

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) -211/MB/2018

Under Section 7 of the I&B Code,  
2016

In the matter of

Dena Bank  
Dena Corporate Center C-10,  
G Block, Bandra Kurla Complex,  
Mumbai – 400051 and having  
One of its Branch office at Share  
Bazar, Dena Bank House,  
31/33, Ambalal Doshi Marg,  
Mumbai – 400023  
Through Assistant Gen. Manager  
Mrs. Prachi Gode.

.... Financial Creditor

Vs.

Om Shiv Hydro Power and  
Constructions Pvt. Ltd.  
5/606, H.S. Rupawate Marg,  
Motilal Nagar No.1,  
Near Siddharth Hospital,  
Goregaon (W),  
Mumbai - 400104

.... Corporate Debtor

Order delivered on : 17.05.2018

**Coram:**

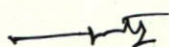
Hon'ble Mr. Bhaskara Pantula Mohan, Member (J)  
Hon'ble Mr. V. Nallasenapathy, Member (T)

For the Petitioner: Mr. B. Gopalakrishnan, Advocate  
For the Respondent: Mr. C. J. Doveson, Advocate

**ORDER**

*Per: V. Nallasenapathy, Member (T)*

1. The Petitioner Dena Bank filed this Petition against the Corporate Debtor M/s. Om Shiv Hydro Power & Constructions Pvt. Ltd. for initiation Corporate Insolvency Resolution Process on the ground that Corporate Debtor defaulted on 20.12.2015 in making the payment of loan dues, which works out to ₹7,00,72,142/- as on 31.12.2017, under Section 7 of the Insolvency & Bankruptcy Code,





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2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petitioner vide sanction letter dated 9.3.2015 converted the existing CC Hypo limit of 500 lakhs to Working Capital Demand loan with the reduction of ₹5,00,000/- to ₹495,00,000/- which is repayable after six months within a period of 30 months at the rate of ₹19.43 lakhs as equated monthly instalments with the rider that the interest is to be serviced every month including the moratorium period of six months. The Petitioner enclosed the following documents in support of the loan :

- (a) Agreement dated 31.3.2015 for working capital demand loan for ₹4.95 crores.
- (b) Hypothecation Agreement dated 31.3.2015.
- (c) Deed of Mortgage dated 31.3.2015.
- (d) Certificate of Registration of for modification of Charge dated 29.4.2015 issued by ROC, Mumbai.

3. The Petitioner has enclosed the recall notice dated 6.1.2016 issued by it recalling the loan outstanding ₹5,22,10,905/- payable by the Corporate Debtor. Further, the SARFAESI notice dated 3.2.2016 issued by the Petitioner calling upon the Corporate Debtor to pay the dues of ₹5,22,10,905/- as on 31.12.2015, within 60 days failing which the Petitioner will exercise his right of enforcement of security interest, is also enclosed.

4. The Corporate Debtor assails the Petition on various grounds and let us discuss one by one.

- (a) Res Judicata : The Corporate Debtor submits that this Petition is hit by the doctrine of Res Judicata. To our knowledge this claim of the Financial Creditor is not yet decided by any judicial authority and hence the claim of

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the Corporate Debtor is unfounded and misleading, it has to be rejected and accordingly rejected.

- (b) Limitation : The Corporate Debtor submits that initially the loan was sanctioned in the year 2013 and subsequently the loan was restructured by the Bank and the Corporate Debtor agreed for the restructure due to the threat made by the Financial Creditor that if the loan is not restructured, the credit worthiness of the Corporate Debtor will come down whereby it won't be in a position to get any loan in future. Further, no new loan was sanctioned and money disbursed to the Corporate Debtor, the old loan which was restructured was renewed in March, 2015 and if we relate back this transaction to the initial sanction of the loan in the year 2013, the loan is miserably time barred. But this contention of the Corporate Debtor cannot be accepted due to the reason that the Corporate Debtor has acknowledged the sanction of conversion of existing CC Hypo limit of ₹500 lakhs to Working capital Demand Loan with reduction of ₹5 lakhs to ₹495 lakhs, executed letter of guarantee dated 31.3.2015, executed Mortgage Deed on 31.3.2015, Registered the Modification of Charge with ROC on 9.4.2015, executed an Agreement for Working Capital Demand Loan on 31.3.2015. Considering all these factors the claim of the Corporate Debtor that the debt is time barred is against the principles of Law of Limitation, and the claim is well within the period of Limitation.
- (c) Suppression of facts : The Corporate Debtor says that the Petitioner has initiated various proceedings with the sole object of browbeating the Corporate Debtor and forcing them to pay unrealistic amount. It is a fact that



