

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

C.P. No. 1153/I&BP/2017

Under section 7 of the IBC, 2016

In the matter of  
Bell Finvest (India) Ltd.

....Applicant

v/s.

Intercon Container Survey &  
Commodities Pvt. Ltd.

....Respondent

Order delivered on 20.11.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)  
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. G. Aniruth Purushothaman, Adv.  
Mr. Vinit J. Mehta, Adv. i/b Mr. Pravin Wampe, Adv.

For the Respondent : Mr. Vinit D. Jaule, Adv. & Mr. Arun Deshpande, PCS.

*Per B. S. V. Prakash Kumar, Member (Judicial)*

**ORDER**

*Order pronounced on 15.11.2017*

It is Company Petition filed by the Petitioner namely Bell Finvest (India) Ltd. u/s 7 of Insolvency and Bankruptcy Code against the Corporate Debtor namely Intercon Container Survey & Commodities Pvt. Ltd. on the ground that this Corporate Debtor defaulted in making repayment of dues amounting to ₹58,55,500 as on 20.06.2017, hence this Petition for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

2. The case of the Petitioner is that this Petitioner company is a Non-Banking Financial Company permitted by Reserve Bank of India (RBI) to carry the business of investing money for availing profit out of doing the same, in furtherance of it, when this Corporate Debtor approached the Petitioner for a loan of ₹30,00,000, on the loan application dated 17.03.2016, this Petitioner issued Sanction Letter dated 19.03.2016 with the condition that the rate of interest

payable would be @24% p.a. flat rate payable in advance for the entire tenure, after negotiation rate of interest was discounted to 24% as against the applicable rate of 36% p.a. It is being further conditioned that interest amount of ₹4,80,000 is payable in advance, EMI amount would be ₹3,75,000 p.m. It says that the company has to give corporate guarantee, and the directors have to give personal guarantee. This loan amount shall be paid in 8 months from the first day of disbursement. In case, the Corporate Debtor defaulted in making payment, an additional interest at the rate of 1% per day over and above the interest rate for defaulted/delayed period on the instalment amounts will be charged. Soon after this sanction letter was given, the Corporate Debtor entered into an agreement with the Petitioner on 28.3.2016, incorporating interest rate as mentioned above by confirming that it would forward to lender 8 post-dated cheques towards the EMI amounts.

3. On the agreement entered by the Corporate Debtor and by executing Promissory Notes, Deeds of Guarantees and Warrantees, this Petitioner disbursed 10 lakhs of rupees on 31.3.2016 and ₹15,20,000 rupees on 31.3.2016 after remitting ₹4,80,000 towards the advance interest in the loan account of the Corporate Debtor.

4. According to the Petitioner since not even a single payment was made in furtherance of the agreement entered by the Corporate Debtor, the Petitioner herein was compelled to issue notice to the Corporate Debtor on 11.09.2016 under section 433 and 434 stating that since the Corporate Debtor failed to make any of the instalments as agreed by the Corporate Debtor, it has been said that Corporate Debtor is liable to pay additional interest @1% per day on overdue outstanding amount which was in arrears since 30.04.2016 aggregating to arrears of additional interest amounting to ₹13,72,500 up to 10.09.2016. According to the interest rate agreed between them, as per this notice, the Corporate Debtor is liable to pay ₹48,62,500 as on 11.09.2016. By the time this Company Petition has been filed i.e. by 20.06.2017, the total due payable by the Corporate Debtor to the Petitioner has become ₹58,58,500 which is more than double to the principal amount within one year two months twenty days.

5. The Petitioner has filed all the requisite documents to show that loan has been taken by the Corporate Debtor and thereafter the Corporate Debtor defaulting in making repayment as agreed by the Corporate Debtor.

6. The Counsel appeared on behalf of the Corporate Debtor has stated that it is no doubt that the Corporate Debtor availed loan from the Petitioner herein and thereafter could not make payment of single instalment to the Petitioner owing to the Corporate Debtor company has gone into losses. Though the Corporate Debtor Counsel having agreed about the debt and default, he has disputed the rate of interest as usurious forcing the Corporate Debtor to pay interest more than double to principal amount received from the Petitioner even before completion of one year from the date of disbursement. In view of the same, the Corporate Debtor Counsel has prayed this Bench to dismiss this Petition on the ground that this credit transaction is usurious transaction.

