

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

C.P(IB)No.51of 2018
U/s 7 of the I&BC, 2016
R/w Rule 4 of the I&B (AAA) Rules, 2016

In the matter of:

M/s Oriental Bank of Commerce,
Registered Office- Harsh Bhawan,
E- Block, Connaught Place,
New Delhi- 110001
Having its Branch,
Maker Tower, F-Wing, 14th Floor,
Cuffe Parade, Mumbai-400005

- Petitioner / Financial Creditor

Versus

M/s Associate Decor Limited,
Having its Registered Office at
Plot No.1, Phase IV KIADB Industrial Area,
Huralagera, Malur, Kolar,
Karnataka- 563160

- Respondent/Corporate Debtor

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (J)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (T)

Dated: 26th October, 2018

Parties/Counsel Present:

For the Petitioner : Shri V.B Ravi Shankar Avinash.
For the Respondent : Shri Aditya Patel along with
Shri Pradeep Nayak,
For the Applicant (IA No.335/2018) - Shri John Paul. A,

ORDER

Per: Rajeswara Rao Vittanala, M (J)

1. C.P(IB) No. 51 of 2018, is filed by M/s Oriental Bank of Commerce, U/s 7 of the Insolvency and Bankruptcy Code, 2016, R/w Rule 4 of the I&B (AAA) Rules, 2016, by inter alia, seeking to initiate Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Associate Décor Limited, on the ground that the Corporate Debtor failed to commit a default of Rs. 128,60,01,812.05 (Rupees One Hundred Twenty Eight

Creore Sixty Lakh One Thousand Eight Hundred Twelve and Paise Five Only).

2. Briefs facts, as mentioned in the application, which are relevant to the issue in question, are as follows:

- 1) M/s. Oriental Bank of Commerce (Petitioner/Financial Creditor) is a Banking Company incorporated under Banking Companies (Acquisition and Transfer of Undertaking) Act, 1980.
- 2) M/s Associate Décor Limited, Respondent/Corporate Debtor, is a Company incorporated initially as Star Panel Boards Limited on 17.01.2017 and subsequently name was changed to Associate Décor Ltd. on 03.08.2011. Its Authorized Capital of the Corporate Debtor INR 52,00,00,000/- (Rupees Fifty Two Creore Only) (5,20,00,000/- equity shares having face value of INR 10/- per share) paid up share capital of the Corporate Debtor INR 51,51,00,000/- (Rupees Fifty One Crores Fifty-one Lakhs Only) (5,15,00,000/- equity shares having face value of INR 10/- per share) Clause 16 & 17 of the Memorandum of Association of the Corporate Debtor is reproduced herein below , Clause 16 to borrow or raise money with or without security or to receive money or deposits at interest or otherwise, including debenture convertible into shares of this or any other Company, and in security of any such money so borrowed, raised or received, to mortgaged, pledge or charge the whole or any part of the property, assets or revenue of the Company, present or future, or pay of in such securities. Clause 17 to sell, mortgage, assign or lease and in any other manner deal with or dispose of the undertaking of, or property of the Company or any part thereof, whether movable or immovable for such consideration as the Company may think fit, and in particular for shares, debentures or other securities of any other Company having objects altogether or in part similar to those of this Company. Corporate Debtor herein, had availed various credit facilities from the Financial Creditor under consortium arrangement with

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Corporation Bank and Bank of Baroda, and Corporation Bank was lead bank of the Consortium. It is stated that after the loan was availed, the Corporate debtor had failed to adhere to terms of sanction, and the credit facilities availed by the Respondent became non-performing assets in the books of account of the Financial Creditor, and accordingly, the account was classified as a non-performing asset on 31.01.2016. And the Corporate Debtor was indebted for an amount of Rs.128,60,01,812.05/- which was due as on 31.01.2018. When the Corporate Debtor failed to pay outstanding amount, the Financial Creditor was compelled to issue a Demand notice under Section 13(2) of SARFAESI Act, on 15.06.2017, and followed by a legal notice dated 24.06.2017. And in spite of the said notice, the corporate debtor had failed to discharge their liability to the Financial Creditor. Therefore, the present petition is filed to initiate CIRP under the provisions of Insolvency and Bankruptcy Code, 2016.

