

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP (I&B) 3558/NCLT/MB/MAH/2018

Under Section 7 of the I&B Code, 2016

In the matter of

Bank of Baroda

...Financial Creditor/ Petitioner

v/s

Pratibha Industries Limited

...Corporate Debtor

Order dated 01.02.2019

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Petitioner: Ms. Sushmita Gandhi, Advocate a/w Ms.
Anamika, Advocate i/b HAS Advocates

For the Respondent: Mr. Anil Vishnoi, Advocate i/b Ashwin Shankar

Per V.P. Singh, Member (Judicial)

ORDER

1. It is a Petition filed u/s 7 of Insolvency & Bankruptcy Code, 2016 (**I&B** Code) by Bank of Baroda, Financial Creditor / Petitioner against Pratibha Industries Limited, Corporate Debtor to initiate Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor on the ground that as on 07.09.2018, the Corporate Debtor has defaulted in making a total repayment of ₹6,37,19,13,438.06/-. The date of default in repayment of the debt by the Corporate Debtor is mentioned as 16.03.2016.

2. The Petitioner has granted several loan facilities to the Corporate Debtor under consortium arrangement, i.e. 'BOB Consortium', as well as outside the consortium. The said loans were secured by a mortgage, hypothecation, personal guarantee and demand promissory note.
3. The Petitioner has annexed Copy of Certificate of Registration of Charge dated 07.06.2018, Certificate of Registration of Mortgage Dt. 20.07.2013, Supplemental Agreement to the First Amended and Restated Working Capital Consortium Agreement Dt. 28.02.2017, Sanction Letter dated 09.02.2017, Supplemental Amended Agreement Dt. 10.03.2017, Supplemental Agreement to the First Amended and Restated Security Trustee Agreement Dt. 10.03.2017, Trust and Retention Account Agreement Dt. 30.01.2017, Seventh Supplemental Indenture of Mortgage Dt. 02.12.2017, Deed of Undertaking cum Indemnity Dt. 10.03.2017, Deed of Undertaking Dt. 10.03.2017, Sixth Supplemental Deed of Counter Indemnity Dt. 10.03.2017, First Supplemental Deed of Guarantee Dt. 10.03.2017, Second Supplemental Deed of Guarantee Dt. 10.03.2017, Seventh Supplemental Deed of Guarantee Dt. 10.03.2017, Sanction Letter Dt. 10.07.2017, Sanction Letter Dt. 22.06.2013, Composite Undertaking cum Declaration Dt. 29.05.2013, Demand Promissory Note Dt. 27.06.2013, Letter of Instalment with Acceleration clause Dt. 27.06.2013, Hypothecation Deed of Movable Machinery Dt. 27.06.2013, Composite Hypothecation Agreement Dt. 27.06.2013, General Form of Guarantee dated 29.06.2013, Supplemental Memorandum of Entry Recording Extension of Mortgage by Deposit of Title Deeds in respect of advances secured by mortgage of immovable properties Dt. 29.06.2013, Declaration in respect of Mortgage by way of

Deposit of Title Deeds Dt. 29.06.2013 and a Letter of Petitioner about the acknowledgement of debt Dt. 30.04.2016.

4. The Petitioner sent a Loan Recall Notice dated 08.08.2018 addressed to the Corporate Debtor and its Guarantors, stating that on account of default in the payment of interest and the principal amount of loan, the account of the Corporate Debtor has been classified as Non-Performing Asset (**NPA**). The Petitioner vide the said letter also invoked the personal guarantees and demanded ₹8,26,39,61,481/- including interest as on 30.06.2018.
5. The Supplemental Agreement to the First Amended and Restated Working Capital Consortium Agreement dated 10.03.2017 executed between the Corporate Debtor and the consortium banks including the Petitioner, which provides that the Petitioner has sanctioned a total of ₹8,95,00,00,000/- under various loan facilities vide its sanction letter Dt. 09.02.2016.
6. The Petitioner has produced Commercial Credit Information Report of the Corporate Debtor issued by Trans Union CIBIL Limited (**CIBIL Report**) Dt 04.09.2018. The CIBIL Report reflects the loan facilities advanced by the Petitioner and the fact that default has been committed.
7. As per the information disclosed in the Part – IV of Form – I, the amount in default under Cash Credit (CC-21) facility is ₹5,31,20,94,482.18/- and Cash Credit (CC-59) facility is ₹69,42,42,145.61/- both under the consortium funding and Term Loan (TL-1004) facility is ₹36,55,76,810.27/- outside consortium funding.
8. The Corporate Debtor has filed its Affidavit in Reply stating that the Petition is not maintainable and should be rejected broadly on two grounds viz. that the Corporate Debtor has deposited FDR

and transferred, sold, assigned and conveyed some of its immovable property to the Petitioners consideration, for settlement of some portion of the debt outstanding, which the Petitioner has not deducted from the claim amount . It is further contended by the corporate debtor that the Petitioner has charged interest more than what was agreed upon in the Loan sanction agreement.

