

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
C.P.(IB) 2295(MB)/2018**

Under Section 7 of IBC, 2016

In the matter of

American Express Banking Corp
.... Petitioner/Financial Creditor

vs.

Sunil Hitech Engineers Limited Corporate Debtor.

Order delivered on 10.09.2018

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

For the Financial Creditor: Mr. Amir Arsiwala, Advocate

For the Corporate Debtor: Mr. Shraddhanand Bhutada, Mr. Mohitrao Jadhav

Per B S V Prakash Kumar, Member

ORDER

Order pronounced on 07.09.2018

It is a Company Petition filed by American Express Banking Corp u/s 7 of Insolvency and Bankruptcy Code, 2016 (IB Code) against the Corporate Debtor, namely, Sunil Hitech Engineers Limited stating that since the Corporate Debtor herein defaulted in making repayment of ₹42,58,54,084, the Petitioner/Financial Creditor filed this Company Petition for initiation of Insolvency Resolution Process against this Corporate Debtor.

Historical facts of the case:

2. The Petitioner submits that the Corporate Debtor incurred its debt under the terms of an American Express Corporate Purchase Account Agreement and various Forms dated 14.2.2017. The Corporate Debtor vide Additional Account for American Express Corporate Purchasing Card-Buyer Initiated Payments (BIP) Account Agreement and various Setup Forms applied to the Petitioner seeking issuance of "Corporate Purchasing Card" and Corporate Purchasing Card-BIP availed the credit facility. On the basis

of the representations made by the Corporate Debtor and in response to the above referred applications and further subject to the terms and conditions governing the said issuance of "Corporate Purchasing Card/CPC and "Corporate Purchasing Card-BIP", the Petitioner issued 15 American Express"CPC-BIP/CPC bearing Nos.376940012481001, 376940013481000, 376940014481009, 376940015481008, 376940016481007, 376940033531008, 376940115151006, 376940116151005, 376940167131005, 376940222501002, 376940011181008, 376940106151007, 376940010181009, 376940104171007 and 376940105171006.

3. The Petitioner submits that the Corporate Debtor was liable to make the payment of the charges pertaining to the user and retention of the "Corporate Purchasing Card"/CPC and "Corporate Purchasing Card-BIP" to the Petitioner.

4. The Petitioner further submits that the Corporate Debtor committed default in six out of the said 15 Corporate Cards and as per the statement of account maintained by the Petitioner in the regular course of its business the Respondent used the said six cards lastly on dates as mentioned as follows:

| Sr. No | Card No. | Date of Last Transaction |
|--------|-----------------|--------------------------|
| 1. | 376940014481009 | 22.3.2018 |
| 2. | 376940015481008 | 19.3.2018 |
| 3. | 376940016481007 | 27.2.2018 |
| 4. | 376940167131005 | 21.3.2018 |
| 5. | 376940033531008 | Unbilled |
| 6. | 376940116151005 | Unbilled |

5. The Petitioner further submits that the Corporate Debtor since the date of issuance of said Cards, are irregular in paying the outstanding amount to the Petitioner in respect of the credit facilities enjoyed on the said Corporate Purchasing Card/CPC and Corporate Purchasing Card-BIP

6. The Petitioner submits that the total outstanding amount payable by the Corporate Debtor to the Petitioner is ₹42,58,54,084 as on 11.6.2018.

7. The Petitioner has filed the copies of the Statement of accounts in respect of the above mentioned Cards and CRILC/CIBIL Report dated 8.6.2018 .

8. The Petitioner submits that the Corporate Debtor has agreed and acknowledged liability due and payable to the Petitioner and the same is reflected in the Statement of Accounts.

9. The petitioner has also enclosed a copy of the Certificate under Section 2(a) of the Bankers Books Evidence Act, 1981.

10. When the Bench raised the question as to whether these type of transactions will be covered under the definition "Financial Debt" as agreed under Section 5(8) of the Code, the Counsel appearing on behalf of the Financial Creditor submitted that the same is covered under Section 5(8) of the Code since it is a credit facility provided to the Corporate Debtor and the interest @ 3.5% per month has to be paid for the unpaid balance. Therefore, the credit facility offered by the Financial Creditor is covered in the aforesaid definition. The Bench has satisfied with the explanation given by the Counsel.

11. In addition to the material papers mentioned above, the Petitioner has also filed the consent letter of the Resolution professional agreeing to be appointed as IRP in the event of the admission of this Company Petition.

12. On perusal of the various documents filed by the Petitioner, we are of the view that this Corporate Debtor availed the credit facility thereafter, defaulted in making repayment to the Petitioner herein which is reflective of the debt and default in existence whereby this Company Petition is hereby admitted with the reliefs as follows:

- I (a) that 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 the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the 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 10.09.2018 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. Harshad Shamkant Deshpande, Flat No.403, Kumar Millenium, Jaibhavani Nagar, Paud Road, Near Rohan Corner, Kothrud, Pune 411038, Registration No. IBBI/IPA-001/IP-P00166/2017-18/10335 as Interim Resolution Professional to carry out the functions as mentioned under Insolvency & Bankruptcy Code.

13. Accordingly, this Petition is admitted.

14. The Registry is hereby directed to communicate this order to both the parties and IRP immediately and even by way of email.

SDI-

RAVIKUMAR DURAISAMY
Member (Technical)

SDI-

B. S. V. PRAKASH KUMAR
Member (Judicial)