- 3) The Financial Creditor has also filed an application before the Debt Recovery Tribunal vide O.A. No.804 of 2017, and same also pending for Adjudication before Debt Recovery Tribunal at Bengaluru. However, there is nothing paid by the Corporate debtor as now.
- 4) The consortium leader Corporation Bank had invoked pledged the shares of the promoters, and thus pledged shares were also put for sale, and in pursuant to process memorandum dated 07.06.2018 and further discussions and negotiations, the bidders had submitted their proposal for purchase of share vide their letter dated 13.07.2018. The Corporation Bank had issued a letter of intent to the successful bidder on 11.09.2018, and was advised to deposit the remaining sum of Rs.110 Crores (out of total sale consideration of Rs.115 Crores, Rs. 5 Crores was already deposited as EMD) within 30 days from the date of issuing the letter of intent. It is stated that as on this day, as per the letter of intent, the successful bidder has not deposited the full amount, and failed to



comply with the terms of letter of intent, and the thus transaction for sale of pledged share has taken place till date.

- 5) When the matter was pending before this Hon'ble Tribunal, the Corporate Debtor has also filed W.P. No. 25907 of 2018 (GM-RES)& 26005-26009 of 2018 before the Hon'ble High Court of Karnataka, under Article 226 of the Constitution of India, by inter alia, seeking to mandamus by directing the Respondents to conduct the bidding process for the pledged shares stipulated in the invocation notice in the fair and reasonable manner by extending the time lines for submission of bid for the shares as stipulated in the mail issued by the consortium lender; to declare the instant proceedings as void, nonest and illegal etc. The Hon'ble High Court, after hearing the parties, had passed an order dated 19.06.2018, by inter alia, stating that the opening of the bid, if any by the Respondents would be subject final result these Writ Petitions, and thus posted it to 22.06.2018. On 22.06.2018, passed any order stating that 'any steps taken by Respondent- Bank would be subject to result of the Writ Petitions. Therefore, the Hon'ble High court has not 'restrained the Tribunal from considering the case for admission under the provisions of Code.
3. M/s. Associate Décor Limited/Respondent, has filed an I.A No. 125 of 2018, under Rule 11, 15 and 34 of NCLT Rules, 2016, by inter alia, seeking to adjourn the case for further a period of three months. Shri Sachin Shetye, the authorised signatory of the Respondent M/s. Associate Décor Limited, has filed a supporting affidavit on 11.05.2018 in support of said I.A, by inter alia contending as follows:
- a) The Company was incorporated on 17.01.2007 as Star Panel Board Ltd. and its name was changed subsequently to M/s Associate Décor Limited on 03.08.2011. The Company was set up for the purposes of manufacture and processing of MDF/Particleboards to this extent, the Company has been successfully operating a MDF/Particleboard factory in Malur, Karnataka and has grown to be one of the Asia's leading manufactures in the industry, with a

reputation for producing high quality, reliable products. The Company's factory at Malur presently employs about 800 people and services about 1350 customers and also has about 3300 vendors (most of whom are farmers).

- b) The Company has availed of financial facilities by a consortium of three public sector banks of which the Petitioner herein is a member. The other Banks, who form a part of the consortium are Corporation Bank, which is also the lead bank, and Bank of Baroda (**'the Consortium'**). On account of certain disputes amongst the promoters of the Company as well as certain other unexpected changes in the market, the Company's operations were adversely affected in the year 2015-2016, consequently affecting its revenue flow and causing the Petitioner herein to declare the Company's loan account to be a 'Non-Performing Asset'. The Company had provided substantial collateral security in respect of the loans availed by it from the Consortium Banks in the form of mortgage of land, plant and machinery situated at Malur, Kolar District (Karnataka) hypothecation of current assets, pledge of shares held by promoters and personal guarantees given by Directors of the Company. The value of this collateral security is sufficient to safeguard the interests of the Consortium Banks.
- c) The Company's operations at Malur have since picked up substantially, and as of March 2018, the Company's monthly turnover was in the range of Rupees Twenty-Five Crore to Rupees Thirty Crore. The Company's representatives have also been in discussions with the Consortium to determine the most feasible method to regularise/restructure the loan accounts of the Company. On 20.03.2018, during a meeting of the Consortium, where the representatives of the Petitioner as well as those of the Company were also present and participating, it was announced by Corporation Bank (lead banker of the consortium) that they had decided to enforce their interest in the shares pledged to them by the promoters of the Company in pursuant to a recent circular of