9. We have heard the arguments of both sides and perused the records. The Petition is filed by Mr Inder Paul Sharma, Chief Manager of the Petitioner, duly authorised vide the Board resolution dated 14.07.2017. The Petitioner has submitted the requisite fee along with the Petition as evidenced by the supporting document with the Petition.
10. The Petitioner has also annexed updated documents evidencing sanction of the financial debt and supporting instruments for the creation of security for the same.
11. The Petitioner has annexed the copy of Ledger Account, which is certified under section 2A(b) of the Banker's Book of Evidence Act, 1891. Further, the CIBIL Report dated 04.09.2018 reflects the loan facilities advanced by the Petitioner and the updated status of the same. It also proves that the Corporate Debtor has defaulted in repayment of the financial debt.
12. As to the defences raised by the Corporate Debtor that interest charged by the financial creditor is more than the agreed rate of interest, it is pertinent to point out that Hon'ble NCLAT in *The Dhar Textile Mills Ltd. vs Asset Reconstruction Company (India) Ltd.*, Company Appeal (AT) (Insolvency) No. 11 of 2019, has held that;

"...it is clear that the Adjudicating Authority is not required to decide mismatch of 'debt' occurred in one place or the

*other place and the mismatch of 'debt' cannot be a ground to reject the claim if the amount is due more than Rupees One Lakh and there is a 'default'. Under Section 7(5), the Adjudicating Authority is to be satisfied that a 'default' has occurred. **If the 'debt' is more than Rupees One lakh, then the Adjudicating Authority is required to admit the application**, except where there is a defect, which can be removed within seven days from the date of receipt of the notice from the Adjudicating Authority. The 'corporate debtor' may only take the plea that the 'default' has not occurred in the sense that 'debt' which has also included 'disputed claim' is not due, a 'debt' may not be due if it is not payable in law or fact."*

13. Thus, it is clear from the above that a petition filed U/S 7 of the I&B Code is to be admitted, if there is default in the payment of a debt of more than rupees one lakh, which was due and payable at the time of filing of the petition and the petition is complete.
14. The defence of the Corporate Debtor is only based upon the quantum of the debt claimed in the Petition. It is well settled by the judgement of Hon'ble NCLAT in *The Dhar Textile Mills Ltd. (supra.)* that the Adjudicating Authority in a petition filed under section 7 of I&B Code, does not have to decide the quantum of debt, but has only to ascertain that admitted debt amount and its default, is of more than rupees one lakh.
15. In the present case, the amount in default would still be more than Rupees One Lakh, even if the deduction as alleged by the Corporate Debtor is effected from the claim amount, as stated in the Petition. Therefore, the said defence of the Corporate Debtor relating to the quantum of debt is of no relevance.

16. The Corporate Debtor has not raised any dispute as to the existence of debt or default. The Petitioner has produced sufficient documents as record or evidence of debt and default.
17. By the above discussion, we are of the considered view that the respondent's contentions raised in the Affidavit in reply are short of any merit. The existence of debt is clear from loan agreements and various documents relating mortgage deed, hypothecation deed, certificate of creation of charge, personal guarantee agreements, and the demand promissory note which are undisputed.
18. The Petitioner has proved the existence of debt as well as the default.
19. The Petitioner has proposed the name of Mr Sunil Kumar Chaudhary, having Registration Number [IBBI/IPA-001/IP-P01243/2018-19/11895] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code, and given his declaration; no disciplinary proceedings are pending against him.
20. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This petition filed under Section 7 of I&B Code, 2016, against the Corporate Debtor for initiating corporate insolvency resolution process

is at this moment admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 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 of I&B Code 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 01.02.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the

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resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.
- VI. That this Bench at this moment appoints Mr Sunil Kumar Chaudhary, having Registration Number [IBBI/IPA-001/IP-P01243/2018-19/11895] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. Fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
21. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp.

Sd/-

RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-

V.P. SINGH
Member (Judicial)

1st February 2019