

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP No. 1264/IBC/NCLT/MB/MAH/2017

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

Abhyudaya Co-Operative Bank Limited
..... Financial Creditor
(Petitioner/Applicant)

v.

M/s. Trust House Commerce Centre Private
Limited.
..... Corporate Debtor
(Respondent)

Heard on : 02.01.2018
Order delivered on: 05.03.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)
Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Madhur Rai, Advocate a/w. Mr. Naresh Trivedi, Advocate i/b. PRS Legal
Advocates for the Financial Creditor/Petitioner.

For the Respondent :

Mr. Mayank Bagla, Advocate i/b. Ms. Dhanashri Panchal, Advocate – Advocate for the
Respondent/Corporate Debtor.

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'Abhyudaya Co-Operative Bank 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 28.07.2017 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).

Bhaskara Pantula Mohan



2. Further under the head "Particulars of Corporate Debtor" the description of the debtor is stated as 'M/s. Trust House Commerce Centre Private Limited' (hereinafter as **Debtor**) having Registered office at, 32, Wonder Land, 7, M. G. Road, Pune - 411001.
3. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹ 1,30,00,000/-. And the total amount claimed in default is said to be 6,47,13,403/- including interest as on 19.07.2017.

4. **Brief Background :**

- 4.1. The Corporate Debtor through its letter dated 10.08.1998 requested the Citizens Co-Operative Bank Limited, Nana Peth Branch, Pune to sanction a loan amount of ₹ 1,30,00,000/- Along with this request letter the Corporate Debtor has attached the required documents for sanctioning of loan.
- 4.2. Based on this letter the Citizens Co-Operative Bank Limited, Nana Peth Branch, Pune has sanctioned the said loan to the Debtor vide letter dated 23.11.1998. The said loan was sanctioned inter-alia against the simple mortgage specifically stated in the Deed of Hypothecation dated 23.11.1998 and Deed of Mortgage dated 10.11.1998.
- 4.3. The sanctioning bank viz. Citizens Co-Operative Bank Limited, Pune has stood merged with the Financial Creditor w.e.f. 03.07.2006 with the permission of RBI.
- 4.4. The account of the Debtor classified as NPA on 23.12.1999 as per the guidelines of RBI.
- 4.5. Since the account became NPA the erstwhile Citizens Co-Operative Bank Limited, Pune filed an application U/s. 101 of Maharashtra Co-Op. Societies Act, 1960 and consequentially obtained recovery certificate on 24.12.2001 against the Debtor and its Gurantors.
- 4.6. As on the 19.07.2017 the Debtor owe to Financial Creditor an amount of ₹ 6,47,13,403/-.

Signature



5. Submissions by the Financial Creditor :

- 5.1. The Learned Counsel for the Financial Creditor submitted that, based on the sanction letter the erstwhile Citizens Co-Operative Bank Limited, Nana Peth Branch, Pune has disbursed the said sanctioned loan amount to the Debtors.
- 5.2. Further that, w.e.f. 03.07.2006 the Citizens Co-Operative Bank Limited, Pune stood merged with the Financial Creditor and to that effect the Order of the Competent Authority is placed on record.
- 5.3. Further that, the Debtor has not repaid the single penny out of the availed loan amount till date hence, the Financial Creditor has filed this Application.
- 5.4. The Account of Debtor declared as NPA in the year 1999 only and consequentially the Citizens Co-Operative Bank Limited, Pune has filed an application before the Assistant Registrar, Co-operative Societies, Pune and obtained a recovery certificate dated 24.12.2001.
- 5.5. Further that, inspite of the said certificate the Debtor has failed to make payment.
- 5.6. Further that, the default by the Debtor is a continuing one and interest factor on the disbursed loan amount is counted till the date of filing this Application hence, the stand taken by the Debtor that this Application is barred by limitation is having no stand.
- 5.7. Further, the Debtor has stated that the said Loan amount is assigned to the Financial Creditor but in fact the erstwhile Citizens Co-Operative Bank Limited, Pune stood merged with the Financial Creditor hence, this is not the case of Assignment of Loan.
- 5.8. Further, the Debtor has raised the question of Dispute about the claimed amount but, as far as the S. 7 of the Code is concerned, existence of Dispute is not a matter for consideration as in the cases of petitions filed U/s. 9 of the Code.
- 5.9. Further, the Debtor has stated that the Financial Creditor has raised his claim on the basis of Recovery Certificate issued by the Assistant Registrar, Co-operative Societies, Pune and hence, to execute that Certificate this Tribunal is not a proper authority. It is submitted that, the Financial Creditor states that certificate is there only to prove that there is a default on the side of Debtor.

