

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

**C.P. (IB)-1831(MB)/2017 &
Inv.P 24&26/2018 in CP 1831/2017**

Under section 7 of the IBC, 2016

In the matter of
Standard Chartered Bank
.... Applicant

v/s.

Bawree Fashions Pvt. Ltd.
.... Respondent

Order delivered on 25.04.2018

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

For the Petitioner : Ms. Jyoti Singh & Ms. Neha Naik i/b
Phoenix Legal.

For the Respondent : Mrs. Rohini Amin, Mr. Joveson, Ms. Preeti
Dambre, Ms. Heena Shaikh

Per: B.S.V. Prakash Kumar, Member (Judicial)

ORDER

Order pronounced on 25.04.2018

It's a Company Petition u/s 7 of Insolvency and Bankruptcy Code filed by the Financial Creditor, namely Standard Chartered Bank against the Corporate Debtor, namely Bawree Fashions Private Limited for this corporate debtor defaulted in making repayment of ₹54,44,00,643 due outstanding against various loans availed by this Corporate Debtor, hence this Company Petition for initiation of Corporate Insolvency Resolution Process (CIRP) against this Corporate Debtor.

Brief facts of the petition:

2. The Petitioner had sanctioned various facilities through a letter dated March 21, 2016 to provide loan of ₹56,47,00,000 through overdraft facility amounting to ₹21,50,00,000 (in which working

capital demand loan-1 amounting to ₹17,20,00,000); term loan amounting to ₹14,97,00,000; working capital demand loan-2 amounting to ₹20,00,00,000. For disbursement of these facilities, the corporate debtor executed Master credit terms on March 30, 2016 with the default clause to take action against the corporate debtor, thereafter on June 9, 2016, the facilities were amended vide a facility letter amending the facility limit totalling to ₹52,47,00,000 to grant all these loans in the month of March 2016 to July 2016, accordingly this corporate debtor executed deed of hypothecation dated 30.03.2016, Indenture of Mortgage dated July 1, 2016 mortgaging the immovable properties of the corporate debtor and other money guarantee agreements dated March 30, 2016 including a personal guarantee of the directors of the corporate debtor and a corporate guarantee from Sanwree Bawree Fashions Pvt. Ltd.; indemnity bond dated June 13, 2016.

3. The facilities as per 2nd amended facility letter were disbursed by the petitioner as under:

- A. Overdraft facility amounting to ₹11,50,00,000
- B. Sub-limit of overdraft facility amounting to ₹10,00,00,000
disbursed on 3 August 2016,
- C. Term loan amounting to ₹14,97,00,000
disbursed on May 10, 2016,
- D. The working capital demand loan was disbursed under 5 tranches
as under:
 - (a) WCDL-1 of ₹1,87,00,199 disbursed on June 27, 2016;
 - (b) WCDL-2 of ₹4,62,99,801 disbursed on July 13, 2016;
 - (c) WCDL-3 of ₹1,00,00,000 disbursed on July 20, 2016;
 - (d) WCDL-4 of ₹4,50,00,000 disbursed on July 26, 2016;
 - (e) WCDL-5 of ₹4,00,00,000 disbursed on August 23, 2016.

4. Thereafter, since this corporate debtor from May 2017 onwards defaulted in making repayments, the account of the corporate debtor was declared as non-performing asset (NPA) by the petitioner on August 16, 2017, in pursuance thereof, this petitioner issued a letter

(Reservation of rights letter) to the corporate debtor informing that the account of the corporate debtor has been declared as NPA on 1st September 2017. For there being no repayment responding to the letter dated September 1, 2017, this petitioner, on November 30, 2017 addressed a recall letter to the corporate debtor recalling the facilities granted to the corporate debtor calling upon it to repay the entire amount outstanding as on October 31, 2017. Besides this, the petitioner on 7th December 2017, issued a notice for invocation of personal guarantee executed by Mr. Dhiren Bheda and Mr. Mittal Bheda and corporate guarantee executed by Sanwree Bawree Fashions Pvt. Ltd. And there being no repayment despite the petitioner declaring this account as NPA, after recalling the loan granted to the corporate debtor, the petitioner has filed this case for initiation of corporate insolvency resolution process against this corporate debtor.

5. By way of reply to this company petition, one of the directors of the corporate debtor, namely Mr. Dhiren Bheda on behalf of the corporate debtor filed two Intervening Applications i.e. IA 24 of 2018 and 26 of 2018 stating as follows:

6. In INVP 24/2018, the aforesaid deponent/director says that when this company petition was taken up for hearing, the Applicant's/Corporate Debtor's counsel Mr. Matthews J. Nedumpara brought it to the notice of this Tribunal that the corporate debtor filed an application seeking dismissal of the company petition as one without jurisdiction and being barred by the doctrine of estoppel or in the alternative to keep this petition in abeyance pending final disposal of civil suit (L) No. 3445 of 2018 on the file of Hon'ble Bombay City Civil Court. And he says that his counsel, on 22.03.2018, was not allowed to argue the question of maintainability of the above company petition as a preliminary issue to say that the Insolvency and Bankruptcy Code is not a complete code, therefore no declaratory relief can be granted by this Bench. In the following paragraphs of this affidavit, this deponent has made several unsavoury remarks against the judicial member of this Bench. Since

the order dated 22.03.2018 passed by this Bench itself speaks the attitude of the aforesaid counsel, we don't need to repeat as to what happened in the court hall on 22.03.2018. On the day, the Counsel aforesaid repeatedly kept on arguing this Bench has no jurisdiction to take up this matter, when it was almost like obstructing this Bench from hearing the case, this Bench passed the order on 22.03.2018 directing this deponent to engage a counsel who would argue the matter in a disciplined manner, by saying so this Bench indeed given opportunity to this deponent to come with counsel to argue Company Petition on the next date of hearing i.e. on 17.04.2018.

