

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

MA No.239 & MA No. 263 in CP 645/I&BC/(MB)/ 2017

CORAM : Present : SHRI M.K. SHRAWAT
MEMBER (J)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY
LAW TRIBUNAL ON **05.04.2018**.

NAME OF THE PARTIES : The Abhyudaya Co-operative Bank Limited
Vs.
Raphael Engineering Private Limited.

SECTION OF THE COMPANIES ACT: I & B Code, 2016

AD-INTERIM ORDER

I) MA 263/2018.

1. This Application is submitted on 5.4.2018 challenging the Order passed on 18.08.2017 by NCLT, Mumbai in the case of Abhyudaya Co-op Bank, Financial Creditor Applicant Vs. Raphaël Engineering, Corporate Debtor, (CP No. 645/IBC/NCLT/MB/MAH/2017); accordingly U/s 7 of the Insolvency Proceedings have been commenced.

2. Learned Counsel appearing on behalf of the Applicant has pleaded that the Respondent Debtor had not been given opportunity of hearing therefore the invocation of the Proceedings U/s 7 of the Insolvency Code were bad in law. On this issue the arguments have been heard for some time and keeping brevity in mind, this Bench is of the firm view that the circumstances under which the Order was pronounced is within the doctrine of "natural justice" and it is wrong on the part of the Applicant to challenge the said Order before this forum who has pronounced the said Order after

we



considering the merits in detail. For reference, Para-8, 9 and 10 of the Order dated 18.08.2017 reproduced below:-

"8. The Ld. Counsel for the Applicant has stated that, Loan Application by the Respondent, Copy of Sanction Letter, Agreement of Loan dated 22.06.2010, undertaking given by the Respondent in respect of Mortgaged Loan, Undertaking given by Respondent in respect of Cash Credit Loan and Undertaking given by the Respondents in respect of Cheque Discount Facility are annexed as **Annexure K, Annexure L, Annexure O, Annexure P, Annexure Q** respectively, to this Application.

9. Further it is submitted that, this application under I&B Code, 2016, filed before the Tribunal, is also served upon the Respondent and to that effect the tracking report of India Speed Post is submitted along with **Affidavit of Service** dated 3rd August, 2017 before this Tribunal. But no one from the side of Respondent has approached either before Tribunal or to the Applicants.

10. It is further submitted that, the non-appearance or non-communication of the Corporate Debtor has thus established that, the Corporate Debtor has nothing to say in defence in respect of the impugned outstanding/claimed amount."

2.1. An Order which is passed by this Tribunal after considering the merits of the case cannot be reviewed or recalled. Admittedly, no appeal has been filed by the Applicant and now pressing for the recall of the said Order. The arguments as well as the contents of the Application are not legally sustainable in the eyes of law, hence dismissed. Application is dismissed.

II) M.A. 239/2018.

1. The Resolution Professional Mr. Rajendra K. Bhuta moved this Application on 26th March, 2018. A Petition was submitted U/s 7 of the Insolvency Code under the title Abhyudaya Co-operative Bank Limited / Financial Creditor Vs. Raphael Engineering



Private Limited, in respect of Financial Debt of ₹3,99,08,230/- Plus interest thereon, which was admitted vide an Order dated 18.08.2017 wherein the CIRP was commenced and Mr. Rajendra K. Bhuta was appointed as Insolvency Professional.

2. As prescribed U/s 21 of The Code, a Committee of Creditor was constituted on 24th October, 2017. It is worth to mention that the Committee of Creditor is constituted by only one Financial Creditor viz. Abhyudaya Co-operative Bank.

3. First meeting of Committee of Creditor held on 10.11.2017 and it was noted that the Corporate Debtor had closed down all the business activities since last five years. It was also noted that the Director of the Corporate Debtor has also not provided data of Accounts. Last Balance Sheet filed before RoC was for the Accounting Period ended on 31st March, 2010. The Committee of Creditors appointed a Chartered Accountant who had prepared the Accounts for the Financial Year 2017-18, that too up to the commencement of Insolvency.

4. Second Committee of Creditor meeting was held on 09.02.2018 and Statement of Accounts drawn as on 14.08.2017 were tabled and discussed. Valuation Report of two Valuers have also been discussed. The summary of the Liquidation Value as tabled was as under :-

The Liquidation Value

(Amount in Rs.)

Sr No.	Name of the Valuer	Liquidation Value of Plot of Land
1	M/s Mai Sohs Consultant	1,89,00,000/-
2	M/s Kishor Karamsey & Co.	1,68,75,000/-
	Average of two Value	1,78,87,500

"Average amount realisable from the assets is amounting to Rs. 1.79 Cr."

4.1 In the said meeting it was also recorded that there was an Operational Creditor in the Books of Account viz. Mahavir Seamless Tube Private Limited for the Debt of



₹37,46,561/-. In this meeting it was informed by the Resolution Professional that there was no lodgement of claim made by the said Operational Debtor. It has also been informed that Expression of Interest was invited but no Resolution Plan was submitted for consideration.

5. As a consequence, in the said meeting held on 09.02.2018 it was resolved to Liquidate the assets of the Debtor. It was also resolved that Mr. Rajendra K. Bhuta be appointed as "Liquidator", subject to approval of NCLT.

6. This Application is therefore submitted by the Resolution Professional U/s 33 of The Code to obtain the proposal of Liquidation and also to approve the name of the Liquidator. This section prescribes that where the Adjudicating Authority does not receive a Resolution Plan shall pass an Order requiring the Debtor to be Liquidated in the manner as laid down in Chapter III of The Code. After due consideration of the facts and the reports submitted by the Resolution Professional I consider that this is a fit case for approval of Liquidation process. Admitted position is that no Resolution Applicant had come forward with a Resolution Plan. It is also an admitted position that the Company is not running any business. No workers or employees are in service in this Debtor Company. The only Financial Creditor is the said Bank who had advanced a Loan of ₹130 lakhs and after passing of several years the default as per the claim had gone up to ₹3,99,08,230/-. As against that, the Bank authorities are satisfied with the Liquidated value as proposed by the Valuer, average expected realizable amount of ₹1.79 crore approximately. Barring this Bank, no other claimant had come forward to claim an outstanding Debt against this Corporate Debtor. As per the report of the Valuer the immovable property to be liquidated is a plot of land bearing No.849, Road No.9, Kalamboli, Panvel, District Raigad admeasuring 900 sq.



mtrs. The estimated realizable value has already been referred *supra*. Resultantly, process of Liquidation is hereby pronounced to be supervised and implemented by the Liquidator Mr. Rajendra K. Bhuta. He shall adopt the due process as prescribed under Chapter III for initiation of Liquidation of the estate and submit the progress report on the next date of hearing, listed for **04.05.2018**.

7. Before we part with, a Prayer of the Resolution Professional is to be considered that 180 days have expired in the recent past, however, inadvertently 90 days' extension was not sought for as prescribed U/s 12(3) of The Code. This Prayer is approved and considering the overall situation, retrospectively the time is extended.

8. Ordered accordingly.

Sd/-

M.K. SHRAWAT
Member (Judicial)

Date : 05.04.2018
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On 2.5.18

Assistant Registrar
National Company Law Tribunal Mumbai Bench