[Signature]



- 5.10. Further, the erstwhile Citizens Co-Operative Bank Limited, Pune has also tried to execute the said Recovery Certificate but the Debtor has not made the payment.
- 5.11. It is further submitted that, the Financial Creditor has number of times reminded the Debtor to make the outstanding payment but till date the Debtor has failed to make the payment.
- 5.12. Further, the Debtor has also issued a Promissory Note in favour of erstwhile Citizens Co-Operative Bank Limited, Pune for a sum of ₹ 1,30,00,000/- dated 23.11.1998 in respect of loan facility.
- 5.13. Further, the Debtor has also executed the various deeds viz. Deed of Hypothecation, Deed of Mortgage, Agreement of Loan etc. which evident that the Debtor has availed the said loan facility from the erstwhile Citizens Co-Operative Bank Limited, Pune.
- 5.14. The Learned Counsel for the Financial Creditor has finally submitted that, from the material on record it can be proved that, the Debtor has availed the loan from Financial Creditor and defaulted to make the payment hence, this Petition/Application may be admitted declaring the Debtor as insolvent.
- 6. Submissions by the Corporate Debtor :**
- 6.1. The Learned Counsel for the Corporate Debtor firstly has raised the issue of the maintainability of this Application under provisions of the Code.
- 6.2. It is submitted that, the amount claimed by the Financial Creditor does not amount to "Financial Debt" as defined under S. 5 (8) of the Code as the Financial Creditor has stated that the Recovery Certificate is issued by the Authorities under Maharashtra Co-operative Societies Act, 1960.
- 6.3. It is further submitted that, there is no uniformity in amount claimed and the total amount disbursed. And hence, in the light of decision given by this very Tribunal in *Urban Infrastructure Trustee Limited v. Neelkanth Township and Construction Private Limited* (CP 69/I&BP/NCLT/MB/MAH/2017) this Petition/Application deserves rejection.

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6.4. Further that, this Petition/Application is barred by the provisions of the Law of Limitation.

6.5. Further that, this is case of Assignment of Loan and the Financial Creditor has not annexed the Deed of Assignment hence, this Petition/Application is hit by the Rule 4 of the Rules consequentially deserves Rejection.

6.6. It is also submitted that, the said amount is in dispute and hence this Petition/Application deserves to be dismissed. And there is Arbitration Suit is also filed with the Hon'ble Bombay High Court.

7. Findings :

7.1. We have gone through the facts and circumstances of the case and also through the submissions made by both the Learned Counsels.

7.2. In our opinion the Debtor has duly availed the said loan facilities from the erstwhile Citizens Co-Operative Bank Limited, Pune and thereafter neglected to repay the instalments in due course.

7.3. Further that, the erstwhile Citizens Co-Operative Bank Limited, Pune has, after due scrutiny, sanctioned and disbursed the loan to the Debtor.

7.4. Further that, the said erstwhile Citizens Co-Operative Bank Limited, Pune stood merged with the Financial Creditor and we record herewith our satisfaction by going through the order to that effect of the competent Authority.

7.5. Further that, this is a case of merger of Bank and hence, the recoveries' of the erstwhile Citizens Co-Operative Bank Limited, Pune are now stood merged with the Financial Creditor and consequentially it can't be treated as case of Assignment of Loan.

7.6. Further that, this Petition/Application is not hit by the Limitation Law as the default is continuing one.

7.7. Further that, the Financial Creditor doesn't crave on the Recovery Certificate issued by the Competent Authority under Maharashtra Co-Op. Societies Act, 1960 but he has submitted the said Certificate to establish the default of the Debtor. Hence, there is no discrepancy in the Amount in Default and Amount so claimed is not as per the Amount reflected in Recovery Certificate.

[Signature]



7.8. Further, hereby we record our satisfaction that the Financial Creditor has not approached us for execution of the said Recovery Certificate as the Financial Creditor nowhere in his Petition/Application has craved upon the amount stated in the said Recovery Certificate.

7.9. As regards to the submission made by the Learned Counsel for the Debtor, stating that the claimed amount is in dispute 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.



7.10. Hence, accordingly we 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.

7.11. Further that, we 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.

Approved:

7.12. Hence, on perusal of this Petition/Application and S. 7 of the Code we are of the opinion that, this Petition/Application is in conformity of the S. 7 (2) and S. 7 (5) of the Code and accordingly deserves **Admission** specifically wherein the claimed amount is Financial Debt as defined U/s. 5 (8) of the Code and Financial Creditor has duly disbursed the amount in term of loan and there is default as per S. 3 (12) of the Code in re-payment of the same.

7.13. Hence, after perusal of the provisions of the Code and facts and circumstances of this case along with the submissions of the both side, we say that, this Petition/Application is **Admitted**.

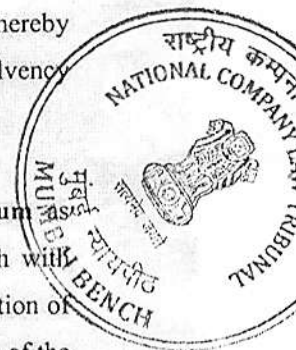
7.14. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, **Mr. R. K. Bhuta** having address at 1207, Yogi Paradise, Yogi Nagar, Borivali (W), Mumbai – 400092, having mail id: **rkbhuta@gmail.com** and having Registration id as **IP-P00141** is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

7.15. Having admitted the Petition/Application, the provisions of **Moratorium** prescribed under **Section 14** of the Code shall be operative henceforth with effect from the date of order and 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.

7.16. 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.

7.17. 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. Liberty is granted to intimate even at an early date, if need be.

R. K. Bhuta



7.18. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

8. Ordered Accordingly.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 05th March, 2018

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Certified True Copy
Copy issued "free of cost"
On 13/06/2018

Deputy Director
National Company Law Tribunal, Mumbai Bench