

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

CP (IB) 1752/MB/2017

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

In the matter of

Bank of Baroda

..... Financial Creditor
(Petitioner / Applicant)

v.

M/s. Doshion Water Solution Private Limited

..... Corporate Debtor
(Respondent)

Order Pronounced on: 31.08.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

For the Petitioner :

Mr. Animesh Bisht, Advocate a/w. Ms. Saloni Kapadia and Ms. Surbhi Pareek, Advocate i/b. Cyril Amarchand Mangaldas – Advocates for the Financial Creditor / Petitioner.

For the Respondent :

Mr. Shailesh Kumar, Advocate – Advocate for the Respondent/Corporate Debtor.

Per: M. K. Shrawat, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'Bank of Baroda' (hereinafter as **Financial Creditor**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" on 13.12.2017 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. Further under the head "Particulars of Corporate Debtor" the description of the debtor is stated as 'M/s. Doshion Water Solutions Private Limited' (hereinafter as **Debtor**) having Registered office at, Office No. 3, 2nd Floor, A – Wing, Godrej Coliseum, Eastern Express Highway, Behind Everard Nagar, Sion (W), Mumbai, Maharashtra – 400022.

3. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt in default is stated as ₹ 133,69,60,093/- as on 30.09.2017 as summarised below :

Facility	Outstanding Amounts at September 30, 2017			
	Principal (Rs.)	Interest (Rs.)	Penal Interest and Charges (Rs.)	Total (Rs.)
Account No: 25380600000232				
WCTL-I Facility	5,51,00,000.00	1,75,41,789.15	30,72,100.67	7,57,13,889.82
Account No: 25380600000233				
WCTL-II Facility	6,33,49,697.00	1,76,78,667.66	28,40,782.51	8,38,69,147.17
Account No: 25380600000234				
FITL Facility	714,77,861.00	1,88,45,456.93	31,64,804.39	9,34,88,122.31
Account No: 25380600000066				
Cash Credit Facility	70,61,38,024.54	12,97,62,673.24	209,90,852.62	85,68,91,550.40
Account No: 25380400000002				
Overdraft Facility	9,99,99,999.66	3,33,06,029.89	51,65,816.94	13,84,71,846.49
Account No: 25380900000134				
Advance Bill Facility	5,83,63,302.00	3,01,62,235.41	-	8,85,25,537.41
Bank Guarantee*	-	-	-	-
TOTAL				133,69,60,093.60

* Bank Guarantees worth Rs. 9,06,34,033.00 (Rupees Nine Crores Six Lakhs Thirty-Four Thousand and Thirty-Three Only) have been issued and are outstanding as on September 30, 2017.

4. **Brief Background :**

4.1. The Corporate Debtor has availed the loan facilities from the Financial Creditor as per following table giving details of Principal amount (Disbursed and Sanctioned) :

Facility	Sanctioned Amount (INR)	Amount of Debt Disbursed (INR)	First Date of Disbursement
WCTL – I Facility [Account No. 25380600000232]	5,51,00,000	5,51,00,000	March 31, 2014

<i>WCTL – II Facility</i> [Account No. 25380600000233]	6,92,00,000	6,42,45,130	March 31, 2014
<i>FITL Facility</i> [Account No. 25380600000234]	8,73,00,000	7,14,77,861	March 31, 2014**
<i>Cash Credit Facility</i> [Account No. 25380600000066]	39,00,00,000	39,00,00,000	March 31, 2014*
<i>Advance Bill Facility</i> [Account No. 25380900000134]	8,45,00,000	5,83,63,302	March 31, 2014
<i>Overdraft Facility</i> [Account No. 25380400000002]	10,00,00,000	10,00,00,000	March 31, 2014*
<i>Bank Guarantee</i>	74,00,00,000	9,06,34,033	-

* This facility was disbursed in multiple tranches since the date of first disbursement.

* This facility was disbursed in multiple tranches since the date of first disbursement. The Interest charge on WCTL – I and WCTL – II were being serviced by way of disbursement from the FITL account as per the restructuring.