7. On hearing the submissions of either side, now it is not a point for discussion about debt and occurrence of default, but now point for discussion is as to whether the interest claimed over the principal is usurious or not as stated under the Usurious Loans Act.

8. Looking at the facts of the case and by the submissions of the Petitioner's Counsel, it is an admitted fact that this Petitioner remitted ₹4,80,000 towards advance interest as on the date of disbursement itself i.e. 31.03.2016, by this calculation, the principal amount released to the Corporate Debtor is only ₹25,20,000. By this remittance, it appears that this Petitioner has already taken out interest @24% p.a. for the entire tenure. Term of loan, as per agreement between them, was repayable in 8 monthly equal instalments from the date of disbursement i.e. 31.03.2016, the payment of first EMI of ₹375,000 per month was in fact to be paid by 31.04.2016. According to this agreement, if any delay or default happened in paying monthly instalments, an additional interest @1% per day shall be paid over and above the interest rate for defaulted/delayed period on the instalments due. On the top of it, the Corporate Debtor shall pay

prepayment interest @4% on Sanctioned Loan amount, beyond all these percentages, it is also claimed interest at enhanced rate of 3% per month compounded monthly on amount under default beyond due date for the default continuing. There has been another addition to all these interest rates, i.e. future interest calculated to ₹9,75,000 payable from 31.7.2016 to 20.6.2017. To have further clarity, the statement of computation given by the Petitioner is mentioned which is as below:

| ACCOUNT STATEMENT OF INTERCON CONTAINER SURVEY & COMMODITIES PVT. LTD.<br>as on 20/06/2017 |            |                 |          |           |           |                                      |                     |
|--|------------|-----------------|----------|-----------|-----------|--------------------------------------|---------------------|
| EMI  | Due Date   | Settlement Date | EMI Amt. | Amt. Rcd. | Late Days | Additional Interest up to 10/09/2016 | Cheque Retd Charges |
| 1  | 30/04/2016 | Nt Rcd.         | 375000   | 0         | 134       | 502500                               | 0                   |
| 2  | 30/05/2016 | Nt Rcd.         | 375000   | 0         | 104       | 390000                               | 0                   |
| 3  | 30/06/2016 | Nt Rcd.         | 375000   | 0         | 73        | 273750                               | 0                   |
| 4  | 30/07/2016 | Nt Rcd.         | 375000   | 0         | 43        | 161250                               | 0                   |
| 5  | 30/08/2016 | Nt Rcd.         | 375000   | 0         | 12        | 45000                                | 0                   |
| 6  | 30/09/2016 | Nt Rcd.         | 375000   | 0         | 0         | 0                                    | 0                   |
| 7  | 30/10/2016 | Nt Rcd.         | 375000   | 0         | 0         | 0                                    | 0                   |
| 8  | 30/11/2016 | Nt Rcd.         | 375000   | 0         | 0         | 0                                    | 0                   |

|  |         |
|--|---------|
| Loan                                     | 3000000 |
| Amount Recd                              | 0       |
| Outstanding Principal Amount             | 3000000 |
| Additional Interest                      | 1372500 |
| Cheque Returned Charges                  | 0       |
| Total Amount Due                         | 4372500 |
| Minimum Int. O/s from 30/3/16 to 30/7/16 | 360000  |
| Pre-closure Charges                      | 120000  |
| Notice Cost                              | 10000   |
| Future Interest from 31/7/16 to 20/06/17 | 975000  |
| Total Due as on 20/06/2017               | 5837500 |

An analysis of the Sanction Letter and statement of account reveals that even though the loan sanctioned is ₹30,00,000, after deduction of ₹4,80,000 as interest for the entire period of loan, a sum of ₹25,20,000 was principal actually payable to the Corporate Debtor. In view of the default additional interest of ₹13,72,500/- which works out to @1% per day (i.e. 365% p.a.) on delayed monthly instalments has been charged. Over and above, 4 months' minimum interest of ₹3,60,000/-, pre-closure charge of ₹1,20,000 and future interest from 31/7/16 to 20/6/2017 to the extent of ₹9,25,000/- is charged.

