

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. No. (IB)-121(PB)/2017

IN THE MATTER OF:

Bank of Baroda**Financial Creditor/Applicant**
v.
Amrapali Silicon City Pvt. Ltd.**Corporate Debtor**

SECTION :

UNDER SECTION 7 of the Insolvency and Bankruptcy Code, 2016

Order delivered on 04.09.2017

Coram:

CHIEF JUSTICE M.M. KUMAR
Hon'ble President

Deepa Krishan
Hon'ble Member (T)

For the Petitioner(s) : **Shri Bishwajit Dubey, Ms. Surbhi Khatter & Ms. Priyal Modi, Advocates**

For the Respondent(s): **Shri Alok Agarwal & Ms. Rati Tandon, Advocates**

For the Intervener(s) : **Shri Vishnu Sharma, Shri Naveen Kapoor, Ms. Anupama Sharma, Ms. Sonali Negi, Ms. Deepti Dayal, Advocates**
(Noida Authority)

JUDGMENT

CHIEF JUSTICE (RETD.) M.M.KUMAR, HON'BLE PRESIDENT

The 'Financial Creditor'-Bank of Baroda has filed the instant application 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

Amrapali Silicon City Private Limited. It is appropriate to mention that the financial creditor is a body corporate constituted by and under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (for brevity 'Banking Companies Act'). The 'financial creditor' had its head office at Baroda House, Mandvi, Baroda, Gujrat. It was incorporated on 02.03.1911 and subsequently constituted as a corresponding new bank on commencement of the Banking Companies Act. The permanent account number of the financial creditor is AAACB1534F and its branch office is at Corporate Financial Services Branch, 1st Floor, Bank of Baroda Building, 16, Parliament Street, New Delhi-110001.

2. Ms. Archana Mishra has been authorized by the letter dated 03.02.2017 (Exhibit - 1)

3. The Corporate Debtor-Amrapali Silicon City Private Limited was incorporated on 20.02.2010. Its authorised share capital is Rs. 2,00,00,000/- (Rupees Two Crores) and the paid up share capital is Rs. 1,03,69,820/- (Rupees One Crore Three Lakhs Sixty Nine Thousand Eight Hundred and Twenty) as per the master

data available on the website of Ministry of Corporate Affairs. It has its registered office also at Delhi.

4. The financial creditor has proposed the name of Mr. Rajesh Samson as an Insolvency Professional. A certificate of registration dated 30.06.2017 issued by the Insolvency and Bankruptcy Board of India has been placed on record (Annexure-B) attached with the application. He has registration No. IBBI/IPA-001/IP-P00240/2017-18/10469. He has also made declaration and sent a written communication dated 04.08.2017. According to the declaration made, Mr. Rajesh Samson has no disciplinary proceedings pending against him nor he is a related party to 'Financial Debtor' namely Amrapali Silicon City Private Limited nor he is an employee of the Amrapali Silicon City Private Limited.

5. The details of the 'financial debt' may now be set out. There was a term loan agreement dated 25.02.2012 (Exhibit-3) executed between the financial debtor and consortium banks which include the financial creditor-Bank of Baroda, Oriental Bank of Commerce and Bank of Maharashtra. In pursuance of



the aforesaid agreement the consortium banks along with the financial creditor sanctioned a term loan to the corporate debtor. Under the term loan agreement, the consortium banks sanctioned to the corporate debtor a term loan of Rs. 100,00,00,000 (Rupees One Hundred Crores). However, the financial creditor has contributed Rs.96,88,00,000 (Rupees Ninety Six Crores Eighty Eight Lakhs). The details of the same have been annexed (Exhibit-4). The principal amount in default under the term loan facility as on 30.04.2017 is claimed to be Rs. 59,38,00,000 (Rupees Fifty Nine Crore Thirty Eight Lakhs). In addition, the default amount towards the overdue interest and penal interest aggregates to Rs. 11,77,43,681 (Rupees Eleven Crore Seventy Seven Lakhs Forty Three Thousand Six Hundred Eighty One). The corporate debtor defaulted the term loan in March, 2016. Further details of the defaulted amount and the period of default have been disclosed (Exhibit-5). The total amount of default under the term loan facility has been further accelerated by the consortium of Bank of Baroda through the notice of acceleration-cum-demand dated 06.03.2017. According to the notice the repayment of the defaulted amount was required



to be made within seven days from the date of the acceleration notice.

