

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

C.P. NO. 402/I&BP/NCLT/MAH/2018

Under Section 7 of IBC, 2016

In the matter of


SREI Infrastructure Finance Ltd

..... Petitioner

vs.

Sterling International Enterprises
Ltd

.... Respondent

Order delivered on 16.07.2018 

Coram: Hon'ble Bhaskara Pantula Mohan, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Mr. Gaurav Mathur a/w Abhishek Shah
and Mr. Durgaprasad Halwai i/b Singhi & Co

For the Respondent: None present.

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This is a Company Petition filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 by the Petitioner against the Respondent/ Corporate Debtor, stating that the Corporate Debtor defaulted in making payment of Rs. 237,69,95,065/- as on 31.01.2018. The Petition reveals that the Petitioner sanctioned Rupee Term Loan of Rs. 275,00,00,000/- on 04.07.2015 in favour of Sterling SEZ and Infrastructure Ltd. (shortly 'Principal Debtor') to which the Corporate Debtor herein is a Guarantor and the actual disbursement of Rs. 262,40,00,000/- was made on 08.07.2015.

2. The Petitioner enclosed the following documents as proof of debt and default:

- a. Rupee Loan Agreement dated 04.07.2015 for Rs. 275,00,00,000/- executed by the Principal Debtor in favour of the Petitioner.
- b. Deed of guarantee dated 04.07.2015 executed by the Corporate Debtor (Guarantor) in favour of the Petitioner.
- c. Statement of Account of the Term loan.
- d. Recall notice issued by the Petitioner dated 10.05.2016 claiming a sum of Rs. 282,38,25,922/- as on 09.05.2016 to the Principal Debtor.
- e. Notice of invocation of Guarantee dated 18.05.2016 issued by the Petitioner to the Corporate Debtor herein claiming the amount of Rs. 282,38,25,922/-
- f. Copy of Original Application No. 408/2016 pending on the file of DRT, Kolkata, against the Principal Debtor and the Corporate Debtor claiming a sum of Rs. 337,80,32,900/- wherein the claim amount is inclusive of another Term Loan of Rs. 60,00,00,000/- plus interest therein sanctioned by the Petitioner in favour of the Principal Debtor.

3. Section 5 (8) of the Insolvency and Bankruptcy Code provides that:

“Financial Debt” means Debt along with interest, if any which is disbursed against the consideration for the time value of money and includes –

- a) *Money borrowed against the payment of interest;*
- b) *Any amount raised by acceptance credit facility or its dematerialised equivalent;*
- c) *Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
- d) *The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
- e) *Receivables sold or discounted other than any receivables sold on non-recourse basis;*

- f) Any amount raised under any other transaction, including any forward sale or purchase agreement having the commercial effect of a borrowing;*
- g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to a sub-clauses (a) to (h) of this clause.*
4. The Debt herein is covered under the provision of Section 5(8)(i) of the I&B Code and hence the same is a Financial Debt.
5. The Petitioner submits that the copy of Petition was sent to the Corporate Debtor vide speed-post dated 13.03.2018 but it was returned as unclaimed. Further, the copy of the petition and the letter of intimation of the next date of hearing was tried to be served by hand delivery on 02.04.2018 but the door of the Corporate Debtor was found locked. The letter of intimation of next dates of hearing were returned as unclaimed. This Bench on 17.05.2018 directed the Petitioner to take out substituted service in the newspapers, which was duly complied with by the Petitioner. Affidavit of substituted service was filed. Subsequently, the case was posted for hearing on 08.06.2018, 14.06.2018 and 25.06.2018, but the Corporate Debtor failed to appear on these hearing dates.
6. This Adjudicating Authority, on perusal of the documents filed by the Creditor, it is evident that when the principal debtor failed to repay the loan, the Petitioner invoked the guarantee given by the Corporate Debtor wherein the Corporate Debtor failed to honour the guarantee issued by it and defaulted in repaying the loan availed by the principal debtor and also placed the name of the Insolvency Resolution Professional to act

as Interim Resolution Professional. This Bench noticed that default has occurred and there are no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

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- (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 (SARFAESI Act);
 - (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 the 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 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 16.07.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes

an order for liquidation of corporate debtor under section 33, 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 the Code.
- (VI) That this Bench hereby appoints CA. Vishal Ghisulal Jain, having his address at B-3/7/1-2, Sector-15, Vashi, Navi Mumbai- 400703, Registration No. IBBI/IPA-001/IP-P00419/2017-18/10742 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
10. Accordingly, this Petition is admitted.
11. The Registry is hereby directed to communicate this order to both the parties within seven days from the date order is made available.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)