

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
CP (IB) 564 (MB)/2018
Under Section 7 of IBC, 2016

In the matter of

State Bank of India ... Financial Creditor

Vs.

CE India Ltd ... Corporate Debtor

Order delivered on 14.09.2018

Coram: Hon'ble Shri B.S.V. Prakash Kumar, Member (Judicial)
 Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

For the Financial Creditor: Mr. Gaurav Joshi, Senior Advocate, Mr. Animesh Bisht, Mr. Dhananjay Kumar, Ms. Saloni Kapadia, Mr. Anush Mathkar, i/b Cyril Amarchand Mangaldas

For the Corporate Debtor: Adv. Sandeep Ladda a/w Adv. Aurup Dasgupta, Adv. Shrey Shah, i/b Jhangiani Narvla & Associates.

Per B S V Prakash Kumar, Member

ORDER

Order pronounced on 12.09.2018

It's a Company Petition filed u/s 7 of the Insolvency & Bankruptcy Code, 2016 (the Code) by State Bank of India, Financial Creditor against the Corporate Debtor namely, CE India Ltd. to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor on the ground that the Rupee Term Loan Facility provided by the Financial Creditor became NPA thereafter, the amount in default as on 31.12.2017 was ₹456.90 crores, and for this debtor, under Indenture of Mortgage dated 20th March, 2013, having consciously covenanted and agreed with SBICAP Trustee Company Limited (Onshore Security Trustee for Rupee Lenders – SBI and its Consortium) that the corporate debtor shall comply with terms and conditions of the Financing documents (documentation in relation to Rupee term loan and LoC/SBLC Facility) and shall repay or pay the secured obligations (principal amount plus interest of the Rupee Term Loan and LoC/SBLC Facility) in accordance with the Financing Documents, besides the covenant aforesaid, this Corporate debtor, in the same Indenture of Mortgage, having further covenanted, "it shall observe and perform each of the covenants set forth in the Rupee Term Loan Agreement which covenants are hereby incorporated herein by reference

and made a part of this Indenture as if such covenants and other relevant provisions were set forth in full there in", and having this corporate debtor failed to discharge this loan obligation despite being on 20.2.2018 called upon to pay the same, the petitioner filed this petition for initiation of corporate insolvency resolution process against the corporate debtor.

2. This applicant executed an Indenture of Mortgage in favour of SBI Cap Trustee Co. Ltd. (the Trustee) on 20.3.2013 stating that this Corporate Debtor will comply with terms and conditions of the financing documents and repay the secured obligations in accordance with the financing documents. In this Indenture of Mortgage, it has been mentioned secured obligations means the principal amount of Rupee Term Loan and the LOC/SBLC facility or interest thereon un-reimbursed drawings, commission, additional interest, default interest, upfront fee, commitment fee, remuneration payable to the secured parties, costs, charges, expenses and any other amounts due and payable to the secured parties under the financing documents, costs, charges and expenses whatsoever stipulated in or payable together with other debts and liabilities of the obligors. By reading this Indenture of Mortgage executed by the Corporate Debtor, it appears that this Corporate Debtor created obligation upon itself to repay the dues in respect to Rupee Term Loan Agreement dated 8.8.2012 between SBI & its associate banks and Videocon Industries Ltd (VIL) and its 12 group companies (Co-Obligors) by saying that it would perform each of the covenants set forth in the RTL Agreement as if such covenants are set forth in the Indenture of Mortgage dated 20th March 2013.

3. This was further confirmed on 20.6.2016 on execution of Confirmation Agreement which brought Videocon Telecommunication Ltd (VTL) as Co-Obligor under the RTL Agreement and RTL Co-Obligors as a Co-Obligor in the Rupee Term Loan Agreement. Since this Rupee Term Loan account has become irregular on 31.6.2017, the account of VIL was declared as NPA on 30.4.2017. However, since RBI directed on 28.8.2017 that the NPA accounts, including the account of VIL would be given time till 13.12.2017 for a resolution outside Insolvency & Bankruptcy Code, for it was not finalised and implemented before 13.12.2017, Insolvency Petitions were filed on 1.1.2018 by State Bank of India against Videocon Industries Ltd. and Videocon Telecommunications Ltd. (VTL). Thereafter, since this applicant being part of the obligors by virtue of Indenture of Mortgage executed on 20.3.2013, SBICAP Trustee Co. Ltd issued a Demand Notice dated 20.2.2018 to the Corporate Debtor calling upon the Corporate Debtor to pay all the amounts payable by the Obligors in respect of the Rupee Term Loan Agreement

together with accrued interest, all costs, expenses, fees and all other amounts accrued under, pursuant to, or otherwise in connection with the Rupee Term Loan Agreement and other financing documents, details of which are set out in Schedule 2, in the event of non-payment of the outstanding amount by the Corporate Debtor, the Rupee Term Lenders shall have the right to initiate action warranted by law and exercise the rights available to the RTL Lender under the Indenture of Mortgage, and for having this Corporate Debtor failed to repay the loan amount even after being demanded, the Petitioner herein filed this Company Petition on 5.4.2018 under Section 7 of the Code against the Corporate Debtor.

