IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

IBA/660/2019

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of M/s. Automative Coaches and Components Limited

M/s. Bank of Maharashtra

---Financial Creditor

V/s

M/s. Automative Coaches and Components Limited

---Corporate Debtor

Order delivered on: 03.09.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri. K. Chandrasekaran, Advocate*
Ms. V. Bhuvaneswari, Advocate

For the Corporate Debtor : *Shri. P.H Arvindh Pandian, Sr.Advocate*
For Shri G. Saravanan, Advocate

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 30.08.2019

It is an Insolvency and Bankruptcy Application filed u/s.7 by the Financial Creditor (Bank of Maharashtra – herein after called as "the Creditor Bank") under the Insolvency and Bankruptcy Code, 2016 ("**the Code**") for initiation of Corporate Insolvency Resolution

Process ("**CIRP**") against the Corporate Debtor (herein after called "the debtor") on the ground the Debtor defaulted in repaying ₹77,47,49,205 as on 31.10.2018.

2. Looking at the application, it is apparent that this Debtor availed various loan facilities from the Creditor Bank. To provide the sanctions sought by the consideration by the Debtor, the Creditor Bank initially issued Sanction Letter on 15.07.2013 sanctioning Cash Credit limits of ₹15.50Crores and Term Loan of ₹36Crores. In consideration to this sanction and disbursement of loans, the Debtor executed Deed of Hypothecation on 20.07.2013, executed Memorandum of Deposit of Title Deeds on 13.08.2013 creating equitable mortgage in favor of the Creditor Bank over the property belonging to the Directors, guarantees executed by the directors, and the Letter of Undertaking on 20.07.2013 executed by the erstwhile Directors of the Debtor Company and other letters binding upon the Debtor. Thereafter, as this Debtor failed to service the loans, the Creditor Bank has declared these Accounts as NPA on 17.01.2015. For the loan account not been regularized even after it was declared

as NPA, the Creditor Bank issued SARFAESI Notice u/s.13 (2) to the Debtor on 16.02.2015. For there being some technical mistake on the notice issued on 16.02.2015, the Creditor Bank again sent another SARFAESI Notice on 10.03.2015 revising the notice sent on 16.02.2015. After SARFAESI Notice issued, the erstwhile Management of the Debtor made part payment of ₹3.50Crores on 31.03.2015.

3. As there was no payment from the Debtor after the part payment of the aforesaid amount, the Creditor Bank again declared it as NPA on 01.05.2015. in furtherance of it, the Creditor Bank on 11.04.2016 issued Demand Legal Notice to the Debtor stating that since the Debtor has not adhered to the terms and conditions of the Sanction Letter and committed breaches of sanction terms in Cash Credit Account and as even interest portion was not serviced, the Account has become NPA as per the guidelines of RBI. Subsequent thereto, the Creditor Bank to terminate the Debtor Credit facility and Term Loan, called upon the Corporate Debtor to repay the Cash Credit Account balance of ₹18,12,90,537 plus interest from 07.04.2016

and the Term Loan Account balance of ₹38,17,43,573 plus interest from 07.04.2016 stating in the event the Debtor failed to pay the amount mentioned above within 4 days of receipt of this notice, the Creditor Bank would be constrained to initiate proceedings against the Debtor and its Directors for recovery of its dues.

4. To the Demand Notice given by the Creditor Bank, the Debtor on 18.10.2016 replied stating that the notice given u/s. 13(2) of SARFAESI Act, 2002 is baseless, imaginary and devoid of merits in classifying this account as NPA and that this Bank did lend money recklessly to the SVLL (Sister Company) of the Debtor on the instructions of Shri. Baid and it was shocking to them to note that it was complete harum-scarum lending and unbecoming of a Banker, the way money has been disbursed was without following basic due diligence by the Creditor Bank. The Debtor has further stated that the Creditor Bank has taken action u/s.13 (2) against the Debtor out of fear, anxiety and to safeguard the ex and current officers who have been dancing to the tune of Mr. Baid.

5. Against which, the Creditor Bank 03.11.2016 further replied rebutting each of the allegations made against the Creditor Bank by the Corporate Debtor by stating that this Debtor is a *"WILLFUL DEFAULTER"*, therefore the Debtor Account was rightly classified as NPA. Besides this, the Creditor Bank already filed Original Application for recovery before Debt Recovery Tribunal. On 12.07.2017, the Creditor Bank intimated the Debtor that the Bank has taken over the possession of the secured assets of the Debtor Company. In furtherance of it, the Creditor Bank on 01.11.2018 issued recall notice stating that the Debtor shall repay in full the total amount of ₹76,48,89,255 plus interest, costs thereon with effect from 31.10.2018 within 7 days from the date of receipt of this notice, failing of which, the Creditor Bank would be constrained to invoke other legal remedies available for recovery including assignment of the debt along with under lying Security/ Securities in favor of any of the Reconstruction Companies/ ARCs/Banks/FIs/NBFCs/Others without any further reference to the Debtor on failure of the Debtor in repayment of the above mentioned dues.