- 4.2. After sanctioning and disbursing of these facilities the Account of the Debtor has turned into Non-Performing Assets (NPA) on 31.08.2015.
- 4.3. The Financial Creditor has issued two Demand Notice to the Debtor demanding the outstanding amount of Debt. But the Debtor has failed in making the payment.
- 4.4. Consequently, the Financial Creditor has filed this Petition / Application U/s. 7 of the Code praying for the commencement of CIRP over the Debtor.

5. Submissions by the Financial Creditor :

- 5.1. The Learned Advocate for the Financial Creditor has submitted that pursuant to the request of the Debtor the Financial Creditor has duly sanctioned and disbursed the loan amount to the Debtor in above mentioned manner.

- 5.2. It is further submitted that during the period of 01.06.2015 to 30.09.2017 the Debtor has made default in making the re-payment towards the availed amount.
- 5.3. It is further stated that the Account of the Debtor has become NPA on 31.08.2015 as per the guidelines of the RBI.
- 5.4. It is further stated that the Financial Creditor has issued a first Demand Notice to the Debtor on 06.04.2016 for repayment of Debts. It is also stated that the Debtor vide its letter dated 16.05.2016 had replied to the said notice stating therein that the Debtor may be invited by the Financial Creditor to negotiate the terms of settlement. Copies of the notice and reply are annexed with the Petition / Application.
- 5.5. It is further stated that thereafter there is nothing much happened progressively, despite of the Joint Lenders Forum meeting dated 20.07.2016. It is stated that the terms and conditions decided in the JLF meeting were never been executed by the Financial Creditor or by any of the Banks.
- 5.6. It is also stated that the Debtor vide its letter dated 07.03.2017 has acknowledged its liability towards Financial Creditor. Further in the said letter the Debtor has also acknowledged the security documents executed by him in favour of Financial Creditor and other consortium Banks. The copy of the said letter is annexed with the Petition / Application.
- 5.7. It is further stated that the Financial Creditor has issued a Notice U/s. 13 (2) of the SARFAESI Act, 2002 and demanded the outstanding amount and has also taken symbolic possession of the properties which are mortgaged with the Financial Creditor.
- 5.8. It is further stated that the charge is also registered with RoC upon the Debtor and the relevant extract of the RoC record is annexed with the Petition / Application.
- 5.9. It is further stated that the DRT, Ahmedabad has restrained the Debtor from alienating the mortgaged immovable properties of the Debtor vide an Order dated 09.01.2017 in the case filed by Financial Creditor against the Debtor. It is also stated that, since the prima-facie case of default was made out by the Financial Creditor the said reliefs were granted by the DRT.

5.10. It is further stated that, since the Debtor has defaulted in repaying the availed loan amount the Financial Creditor has preferred this Petition / Application before this Bench.

5.11. It is further stated that though the JLF meeting records for terms and conditions for restructuring of debt nothing had been acted upon by the Financial Creditor or any other Bank hence, it is not a case that the Debt has been restructured and therefore as on date there is Debt lying with the Debtor in terms of S. 5 (8) of the Code and hence this Petition / Application deserves to be Admitted and the CIRP may be commenced upon the Debtor.

6. Submissions by the Corporate Debtor :

- 6.1. The Learned Counsel for the Corporate Debtor firstly has raised the issue of the maintainability of this Application under provisions of the Code.
- 6.2. It is submitted that on 16.01.2014 the Financial Creditor along with other consortium banker had agreed to restructure the loan and provide enhancement facilities and the modalities were finalized. It is also stated that pursuant to this restructuring the Debtor has to open a TRA Account for their day to day business. Copy of the letter to that effect is annexed with the Reply alleging that sum of ₹ 1,15,00,000/- deposited in the said TRA Account.
- 6.3. It is further stated that, at the time of implementation of the said restructuring agreement one of the Bank from consortium i.e. Standard Chartered Bank did not take part and consequently thereafter other Bankers also declined from disbursing of the loan facilities.
- 6.4. It is also stated that in the JLF meeting which was held on 14.06.2016 it was agreed that the Bankers will explore the realization of old book debts. Copy of the said agreement is annexed with the Reply.
- 6.5. It is further stated that the Financial Creditor has invoked the Bank Guarantees without knowledge of the Debtor and that too in haste.
- 6.6. It is vehemently argued that the Debtor has also provided personal as well as corporate guarantees to satisfy the Bankers however the Bankers did not act on agreed restructuring and enhancement facilities. And because of these circumstances the Debtor is in default in making the payments.

