

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP/759/ (IB)/2018

Under Section 7 of the IBC, 2016 r/w Rule 4 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016

In the matter of

M/s. PHOENIX ARC PRIVATE LIMITED

.....Financial Creditor

V/s

M/s. ST. JOHN FREIGHT SYSTEM LIMITED

.....Corporate Debtor

Order delivered on: 10.12.2018

CORAM:

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

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicant/FC : Ms.Abitha Banu, Advocate
For the CD/CD : Shri. Pushkar Sood, Advocate

ORDER

Per : S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Under consideration is a Company petition filed **M/s. PHOENIX ARC PRIVATE LIMITED** (in short Applicant/Financial Creditor) against **M/s. ST. JOHN FREIGHT SYSTEM LIMITED** (in short Corporate Debtor) under section 7 of the Insolvency and Bankruptcy Code, 2016 (in short IB Code 2016) r/w rule 4 of Insolvency & Bankruptcy (Application to “Adjudicating Authority”) Rules, 2016 (for brevity, IB Rules 2016).

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1. The Corporate Debtor is a public limited Company incorporated under the Companies Act, 1956 on 21.06.1991 having its registered office at C-98, SIPCOT Industrial Complex Harbour Express Road, Tuticorin– 628008.
2. Since 1999, the State Bank of Travancore sanctioned and disbursed various credit facilities to the CD herein and the same were renewed and/or enhanced from time to time. The said credit facilities were, inter-alia, duly secured by equitable mortgage on immovable properties and hypothecation of stock, book debts/receivables and other current assets and the said security cover was extended to secure the renewed and/or enhanced credit facilities. In the year 2015, the State Bank of Travancore renewed the following credit facilities in favour of the CD;
 - a) Cash Credit Limit of ₹26 crores
 - b) EPC Limit of ₹5.50 Crores
 - c) Term Loan of ₹5.60 crores (since repaid)
 - d) Term Loan of ₹13.25 crores
 - e) Letter of credit of ₹5 crores
 - f) Bank of Guarantee of ₹4 crores

Total amount of debt granted is ₹59.35 crores.

Details of Disbursement

EPC Facility – Loan a/c no. 67319111589- Disbursements

Date of Disbursement	Amount (₹)
31.03.2015	55000000
Total	55000000

Term Loan Facility- Loan a/c no. 67218618832- Disbursements

Date of Disbursement	Amount (₹)
28.03.2013	18000000
28.03.2013	75000000
30.03.2013	15627213
30.03.2013	6772787
30.03.2013	1700000
30.03.2013	5000000
03.04.2013	1500000
03.04.2013	3500000
17.04.2013	1800000
17.04.2013	250000
30.04.2013	3349992
Total	132499992

3. The account of the CD was declared as a Non-Performing Asset on 30.09.2015. As per the notice dated 07.12.2016, issued by the FC u/s 13(2) of SARFAESI Act, 2001, the amount of default as on 30.11.2016 was

- i) ₹41,15,04,371 in respect of Cash Credit Facility
- ii) ₹6,95,86,424 in respect of the Export Packing Credit (EPC) Facility.
- iii) ₹12,81,53,858 in respect of the Term Loan Facility.

The total amount of default as on 30.11.2016 is ₹60,92,44,653.

Since, the outstanding dues have still not been paid by the CD, as on 15.03.2018 the amount is ₹73,08,54,170 which is due and recoverable from the CD.

4. In the reply the CD has stated that that the account of the CD, was assigned from State Bank of Travancore (SBT) to Phoenix ARC on 31.03.2016, by way of Letter of Assignment and that it

is believed by the CD that the value of the Debt purchased by the FC is ₹39.90 crores, whereas the FC, by way of present petition, is seeking to recover an amount of ₹73,08,54,170. The FC has not given a break up of the calculation as to how a sum of ₹73 Crores is due.

5. The CD has stated that the FC or its predecessor has not filed any petition in the Debt Recovery Tribunal for recovery of amount from the CD. Thus the amount recoverable is not an ascertained amount and no adjudication has taken place till date to ascertain the amounts due. The CD had secured the loan taken by it from State Bank of Travancore, by pledging core immovable assets, which are estimated to be worth ₹140 crores. Thus, the debt to security ratio is very high. The CD with the consent of the FC has tried to liquidate part of its assets to pay certain amounts to the FC, however the same has not fructified till date. The CD has also identified a buyer to complete the transaction. In the event, the sale takes place, the CD shall be in a position to settle the agreed outstanding amount.
6. The CD has stated that most of the documents, which have been filed by the FC along with the Petition, are extremely old documents, which are beyond the period of three years, from the date of filing of the present petition, and are thus hit by the Limitation Act, 1963.
7. The CD has stated that M/s St. John Freight Systems Ltd. (SJFS),

is in the field of Logistics, Shipping, Clearing, Forwarding, Warehousing facilities for the Exporters, having offices from Gujarat to West Bengal. The turnover of the business for the financial year 2017-18 was approximately ₹330 crores and turnover of the business for the financial year 2016-17 was approximately ₹380 crores within India. SJFS also has overseas operations, in which the turnover for the year 2017-18 was ₹420 crores and for the year 2016-17 was ₹380 crores.

