

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

CP No. 4425/IBC/NCLT/MB/MAH/2018

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Omkara Assets Reconstruction Private Limited
..... Financial Creditor
(Petitioner/Applicant)

V.

Janta Glass Limited.
..... Corporate Debtor
(Respondent)

Heard on: 27.08.2019

Pronounced on: 28.08.2019

Coram :

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Chandra Bhan Singh, Member (T)

For the Petitioner :

Advocate Kumal Kanungo a/w Rohini Menon i/b Cogito Legal.

For the Respondent :

None Present.

Per: Chandra Bhan Singh, Member (T)

ORDER

1. The Petitioner/Applicant viz. 'Omkara Assets Reconstruction Private Limited' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 26.11.2018 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Janta Glass Limited' (hereinafter as 'Corporate Debtor'). The registered address of the Corporate Debtor is stated to be 2nd Floor, Parekh Market, MG. Road, Ghatkopar East, Mumbai-400077.
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹26,28,21,721/-, and the amount claimed to be in default is ₹54,66,31,000/-. The Petitioner states that the Corporate Debtor has defaulted in making payment on various dates, Hence the default is a continuing default.

Brief History of the case:

3. The Corporate Debtor herein, approached the Financial Creditor for availing Cash Credit Facility worth ₹10,99,21,719.20 and a Term Loan Facility of ₹15,30,00,002/-, thus totalling to ₹26,28,21,721.2/- of debt. These facilities were issued vide Credit Arrangement Letter dated 03.12.2007 issued by ICICI Bank under Rupee Term Loan Facility agreement dated 10.04.2008 executed by ICICI Bank, whereby the Corporate Debtor availed the facilities.

Submissions by the Financial Creditor

4. It is stated that the validity of the Cash Credit Facility was 12 months and its proposed limit was ₹10 Crore @ interest rate of 19.5% p.a. The Term Loan was disbursed directly to suppliers/vendors upto the limit of ₹17 Crore @ interest rate of 13.5% pa. which was to be repaid in 20 equal quarterly instalments after initial moratorium of 12 months from the date of 1st disbursement viz. 16.09.2009.
5. These facilities were availed by the Corporate Debtor from FY 2007-08 till FY 2011-12. The Corporate debtor has issued a Demand Promissory Note for ₹270 million (₹27 Crore) dated 10.04.2008 in favour of ICICI Bank for the facilities availed. These facilities are provided against various movable and immovable properties of the Corporate Debtor as securities. On 19.04.2010, the Corporate Debtor addressed a letter to the ICICI Bank requesting a Restructuring of the Credit Facility Account. Hence, on 10.06.2010, the ICICI Bank and the Corporate Debtor executed a Supplemental and Amendatory Agreement whereby it was agreed that the Corporate Debtor will repay the amount of credit facility in 48 instalments immediately after the moratorium, as per the agreement dated 19.04.2010.
6. It is further stated that due to default of the Corporate Debtor in repayment of regular interest/prescribed EMIs, the ICICI Bank withdrew the aforesaid credit and loan facilities and called the Corporate Debtor vide two Recall Notices dated 28.03.2011 and 06.04.2011 and asked its promoters/Directors to pay the sum of ₹29,24,71,618/- within 7 days from the date of receipt of notice. Nothing fructified. The ICICI Bank filed an Original Application u/s 19(2) of Recovery of Debt due to bank and Financial institution Act, 1993 before the DRT-I, Mumbai for the recovery of the aforesaid amount. The result of DRT proceedings is still awaited.
7. Thereafter, the said credit and loan facility of the ICICI bank was taken over by the Financial Creditor vide an Assignment Agreement dated 26.03.2018. An Assignment Intimation Notice was issued by the Financial Creditor to the Corporate Debtor conveying that the debt of ICICI Bank has been assigned in favour of the Omkara ARC (the Financial Creditor).

8. The Financial Creditor, after charging interest as well as Penal Interest is claiming an amount of ₹54,66,31,000/- from the Corporate Debtor in respect of the default committed in repaying the debt.
9. The Financial creditor submits that its statement of accounts annexed in the petition is an ample proof that the loan amount has been duly disbursed. The Bank statement is corroborating to the computation of claim of the Financial Creditor. However, the Corporate Debtor has neither repaid the loan amount till date nor it has replied to the correspondences sent by the Financial Creditor calling for the repayment of loan.

No Submissions by the Corporate Debtor :

10. The Corporate Debtor has never appeared before this Bench despite a number of opportunities being given. Notices for intimation of dates of hearing have also been sent and affidavit of service has been produced on record by the Financial Creditor. The same has been duly perused. No reply has been received on record till date. The Corporate Debtor has nowhere denied his liability to pay the amount claimed.

Findings :

11. On going through the submissions made by the Learned Counsel for the Financial Creditor and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt on various occasions. This dues are unpaid for around 9 years and even the DRT proceedings have not fructified any result till date. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.
12. Further, by not filing any reply to this petition or the recall notice, the Corporate Debtor clarifies that there does not exist any valid defence to the amount claimed. Therefore, it can be very safely presumed that the Corporate Debtor has nothing much to say in its defence.
13. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there has been default in payment of Debt on the part of the Corporate Debtor.
14. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor.
15. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.

16. Further that, I have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.
17. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the petitioner, it is hereby held that this Petition/Application is **Admitted**.
18. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Rajat Mukherjee, having registration No. IBBI/IPA-002/IP-N00493/2017-18/11723, address at 302 Daga Complex II, 103/5 B.K. Street, Uttarpara, Hooghly, West Bengal-712258 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
19. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
20. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
21. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
22. The Petition is hereby “**Admitted**”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.
23. Ordered Accordingly.

SD/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Dated : 28.08.2018

SD/-

M.K. SHRAWAT
MEMBER (JUDICIAL)