

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. No.12/I & BP/NCLT/MAH/2017

**Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)**

In the matter of **Section 7 of the Insolvency and Bankruptcy Code, 2016**
read with Rule 4 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016.

In the matter of:

Starlog Enterprises Limited

... Corporate Debtor

And in the matter of:

ICICI Bank Limited, a Public Company incorporated under the
Companies Act, 1956 and a Banking Company within the meaning of the
banking Regulation Act, 1949, having its registered office at "Landmark",
Race Course Circle, Vadodara – 390007 and its corporate office at ICICI
Bank Towers, Bandra-Kurla Complex, Mumbai – 400051

... Applicant/Financial Creditor

Applicants' Counsel: Mr. Shyam Kapadia, Ms. Shreevandhini Parchure
and Ms. Isha Maniar, Advocates for the Applicant.

ORDER

(Heard & Pronounced on 17.2.2017)

The petitioner i.e., ICICI Bank, having failed to realize outstanding
dues from the Corporate Debtor i.e., Starlog Enterprises Limited in respect
to the loan facilities the petitioner granted, filed this petition u/s 7 of The
Insolvency and Bankruptcy Code 2016(herein after referred as "Code"),
seeking for admission of this petition declaring moratorium on the
Corporate Debtor Company, direction for public announcement of
initiation of corporate insolvency process and call for the submission of

claims u/s 15 and appointment of interim resolution professional as prescribed under the Code and Rules thereon.

2. The Petitioner, Financial Creditor, granted ₹230million Rupee Term Loan facility (RTL Facility) on an agreement entered on October 19,2011, thereafter disbursed the same, apart from this, this petitioner also granted ₹160million Working Capital Term Loan Facility (WCTL Facility) on an agreement dated March 2014 and disbursed the same on March 6,2014.

3. Besides the above two facilities, this petitioner already granted ₹20.4million Working Capital Bank Guarantee facility (BG Facility) basing on facility agreement dated October 27,2007 with utilization date as February 02,2017.

4. The petitioner says since no amounts are due under BG Facility, the amount of BG Facility has not been included in this petition by reserving its right to proceed later, as to WCTL facility, the defaults first occurred in respect to RTL Facility on 31st March 2016 and in respect to WCTL facility on 1st April 2016 respectively. For the Corporate Debtor having failed to repay the out-standings as agreed in the Agreements mentioned above, in respect to RTL Facility, the amount, as on February 06, 2017, defaulted has come to ₹9,99,01,103.62, and in respect to WCTL Facility, the amount, as on April 01, 2017, defaulted has come to ₹17,78, 27,162.00. therefore, these two amounts (principal + Interest + Overdue) put together has come to ₹27,78,27,162.00 (Annexur-2).

5. The Petitioner filed Certificate dated issued by ICICI (the Petitioner, being a Bank, Account has been maintained in the petitioner Bank itself) stating that copies of entries in accordance with the Bankers Books Evidence Act, regarding the statement of accounts of Starlog Enterprises Ltd. bearing Term Loan Account A115508001 for the period October 19, 2011 to February 07, 2017 and Term Loan Account No. 0000001101 for the

period March 06, 2014 to February 07, 2017, are annexed. And they are true and correct extract of the Ledger and the entries therein made in ordinary and usual course of business and the ledger is still in the custody of the petitioner Bank. To substantiate the certificate given by the petitioner Bank, the petitioner filed statements of both the Loan Accounts reflecting default occurred in two Term Loan accounts above mentioned for an amount of ₹17.77crores and ₹9.99crores aggregating to around ₹27.77crores.

6. Apart from the filings above mentioned, the Petitioner filed record of CIBIL Ltd. (Credit Rating Agency) reflecting the aforesaid two term loan accounts maintained by corporate debtor with numbers A115508001 and 0000001101 have become overdue and not paid even after 90 days past due, by which, it is evident that the Corporate Debtor defaulted making payments and the default has remained in existence till date. Though Information Utility Center has not yet come into existence so far, for there being a proof from Credit Information Agency bearing out default occurred in respect to the Accounts the company held with the petitioner Bank, this Bench hereby holds that the default above has been reflected in the credit agency books.

7. To further substantiate that the corporate debtor has been reminded of the fact of occurrence of default, the Petitioner has also filed the correspondence dated July 09,2015, August 19, 2015, September 11,2015, August 18,2016 and final notice dated February 06,2017 demanding payment of dues, failing which, the company would take recourse for remedial measures. To which, the Corporate Debtor, on August 20,2016 and on November 22,2016, responded to the notices given before November 22,2016 confirming the correctness of their indebtedness seeking extension of time for taking legal action for recovery. Thereafter, for the petitioner stated that the Corporate Debtor failed to discharge the liability till the date of filing this petition, this Bench believes that the

corporate debtor committed default and it has remained in existence till date.

8. The petitioner filed proof of service showing that notice has been served upon the corporate debtor before filing this petition i.e., on 08.02.2017.

9. Looking at the Petition filed by the Financial Creditor u/s 7 of I & B Code, for this Bench being satisfied that the Corporate Debtor failed to discharge the liability mentioned in this Company Petition resulting occurrence of default for an amount of around ₹27.77crores, this Bench admits this petition u/s 7 of the Code declaring moratorium for the purposes referred to in section 14 of the Code with following directions:

(i) That this Bench, subject to provisions of sub sections (2) & (3) of section 14 of the Code, hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 and 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) 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 17.02.2017 till the completion of the corporate insolvency resolution process as prescribed under section 12 of the Code.

(v) That this Bench hereby directs to cause public announcement of the corporate insolvency resolution process immediately as specified under section 13 of the Code.

(vi) That this Bench hereby appoints Mr. Sashank Narendra Desai, M/s Desai Saksena & Associates (Chartered Accountants) Laxmi Building, 1st Floor, Sir P.M. Road, Fort, Mumbai - 400001, Email: snd@dsaca.co.in with registration no. IBBI/IPA-01/IP-00072/2016-17/1082 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

(vii) That this Bench hereby directs the Registry of NCLT, Mumbai to communicate this order to the petitioner i.e., financial creditor and the corporate debtor.

Accordingly, this petition is admitted.

Sd/-

B. S.V. PRAKASHKUMAR
Member (Judicial)

Sd/-

V. NALLASENAPATHY
Member (Technical)