6. The Creditor Bank counsel has stated that, in between, the new management, which has come in the place of erstwhile management gave a proposal on 30.03.2017 for settlement of accounts, to which, the Creditor Bank sanctioned One Time Settlement proposal vide letter dated 03.05.2017 which is as follows:

"AE59/COM/ACCLSOFR/ARB/2017-18 Date: 03.05.2017

The Chairman/Managing Director,
M/s Automotive Coaches and Components Pvt Ltd.(ACCL)
Plot No-C & D-6, SIPCOT Industrial Complex,
Gummidipoondi-601201 (T.N.) E-mail: systems@accl.in
&
M/S.SoframeDefense Solutions India Ltd. (SOFRAME)
Sr.No.170, Plot No.D-1, Khalumbre,
Chakan – Talegaon Highway.
MIDC Chakan, Pune 410501.

Dear Sir,

RE: APPROVAL OF COMPROMISE PROPOSALS OF FOLLOWING ACCOUNTS…
1) M/s Automotive Coaches and Components Pvt. Ltd. (ACCL)
2) SoframeDefense Solutions India Ltd. (Soframe)

This has reference to your compromise offer letter No. ACCL/ BOM/ PROPOSAL/16-17 dated 30/03/2017 to Branch Manager Deccan Gymkhana Branch, Pune (Since transferred to Asset Recovery Branch, Pune) for settlement of above mentioned accounts. We are pleased to inform you that your compromise proposal is sanctioned by the competent authority on the following terms and conditions:

1. ₹30.64Crores is to be paid in full and final settlement of M/s. Automotive Coaches and Components Pvt. Ltd. payable by 3.6.2017.

2. ₹8.52Crores is to be paid in full and final settlement of M/s. Soframe Defence Solutions India Ltd. payable by 30.06.2017.

3. Ledger Balance of ₹18.82Crores will be waived/written off (ACCL – ₹17.49 Cr + Soframe ₹1.33 Cr)

4. Unapplied Interest/Expenses of ₹12.44Crores (ACCL ₹10.13Crores + Soframe – ₹2.31 Cr) to be waived.

5. Processing fee of ₹20.00lakhs and legal expenses ₹2.38Lakhs in ACCL & ₹2.10Lakhs in Soframe to be paid immediately, which is in addition to the compromise amount.

6. In case of default in payment of compromise amount in respect of accounts ACCL and Soframe as per terms and conditions of sanction, compromise shall come to an end and the Bank will have the right to recover the entire dues as per contractual terms.

7. The consent terms to be filled in the DRT with default clause "In case of default by the defendants to pay the amount as per the terms and conditions, the compromise/settlement shall come to an end and the Bank will be entitled to recover entire dues as per the contractual terms".

8. The settlement agreed between the parties shall not in any way affect or be construed as a settlement of ongoing criminal case/proceedings pending in the court against the borrower if any.

9. The borrower/guarantor shall withdraw all the suits, claims, counter claims, writ petitions filed in any of the courts by them, against the Bank, unconditionally, before the withdrawal of DRT/legal proceedings by the Bank.

10. DRT Suit to be withdrawn only after receipt of the entire agreed/compromise amount processing fee, Legal Charges and the withdrawal of the legal action/counter claim by the borrower/ guarantor.

11. Case filed (pertaining to M/s. Siddhi Vijayak Logistics Ltd) with CBI where TSI has been made a party will continue.

12. An undertaking, not to raise any objections/litigations in this context against bank in future, be submitted by the Borrower Company, borrowers/guarantors immediately.

13. No fresh Credit facilities will be sanctioned in future to company/directors/guarantors/partners/proprietor or any entity which they are interested in.

14.'No dues certificate' will be issued – after receipt of entire compromise amount and processing fee – on specific request of the borrower, ACCL and Soframe, mentioning clearly therein that the dues are settled by mutually agreed settlement involving sacrifice on the part of the bank.

15. On receipt of agreed amount of settlement/payment, personal guarantee/s, corporate guarantee and charge on properties towards that particular liability only, be released.

16. Acceptance of Terms and Conditions of the sanction by borrower/s and guarantor/s to be submitted.

Kindly acknowledge the above sanction with acceptance of terms and conditions by Board Resolution of respective companies i.e. of M/s. Automotive Coaches and Components Pvt. Ltd. (ACCL), Soframe Defense Solutions India Ltd. (Soframe) and acceptance of guarantors of these accounts.