the RBI dated 12.02.2018. The other Bankers of Consortium concurred with the decision to invoke the pledge in respect of the promoters' shares rather than to consider any restructuring plan. During the discussions, it was felt that the enforcement of the pledge interest would realise best possible value for the lenders only when the Company was operating as a going concern, and that there was a serious risk of depreciation in value of the pledged shares in the event that operations of the Company as a going concern were impaired for any reason. A true copy of the Minutes of the Consortium Meeting held on 20.03.2018 (**'Minutes'**) is also filed.

- d) Subsequent to the aforesaid meeting, the Consortium, through its lead Bank, has issued the Notice for Invocation of Pledge dated 27.03.2018 and has thereafter issued a public advertisement inviting 'Expression of Interest' ('EOIs') from prospective investors for acquiring 73.71% of the Company's shares (that are pledged with the Consortium), which were to be submitted by 21.04.2018. As this time-period has lapsed, it is bonafide expected that the Consortium would be in receipt of EOIs from a sufficient number of interested investors, and that it is ready to proceed with the next steps in the course of the next three to four months. The Notice invoking Pledge dated 27.03.2018 is annexed and the Public advertisement issued by the Consortium lead bank is annexed.
- e) This auction process is expected to conclude in the course of the next three to four months and upon its conclusion, it is very likely the sums received thereunder (by way of sale of the promoters' pledged shares in a Company operating as going concern) would be more than sufficient to clear any default and regularise the loan account of the Company held not only with the Petitioner but also with all other consortium members.



4. Heard Shri V.B.Ravi Shankar Avinash, learned Counsels for the Petitioner M/s. Oriental Bank of Commerce and Shri Aditya Patel and Shri Pradeep Nayak for the Corporate Debtor, Shri John Paul.A for M/s Kings Suppliers Pvt. Ltd, Counsel in I.A No. 335/2018.

5. Shri V.B. Ravi Shankar Avinash, learned Counsel, while pointing out various contentions raised in the Company Petition, has further submitted that the instant Company Petition is filed in prescribed format; appropriate record is filed to show that outstanding amount was not paid, Shri Alok K Saxena, who is qualified as Resolution professional , as per certificate dated 02.05.2017 with Registration No. IBBI/IPA-001/IP-P00056/2017-18/10134 is suggested to act as IRP, he has also filed written Communication 02.02.2018, in Form 2, by inter alia declaring that he is a currently a qualified Insolvency professional, there are no disciplinary pending against him with the Board or Indian Institute of Insolvency professionals ICAI etc.

6. This case is listed for admission on various dates viz. 22.02.2018, 02.03.2018,14.03.2018,03.04.2018, 23.04.2018, 11.05.2018,25.06.2018, 31.07.2018, 27.08.2018, 30.08.2018, 28.09.2018, 10.10.2018, 23.10.2018 and 29.10.2018. And it is adjourned on those dates in order to give proper opportunity to both the parties to explore the possibilities of resolving the issue in question. Since no substantial developments are reported in the so far in that directions, the Petitioner Bank has insisted the Tribunal to pass appropriate order to initiate CIRP as prayed for.

7. Shri Aditya Patel, learned Counsel for Corporate Debtor submit that there are still exploring the possibility of settling the issue, and a writ petition is also pending on the subject issue before Hon'ble High Court of Karnataka. Therefore, further time may be granted to settle the issue in question.