6. The 'financial creditor' has placed on record an overwhelming evidence to prove the default. The details of the security interest have been given in Part V which are set out below:-

- (a) Second charge on a *pari-passu* basis by way of mortgage by deposit of title deeds of the immovable properties located by Plot No.- GH - 01/A, Sector - 76, Noida, Uttar Pradesh, along with the building and structures thereon as detailed in **Exhibit - 6 ("Immovable Property")**;
- (b) First charge on a *pari-passu* basis by way of hypothecation of all the movable assets of the Corporate Debtor including but not limited to the raw materials, work in progress etc., both present and future;
- (c) First floating charge on a *pari-passu* basis by way of hypothecation or assignment of all book debts, operating cash flows, receivables, commissions;

intangibles and revenues of whatsoever nature and wherever arising, both present and future;

(d) First charge on a *pari-passu* basis on all the bank accounts of the Corporate Debtor including but not limited to the trust and retention account, into which inter alia, all the operating cash flows, treasury income, revenues/ receivables of the Corporate Debtor, debt service reserve amount would be deposited;

(e) First charge on a *pari-passu* basis by way of assignment or creation of security interest of all the rights, title, interest, benefits, claims and demand whatsoever of the Corporate Debtor:

(i)

(ii)

(iii)

(iv)

(v)

- (f) first charge on the profits of the Corporate Debtor after provision for taxation.

The copies of certificate of registration of charges issued by the Registrar of Companies with respect to the aforementioned securities have been annexed herewith at **Exhibit - 7**.

A copy of the memorandum of entry dated February 25, 2012 (the "**Memorandum of Entry**") in respect of the second charge on a *pari passu* basis created in favour of the BoB Consortium by way of mortgage by deposit of title deeds of the Immovable Property, along with a copy of letter dated February 27, 2012 of the Corporate Debtor confirming deposit of title deeds has been annexed herewith at **Exhibit - 8**.

A copy of the deed of hypothecation dated February 25, 2012 (the "**Deed of Hypothecation**") executed by the Corporate Debtor in favour of the BoB consortium has been annexed herewith at **Exhibit - 9**.

7. The following Corporate Guarantors have furnished the Corporate guarantees:-

- (a) Ultra Home Construction Private Limited;
- (b) Rinku Clothing Creations Private Limited;
- (c) Jotindra Steels and Tubes Limited; and
- (d) Vidhya Shree Buildcon Private Limited

All of them have guaranteed the obligation of the corporate debtor under the loan agreement executed by the Corporate Guarantors in favour of the consortium banks. Copies of the Corporate Guarantee Agreements have been placed on record (Exhibit-10).

8. The Financial Creditor also placed on record the Personal Guarantees of the Corporate Debtor namely Mr. Anil Kumar Sharma, Mr. Pramod Kumar and Mr. Shivpriya. All of them have guaranteed the obligation of the Corporate Debtor under the loan agreement dated 25.02.2012. Copies of the Personal Guarantees have been placed on record (Exhibit-11).

9. The estimated value of the aforementioned securities (except the corporate and personal guarantees) is approximately Rs. 13,23,49,84,000 (Rupees One Thousand Three Hundred and



Twenty Three Crores Forty Nine Lakhs and Eighty Four Thousand). A copy of the valuation report has also been placed on record (Exhibit - 12).

10. The copies of the loan agreement and the sanction letter along with letter dated 24.06.2016 conveying modification/re-fixing of loan instalments have been placed on record (Exhibit - 3 and Exhibit - 21)

11. A record of default is also available with the Credit Information Companies like the status classification report of the 'Corporate Debtor' issued by the Trans Union CIBIL dated 28.02.2017 (Exhibit - 13). Likewise, Entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 has also been placed on record which relate to term loan facility (Exhibit - 14).

12. The 'financial creditor' has then attached a list of other documents to the application to prove the financial debt, the total amount due and the date of default. Those documents are as under:-



- a) A copy of Acceleration Notice dated March 6, 2017 by BoB to the 'Corporate Debtor' calling upon the 'Corporate Debtor' to repay the default amount within seven days of the date of the notice and reply of the Corporate Debtor to the Acceleration Notice;
- b) A copy of reply by 'Corporate Debtor' dated April 4, 2017 to aforementioned notice;
- c) A copy of letter dated May 5, 2017 on behalf of – BoB to 'Corporate Debtor' in response to aforementioned reply;
- d) A copy of reporting of the account of the 'Corporate Debtor' as SMA – II account with the Central Repository of Information on Large Credits (CRILC)
- e) Copies of the letters dated June 29, 2016, June 25, 2016, June 18, 2016 and e-mail dated June 2, 2016 by BoB to the 'Corporate Debtor' indicating persistent overdues;

- f) Copies of the acknowledgement letters dated February 15, 2015 and February 16, 2015 acknowledging indebtedness of the 'Corporate Debtor' to BoB.