Yours faithfully,
For – Bank of Maharashtra

(Hariom Trivedi)
Sr. Manager
Asset Recovery Branch Pune"

7. Though the Creditor Bank approved OTS proposal as mentioned above saying that since no payment has come from the Debtor in respect to the debt of ₹65Crores payable on or before 30.06.2017 and ₹5Crores in five equal monthly installments starting from 10.07.2017, it addressed a letter to this Debtor intimating that if the Creditor Bank has not received the compromise amount before

07.10.2017, it would initiate recovery recourse against the Group Companies/Directors as under:

1. *Declare all the Group companies/Directors as wilful defaulters*
2. *Take possession of assets of all the Group companies under SARFAESI*
3. *Lodge CBI complaint*
4. *Approach NCLT under Insolvency & Bankruptcy Act*

8. The Creditor Bank counsel says that this Debtor Management, instead of complying with OTS proposal sanctioned by the Bank, wrote another letter dated 12.03.2018 seeking for extension of OTS on depositing ₹1.60Crores in no-lien account towards the above OTS and ₹50Lacs on 28.02.2018. This Debtor Management has categorically mentioned that they would clear the balance amount on or before 30.03.2018, on this cause, the Management again requested the Creditor Bank to extend the facility of OTS up to 31.03.2018. For a while, the Creditor Bank did not take any action against the Debtor, perhaps hoping that the Debtor would repay in the extended period the Debtor sought. But whereas, this Debtor Management, instead of adhering to the OTS and subsequent request asking for further time, filed Writ Petition in the month of April 2018 before Hon'ble High

Court of Madras praying for the issuance of Writ of Certiorarified Mandamus to quash the above said letter dated 06.04.2018 of the District Collector, Thiruvallur District calling for a Report from the Tahsildar, Gummidipoondi in respect to the properties under SARFAESI and for a direction against the Creditor Bank to act upon its another OTS proposal dated 07.04.2017. Upon which, the Honorable High Court of Madras passed a detailed order covering 10 pages dealing with the issues threadbare with a final observation saying that the Hon'ble High Court of Madras is not inclined to accept the reliefs sought by the Debtor in the light of decisions discussed in the said Writ Order. It is also recorded in the order that the Debtor gave another OTS proposal on 18.07.2018 requesting for extension of OTS.

9. Based on the material placed before this Bench, we are of the considered opinion that the Creditor Bank has proved existence of debt and default with regard to the Accounts of the Debtor.

10. As against the case placed by the Creditor Bank, the Corporate Debtor, tried its luck before this Bench by filing an

MA/905/2019 asking relief to refer this case for mediation on the ground Mediation and Conciliation Rules, 2016 are applicable to IBC. So far, neither a Regulation nor any amendment has come to IBC to apply these Mediation and Conciliation Rules as sought by the Debtor. Based on this MA, the Debtor counsel insisted upon this Bench not to pass an order. When this Bench dismissed the above said MA just before hearing this case, this Debtor Counsel further insisted that this Bench shall not hear the IBC Application because he wanted to file appeal over the order in the MA aforesaid.

11. It is not the case of the Debtor counsel that money has not been taken from the Bank, and it is not even the case of the Debtor Company that it has discharged this liability owed to the Creditor Bank. By looking at the correspondence and the material filed by the Creditor Bank, it appears on record that this Debtor Management is in the practice of shooting up letters to the Bank asking for OTS proposal, when OTS granted, they do not pay money and again they come out with another OTS proposal. This is how for the last two

years have passed by without any progress in respect to repayment of the loan amounts availed and the interest accrued upon.

12. On having the Creditor Bank placed sanction letter and proof of disbursement of monies to the Corporate Debtor, creation of charge over the properties of the Corporate Debtor and various other documents reflecting existence of debt and thereafter the Corporate Debtor failure to repay the loan amount on repeated demands made by the Creditor Bank, we hereby hold that the Creditor Bank has proved existence of debt and default, therefore, we hereby admit this IBA/660/2019 by appointing Mr. Madurai Sundaram Sankar, IRP with the directions as follows:

I. That Moratorium is hereby declared prohibiting all of the following actions, namely,

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 the possession of the corporate debtor.

II. That 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 of IBC 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 **30.08.2019** 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 IBC

or passes an order for liquidation of corporate debtor under section 33 of IBC, 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 IBC.

VI. That this Bench hereby appoints **Mr. Madurai Sundaram Sankar, having Registration Number [IBBI/IPA-001/IP-P00770/2017-18/11315], A 1206, S & S Sarvam, 200 Feet Pallavaram Thuraipakkam Radial Road, Pallikaranai, Chennai-600100, E-Mail: m.s.sankar@outlook.com, Mobile No: 9444005746** as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

13. Accordingly, this Petition is admitted.

14. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-Sd-
(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

TJS/SR