7. It is another INVP 26/2018 asking same reliefs for dismissal of the company petition declaring it as without jurisdiction and barred by doctrine of estoppel or in the alternative to keep the above petition at the hands of the alleged creditor in abeyance pending the final decision of the Hon'ble City Civil Court, Bombay as to the jurisdiction of this Bench to embark upon an enquiry of the controversy placed before it by the Petitioner bank. This is nothing but repetition of the same application earlier discussed, therefore for the sake of brevity, we have not repeated the entire averments of the affidavit filed along with this intervening application.

8. By looking at the averments of the affidavit reflecting the gist of the civil suit filed by the corporate debtor, it is ascertainable that the Corporate Debtor has tried to impress upon that on seeing the growth of the corporate debtor company, the representatives of the Petitioner bank approached the corporate debtor with attractive schemes to provide loan to this corporate debtor and this debtor, being alluded by the Bank Schemes, agreed to avail ₹70.0crores as loan from this bank, but this bank, having over the period, disbursed only ₹56.47crores, this has badly affected the business of the company. He says that during the completion of the formalities of the sanction of loan, the petitioner bank officers had procured signatures from management of the Corporate Debtor on various blank papers. The directors of the corporate debtor, having a vast experience of dealing with honest bankers alone, never found it

necessary to doubt the credentials or go to the various standard form of agreements which the representative of the petitioner bank had brought before them to sign. While taking such signatures, this deponent says, they were not aware of that the bank authorities seeking signatures for mortgaging their property as collateral security far in excess to the loan amount.

9. The sum and substance of the suit filed before City Civil Court is that this petitioner bank did not release the entire sanctioned limit, for its business has gone down, secondly the petitioner's bank is indulged in fraud in getting their property mortgaged to the bank. It seems till date that suit has not been numbered. In this entire suit, it has not been mentioned anywhere as to what date what happened, when mortgage was created, in any event, these points are merit of that case, whereby we restrain ourselves from making any observation in respect to filing of a suit before the Ld. Civil Judge, City Civil Court, Bombay.

10. As to the facts of this case, it is not the case of the corporate debtor that loan has not been taken, that mortgage has not been created, that the account has not been declared as NPA for the account has become irregular, in addition to it, for the petitioner bank having filed documents executed by this corporate debtor and in support of the same, the account statement has been filed showing that this debtor defaulted in making repayments as agreed between the bank and the corporate debtor, we believe that nothing has been left to this corporate debtor except coming with these unreasonable pleas such as this Bench has no jurisdiction to deal with this case, therefore we have not found any merit in the submissions made by the corporate debtor because it has been made clear in the IB Code itself in sections 63 and 231 of the Code that civil court is barred from exercising its jurisdiction in respect of the matters falling under IBC, whereby this Bench hereby holds that the petitioner herein has proved that this corporate debtor has availed loan facilities as mentioned in part IV of the application and also established the fact

that the corporate debtor defaulted in making repayments as agreed between them.

11. It is an established proposition of law u/s 7 of the Code, that the petitioner has to prove the existence of debt and default, for having the petitioner proved both and there being no defence from the corporate debtor in respect to taking loan and thereafter defaulting in making repayments, therefore this petition is hereby **admitted** with the reliefs below prohibiting all of the following 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;
- (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 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.

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(IV) That the order of moratorium shall have effect from 25.04.2018 till 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.

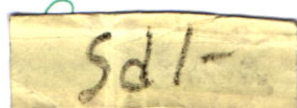
(VI) That this Bench hereby appoints, Mr. Anshuman Nandlal Chaturvedi, A-404, Express Zone, Off. Western Express Highway, Goregaon (E), Mumbai - 400 063, e-mail: acafirm@gmail.com, Reg. No.: IBBI/IPA-001/IP-P00158/2017-18/10327, as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

12. Accordingly, the CP (IB) 1831 (MB)/2017 is hereby **admitted**.

13. The Registry is hereby directed to communicate this order to both the parties within seven days from the date order is made available.

14. As to two applications (INVP 24/2018 & INVP 26/2018) filed by the corporate debtor, both are hereby dismissed as misconceived stating that this Adjudicating Authority has been given explicit jurisdiction to deal with this case u/s 7 of IB Code and that civil court is barred from exercising jurisdiction over this matter falling within the ambit of Insolvency and Bankruptcy Code 2016.

15. Accordingly, these two applications are hereby **dismissed** without costs.



RAVIKUMAR DURAISAMY
MEMBER (TECHNICAL)



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