8. Shri John Paul.A, learned Counsel for applicant submit M/s. Kingswood Suppliers Pvt. Ltd., has filed I.A No. 335 of 2018, filed U/s 60, sub-section (5), Clause (c) and Section 65 of Insolvency and Bankruptcy Code, 2016 R/w Rule 11 of National Company Law Tribunal Rules, 2016 and Section 424 of the Companies Act, 2013, by inter alia, seeking to dismiss the main Company petition as it is abuse process of law etc. The applicant is a Bidder, who has submitted Expression of Interest on 21.04.2018 for purchase of 73.71% equity stake and taking over management control of the Company. On submission of EOI, on 07.06.2018 EY Restructuring LLP has written a mail to the applicant by attaching the brief timelines of the process, finalised as per the consortium lenders, decisions along with the Non-disclosure Agreement (NDA) for its execution, Treasurer and Bank account details for payment of Non-Refundable bid participation fee of Rs. 1 Lakh, payable on 08.06.2018. On the very same day, the Applicant has remitted Rs. 1 Lakh and submitted signed copy of NDA for obtaining documents.

“On due date of bid submission i.e., 18.06.2018 the Bidder/ Applicant had submitted Resolution plan offer and refundable EMD amount of Rs. 5 Crores, vide Demand Draft bearing No. 050551 dated 14.06.2018 drawn from Standard Chartered Bank, Bangalore for acquiring 73.71% equity stake and taking over of management control of the Company. On perusal of the bidding offer on opening the sealed cover, the process advisor EY through their mail dated 19.06.2018, sought the willingness of the Applicant to remove Condition Precedents and Subsequent (CP&S) and to make the bid submission unconditional. Copy to the mail dated 19.06.2018 is produced.”

It is further stated that Applicant has raised some key points post the submission of offer bid owing to certain incidents, which have occurred at the Factory for non-payment of statutory payment of GST department, who has initiated recovery proceedings against the company for recovery of due amount to an extent of Rs. 60 Crores, towards basic tax for the


period from July 2017 to March 2018. The action initiated by the GST department on seizure of the goods at the factory was informed to the consortium leader and requested to consider the same for acceptance of Letter of Intent. The Applicant is in the process of raising funds for the purpose of taking over the Company and liabilities .Therefore, the learned Counsel urged the Tribunal to dismiss the main company petition.

9. Before advertng to the facts of instant case, we may advert to the Order dated 15th May 2017 of Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No.1 & 2/2017 in the case of M/s Innovative Industries Ltd. Vs. ICICI Bank and another. Paras 55 to 58 of the judgement are relevant to the issue, which we are extracted below:

“55) Process of initiation of Insolvency Resolution process by a financial creditor is provided in Section 7 of the I& B Code. As per sub-section (1) of Section 7 of the I & B Code, the trigger for filing of an application by a financial creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the financial creditor shall make an application in prescribed form and manner and with prescribed documents, including:

- i. “record of the default” recorded with the information utility or such other record or evidence of default as may be specified;
- ii. the name of the resolution professional proposed to act as an interim resolution professional; and
- iii. Any other information as may be specified by the Board.

56. The procedure once an application is filed by the financial creditor with the Adjudicating Authority is specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of the I& B Code:

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), **ascertain** the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3)”.


57) Sub-section (5) of Section 7 of the I& B Code provides for admission or rejection of application of a financial creditor. Where the Adjudicating Authority is satisfied that the documents are complete or incomplete.

58) The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the financial creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the financial creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority's summary adjudication, though limited to 'ascertainment' and 'satisfaction'."

The Hon'ble Supreme Court has also upheld the above judgement in Civil Appeal Nos. 8337-8338 of 2017 vide judgement dated 31st August, 2017.

Para 28 relevant here to extract:

"When it comes to a Financial Creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor,

is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7 (5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

10. By perusal of the instant Company Petition, it is found that Financial Creditor, Oriental Bank of Commerce, has filed the instant Application/Petition in prescribed format, against the Corporate Debtor M/s. Associate Décor Limited, as default has occurred. The Financial Creditor has also furnished ample proof showing default in question. The Corporate Debtor has named Shri Alok K. Saksena having Registration No. IBBI/IPA-001/IP-P00056/2017-18/10134 as Interim Resolution Professional. The Corporate Debtor did not raise any substantial dispute except raising untenable grounds like filing Writ Petition before the Hon'ble High Court of Karnataka by some other parties, and there are also possibilities of settlement etc. Moreover, it is not the case of the Corporate Debtor that they have paid the amount even in part, though the Financial Creditor initiated proceedings under the SARFAESI Act, etc.

