

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP NO.: 1137/I&BP/2017

Under section 7 of IBC 2016

In the matter of
State Bank of India

.... Financial Creditor

v/s

Jyoti Structures Ltd.

.... Corporate Debtor

Order delivered on: 04.07.2017

Coram:

Hon'ble B.S.V. Prakash Kumar, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner.....Mr. Dhananjay Kumar Adv. a/w Ms. Saloni Kapadia Adv.,
Mr. Anush Matkar Adv.
i/b M/s. Cyril Amarchand Mangaldas.

For the Respondent...Mr. Amit Vyas Adv. a/w Mr. Rohan Mathur Adv.
i/b Vertices Partners.

Per: B.S.V. Prakash Kumar, Member (J)

ORDER

It is a Company Petition filed by State Bank of India u/s 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor namely Jyoti Structures Ltd. for this Corporate Debtor availed loan facility of ₹1,227.25 crores through fund based and non-fund based arrangements, thereafter this Corporate Debtor defaulted in making repayment of the loans availed. When failed to clear the loan, a Master Restructuring Agreement (MRA) dated September 29, 2014 was entered into for restructuring, but when that was also failed, this applicant filed this application to initiate Insolvency Resolution Process against this Corporate Debtor on the ground that, as on 20.06.2017, this Corporate Debtor failed to repay the outstanding balance of ₹1,600.74 crores indebted to this creditor in relation to the loan facilities availed not

only from this creditor but also from the erstwhile Bank, State Bank of Hyderabad, hence this Petition.

Brief facts of the Case:

2. On March 15, 2012, State Bank of India granted loan facility of ₹1,227.25 crores to this Corporate Debtor on working capital consortium agreement dated March 15, 2012 executed by this Debtor. When Debtor failed to repay the loan as per the consortium agreement, the loan was restructured on September 29, 2014 in pursuance of Master Restructuring Agreement under the corporate restructuring scheme of Reserve Bank of India along with certain additional facilities granted to the Corporate Debtor under the said MRA, likewise erstwhile Bank SBH also granted loan facility to the debtor company.

3. The details of the facilities granted by State Bank of India and State Bank of Hyderabad to the Corporate Debtor are set out below:

SBI Facilities	<p>Details of the facilities granted by SBI ("SBI Facilities") to the Corporate Debtor pursuant to the MRA are set out hereunder:</p> <p><u>Fund Based</u></p> <p>a) Working Capital Term Loan to the tune of ₹ 309.52 Crores (as set out in part B(3) of Schedule III to the MRA);</p> <p>b) Funded Interest Term Loan to the tune of ₹ 31.62 Crores (as set out in Part B(8) of Schedule III of the MRA); and</p> <p>c) Cash Credit up to a limit of ₹ 124.48 Crores (as set out in Part B(5) read with Part B(7) of Schedule III to the MRA)</p> <p><u>Non-Fund Based</u></p> <p>a) Letter of credit facilities up to a limit of ₹ 273.53 Crores (as set out in Part B(6) of Schedule III to the MRA); and</p> <p>b) Bank Guarantees up to a limit of ₹ 715.26 Crores (as set out in Part B(6) of Schedule III to the MRA). A working capital term loan facility to the limit of ₹ 365 Crores was made</p>	<p>See Exhibit 4 (page 48- Vol-I) along with the MRA and recall notice (page 1008-Vol IV)</p>
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	available to the Corporate Debtor as a sub-limit to the bank guarantee facility.	
SBH Facilities	<p>Details of the facilities granted by SBH ("SBH Facilities") to the Corporate Debtor pursuant to the MRA are set out hereunder:</p> <p><u>Fund Based</u></p> <p>a) Working Capital Term Loan to the tune of ₹ 62.17 Crores (as set out in part B(3) of Schedule III to the MRA);</p> <p>b) Funded Interest Term Loan to the tune of ₹ 5.20 Crores (as set out in Part B(8) of Schedule III of the MRA); and</p> <p>c) Cash Credit up to a limit of ₹ 46.28 Crores (as set out in Part B(5) read with Part B(7) of Schedule III to the MRA).</p> <p><u>Non-Fund Based</u></p> <p>a) Letter of credit facilities up to a limit of ₹ 49.05 Crores (as set out in Part B(6) of Schedule III to the MRA); and</p> <p>b) Bank Guarantees up to a limit of ₹ 128.28 Crores (as set out in Part B(6) of Schedule III to the MRA).</p> <p>SBI Facilities and SBH Facilities are collectively referred to as "Facilities".</p>	See Exhibit 4 (page 48- Vol-I) along with the MRA and recall notice (page 1008-Vol IV)