4. The Petitioner Counsel submits that in terms of the RTL Agreement dated August 8, 2012, the Corporate Debtor is individually and jointly liable as Obligors/Co-Obligors to 12 other Videocon companies to repay the loan granted under Rupee Term Loan and the Working Capital Consortium Agreement.

The following table discloses amounts in default under RTL Agreement:

Facility	Total Overdue as on 31.12.2017 (In ₹ Crores)			
	Principal	Interest	Penal Interest	Total Defaulted Debt
SBI RTL Facility	51.80	260.40	3.03	315.29
SBBJ RTL Facility	2.50	13.85	0.16	16.51
SBH RTL Facility	7.50	40.99	0.46	48.95
SBM RTL Facility	6.25	31.62	0.35	38.22
SBP RTL Facility	1.14	5.83	0.06	7.03
SBT RTL Facility	5.00	25.59	0.31	30.90
Grand Total	74.19	378.34	4.37	456.90

5. The Petitioner herein issued notice dated 27.1.2017 to Shri V. N. Dhoot for repayment of amount due as on date for the RTL Agreement and requesting to regularise its account. Again on 2.5.2017, this Petitioner has issued another notice to Shri V. N. Dhoot of Videocon Group specifying that the RTL Accounts of VIL and VTL have turned to a Non Performing Asset on 30.4.2017 for non-payment of interest for the month of January, 2017, asking it to pay upto date dues. For having VIL and VTL not repaid the dues, on 20.2.2018, the Trustee issued Demand Notice to the Corporate Debtor calling upon the

Corporate Debtor to pay forthwith the outstanding amounts in relation to the RTL Agreement. This Petitioner further submits this asset was classified as substandard on 28.12.2017 by CRILC. The Petitioner further submits that this Corporate Debtor, by virtue of RTL Agreement dated August 8,2012, having become co-obligor along with other obligors on having observed in the indenture of Mortgage dated 20th March 2013 that the corporate debtor shall perform each of the covenants set forth in the RTL Agreement, the corporate debtor has become a party to RTL Agreement as a co-obligor and assumed all obligations of the obligors therein towards the Videocon Group Lenders, which include SBI, SBM, SBBJ and SBP.

6. The Petitioner submits that since the Corporate Debtor being co-obligor along with other obligors, for there being a covenant in between the obligors and the lenders stating that in the event of default in making repayment of Rupee Term Loan, all of them including this Corporate Debtor would be jointly and severally liable to repay the same, today, therefore this Corporate Debtor cannot say that since the money has not been given to this Corporate Debtor, obligation has not been cast upon this Corporate Debtor to repay the dues under RTL Agreement.

7. As against this argument, the Corporate Debtor Counsel submits that this Indenture of Mortgage has not been executed in favour of the Petitioner herein therefore, this Corporate Debtor is not under obligation to pay anything to the Petitioner herein, as against this argument, when we have examined this Indenture of Mortgage, it is apparent on record that SBI Cap Trustee Co. Ltd was incorporated under Companies Act, 1956 in its capacity as the security trustee for the LOC/SBLC Lenders and the O & G Rupee Lenders, therefore now it cannot be said since Indenture of Mortgage is in between the Corporate Debtor and SBI Cap Trustee Co. Ltd., this Petitioner shall not prosecute the Corporate Debtor for having failed to discharge the obligation created upon itself to pay the dues arose under Rupee Term Loan Agreement. In the Indenture of Agreement itself it has been recited that this Trustee acts on behalf of SBI (financial creditor), and the corporate debtor having agreed that it would perform each of the covenants set forth in the RTL Agreement as if such covenant agreed in between the petitioner and the corporate debtor, it has to be construed that this financial creditor can enforce this obligation against the corporate debtor.

8. Another argument advanced by the corporate debtor counsel is, the agreement in between the trustee and the corporate debtor is a mortgage

deed, the petitioner at the most could proceed against the corporate debtor for realising funds from the property, but not to initiate insolvency proceedings as if this company failed to make payment. But this argument has no merit because this corporate debtor has itself agreed to perform all the obligations under the RTL Agreement dated August 8,2012, henceforth not only the indenture agreement, but also the RTL agreement-binding upon the corporate debtor. In view of the same, for the corporate debtor being jointly and severally liable to pay as any other obligor of RTL Agreement, and the loan being admittedly not paid by the corporate debtor, the corporate debtor is to be construed as defaulted in repaying the sums due under RTL Agreement dated August 8,2012.

9. For the Petitioner having proved the existence of debt as well as existence of default, this Petition is hereby admitted against this Corporate Debtor.

10. The Corporate Debtor having named the Interim Resolution Professional with his consent, there being no disciplinary proceedings against the same, this Bench hereby admits this petition filed under Section 7 of IBC, 2016, declaring moratorium with consequential directions as mentioned below:

- I (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 14.9.2018 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 Mr. Mahender Khandelwal, B-2A Sunny Valley CGHS, Dwarka, Sector 12, New Delhi – 110 078, Email mahenderkhandelwal1967@gmail.com, having Registration No.IBBI/IPA-001/IP-P00033/2016-17/10086 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

11. Accordingly, this Petition is admitted.

12. The Registry is hereby 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/-

B. S.V. PRAKASHKUMAR
Member (Judicial)