the Petitioner has issued SARFAESI notice to the Corporate Debtor and the same has been disclosed in the Petition. Further, the Petitioner has also disclosed that an Original Application under Section 19 of the Recovery of Debts (due to Bank and Financial Institutions) Act, 1993 is pending. Hence, this Bench feels that there is sufficient disclosure of other proceedings pending before other Forums and hence, the question of non-disclosure by the Petitioner does not arise at all.

- (d) Non-joinder of necessary parties: The Corporate Debtor contends that the property mortgaged for the loan belongs to some third party and not to the Corporate and non-joinder of the such third parties is fatal to the Petition. However, in view of the fact that this is a Petition for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor it is not necessary to implead third parties who have given their property as security for the loan. Hence, this claim of the Corporate Debtor also fails.
- (e) No service of notice under I&B Code 2016 : Section 7 of the I&B Code, provides that the Financial Creditor may make an application under sub-section(1) in such Form and manner accompanied with fees as may be prescribed and the Financial Creditor shall along with the Application furnish record of default as recorded with the Information Utility or such other record or evidence of default as may be prescribed along with the name of the Resolution Professional proposed to act as Interim Resolution Professional. The Code does not envisage any notice or whatsoever before filing this Petition. Hence this contention of the Corporate Debtor, that no notice has been served on it does not hold water. As provided

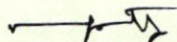


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under the Code this Petition has been served on the Corporate Debtor and in consequence the Corporate Debtor is before this Bench raising all these contentions. No separate demand before filing the petition is envisaged under the Code and hence this objection fails.

- (f) Dispute of claim amount: The Corporate Debtor claims that it has disputed the amount claimed by the Petitioner by way of Securitization Application preferred by it before the Debt Recovery Tribunal, Mumbai. However, the Corporate Debtor has not brought to the notice of this Bench pointing out any discrepancies in the statement of account filed by the Petitioner. Even if some calculation mistake or charging of penal interest, etc can be looked into by IRP/RP at the time of admission of claim, this objection cannot be a ground to stall this petition.
- (g) Forum shopping : Prior to the advent of Insolvency and Bankruptcy Code, 2016, under the provisions of Recovery of Debts (due to Banks and Financial Institutions) Act, 1993 and under the provisions of SARFAESI Act, 2002 the Petitioner is entitled to take proceedings for recovery of its dues. The Code entitles the Financial Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor who defaulted in making the payment of the debt due by filing Petition under Section 7 of the Code. Neither the proceedings pending before the Debt Recovery Tribunal nor the SARFAESI proceedings would be a bar to initiate CIRP under the Code and hence the contention of forum shopping by the Corporate Debtor fails. Further, the aforesaid submissions cannot be accepted in view of the decision of Hon'ble NCLAT in "*M/s. Unigreen Global*



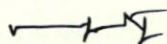


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*Private Limited v. Punjab National Bank & Anr.— Company Appeal (AT) (Insolvency) No. 81 of 2017*”, wherein it was held that pendency of SARFAESI proceedings or the DRT proceedings or DRAT proceedings, or suit proceedings cannot be a ground to reject the Insolvency and Bankruptcy petition. Further, it was held that I & B Code shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force including DRT Act, 1993; SARFAESI Act, 2002; money suit etc.”