8. The CD has stated that the CD had sought re-schedulement of the loan amount from the FC, which was initially agreed by the FC in the meeting of the joint lenders held on 23.06.2017, however later on the plan was not accepted by the bankers. After the FC has taken over the account from SBT, the CD company has already paid an amount of ₹1.38 crores to the FC, towards servicing of the loan amount.
9. In the para-wise reply it has been stated that as regards the signature of the person who has signed on behalf of the FC is concerned, it has been submitted that the original Board Resolution and original Power of Attorney in favour of Ms. Gurleen Chhabra, should be placed on record by the applicant, before this Tribunal to proceed further with the matter. In view of non filing of the documents mentioned above, the petition is hit by the law laid down in the judgment of the Hon'ble Supreme Court titled as Uday Shankar Tariyar Vs Ram Kalewar Prasad

Singh & Anr. (AIR 2006 SC 269).

10. It has been submitted by the CD that the State Bank of Travancore had declared the account of the CD as a Non-Performing Asset on 30.09.2015, incorrectly and the same is liable to be rejected and that the amount that was claimed by the applicant bank in the notice under section 13(2) of the SARFAESI Act, 2002, was far too inflated in so far as State Bank of Travancore had sought to debit/charge interest over and above the rate of interest mentioned in the documents heavily relied upon by the bank, attached with the accompanying application. The penal interest cannot be capitalized and no interest can be charged upon the expenses/ charges debited in the account. The application is absolutely silent about the principal amount allegedly advanced to the CD.

11. The CD has stated as the alleged statement of accounts, filed by the FC as document No.23 is specifically denied. The entries made in the purported statement of account are specifically denied and disputed individually and specifically as the State Bank of Travancore, had charged and debited interest and various other miscellaneous charges at the rates and amounts which were manifestly highly exorbitant and illegal. The CD denies such debits specifically and individually. It is further submitted that the State Bank of Travancore as well as Phoenix ARC Pvt. Ltd. had not maintained the ledgers in the ordinary course of banking business activity

and as such the ledgers are specifically disputed and denied. The FC, therefore, must be directed to produce and prove in accordance with law each and every entry, purported vouchers, books, ledgers and other records pertaining to the alleged entries, relied upon in support of the alleged claims.

12. The CD has stated that with regard to the appointment of Mr.R.Venkatakrishnan as the insolvency professional the CD has stated that in accordance with the provisions of Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, which was promulgated on 06.06.2018, Section 29A has been inserted making provisions for eligibility criteria for the Resolution Applicant, which provides for eligibility criteria of a Resolution Professional and that it has to be examined whether Mr.R.Venkatakrishnan, qualifies under all the parameters under section 29A of Insolvency and Bankruptcy Code, 2016. The CD is in the process of finding out about Mr.R.Venkatakrishnan, as the first appearance in the present matter was on 06.07.2018.

13. The FC in their rejoinder has stated that in view of the default, the account became a Non Performing Asset (NPA). The Assignor Lender thereafter assigned its debt in favour of the FC vide Assignment Deed dated 31.03.2016. The transaction of Assignment of debt is purely between the FC and the Assignor Lender. The CD is no way

related to the said transaction. Further, the consideration in which the debt was assigned is no way related to the amount payable by the CD. The CD has availed the loan facilities by executing loan documents. The CD is bound by the terms and conditions of the loan documents and the CD is liable to repay the same, as per the said terms.

14.The FC has denied the statement that the FC has not given a breakup of the calculation of the claim amount and that it has filed a detailed statement of accounts before this Tribunal. It is seen that the break up figures are given in the Annexure D – Pg No.2613 and the same tallies with the amount claimed under this petition. With regard to the contention of the CD that the FC or its Predecessors have not filed any petition in Debt Recovery Tribunal for recovery of amount from the CD. The FC submits that filing of Petition before DRT is not a prerequisite to approach this Tribunal. In respect of averment made in para 3, the CD has clearly admitted the loan by saying that it has secured the loan by pledging immovable assets. Thus, the CD has admitted its liability and also its inability to repay the outstanding debt. All other averments in the said para is denied as false and as being irrelevant to the present proceedings

15.The FC has stated that in respect of averment made in para 5(1)

to 5(5), it is false to state that the claim is barred by limitation. The FC has submitted that the transaction between the CD and State Bank of Travancore was from 1999. At the request of the CD, the facilities were renewed/enhanced from time to time. The Balance confirmation dated 15.09.2004 is at Page 1115 of the Application. On 31.03.2015, at the request of the CD, the Assignor Lender enhanced/renewed/sanctioned and disbursed amongst others Cash Credit limit of ₹2600 lakhs, Export Packing Credit limit of ₹550 lakhs, Term Loan limit of ₹550 lakhs (since repaid) and Term Loan limit of ₹1325 and various documents were executed to secure the said facility, which were filed as document No.296 to 309, 312 to 324, 326 to 328 and 330 to 333. Further, the CD has issued a Revival letter of term loan dated 20.02.2016. The CD has issued a balance confirmation on 22.02.2016. Thus, the claim is within limitation.

