or orders, cause inspection of records at the Bench and appear and argue on behalf of the Bank before the National Company Law Tribunal in connection with the present matter and to do other needful. It further empowers Mr. S.M. Wasnik, Assistant General Manager to engage legal Practitioners, Advocates, Counsels to appear and argue on behalf of the Bank and take all lawful steps for and on behalf of the Bank as may be necessary. Therefore, it is established that the petition has been filed by a person authorized in accordance with law. The affidavit and the vakalatnama have also been duly signed by the aforesaid officer. In view thereof, we do not find any substance in the objection raised on behalf of respondent.

15. Another objection is equally devoid of merit. The proposal of Restructuring of the loan accounts of the Respondent and the compromise proposal sent by it was unreasonably and arbitrarily rejected as all such efforts are part of external processes which are beyond the scope of the Insolvency and Bankruptcy Code. In any case such a proposal is not binding on the Financial Creditor. It is imperative to observe that Insolvency is not equivalent to winding up. This involves restructuring, re-planning and facilitation of evolving a

resolution for the industry to survive. If the solution is well in sight then there would not be any difficulty for the Committee of Creditors with the assistance of the Corporate Insolvency Resolution Professional to adopt a resolution plan in a time bound disciplined manner under the IBC-a Parliamentary Act. It would be acceptable to all the stake holders. It is only on the failure of a resolution that the liquidation process may have to be initiated in accordance with the provisions of Section 33 of IBC.

16. The respondent has argued that the account of the Corporate Debtor has been wrongly declared as NPA. While dealing with application under Section 7 of the Code, it is immaterial for us to examine as to when the account was declared as NPA. In Section 7 application, the Adjudicating Authority has to consider whether there is a debt due in law and facts and whether there has been a default in paying the financial debt. Hon'ble National Company Law Appellate Tribunal in the case of *Ranjit Kapoor v. Asset Reconstruction Company (India) Limited, in Company Appeal (AT) (Insolvency) No. 410 of 2018* has held that *"the provision of NPA relates to SARFAESI Act, 2002 and has nothing to do with Code".* Therefore, the objection of the Respondent that the account of the Respondent has been wrongly declared as NPA,

cannot be a ground to reject the application preferred by Financial Creditor under Section 7 of the Code, there being default in payment of financial debt.

17. Another objection of the Corporate Debtor is that the petitioner is resorting to forum shopping firstly before Debts Recovery Tribunal and secondly before this Tribunal. Such an argument looks attractive at the first blush but lacks substance because the pendency of any proceeding much less before the DRT would not create a bar for initiation of Corporate Insolvency Resolution Process against a Corporate Debtor. In that regard reliance may be placed on the observations made by Hon'ble the Supreme Court in the case of ***Innoventive Industries Ltd. v. ICICI Bank and Ors.*** (2018) 1 SCC 407. Referring to Section 238 of the Code it has been held that the non-obstante clause of the Parliamentary enactment would prevail over the limited non-obstante clause of any earlier enactment. Therefore, the pendency of proceeding under the provisions of the SARFAESI Act or DRT would not exclude the jurisdiction of the Tribunal under the Insolvency and Bankruptcy Code, 2016.

18. So far as the objection raised relating to inconsistent claims in different proceedings is concerned, the Petitioner-Bank in the rejoinder

has categorically clarified that the amount of Rs. 1250.34 lakhs as mentioned in E-auction sale notice dated 20.12.2018 was merely a typographical error as the amount of dues as per demand notice under Section 13 (2) of the SARFAESI Act was outstanding as on 31.03.2018 was mentioned as Rs. 12,50,33,994/- and uncharged interest upto that date was mentioned as Rs. 9,16,85,278/- and thus total amount due as on 31.03.2018 was Rs. 21,67,19,272/-. In any case we are not to determine the amount of unpaid debt (default) and it shall be open for determination by Committee of Creditors.

19. The Financial Creditor has placed on record various documents in relation to the disbursement of loan to the Respondent Company. The materials on record and the loan documents clearly depicts that the loan was sanctioned, disbursed and the loan/hypothecation agreement were properly executed. Respondent company utilized and enjoyed the loan facilities. The Financial Creditor has relied upon the document namely 'Charges Registered' obtained from the website of Registrar of Companies confirming creation of mortgage over the properties in order to secure the loan.

20. The Corporate Debtor vide letter (Annexure-L) had admitted, confirmed and acknowledged the outstanding liability and

indebtedness due and payable to the Petitioner-Bank by it in the heads namely Cash Credit Limit, Term Loan and DL-Invoked Bank Guarantee. A reference has already been made to the aforesaid fact in preceding para 8 of this order. Moreover, the amount claimed in Part-IV of the application is based on the statement of Accounts maintained by the Bank in its ordinary course of business and in accordance with the banking systems. In any case no serious dispute with regard to the amount payable could legally be raised before us.

21. The Tribunal is not an adjudicating authority to ascertain the quantum of amount of default or to pass decree as to how much amount is actually due to the Petitioner-Financial Creditor. Adjudicating Authority is not to decide a money claim or suit. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default if it amounts to rupees one lac or above (Section 4) before admitting the petition.

22. We further find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in our order dated 27.11.2018 rendered in the case of ECL Finance Limited vs. Digamber Buildcon Pvt. Ltd. (IB- 1039(PB)/2018).

23. After a reading of Section 7 of the Code along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, we are satisfied that a default has occurred and the application under sub section 2 of Section 7 is complete. The IRP proposed does not have any disciplinary proceedings pending against him.

24. As a sequel to the above discussion, this petition is admitted and Mr. Jatin Madan is appointed as an Interim Resolution Professional.

25. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 7 of the Code.

26. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as

provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

27. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to her in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditors.

28. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

29. Before parting we must notice the complaint made against Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount

due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act accordingly by placing it before the Financial Creditor as it is only fair to do so.

30. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

31. A copy of this order shall also be sent to the Secretary, Ministry of Corporate Affairs, New Delhi for compliance of directions issued in para 30 above.

05/12/19

Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003

-Sd-

(M.M. KUMAR)
PRESIDENT

-Sd-

(S.K. MOHAPATRA)
MEMBER (T)

National Company Law Tribunal
Principal Bench

03.12.2019
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