- (h) Delay in disbursement of loan and consequential loss: Admittedly, the loan was taken in the year 2013 and subsequently renewed in the year 2015 and after default when CIRP is initiated, the Corporate Debtor cannot take a stand that there was a delay in disposal of loan and there was a consequential loss of 5 crores and hence this petition has to be dismissed. It is not known why the Corporate Debtor has waited for 5 years instead of initiating appropriate proceedings against the Petitioner before the appropriate forum. This contention is only an afterthought by the Corporate Debtor to stall the CIRP and hence it does not merit any consideration.
- (i) Authority of Mrs. Prachi Gode to file this Petition: The Deputy Zonal Manager of Dena Bank authorised one Mrs. Prachi Gode, Assistant General Manager of the said Bank to file application and attend the matter relating to the Corporate Debtor before NCLT under the Code. The said Mrs. Prachi Gode is employed with the Petitioner as Assistant General Manager and she is not a stranger to the Petitioner. It is relevant to note that the sanctioned letter dated 9.3.2015 was also signed by an Asst.





Manager of the Bank. Since this Petition is filed by a responsible Officer of the Petitioner Bank, the same is in order and there is nothing wrong when the Dy. Zonal Manager who is above the rank of Asst. General Manager authorises his sub-ordinate officer for a particular purpose. The Hon'ble NCLAT, in *Palogix Infrastructure Ltd. V/s. ICICI Bank 2017 SCC Online NCLAT 266* has held that an Officer of the Bank who has Authority to sanction the loan has the power to initiate Corporate Insolvency Resolution Process and hence the contention of the Corporate Debtor is not sustainable.

- (j) Inflated claim: The Corporate Debtor makes an allegation that the claim is highly inflated but failed to produce any convincing material to show that the claim is inflated. It was further submitted that the Corporate Debtor has filed an application U/s 17 of the SARFAESI Act disputing the Claim of the Financial Creditor and also submits that Insolvency and Bankruptcy Code proceedings can be taken only in cases of bona fide acknowledgement of dues by the Corporate Debtor. Both the contentions of the Corporate Debtor cannot be accepted in view of the fact that U/s 7 of the IB Code the criteria for admitting a Petition is debt and default. It is neither the case of the Corporate Debtor that it has not borrowed any money from the Petitioner nor the Corporate Debtor has repaid the Petitioner all the amounts due and nor there was no default on the part of the Corporate Debtor. Further, if there is any discrepancy in the claim of the Bank, the Corporate Debtor is at liberty to point out the same to the Resolution Professional at the time of admission of the claim of the Financial Creditor. It is not the case of the



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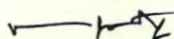
Corporate Debtor that they have not borrowed any money from the Financial Creditor.

- (k) CIBIL Report: The Corporate Debtor submits that CIBIL Report does not verify the truthfulness or veracity of the information given to them by the banks. This Bench looks into the petition and analyses whether the debt is there and default has occurred based on various documents provided by the Petitioner and the CIBIL Report is one of the documents which comes to the aid of this Bench but that is not the only document relied upon by this Bench to come to a conclusion whether the ingredients of Section 7 are satisfied. Hence, apprehension of the Corporate Debtor about the veracity of the CIBIL Report does not merit any consideration for deciding this petition.

5. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Petition 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;





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- (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 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) of 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 17.05.2018 till the 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 Mr. Vishal Bidawatjika Chartered Accountant, Office No. 307, Business Classic, 3<sup>rd</sup> floor, Chincholi Bunder road, Near HP Petrol Pump, Malad (West), Mumbai -400064, Email:- [finvishal@yahoo.com](mailto:finvishal@yahoo.com), having Registration No. IBBI/IPA-001/IP-P00125/2017-18/10267, Mobile No.91 9892333340, as Interim Resolution



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Professional to carry the functions as mentioned under  
Insolvency & Bankruptcy Code.

10. Accordingly, this Petition is admitted.
11. The Registry is hereby directed to communicate this order to both the parties within seven days from the date order is made available.

Sd/-

V. NALLASENAPATHY  
Member (Technical)

Sd/-

BHASKARA PANTULA MOHAN  
Member (Judicial)