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NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

MA 765/2018 in C.P.(IB)-1758/(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 **09.10.2018**.

NAME OF THE PARTIES : Yatish Trading Company Pvt. Ltd. : Applicant/ Intervener

In the matter of

Libord Securities Ltd. & Ors.	:	Operational Creditor
	Vs.	
Noble Explochem Ltd.	:	Corporate Debtor

SECTION OF THE COMPANIES ACT: 60(5) of Insolvency & Bankruptcy Code, 2016.

INTERIM ORDER

1. An Order was passed u/s. 9 of the Insolvency Code dated 14.05.2018 according to which the Petition of the Operational Creditor M/s. Libord Securities Ltd. was "Admitted" against the Corporate Debtor M/s. Noble Explochem Limited (NEL) and a Resolution Professional was appointed by declaring commencement of CIRP.

2. This Miscellaneous Application is submitted on 01.08.2018 by Yatish Trading Company Pvt. Ltd. with the following Prayers:-

"a) that the Applicant be impleaded as a party Respondent in the present proceedings;

b) that the rejection of claim of the Applicant as recorded by the IRP in its mail dated 21st July, 2018, be set aside.

c) that pending hearing and final disposal of the present application, the IRP be directed to not proceed further in the matter, including but not limited to formation of the Committee of creditors and/or continuation of the resolution process.

d) that the Respondent No.3 be removed and substituted by another IRP that this Hon'ble Court may deem fit and appropriate"

3. Pursuant to a Public Announcement dated 22.06.2018 the Resolution Professional had called upon the Creditors to submit their claim on or before 04.07.2018. The Applicant lodged its claim, however, vide email dated 21.07.2018 the Resolution Professional had rejected the claim.

4. It is informed in this Miscellaneous Application that the Corporate Debtor had availed financial assistance from various Banks. From India Overseas Bank (IOB), the Corporate Debtor had availed Credit facility against the mortgage of a Factory situated at Taluka Seloo, District Wardha. The Corporate Debtor (NEL) had defaulted in repayment of IOB dues aggregating to ₹26,06,12,970/-. As a consequence, IOB had initiated SARFAESI Proceedings.

5. The Corporate Debtor (NEL) had approached the Applicant M/s. Yash Trading Company who had paid the entire Debt of IOB. In the process of repayment, a Tripartite Assignment Deed was executed on 09.01.2008 between the Parties viz. IOB, the Corporate Debtor (NEL) and the Applicant (Yash Trading).

6. In lieu of the above assignment the Corporate Debtor had given the symbolic possession of the said mortgaged Land and Factory to the Applicant.

7. In addition to the above referred Debt amount, simultaneously the Applicant had also paid an amount of ₹2,84,68,183/- to IDBI towards another Debt owed by the Corporate Debtor.

8. The Applicant had also granted a Loan of ₹1,40,25,000/- to the Corporate Debtor. In witness to the above transactions a "Memorandum of Deposit of Title Deeds" was executed on 11.01.2008 in favour of the Applicant. The Original Title Deeds of the Land and Factory have been handed over to the Applicant by creating an equitable mortgage. The aggregate Loan amount was to the tune of ₹303.63 Crores. The Corporate Debtor had failed to repay the aforementioned Debt amount as agreed upon hence a Notice dated 01.10.2010 was issued calling upon the Corporate Debtor to repay the amount together with Interest.

9. The Corporate Debtor had denied the liability in its reply dated 14.03.2011 on the ground that the Corporate Debtor is entitled for a set off against the liability of the Applicant due to M/s. Meet Mercantile Pvt. Ltd. As per the Applicant it was brought to its notice that the Corporate Debtor in a strange manner had filed a reference u/s.15 of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) before BIFR, New Delhi. Due

to the said reason the Applicant could not initiate any legal proceedings for recovery of the amount earlier. In this Application there is a reference of filing of Suit by the either side and also a Suit before the Hon'ble Bombay High Court. According to the Applicant it is worth to take cognizance that during the pendency of those Suits, the Corporate Debtor had approached the Applicant for an amicable settlement in November, 2014. A meeting had also held on 01.11.2014. As a consequence, a "Draft Settlement Term" was also communicated. It has also been pointed out that the Corporate Debtor in a written statement dated 06.06.2014 had admitted before the Hon'ble High Court about the execution of the Assignment Deed, Memorandum of Deposit of Title Deeds, etc. The Loan amount had also been admitted by the Corporate Debtor. Further it was mentioned that vide Order dated 01.07.2016 in the proceedings before BIFR various Drafts Rehabilitation Schemes were submitted, however, not sanctioned. All attempts of Corporate Debtor had failed in those malicious legal proceedings. Rather, in the Proceeding before BIFR an observation was made on 16.05.2016 that while submitting DRS the amount payable to the Applicant should also be considered by the Corporate Debtor. Meanwhile, with effect from 01.12.2016, the SICA Act was repealed with the liberty to submit necessary Application before NCLT within 180 days. The Applicant has particularly stated in this Application as under :-

"a) The IRP failed to appreciate that the Applicant's claim is for a liquidated sums indeed admitted and in any event not disputed by the Corporate Debtor. The Corporate Debtor has merely made an entirely dishonest counter-claim on the basis that Meet Mercantile, an alleged sister concern of the Applicant had not paid certain monies even though promised to advance to the Corporate Debtor as and by way of a loan. Apart from the fact that the claim is entirely devoid of any merits, the said purported counter – claim cannot be directed against the Applicant – who is not alleged to be in breach of any alleged obligation to advance any monies. Further and without prejudice to the aforesaid, it is submitted that any purported claim in damages, like the one set up by the Corporate Debtor requires adjudication and cannot be set -off against the liquidated debt owing to the Applicant. In not doing so, the IRP erred patently. The purported email dated 21.07.2018 is liable to be set aside on that ground.

b)

c) The Applicant submits that on such verification the IRP ought to have acknowledged the claim to the extent of Rs.31.31 crores, along with interests thereon as a financial claim and the Applicant be treated as Financial Creditor. In not doing so, it is respectfully submitted, the IRP committed a blatant error of law."

10. Heard both the sides and perused the record. A claim was lodged by this Applicant before Resolution Professional, however, it was rejected by Ld. Resolution Professional vide communiqué dated 21.07.2018 on the ground that the liability of Yash Trading Company Pvt. Ltd. was a contingent liability. It has also been noted in the said rejection Letter that BIFR vide its Order dated 16.01.2013 permitted YTCPL to approach the Civil Court to crystalize the demand which was otherwise contingent in nature, hence the claim was not admitted. However, after considering the factual matrix as narrated hereinabove, this Bench is of the view that the Respondent Debtor has made several attempts before various Judicial authorities to avoid the payment; however, all those attempts have failed. In the foregoing paragraphs several such instances have been considered which throw the light that the Debt in question is payable by the Corporate Debtor to this Applicant. It is hereby held that the reasons given by the Ld. Resolution Professional are not convincing as also not sustainable in the eyes of law. Undisputedly, the Corporate Debtor had approached the Applicant for the impugned financial assistance which was granted, hence the liability ought to be owed by the Corporate Debtor.

11. This Application is allowed with the direction to the Ld. Resolution Professional to take due cognizance of the impugned claim as prescribed under the provisions of the Insolvency Code.

Sd/-
(M.K. SHRAWAT)
Member (Judicial)

Date : 29.10.2018

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