

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
AT NEW DELHI**

Company Petition no. 422 of 2016

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Bank of Baroda

...Applicant

Versus

M/s Metaphor Exports Pvt. Ltd.

...Respondent

Judgement delivered on 19.01.2018

Coram:

CHIEF JUSTICE (Rtd.) M.M. KUMAR

Hon'ble President

MS. DEEPA KRISHAN

Hon'ble Member (T)

For Applicant: Mr. R.P. Aggarwal, Advocate

For Respondent: Mr. Praveen Kapoor, Advocate



ORDER

Per: MS. DEEPA KRISHAN, MEMBER (TECHNICAL)

1. This is an application filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency process in respect of Respondent corporate debtor.
2. The Applicant Bank of Baroda is a bank constituted under the banking Companies (Acquisition and Transfer of Undertakings) Act 1970, having its Head Office at Asset Recovery Management Branch at 9th Floor, Bank of Baroda Building, Parliament Street, New Delhi-110001.
3. The respondent M/s Metaphor Exports Pvt. Ltd. is a company incorporated on 13.03.2001 under Companies Act 1956, bearing Identification Number U93000DL2001PTC109997 having its registered office at D-45, Naraina Vihar, New Delhi-110028.
4. The applicant had sanctioned to the Company working capital facility of Rs. 9.00 crores. The sanction letter dated 28.03.2013 of the Applicant Bank has been placed on record. Further, on 19.09.2013 the respondent

2/

company executed in favour of applicant, inter-alia, the Demand Promissory Note of Rs. 9.00 crores, Deed of Composite Hypothecation Agreement etc. additionally the Director of Company, i.e. Sh. Pran Nath Khanna, Sh. Sameer Khanna and Smt. Anju Khanna had executed in favour of applicant, a General Form of Guarantee whereby they, in their individual capacities, unconditionally guaranteed, to pay on demand by the Bank, all sums of money due under the said limit of Rs. 9.00 crores sanctioned.

5. Further it is stated that after execution of the security documents, agreement of guarantee etc., the applicant bank released Rs. 7.00 crores out of the sanctioned Limit of Rs. 9.00 crores. The balance Rs. 2.00 crore was not released on account of non-compliance of terms of sanction by the Company. Subsequently a request for restructuring of the account of company was made but the same was rejected by the applicant bank because of defaults on its part.
6. It is the case of the applicant that the applicant repeatedly drew the attention of the respondent towards non-creation of securities as per terms of sanction and other deficiencies & irregularities in the account. It was pointed out by the applicant that the turnover in the account is not in tune with sales and the proportionate share of the applicant in the credit facilities. In addition to that applicant requested the company for servicing the interest for the month of January, February and March,



2014 in the cash credit account without delay, but there was no positive response from the respondent company and the company failed to service the interest for the aforesaid period. Consequently, as the company failed to liquidate the dues of the bank despite regular follow up oral as well as in writing, the account of the company was declared as a Non-Performing Asset on 30.06.2014.

7. The applicant bank sent legal notice to the Company on 03.07.2014 and thereafter the applicant have filed an Original Application, being O. A. No. 295/2014 for recovery of a sum of Rs. 7,56,64,225.00 (Rupees Seven Crores Fifty-Six Lacs Sixty-Four Thousand Two Hundred Twenty-Five only) in Debt Recovery Tribunal – II, New Delhi. Debt Recovery Tribunal – II, New Delhi passed an interim order dated 16.07.2014, restraining the Directors of the Company from alienating or creating third party interest or any sort of encumbrance in respect of their immovable properties. The applicant bank has also through their counsel sent to the company a statutory notice dated 09.09.2014 under section 433 and 434 of the Companies Act, 1956 and the Winding UP Petition was filed before the High Court of Delhi which has been subsequently transferred to this tribunal vide order dated 08.03.2017.
8. The applicant has filed compliance affidavits on 29.05.2017, in terms of notification dated 07.06.2017 and affidavit of service.



9. The respondent has filed their reply on 31.07.2017, in which an objection has been raised that no valid authorization in favor of the representative of the Applicant bank to initiate corporate insolvency resolution process against the corporate debtor. It is further submitted that although Rs. 9 Crore was sanctioned to them but only Rs. 7 Crores was given to the respondent by applicant and Rs. 2 Crores was never released in favour of the respondent due to which the respondent company faced problems to repay interest and therefore the applicant failed to fulfill its commitments.
10. Additionally, it is submitted that various communications were addressed to the respondent but the applicant did not disburse the remaining amount. The respondent further asserted that a request of restructuring of loan was made by the respondent but the same was rejected. It is further stated that since the applicant did not pay the full amount to the respondent so the applicant is not entitled to recover the loan amount from respondent by dubbing it as willful defaulters and applicant has mala-fide intentions to harm the respondent company. Therefore, the present application is liable to be dismissed on the ground of non-fulfillment of terms of contract.
11. In this respect, it is seen that loan was sanctioned to the corporate debtor by the Applicant Bank and the account of corporate debtor has been declared NPA due to non-payment of amount. This Tribunal is not

an adjudicating authority to ascertain the quantum of default. The only essential ingredient of section 7 is that a default must have been committed by the corporate debtor, which is evidently proved by the Applicant Bank. Hence, the objection raised by the corporate debtor about dispute of quantum of amount due to non-payment of entire loan amount cannot be sustain. In any case such a defense would not be sustainable in face of the assertion by the applicant that respondent did not comply with the terms of sanction.

12. In the aforesaid background and since the application of the financial creditor is complete and there is no disciplinary proceeding pending against the proposed IRP, we are satisfied that the present application is complete and the Financial Creditor is entitled to claim its loan sanctioned to the corporate debtor. There has been a default in payment of the financial debt. Therefore, as per section 7 (5)(a) of the Code, the present application is admitted.

13. A moratorium in terms of section 14 of the Code is being issued prohibiting the following:

- *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;*



- *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- *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;*
- *recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

14. *It is further directed that:*

- The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*
- The provisions of sub-section (1) of section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*


15. Mr. Satyendra Prasad Khorania, registration number IBBI/IPA-002/IP-N00002/2016-2017/10002, was proposed by operational Creditor for appointment as Interim Resolution professional (IRP). Mr. Satyendra Prasad Khorania has affirmed that he is a registered insolvency professional and that no disciplinary proceeding is pending against him. He has also given his consent for appointment as IRP in the present matter. In the facts Mr. Mr. Satyendra Prasad Khorania, is




appointed as Interim Resolution Professional, who shall take statutory steps as envisaged under section 15, 17 and 18 of the Code.

16. The applicant is directed to pay sum of Rupees two lakhs to the Interim Resolution Professional to meet out the expenses to perform the function assigned to him/her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for corporate person) Regulations, 2016.

17. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process as per Sub-Section (4) of section 14 of the Code.


(M.M. KUMAR)
PRESIDENT

19.01.2018


(DEEPA KRISHAN)
MEMBER (TECHNICAL)