

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

CP No. 200/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

M/s. Anchor Enterprises Private Limited
..... Financial Creditor
(Petitioner/Applicant)
V.

M/s. Bombay Slum Redevelopment
Corporation Private Limited.
..... Corporate Debtor
(Respondent)

Order Pronounced on: 02.08.2018

Order delivered on: 06.08.2018

Coram :

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

For the Petitioner :

Adv. Pulkit Sharma i/b Abhishek Adke

For the Respondent :

Adv. Parthvi Gotecha, on behalf of Haresh Mehta & Co.

Per: M.K. Shrawat, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'M/s. Anchor Enterprises 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 8th February, 2018 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹5,00,00,000/- (Rupees Five Crores only). And the total amount claimed to be in default is ₹2,80,28,750/- including interest as on 31st January, 2018. The date on which default occurred is 21.06.2017.

3. Further under the head "Particulars of Corporate Debtor" the description of the debtor is stated as 'M/s. Bombay Slum Redevelopment Corporation Private Limited' (hereinafter as **Corporate Debtor**) having Registered office at Bombay Slum Redevelopment Corporation Private Limited, 605, Trade Centre, Bandra Kurla Complex, Bandra East, Mumbai-400051.

4. Brief Background :

- 4.1. The Financial Creditor sanctioned a loan of ₹5,00,00,000/- (Five Crores Only) on interest @ 18% p.a. to the Corporate Debtor in the year 2010 and the same has been debited from the Bank of India A/c of the Financial Creditor.
- 4.2. The said loan was returned partly to an extent of ₹1,50,00,000/- on 19.01.2011 and ₹1,00,00,000/- on 29.08.2012. The balance amount of ₹2,50,00,000/- is due till date along with interest @18% p.a.. However, the Confirmation & Undertaking for repayment of loan given by the Corporate Debtor to the Financial Creditor reveals that the interest percentage is 12%.
- 4.3. The undated Security Cheque No. 001945 for the balance amount of ₹2,50,00,000/- issued by the Corporate Debtor in the name of Financial Creditor can be treated as an acknowledgement of the debt.

5. Submissions by the Financial Creditor :

- 5.1. The Learned Counsel for the Financial Creditor submitted that the Financial Creditor has disbursed the said sanctioned loan amount on 05.08.2010. The same has been debited from its Bank of India Account, which is evident in the ledger account of the Financial Creditor annexed in the Petition as Annexure-C. It has been confirmed in the details of accounts of the corporate Debtor as standing in the Books of accounts of Financial Creditor.
- 5.2. It is further submitted that an amount of ₹2,50,00,000/- has been repaid towards the loan sanctioned; ₹1,50,00,000/- repaid on 19.01.2011 and ₹1,00,00,000/- repaid on 29.08.2012. The same is evident from Annexure-C as well as Annexure-E of the Petition.
- 5.3. Various Demand Notices dated 21.06.2017, 27.09.2017, 08.11.2017, 21.11.2017 were sent by the Financial Creditor to the Corporate Debtor. The Corporate debtor replied to the said Demand notices vide letter dated 07.07.2017 acknowledging its liability and further asking for further time to settle their liabilities as they are going through some financial hardship.

5.4. Subsequent to the said notice the Corporate Debtor has forwarded an undated security cheques amounting to ₹ 2,50,00,000/-. Thus the cheque and the reply sent by the Corporate Debtor was an acknowledgement of the debt.

6. Submissions by the Corporate Debtor :

- 6.1. The Corporate Debtor has admitted its liability time and again and has nothing much to say in its defence.
- 6.2. It has been further submitted that the Corporate Debtor has given a Confirmation & Undertaking to the Financial Creditor for repayment of loan. Further, it has admitted its liability to the tune of ₹2,50,00,000/- in reply to the Demand Notices sent by the Financial Creditor. As a consequence, the admission of the Petition is not challenged seriously. Moreover, on the last occasion when hearing took place, none was present.

7. Findings :

- 7.1. I have gone through the facts and submissions of the both parties. And upon considering the same I come to conclusion that, the Financial Creditor has established that the loan was duly sanctioned and duly disbursed to the Corporate Debtor but there is no complete payment of Debt on the part of the Corporate Debtor.
- 7.2. As regards to the submissions made by the Learned Counsel for the Corporate Debtor, it is worth to reproduce sub-Section of (5) of S. 7 of the Code as follows:

(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.

- 7.3. Hence, accordingly I have perused this Petition/Application filed under S. 7 of the Code r/w Rule 4 of the Rules and come to conclusion that, pursuant to S. 7 (7) (5) (a) of the Code this Application is complete under sub-section (2) of S. 7 of the Code.
8. As a consequence, keeping the admitted facts in mind that the Applicant had not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code have been completed by the Petitioner I am of the conscientious view that this Petition deserves '**Admission**'.
9. 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, there is any disciplinary action is pending against the said proposed Interim Resolution Professional.
10. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the both side, I say that, this Petition/Application is **Admitted**.
11. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Arun Kapoor, R/at 1301, 13th Floor, peninsula Business park, Tower B Senapati Bapat Marg, Lower Parel West, Mumbai-400013, having registration No. IBBI/IPA-003/IP-N00030/2017-18/10230 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
12. 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 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.
13. 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.
14. 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.

15. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

16. Ordered Accordingly.

Dated : 06.08.2018

SD/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

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