

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

CP/1153/IB/2018

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the Matter of M/s. Deepsea Developers Private Limited

M/s. City Union Bank Limited

---Financial Creditor

Vs

M/s. Deepsea Developers Private Limited

---Corporate Guarantor/Debtor

Order delivered on: 18.03.2019

Coram:

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

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri.A. Karthikeyan, Advocate*

For the Corporate Debtor : *Shri. Pawan Jhabakh, Advocate*

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order pronounced on 18.03.2019

Under consideration is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code ("the Code") by M/s. City Union Bank ("the Financial Creditor") for initiation of

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Corporate Insolvency Resolution Process (CIRP) in respect of Deepsea Developers Private Limited (“the Corporate Guarantor”) on the ground that the Principal Debtor M/s. St. John Freight Systems Limited has defaulted in repaying the financial debt of ₹16,83,31,642 (Rupees Sixteen Crores Eighty Three Lakhs Thirty One Thousand Six Hundred and Forty Two only).

2. In the present case, the Financial Creditor (City Union Bank Limited) had sanctioned credit facilities for a sum of ₹17.45 crores to M/s. St. John Freight System Limited (Principal Debtor). M/s. Deepsea Developers Private Limited was the Corporate Guarantor of the said loan and had undertaken to guarantee all amounts payable by the Principal Debtor to the Financial Creditor. When the Principal Debtor failed to repay the loan, the Creditor Bank invoked the corporate guarantee on 29th July 2016. Thereafter, on the failure of Principal Debtor to repay the loan, the Financial Creditor filed this application to initiate Corporate Insolvency Resolution Proceedings (CIRP) against Corporate Guarantor.

3. To support this claim, the Financial Creditor filed dates and events disclosing existence of debt and occurrence of default, which are as follows:

S.No.	Dates	Events
(i)	19.11.2012	Initially loan was sanctioned to the tune of Rs.6 crores as <i>OLCC Facility</i> to the Principal Debtor
(ii)	17.11.2012	The CD executed various Security Documents/ Agreement of Guarantee for the credit facilities sanctioned by the Bank
(iii)	31.01.2016	Principal Debtor availed Rs.10 crores as Enhanced OLCC Facility
(iv)	31.03.2016	Principal Debtor availed Rs.1.45 crores as Term Loan
(v)	04.01.2017	Notice issued under Section 13(2) of the SARFAESI Act, 2002
(vi)	29.07.2016 to 17.08.2018	Statement of outstanding dues with respect to Principal Debtor Certificate under Banker's Book Evidence Act, 1891
(vii)	17.08.2018	Written Communication by proposed IRP

4. Looking at the dates and events as well as the annexures to the Company Petition, it is seen that the Financial Creditor has furnished material disclosing the Financial Creditor having

provided credit facilities to the Principal Debtor, as mentioned above.

5. On behalf of the Principal Debtor or Corporate Guarantor, no counter affidavit was filed before this Tribunal.
6. On perusal of records, we observe that the Financial Creditor has placed before this Tribunal (i) certificate of Registration for Modification of Charge; (ii) Resolution of Corporate Guarantor's company; (iii) Guarantee Agreement; (iv) Deposit of Title Deeds for the fulfilment of the terms of loan agreement; (v) Demand Notice issued under SARFAESI Act, 2002; and (vi) Statement of outstanding dues etc. evidencing the fact that an amount of ₹16,83,31,642 (Rupees Sixteen Crores Eighty Three Lakhs Thirty One Thousand Six Hundred and Forty Two only) is due and payable by the Principal Debtor/Corporate Guarantor as on 29.07.2016. It is seen that the Principal Debtor has not fulfilled the terms of loan agreement and as such had committed default for

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which the Principal Debtor/Corporate Guarantor is liable to repay the Financial Creditor.

7. In view of the above observations, this Bench is of the view that the Corporate Guarantor becomes a Corporate Debtor as soon as a guarantee agreement is invoked. Section 5(8) of the I&B Code (*which defines 'Financial Debt' as inter-alia, including "the amount of any liability in respect of any of the guarantee"*) confirms that a corporate person who owes a debt in the form of a liability in respect of a guarantee would be included in the definition of a "Corporate Debtor" under section 3(8) of the Code (*NCLAT judgment in matter of Ferro Alloys Corporation Limited v Rural Electrification Corporation Limited (Comp. App (AT) (Ins) No. 92 of 2017) and other connected appeals*). Since the liability is subsisting against the Corporate Debtor and the Corporate Debtor has already defaulted in repaying the liability, therefore, we hereby hold that it is a fit case for admission. The Financial Creditor has

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also proposed the name of Interim Resolution Professional. We hereby declare moratorium with the following directions:

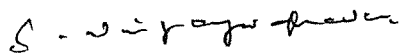
- I. That Moratorium is hereby declared prohibiting all of the following actions, namely,
 - a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel 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;*
 - d) *the recovery of any property by a owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

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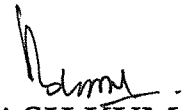
- II. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period.
- III. That the provisions of Sub-section (1) of Section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of issue of order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of corporate debtor under section 33 of the IBC, 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 IBC.

VI. That this Bench hereby appoints Mr.Chandramouli Ramasubramaniam, Regn.No. [IBBI/IPA-002/IP-N00052/2016-2017/10096], "Raji", 3B1, 3rd Floor, Gaiety Palace, No.1 L, Blackers Road, Mount Road, Chennai-600002, E-mail ID : fcs.rms@gmail.com as Interim Resolution Professional (IRP), as proposed by the Financial Creditor, to carry out the functions as mentioned under the IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

8. Accordingly, the CP/1153/IB/2018 is hereby **admitted**.



(S. VIJAYARAGHAVAN)
Member (Technical)



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

TJS/KNP