4. Since State Bank of Hyderabad has been merged with the State Bank of India with effect from April 01, 2017, the resulting Bank i.e. State Bank of India has filed this Petition for initiation of Insolvency Resolution Process on the ground that this debtor defaulted to repay ₹1,745.39crores due outstanding as on 20.06.2017.

5. The Financial Creditor mentioned the details and the dates of disbursement under the facilities as mentioned in 'Exhibit-4' to the application, which are as follows: –

Amount in default (SBI Facilities)	Exhibit 5 (page 51-Vol-I)
a) SBI Working Capital Term Loan-1 – ₹ 409.72 crores;	Specific pages from the bankers' book (Vol III):
b) SBI Working Capital Term Loan-2 – ₹ 113.90;	
c) SBI Funded Interest Term Loan –	<u>SBI Working Capital Term Loan -1</u>

<p>₹ 38.65 Crores; d) SBI Cash Credit Facility – ₹ 710.34 Crores.</p> <p>Account in default (SBH Facilities)</p> <p>a) SBH Working Capital Term Loan-1 – ₹ 80.32 Crores; b) SBH Funded Interest Term Loan ₹ 4.88 Crores; c) SBH Cash Credit Facility – ₹ 242.93 Crores</p> <p>The total amount in default as on June 20, 2017 under the SBI Facilities and the SBH Facilities collectively is ₹ 1600.74 Crores.</p>	<p>Starting page – 594 Default - 597 (30/06/2015) Closing balance – 600</p> <p><u>SBI Working Capital Term Loan – 2</u> Starting page – 601 Default – 605 (30/06/15) Closing balance – 608</p> <p><u>SBI Funded Interest Term Loan</u> Starting page – 610 Default – 615 (30/05/15) Closing balance – 618</p> <p><u>SBI Cash Credit Facility</u> Pages 620 and 932 (Please note that there are two cash credit accounts under this facility. They have been annexed at page 620 and 932, respectively. A short enquiry report generated from the system has been attached along with to specify the amount outstanding and date of default).</p> <p><u>SBH Working Capital Term Loan – 1</u> Starting page – 959 Default - 961 (31/05/15) Closing balance – 963</p> <p><u>SBH Funded Interest Term Loan</u> Starting page – 965 Default – 970 (31/05/15) Closing balance – 972</p> <p><u>SBH Cash Credit Facility</u> Page 973. A short enquiry report generated from the system has been attached along with to</p>
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	specify the amount outstanding and date of default.
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6. The financial creditor has given computation of the amount of default as on 20.06.21017 which is as below:

Computation of amount of default, date of default and days of default:

Sr. No.	Facility	Total Overdue as on June 20, 2017 (In Rupees (Crores))				Date of Default (this reflects the first date of default under the respective facilities. The outstanding was recalled vide notice dated May 17, 2017.	Days of Default till June 20, 2017
		Principal	Interest	Penal Interest	Total standing (Principal + Interest + Penal Interest)		
SBI Facilities							
1	SBI Working Capital Term Loan-1	332.08	63.76	13.88	409.72	01.07.2015	721
2	SBI Working Capital Term Loan-2	91.32	18.72	3.86	113.90	01.07.2015	721
3	SBI Funded Interest Term Loan	17.27	20.07	1.31	38.65	30.06.2015	722
4	SBI Cash Credit Facility	580	114.24	16.10	710.34	19.05.2015	764
	Total	1272.61					
SBH Facilities							
1	SBH Working Capital Term Loan	61.54	18.78	0	80.32	01.06.2015	751
2	SBH Funded Interest	3.84	1.04	0	4.88	01.06.2015	751

	Term Loan							
3	SBH Cash Credit Facility	188.81	48.20	5.92	242.93	31.05.2015	752	
	Total	328.13						
	Grand	1600.74						

7. The financial Creditor has given particulars of various securities created in favour of it in consideration to the facility provided to the Corporate Debtor under the head of securities as mentioned in Exhibit-6 to 9 of the Company Petition.