11. M/s Kingswood Suppliers Pvt. Ltd applicant of I.A No.335 of 2018) is admittedly is not a party or impleaded itself, to instant Company petition to maintain its IA. And thus, the applicant has no locus standi to intervene in the main Company Petition and resultantly, it is liable to be rejected.

12. As stated supra, the Company Petition is filed by the Financial Creditor U/s 7 of Code to initiate CIRP against the Corporate Debtor. Therefore, it is for the petitioner to satisfy the Adjudicating

Authority/Tribunal as to whether the ingredients, as prescribed under Section 7 of Code, and relevant rules made thereunder are complied with or not. In the instant case, as stated supra, a prescribed petition/application is filed, default in question is proved by fling substantial proof along with application, a Competent Resolution professional is named as IRP to appoint, and he has also given declaration that he is not undergoing any disciplinary proceedings etc.

13. The Hon'ble High Court has not has not restrained the Tribunal from 'proceeding with the instant as per orders passed in W.P No. 25907/18 (GM-RES) & 26005-26009 of 2018 filed by M/s. Associate Décor Limited and others. Moreover, both the learned Counsels, have also reiterated that there is no bar for the Tribunal to take up the case for admission. However, the learned counsel for the respondent has sought some more time to pursue the case before the Hon'ble High Court. As stated supra, the Hon'ble High Court has already put all the proceedings of Respondents therein, namely Corporation Bank, Oriental Bank of Commerce(the petitioner herein) and Bank of Baroda, subject to result of pending Writ proceedings. Therefore, there is no bar for the Corporate Debtor to pursue its remedies before the Hon'ble High Court. Even initiating CIRP by appointing IRP may not prejudice the interests of Respondent.

14. As per section 7 (4) of the Code, the Adjudicating Authority/ Tribunal, should ascertain the existence of default from the records of information utility or on the basis of other evidence furnished by the Financial Creditor, within a period of 14(fourteen) days from the date of receipt of the application/Petition. While following prescribed period, the Tribunal has to follow principle of natural justice, while adjudicating the issue. As stated supra, several opportunities were extended to the Corporate Debtor to explore the possibilities settling the issue in question with the Financial Creditor. It is also not in dispute that the account of the Corporate Debtor became a Non-Performing Asset (NPA) as early as 31.03.2016, and the Corporate debtor failed to pay any amount to the petitioner, even though the notice U/s 13(2) of SARFAESI Act, on

15.06.2017 followed by legal notice dated 24.06.2017, filing O.A No. 804 of 2017 before debt required to the Tribunal etc. Therefore, it is proved that default in question is occurred, and thus it is a fit case to initiate CIRP in respect of Corporate Debtor, appointing IRP, declaring moratorium etc.

15. In the result, by exercising powers conferred on this Adjudicating Authority, U/s 9(5) (a) IBC 2016, we hereby admitted C.P (IB) No.51 of 2018, by initiating CIRP in respect of M/s. Associate Décor Limited, the Corporate Debtor, with the following consequential directions:

- 1) We hereby appointed Shri Alok K. Saksena, Insolvency Professional, having IBBI Registration No. IBBI/IPA-001/IP-P00056/2017-18/10134 as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the Insolvency & Bankruptcy Code.
- 2) The following moratorium is declared prohibiting all of the following, 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 an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



- (e) 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.
- (f) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (g) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.
- (h) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file his report in the Tribunal from time to time.
- 3) The Board of Directors and all the staff of Corporate Debtor are hereby directed to extend full co-operation to the IRP in carrying out his functions as prescribed under the Code and Rules made thereunder by IBBI.
- 4) IRP is further directed to strictly adhere to time schedule as mentioned under the Code. And he is directed to file progress report from time to time to the Tribunal.
- 5) I.A No. 335/2018 in C.P (IB) No.51/2018 is rejected.
- 6) Post the case on **03.12.2018** for submission of report of IRP.


(Dr. ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL