

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) -3272/I&BP/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

Corporation Bank

G-4, Welspun House, Kamala Mills
Compound, Senapati Bapat Marg, Lower
Parel, Mumbai - 400013

.... Petitioner

Vs.

Speciality Polymers Pvt. Ltd.

5A, 6th Floor, New Excelsior Building,
Wallace Street, A. K. Naik Marg, Fort,
Mumbai - 400001

.... Respondent

Order delivered on: 14.01.2019

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V.Nallasenapathy, Member (T)

For the Petitioner: Mr. Nishit Dhruva, Advocate a/w Mr. Darshit Dave,
Advocate i/b MDP & Partners

For the Respondent: Mr. Ghanashyam B. Sakpal, Advocate

Per: V. Nallasenapathy, Member (T)

ORDER

1. Corporation Bank (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process (hereinafter called 'CIRP') of Speciality Polymers Pvt. Ltd. (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default in repayment of facilities granted to the Corporate Debtor to the extent of Rs. 108,48,05,026/-, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Petitioner has enclosed sanction letter dated 04.08.2015 which shows that the following facilities were granted to the Corporate Debtor by the Petitioner.

Sr. No.	Nature of Facility	Amount
1	Working Capital Limit	45,00,00,000/-
2	Inland/Import Letter of Credit	20,00,00,000/-

3	Bank Guarantee	10,00,000/-
4	Forward Purchase Contract	45,00,00,000/-
5	Forward Sale Contract	20,00,00,000/-
6	Term Loan	12,50,00,000/-
Total		142,60,00,000/-

3. The Petitioner has enclosed the following security documents connected with the sanction of loan facilities:

- (a) Supplemental Common Deed of Hypothecation dated 19.08.2015.
- (b) Guarantee Agreement dated 19.08.2015.
- (c) Continuity Letter (memorandum of deposit of title deeds) in favour of Petitioner dated 10.12.2015 for enhancing facility limits and total credit limits.
- (d) Certificate of Registration/Modification of Charge dated 31.01.2015 and 11.08.2016.
- (e) Tripartite Agreement dated 28.12.2015 between the Petitioner, Respondent and MIDC for mortgaging the factory premises to the Petitioner.
- (f) Bank Guarantee Agreement dated 30.07.2016.

4. The Petitioner has enclosed the Statement of Account for the facilities granted to the Corporate Debtor which shows that the amount claimed in the Petition is in consonance with the Statement of Account.

5. The Petitioner has enclosed notice under Section 13(2) of SARFAESI Act, 2002 dated 14.12.2016 demanding a sum of Rs. 86,05,90,596/- along with interest, charges etc which shows that the Corporate Debtor defaulted in repaying the credit facilities availed by them. The Petitioner also enclosed the loan recall notice dated 20.01.2018 requiring the Corporate Debtor to pay a sum of Rs. 99,29,05,063/-.

6. The Petitioner has annexed the Certificate dated 21.08.2018 under Section 2A(a) of Banker's Books Evidence Act, 1891.

7. The Corporate Debtor filed reply to the Petition wherein inter alia among other things, the Corporate Debtor primarily complaining that even though the Bank had appraised for the Working Capital limit of Rs. 25 crores, only a sum of Rs. 8 crores was sanctioned as Working Capital, that too belatedly, the Bank has

not sanctioned the other non-fund based limits such as inland LC and hence the Corporate Debtor suffered a lot. It was further stated that the Corporate Debtor failed to sanction the additional Working capital of Rs. 17 crores as requested by the Corporate Debtor. This Bench is of the firm view that this kind of defences will not come in the way of admission of this Petition.

8. The above facts clearly reveal that the Corporate Debtor is liable to pay the Petitioner and defaulted in making the payment to the Petitioner.

9. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loans availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of 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 the 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.
- (IV) That the order of moratorium shall have effect from 14.01.2019 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. Vasudev Ganesh Nayak Udupi, 303/305, Rajmata CHS Ltd., near RTO, Four Bungalows, Andheri West, Mumbai - 400053, Email:- uvnayak2004@yahoo.co.in, having Registration No. IBBI/IPA-001/IP-P00019/2016-17/10043 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

10. Accordingly, this Petition is admitted.

11. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Bhaskara Pantula Mohan
Member (J)