9. For loan of ₹25,20,000/- (actual disbursement) given on 30/03/2016, the following is the cost of loan under different nomenclatures for a period of 445 days:

|                     |            |
|---------------------|------------|
| Additional interest | 13,72,500  |
| Minimum interest    | 3,60,000   |
| Pre-closure charges | 1,20,000   |
| Future interest     | 9,75,000   |
|                     | -----      |
|                     | ₹28,27,500 |

The interest works out to a rate of 92% per annum.

10. By seeing the calculations made by the Petitioner, it can be clear to anybody that interest rates are usurious therefore whether this Bench can interfere in respect to the claim made by the Petitioner or not. To decide as to whether interest rates are usurious or not, it is imperative to read the sections 3 and 4 of the Usurious Loans Act, 1918, which are follows:

3. (1) *Notwithstanding anything in the Usury Laws Repeal Act, 1855, where, in any suit to which this Act applies, whether heard ex parte or otherwise, the Court has reason to believe :-*
- (a) *that the interest is excessive; and*
- (b) *that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely, may, -*
- (i) *re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;*
- (ii) *notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay and sum which it considers to be repayable in respect thereof;*
- (iii) *set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just :*

*Provided that, in the exercise of these powers, the Court shall not –*

(i) *re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than (twelve) year from the date of the transaction;*

(ii) *do anything which effects any decree of a Court.*

*Explanation – In the case of a suit brought on a series of transactions the expression “the transaction” means for the purposes of proviso (i), the first of such transactions.*

(2) (a) *In this section “excessive” means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.*

(b) *In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.*

(c) *In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.*

(d) *In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.*

*Explanation – Interest may of itself be sufficient evidence that the transaction was substantially unfair.*

(3) *This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan [or for the redemption of any such security].*

(4) *Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was bona fide, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.*

*For the purposes of this sub-section, the word “notice” shall have the same meaning as is ascribed to it in section 4 of the Transfer of Property Act, 1882.*

*(5) Nothing in this section shall be construed derogating from the existing powers or jurisdiction of any Court.*

*4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Act applies.*

11. By reading these two provisions, if Court is of the view that interest charged is excessive and the transaction is unfair, it may either reopen the transaction and relieve the debtor of all liabilities in respect of any excessive interest or notwithstanding any agreement, relieve the Debtor of all liabilities in respect of excessive interest or set aside either wholly or in part the agreement made in respect of any loan.

12. By seeing the loan transaction, one thing is clear that most of the interest rates charged are not heard of, at least we have not come across of charging 1% interest per day on defaulted amount, the Petitioner multiplied interest rates, with different nomenclature such as additional interest, minimum interest, future interest, prepayment interest. May be, the Debtor entered into an agreement agreeing for paying all these interests but for this Court, it appears as usurious, since there is a law in existence giving discretion to this Bench to discourage claiming interest at fleecing rates is usurious in nature. Therefore, since it is a Code came in to existence to deal with distress situation of the company, this Bench is not expected to permit to allow the companies like this fleecing whatever left in the company in the name of interest, if claims of this nature are allowed, the other creditors who are genuinely entitled to have their say in CoC will also get affected.

13. It is not for the first time, this Bench applying this proposition, in the past various High courts in cases in between Sri Balasaraswathi Ltd., Tirunelveli v. A. Parameswara Aiyar & Anr. (AIR 1957 Mad 122); Nageswara Ayyar v. M.L.M. Ramanathan Chettiar & Anr. (AIR 1935 Mad 468); Girwar Prasad Narain Singh v. Ganeshlal Saraogi (AIR 1949 FC 57); Gopala Menon & Anr. v. Srinivasa Varadachariar & Ors. (AIR 1960 Mad 359); Raja Vellanki Lakshmi Narasayamma Rao v. Vejju Achayya (AIR 1958 AP 207) and State Bank of Hyderabad & etc. etc., v. Advath Sakru & Anr. Etc. etc. (AIR 1994 AP 170); decided interest rates are

usurious wherever the rates are felt excessive, therefore, since the average rate of interest over the principal has come to 92% per annum, this Bench invoked discretion given under the Usurious Loans Act to deprecate the claim made by this Petitioner.

14. In view of the reasons aforementioned, this Bench hereby holds that the interest claimed over the principal is usurious, therefore, this Petition is hereby **dismissed** with liberty to the Petitioner to approach before appropriate Forum.

Sd/-

V. NALLASENAPATHY  
Member (Technical)

Sd/-

B. S.V. PRAKASH KUMAR  
Member (Judicial)