16. Further, it is false to state that the major portion of the claim amount is the interest and other charges and that the principal amount availed by the CD is ₹59.35 Crores and the amount claimed is approximately ₹73 Crores. Further, it is false to state that the FC and the Assignor Bank has not maintained the ledgers in the ordinary course of banking business activity. It is absurd to

state that no financial debt exists. The CD is put to strict proof of the said averment.

17. It has been submitted that it is false to state that the documents filed by the FC which had taken over the financial assistance extended by the Assignor Bank are stale documents and barred by limitation. The CD has admitted its liability in the Revival Letter dated 20.02.2016 and Balance Confirmation letter dated 22.02.2016. The FC further stated that the CD has executed various loan documents. The CD has also acknowledged its liability on various occasions particularly vide letter dated 22.02.2016 to the Branch Manager, State Bank of Travancore.

18. The following would show that the claim of the FC is within limitation: -

- a. Revival Letter was executed by the CD on 20.02.2016.
- b. Balance confirmation was executed by the CD on 22.02.2016.
- c. Last payment was made by the CD on 14th November 2017
- d. In para 11 of the reply, the CD has stated that it has paid ₹1.38 Crores to the FC company after the debt was assigned. The debt was assigned to the FC on 31.03.2016 and the last payment was made subsequently. Thus, the claim of the FC is within limitation.

19. When the matter came for hearing on 28.11.2018 the Tribunal has ordered as follows;

“Matter has been mentioned which pertains to CP/759/2018 wherein the parties have made final submissions and the order has been reserved. The Applicant/Corporate Debtor has submitted that there is every chance of settlement between the parties and he has given the details with regard to the terms and conditions offered for the purpose of settlement.”

The matter was posted for next hearing on 06.12.2018. On 06.12.2018 when the matter came up for hearing, the Tribunal has ordered as follows;

*“....
Since this matter was earlier posted for orders almost one month before and this Corporate Debtor till date is not in position to settle this issue with the Financial creditor, this matter is again posted for orders by dismissing this unnumbered MA moved by the Corporate Debtor.”*

But till the last date of hearing no memorandum of settlement has been filed by the parties.

20.In view of the facts mentioned in the preceding paragraphs, the Tribunal observes that there is a debt due payable by the Corporate Debtor and that a default has occurred for which the Corporate Debtor was responsible to pay. Therefore, we are of the opinion that the Applicant has established that the amount in default committed by the Corporate Debtor is a fact and it is supported by the documentary evidence placed before this Adjudicating Authority.

21.Therefore, the instant petition is admitted and we order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

22. We appoint **Mr.R.Venkatakrishnan**, as Interim Resolution Professional (IRP) as proposed by the Applicant. There is no disciplinary proceeding pending against the IRP and the IRP's name is reflected in IBBI website. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to make public announcement as prescribed under Section 15 of the I & B Code, 2016 within three days from the date the copy of this order is received and call for submissions of claim in the manner as prescribed.

23. We declare the moratorium which shall have effect from the date of this order till the completion of Corporate insolvency resolution process for the purpose referred to in Section 14 of the I & B Code, 2016. We order to prohibit all of the following, namely:

- (i) *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.*
- (ii) *Transferring, encumbering, alienating or disposing of by the corporate debtors any of its assets or any legal right or beneficial interest therein;*
- (iii) *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 (54 of 2002)*
- (iv) *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. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The

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provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

25.The IRP shall comply with the provisions of sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and to facilitate the discharge of his functions under Section 20 of the I & B Code.

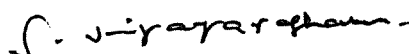
26.The Applicant/FC as well as the Registry is directed to send the copy of this order to IRP so that the IRP could taken charge of the Corporate Debtor's assets etc and make compliance with this order as per the provisions of the I & B Code, 2016.

27.The Registry is also directed to communicate this order to the Financial Creditor and the Corporate Debtor.

28.With the above directions the application is admitted.

29.The address details of the IRP are as follows: -

Mr.R.Venkatakrishnan
Reg. No. IBBI/IPA-001/IP-P00115/2017-2018/10250)
1/4th "Rangas",
4th Main Road,
R.A.Puram, Chennai – 600028.


S. VIJAYARAGHAVAN
MEMBER (TECHNICAL)


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

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