

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

IBA/332/2019

Under Section 7 r/w rule 4 of the IBC, 2016

In the matter of M/s. R.A Samy Trading Private Limited

United Bank of India

---Financial Creditor

V/s

M/s. R.A Samy Trading Private Limited

---Corporate Debtor

Order delivered on: 01.05.2019

Coram:

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

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri. P.S. Ganesh, Advocate*

For the Corporate Debtor : *Shri. Naveen Kumar Murthi, Advocate*

Shri. G.V Mohan Kumar, Advocate

ORDER

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

Heard and pronounced on: 30.04.2019

It is a Company Petition filed u/s 7 of the Insolvency & Bankruptcy Code, 2016 ("**the Code**") by the Creditor Bank (United Bank of India) seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on the ground that the Corporate Debtor defaulted in

repaying the claim amount of ₹22,49,92,832 as on 19.02.2019 together with further interest at 12% (simple) per annum to be calculated from 20.02.2019.

2. On perusal of this Company Application, it appears that the Creditor Bank sanctioned various loan facilities in its letter dated 08.12.2009 [Annexure-I] by providing overall credit facility of ₹2450.82 lakhs, by way of (i) takeover of Term Loan of ₹750.82 lakhs and Cash Credit facility of ₹500 lakhs from SBBJ and (ii) fresh sanction of Term Loan of ₹500 lakhs and additional Cash Credit facility of ₹700 lakhs at interest rate BPLR + 2.5% per annum [Annexure-I] and subsequent thereto, the Creditor Bank disbursed the loan amounts as agreed, but the corporate debtor having failed to repay the same, the Creditor Bank has filed this case.

3. On sanction of loan, the Corporate Debtor executed Demand Promissory Note dated 10.12.2009, Hypothecation Agreement dated 10.12.2009, Hypothecation of Debts and Movable Assets dated 10.12.2009, Hypothecation of Goods dated 10.12.2009, Hypothecation of

Movable Plant and Machinery dated 10.12.2009, Power of Attorney executed by the Corporate Debtor on 10.12.2009 authorizing the Creditor Bank to collect future receivables, Undertaking-cum-Declaration dated 10.12.2009 agreeing that bank is at liberty to take action in accordance with law, Agreement for Assignment of Rent dated 10.12.2009, Agreement for Term Loan against future interest dated 10.12.2009, Agreement of Guarantee by R.A. Samy Trading dated 10.12.2009, Agreement of Guarantee on individual capacity dated 10.12.2009, Agreement of Guarantee by Eswari dated 10.12.2009, Agreement of Guarantee by R. Navamani dated 10.12.2009. Acknowledgement of Deposit of Title Deeds in Bank Format dated 10.12.2009, Registered Memorandum of Deposit of Title Deeds (equitable mortgage) Doc.No.1364/2010 dated 23.06.2010. In support of the Memorandum of Title Deeds, the Corporate Debtor deposited Sale Deed (Doc.No.341/2006) dated 10.02.2016, Sale Deed (Doc.No.342/2006) dated 10.02.2016, Sale Deed (Doc. No.343/2006 dated 10.02.2016), Sale Deed

(Doc.No.2007/2006) dated 28.03.2006 and Sale Deed (Doc.No.972/2006) dated 17.04.2006 with the Creditor Bank

4. In furtherance, the Creditor Bank has also filed copy of balance confirmation dated 31.03.2012 given by the Corporate Debtor, Revival letter dated 10.12.2012 given by the Corporate Debtor, copy of Demand Promissory Note for ₹24,50,80,000 dated 10.12.2012 executed in favor the Creditor Bank, copy of Creditor Bank's sanction letter with acknowledgement dated 08.12.2009, copy of Letter of Continuity dated 10.12.2012, copy of Lien dated 10.12.2012, copy of Search and Status Report dated 21.01.2015, copy of OTS approval letter dated 01.12.2018, copy of letter for non-compliance of OTS dated 29.01.2019, copy of statement of accounts reflecting the claim amount mentioned in the Company Application as on 19.02.2019 to prove that the Corporate Debtor herein availed loan as reflected in the document mentioned and thereafter failed to repay the loan amount. Indeed this account was declared as NPA on 30.06.2013, after the account was declared NPA, this Corporate Debtor entered into OTS on 01.12.2018. Since the Corporate

Debtor failed to adhere to the terms and conditions of OTS in making repayments to the Creditor Bank, it has issued a letter dated 29.01.2019 notifying it to the Corporate Debtor that it has failed in repaying even the amount agreed in the OTS entered into.