The copies of the aforementioned documents proving existence of 'financial debt' have also been annexed **(Exhibit – 15, 16, 17, 18, 19 and 20)**.

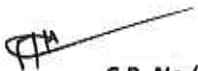
13. The application has been duly presented by Ms. Archana Mishra on the basis of authorization dated 03.02.2017 (Exhibit-1).

14. The 'corporate debtor' has opposed the admission of the application by arguing that the demand of Rs. 71,15,43,682/- is wholly arbitrary. The applicant is part of consortium of banks and the RTL agreement was executed for providing a term loan of Rs. 300,00,00,000/- .In the said agreement the Bank of Baroda, Oriental Bank of Commerce and Bank of Maharashtra are described as consortium or the lenders. It is also conceded that the applicant was designated as lead bank of the Consortium. The applicant cannot individually enforce any right or obligation

of the term loan agreement. The application even otherwise is incomplete and the same is liable to be rejected. A reference has been made to the provisions of Section 7 (5) (a) of the Code in as much as the question has been raised with regard to the authority of Ms. Archana Mishra from Bank of Baroda who is authorized by Power of attorney dated 03.02.2017 to file the present application. According to the learned Counsel Ms. Archana Mishra would have the same power and authority which were conferred upon Mr. Ravi Kant Thakral vide a power of attorney dated 16.12.2015 and the Board resolution of the company. The power of attorney has not been placed on record. We have duly considered the objection. The power of attorney has been later placed before us. A perusal of power of attorney dated 16.12.2015 executed in favour of Shri Ravi Kant Thakral would show that both these objections would not survive. The Bank has conferred upon him powers and authorities as are therein contained including the power to substitute and appoint one or more Attorney or Attorneys to exercise for the Bank of Baroda as its attorney. Accordingly, Shri Thakral has executed Power of Attorney in favour of Mrs. Archana Mishra on 03.03.2017 (pp. 17-23). Clause 19 thereof clearly authorized the power of attorney


to sign on behalf of the Bank all matters incidental to or arising out of the bankruptcy or insolvency or any composition or arrangement with the creditors. In pursuance thereof, she has signed power of attorney, pleadings and other papers. The application cannot be considered in complete. Therefore, the objection raised would not survive.

15. It has further been argued that the default amount mentioned in part IV column 2 of the application does not match with the amount mentioned in various other documents annexed by the applicant. A reference has been invited to status classification report of the corporate debtor issued by CIBIL dated 28.02.2017, bankers book maintained by the applicant and acceleration notice. Even this objection will not survive because a perusal of the CIBIL report dated 28.02.2017 mention the same figure of default namely Rs.59,38,00,000/- (Rupees Fifty Nine Crore Thirty Eight Lakhs) and the element of interest amounting to Rs.11,77,43,681 (Rupees Eleven Crore Seventy Seven Lakhs Forty Three Thousand Six Hundred Eighty One) is not required to be reflected. It clearly mentions the account to be substandard. Likewise, in the Bankers Book (Exhibit-14) same amount has



been worked out under the column balance as on 16.08.2016 namely Rs.59,38,00,000/- (Rupees Fifty Nine Crore Thirty Eight Lakhs). The amount of default continued to be similar as on 18.05.2017 namely Rs. 59,38,34,500/-. This variation appears to be on account of difference of dates. In any case the 'Corporate Debtor' would be entitled to raise objection of any mismatching before the Committee of Creditors. It was then submitted that consent from other members of consortium has not been obtained. The objection would not require any serious consideration because Explanation to section 7 (1) clarifies that for the purposes of section 7 a default includes a default in respect of financial debt, owed not only to the applicant-financial creditor but to any other financial creditor of the Corporate debt. Moreover, no other financial creditor has come to the forefront to oppose the application.

16. The respondent has also made an attempt to highlight that the group housing project namely Silicon City Project is being driven through an SPV being the current respondent. It is further stated the land in question is not owned by the 'corporate debtor'. As a matter of fact, the land is owned by Noida Authority. The



'corporate debtor' has issued a lease, which is governed by various covenants and the covenants include the provisions of cancellation of the lease and to take over the entire project, including the land in case of default in payment. It is claimed that the aforesaid stipulation has found further strength from the RERA Act. The project is likely to be completed in year 2021. To start with there would be construction of 6000 flats by December 2017. The 'corporate debtor' is to handover possession of 900 flats to the respective flat buyers in 2018 and another 900 flats would be handed over in the year 2019 and remaining 2200 flats shall be constructed and delivered by 2021. The delay has been caused on account of the order dated 07.04.2015 passed by the National Green Tribunal which had banned construction activity in the area (Annexure R/5). As a result, construction was completely suspended. Reference has also been made to the Joint Lender meetings but no substantial resolution could be achieved.