6.7. The Learned Advocate for the Debtor, in light of above submissions, reiterated that since the modalities of the Debt restructuring had arrived between the consortium and the Debtor Company the Debt does not survive and this Petition / Application deserves to be Rejected.

7. Findings :

- 7.1. I have gone through the facts and circumstances of the case and also through the submissions made by both the Learned Advocates.
- 7.2. Before discussing further it is noteworthy to place certain facts on record. During the hearing it is noticed that, in recent past the Hon'ble Bombay High Court had passed an order for winding-up against the Debtor Company U/s. 433 (e) and 434 of the Companies Act, 1956 vide an Order dated 16.03.2018. Thereafter an improvement has occurred and the Hon'ble Bombay High Court vide an Order dated 09.05.2018 has recorded that the Order of 16.03.2018 stands set aside and the Debtor Company shall move an application for discharge of Official Liquidator.
- 7.3. The Bench has gone through both the abovementioned orders and it transpires that initially the Hon'ble Bombay High Court had ordered for Winding-up of the Debtor Company and the said Order has been set aside by the Appellate Court. Hence, consequently the conclusion can be drawn that at present there is no Winding-up order is operative against the Debtor Company and therefore there is no legal hurdle to proceed in this matter in its own merits.
- 7.4. While going through the submissions it is noticed that admittedly the Debtor has availed the Loan Facilities from the Financial Creditor however, the Debtor has defaulted in making the payment.
- 7.5. It is further noticed that admittedly the modalities for the restructuring of Debt had been agreed between the consortium of Banks and the Debtor Company. However there is nothing on record which will prove that the modalities / agreements were acted upon / implemented by the Financial Creditors. Consequently any of one from the Consortium had not enhanced the facilities of the Debtor.
- 7.6. In light of above observation it can be carved out that, as the agreements were not acted upon the amount of Debt has never been restructured and therefore there is an **existence of debt** and the Debtor Company is **liable** to make the payment to the Financial Creditor.

- 7.7. It is further noticed that, there is **no dispute** about the existence of default and the default is also evident from the order of DRT, Ahmedabad. Further the reply to the Demand notice of the Financial Creditor also evident that the Debtor has not repaid the loan amount and there is a default in repayment.
- 7.8. Hence, keeping the facts and submissions in mind this Bench has come to conclusion that, the nature of Debt is a “Financial Debt” as defined under section 5 (8) of the Code. Further, admittedly there is a “Default” as defined under section 3 (12) of the Code on the part of the Corporate Debtor.
- 7.9. On the basis of the evidences on record the Financial Creditor has established that the loan was sanctioned and duly disbursed to the Corporate Debtor but there is non-payment of the Balance Debt on the part of the Corporate Debtor.
- 7.10. As a consequence, keeping admitted facts in mind that the Financial Creditor had not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Financial Creditor we are of the conscientious view that this Petition deserves ‘**Admission**’.
- 7.11. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, **Mr. Ketul Bhai Patel** having address at **M/s. R S Patel & Co. 801, Popular House, Ashram Road, Ahmedabad, Gujarat – 380009**, having mail id: **ketul@rspatelca.com** and having Registration id as **IBBI/IPA-001/IP-P00228/2017-18/10427** is hereby appointed as Interim Resolution Professional to initiate the Insolvency Resolution Process.
- 7.12. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
- 7.13. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency

Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

7.14. That the Interim Resolution Professional shall perform the duties as assigned under **Section 18** and **Section 15** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. Liberty is granted to intimate even at an early date, if need be.

7.15. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

8. Ordered Accordingly.

Dated : 31.08.2018

SD/-

**M. K. SHRAWAT
MEMBER (JUDICIAL)**

Avinash