5. Looking at the letter dated 29.01.2019 issued by the Creditor Bank to the Corporate Debtor, it appears that this OTS is arrived at for repayment of ₹15.50 Crores against total dues outstanding against Corporate Debtor. It is apparent on record that the Corporate Debtor has failed in paying in OTS amount within the stipulated time. It is evident on record that the Creditor Bank has only received ₹5 crores on 01.12.2018 and ₹1 Crore on 24.01.2019. The Creditor Bank further states that as per their sanction letter, the Corporate Debtor should have deposited the entire settlement amount of ₹15.50 Crores to the Creditor Bank on or before 28.01.2019 but whereas this Corporate Debtor failed to deposit the remaining balance payment of ₹9.5 Crores within the stipulated date i.e. 28.01.2019. Thereafter, the Creditor Bank has informed that non-payment of one time settlement amount within the

stipulated date i.e. 28.01.2019 would tantamount to non-compliance of the approval of OTS, thereby OTS was automatically cancelled, thereafter due to default in payment of dues and non-compliance of other terms of the sanction letter of the Creditor Bank prior to settlement, the Creditor Bank sent a notice on 29.01.2019 to the Corporate Debtor demanding repayment of principal amount along with further interest without further reference to the borrower/guarantors, when repayment has not been done as stipulated in the notice dated 29.01.2019, this case was filed before this Bench on 25.02.2019.

6. Since the Corporate Debtor failed to make the balance payment before filing this case, except making a part payment, the Creditor Bank was constrained to file this case before this Bench stating that the Corporate Debtor availed loan facilities and thereafter defaulted in repaying even the OTS amount agreed upon between the parties within the stipulated date i.e. 28.01.2019.

7. Today, the argument of the Corporate Debtor is that the Corporate Debtor having paid ₹2.5 Crores in Escrow Account, if some more time is

given, the debtor would be in a position to clear the balance payment as well.

8. Against this argument, the Creditor Bank has stated that this Corporate Debtor is in the habit of giving such type of undertakings and thereafter violating the same. Moreover, the Creditor Bank counsel has stated that this Bench has posted this matter to today on the assurance given by the Corporate Debtor that the Corporate Debtor would make the entire payment on or before today but whereas today, this Corporate Debtor has filed another memo seeking extension of time without paying the claim amount as sought in this Claim application.

9. On hearing the submissions of the Corporate Debtor, it is evident on record that it is not the case of the Corporate Debtor that debt is not in existence and default is not in existence. Though this Bench has given time of almost more than three months from the date of filing this Company Application, the Corporate Debtor failed to repay the same, today the counsel has sought adjournment. As against this argument, the

Creditor Bank counsel argued that it would be of no use in postponing this matter.

10. This Bench having perused the material available on record, it is of the considered view that the Creditor Bank has proved existence of debt and default and has also filed the consent letter given by the Insolvency Professional for being appointed as Interim Resolution Professional, we hereby admit this Company Application by appointing Mr. Ashok Kumar Seshadri as Interim Resolution Professional with the following directions along with an additional direction to the IRP to deduct if any further payments have come from the debtor from the claim amount of the creditor bank at the time of verification of the claim of the creditor bank.

- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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 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 of 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 **30.04.2019** till the completion of the corporate insolvency resolution

process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of 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 IBC.
- VI. That this Bench hereby appoints Mr. Ashok Kumar Seshadri having Registration Number: IBBI/PA-001/IP/P00937/2017-2018/11541, No. 85, MGR Road, Hindu Colony, Nanganallur, Chennai-600 061, E-mail: ashokseshadrig@gmail.com as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.
12. Accordingly, this Petition is **admitted**.
13. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email or whatsapp.

-SD-
(S. VIJAYARAGHAVAN)
MEMBER (Technical)

-SD-
(B. S.V. PRAKASH KUMAR)
MEMBER (Judicial)

VS/TJS