The objection raised by the 'Corporate Debtor' has been noticed to highlight their wish. However, the fact remains that till date substantial outstanding amount in default is payable by the 'Corporate Debtor'. Therefore, this objection too would not cut any ice.



17. The New Okhla Industrial Development Authority has filed an application for intervention under Rule 32 of the NCLT Rules, and has placed on record a copy of the lease deed executed between the 'Corporate Debtor' and the New Okhla Industrial Development Authority.

18. The question which arises for consideration is whether the petitioner has been able to satisfy the requirement of Section 7 of the Code. According to explanation appended to Section 7 (1) of the Code an application by the 'Financial Creditor' either on its own behalf or jointly with the other financial creditor would be competent for initiating Corporate Insolvency Resolution Process against a 'Corporate Debtor' before this Tribunal when a default has occurred. It is obvious that the lead bank like the petitioner is competent to file this application on its own behalf and other banks who are members of the Consortium.

19. In order to ascertain whether the default has occurred, it will be profitable to read Section 3 (12) of the Code which states that default means non-payment of debt when whole or any part of the instalment of the debt has become due & payable and the

same has not been repaid by the 'Corporate Debtor'. In the present case, it has eminently come on record that the 'default' has occurred many a times. The initial date of default by the 'corporate debtor' in accordance with the term loan facility is 31.03.2016. The computation of defaulted amount and the date of default is as under:-

Sr. No.	Facility	Total overdue at [30 th April], 2017 (Principal + Interest + Overdue Interest + Penal Interest) (INR)	Date of Default	Days of Default
	RTL Facility	59,38,00,000.00+4,51,75,849.00+6,63,86,493.08+61,81,339.88	31.03.2016	398 days till date
	Total	71,15,43,682.00		

20. The default has again occurred when a demand notice dated 06.03.2017 was issued (acceleration notice) and the repayment of the defaulted amount was required to be made within seven days from the date of acceleration notice. The principal defaulted amount in most documents is the same. However, in one of the documents it may vary as the calculation has been made for different dates. Therefore, it would not be a material factor warranting the dismissal of the application. Any objection to the



amount of default shall remain available to the 'corporate debtor' before the 'Committee of Creditors'.

21. In order to arrive at a correct conclusion, it would be further necessary to examine the provisions of Section 7 (2) and 7 (5) of the Code which read as under:

"Initiation of corporate insolvency resolution process by financial creditor.

7 (1)


7 (2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

7 (3)

7 (4)

7 (5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there

 is no disciplinary proceedings pending

against the proposed resolution professional,
it may, by order, admit such application; or
(b) *default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:*

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.”

A conjoint perusal of the aforesaid provision would reveal that form and manner of the application has to be the one prescribed by the authorities. It is required to be accompanied by the prescribed fee. It is further evident that if the application is incomplete as per the requirement of Section 7 (2) of the Code then this Tribunal being the Adjudicating Authority may reject it. However, proviso to Section 7 (5) of the Code postulates that before rejecting the application on the ground that it is incomplete in terms of Section 7(2) of the Code the Tribunal is

obliged to give notice to the applicant to rectify the defect in his application. The defect in the application needs to be removed within seven days from the date of receipt of notice.

22. For the reasons, aforementioned this petition is admitted. Shri Rajesh Samson who is duly registered with Insolvency and Bankruptcy Board of India (IBBI/IPA-001/IP-P00240/2017-18/10469) has been proposed as an Interim Resolution Professional. He is hereby appointed as an Interim Resolution Professional. He has filed his certificate of registration with Insolvency and Bankruptcy Board of India. He has also filed his written communication dated 04.08.2017 in connection with the application to initiate Corporate Insolvency Resolution Process. The disclosure has been made in the letter dated 04.08.2017.

23. In pursuance of Section 13 (2) of the Code we direct that public announcement shall be made by the Interim Resolution Professional within the statutory period with regard to admission of this application under Section 7 of the Code. We also declare moratorium in terms of Section 14 of the Code. Some necessary consequences of imposing the moratorium flows from the



provisions of Section 14 (1) (a), (b), (c) & (d). Thus, the following prohibitions are imposed:

- “(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;
- (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.”



24. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the 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.

25. The Interim Resolution Professional shall perform all his functions contemplated, interalia, by Sections 15, 17, 18, 19, 20 & 21 of the Code. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation



imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

26. The intervener shall be at liberty to file any claim before the Insolvency Professional in accordance with law which shall be duly considered.

27. The Petition is disposed of in the above terms.

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(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT

sd/-

(DEEPA KRISHAN)
MEMBER(TECHNICAL)

04.09.2017
Vineet