8. To prove the factum of default, this Petitioner has filed the Status Classification Report of the Corporate Debtor dated 22.06.2017 issued by the Central Repository of Information of Large Credits (CRILC) for disclosing asset classification of the Corporate Debtor specifying it as '**doubtful debt**'; to corroborate further to the classification report, the Petitioner has filed certificate u/s 2A of Bankers Book Evidence Act along with Statement of Account of the debtor company maintained by the petitioner, apart from this, the petitioner annexed the notice dated May 17, 2017 to the Corporate Debtor and the various personal guarantors for repayment of the amounts granted under the facilities aggregating to ₹ 1,538.36crores, the balance confirmation issued by the financial creditor on June 19.2017, pursuant to which the outstanding balance amounts (under the SBH facilities) as on March 31, 2017 were acknowledged by the Authorised Signatory of the Corporate debtor, the balance confirmation issued by the financial creditor on June 19.2017, pursuant to which the outstanding balance amounts (under the SBI facilities) as on March 31, 2017, March 31,2016, were acknowledged by the Authorised Signatory of the Corporate debtor, the letter issued by RBI dated June 15,2017 directing the Financial Creditor to initiate insolvency Resolution process, singly or jointly with other lenders under the provisions of The Insolvency and Bankruptcy Code, 2016 in respect of default committed by the Corporate Debtor, the Annual Report of the Corporate Debtor for the financial year 2015-2016, and the report of the auditor of financial creditor classifying it as NPA with effect from July 05,2014.

9. The Petitioner has given particulars of the proposed Interim Resolution Professional mentioning the name of professional as Ms. Vandana Garg, BDO India LLP, The Ruby – Level 9, NW Wing, Senapati Bapat Marg, Dadar West, Mumbai –

400 028, e-mail: vandana.garg@bdo.in, the Registration number of the professional is: IBBI/IPA-001/IP-P00025/2016-17/10058. The Petitioner has mentioned the default amount as ₹.1,600.74 crores as on 20.06.2017 and for having the Petitioner furnished all the details required evidencing the Corporate Debtor availing loan thereafter committing default in making repayment, in support of record available, the Petitioner prays this Bench to initiate corporate Insolvency Resolution Process against this Corporate Debtor.

10. Since Master Restructuring Agreement being entered into on September 29, 2014, and indebtedness being confirmed by the corporate debtor company, it is hereby held that this claim has been made within limitation.

11. In view of the submissions made by the Petitioner's Counsel, the Counsel appearing on behalf of the Corporate Debtor, on admitting the claim made by the Petitioner, submits that there are prospective investors to take over this company as going concern; in view of this fact, he therefore submits that the debtor may be permitted to place this information before the Insolvency Resolution Professional (IRP).

12. It is needless to say that the Promoters are not prohibited from placing such information with IRP and if at all any such information is placed before the IRP; the said IRP will submit the same before the Committee of Creditors meeting.

13. On perusal of the documents placed and the reasons given above, this Bench being satisfied that the debtor company defaulted in repaying its debt to the financial creditor, this Bench hereby admits this application prohibiting all of the following of item-I, namely: -

- I (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(SARFAESI Act);

(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) Section 14 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 04.07.2017 till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, 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 the Code.

(VI) That this Bench hereby appoints, Ms. Vandana Garg, BDO India LLP, The Ruby – Level 9, NW Wing, Senapati Bapat Marg, Dadar, West, Mumbai – 400 028, e-mail: vandana.garg@bdo.in, the Registration number of the professional is: IBBI/IPA-001/IP-P00025/2016-17/10058, as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

14. Accordingly, **this CP 1137/I & BP/NCLT/MAH/2017 is admitted.**

15. The Registry is hereby directed to communicate this order to the Financial Creditor and the Corporate Debtor within seven days from the date order is made available.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

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