

In the National Company Law Tribunal,
Kolkata Bench,
Kolkata

Coram: Shri V. P. Singh
Hon'ble Member (J)
&
Shri Jinan K.R.
Hon'ble Member (J)

CP (IB) No.592/KB/2017

In the matter of:

An application under section 7 of the Insolvency and Bankruptcy Code, 2016, read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

IDBI Bank Limited, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai- 400 005; Principal Office at Retail Bank Group, IDBI House, 44, Shakespeare Sarani, Kolkata- 700 017;
.....Financial Creditor

-Versus-

Manor Floated Limited having its office at 2A/1, Poonam Building, 5/2, Russel Street, Kolkata- 700 001;
.....Corporate Debtor

Counsels appeared:

For the Financial Creditor:

1. Mr A.K. Dhandhania, Advocate
2. Mr D. Chakraborty, Advocate

For the Corporate Debtor :

1. Mr. Ratnanko Banerjee, Sr. Advocate
2. Mr Pradip Kumar Das, Advocate
3. Ms. Urmila Chakraborty, Advocate
4. Mr. Subhajit Das, Advocate

Order pronounced on 10th January, 2018

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O R D E R

Per Shri V.P. Singh, Member (J):

Petitioner has filed this application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (from now on referred to I & B Code, 2016) for initiating Corporate Insolvency Resolution Process read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the Corporate Debtor, Manor Floatel Ltd. Petitioner has stated that corporate debtor has committed default in making payment of Rs.32,22,46,170/- (Rupees Thirty-two crore twenty-two lakh forty-six thousand one hundred seventy).

2. The brief facts of the case, as stated in the application, are that IDBI Bank Ltd. is a corporate body having its registered office at IDBI Tower, WTC Complex, Cuffe Parade, Mumbai-400 005. The Identification No. of IDBI Bank Ltd. is L65190MH2004GOI148838. Smt. Minky Pramanik, Deputy General Manager, NPA Management Group of the Applicant Bank has filed this application on behalf of IDBI Bank Ltd, who has been authorised to submit this application on behalf of the applicant bank vide authorisation letter dated 10/8/2017 annexed with the petition and marked as Annexure A.

3. The Corporate Debtor, Manor Floatel Ltd., Identification No. is L45202WB1987PLC042377. The name and registration number of the proposed interim resolution professional are Mr Sanjay Gupta; Registration No. IBBI/IPE/2016-17/0002 of B-143-144, LGF, Lajpat Nagar-I, New Delhi-24; email address ramesh.giri@aaacapitalservices.com.

4. The Financial Creditor/Applicant has stated that the total debt granted by IDBI Bank Ltd. to the corporate debtor as follows: -

- a) Venture Capital Fund Scheme on 7/11/2000 to Rs.587 lakh.
- b) Venture Capital Fund Scheme on 6/5/2013 to Rs.147 lakh.

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2 | Page

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c) Venture Capital Fund Scheme on 11/2/2003 to Rs.150 lakh.

d) Term Loan on 20/10/2006 Rs.54 lakh.

Total amount disbursed by the financial creditor is Rs.938/- lakh.

5. The Financial Creditor/Applicant bank submits that the total amount of default as on 30/6/2017 is Rs.32,22,46,170/-. A copy of the statement of dues is annexed along with the application and marked as Annexure A.

6. It appears from the record that the Applicant/Financial Creditor granted financial assistance to the Corporate Debtor to set up a floating hotel at 9/10, Calcutta Jetty, Hooghly River, Kolkata -700001 on the terms and conditions contained in the loan agreement. The corporate debtor has created a security interest in favour of the financial creditor by way of hypothecation in respect of movable properties situated at the above address.

7. The Financial Creditor/Applicant further submits that the corporate debtor availed the said loan and agreed to repay to the financial creditor. But the corporate debtor failed and neglected to pay the financial creditor the instalments, as such the accounts classified as NPA on 31/3/2008.

8. The Financial Creditor/Applicant further submits that the applicant has instituted a recovery suit before the Debts Recovery Tribunal - I, Kolkata and the said proceedings is pending. Applicant has also issued a statutory notice under Sec.13(2) of SARFAESI Act, 2002.

9. The Applicant/Financial Creditor further submits that the respondent/corporate debtor has admitted the loan amount outstanding and the applicant annexed with the application the balance sheet for the year 2011-12 of the corporate debtor as Annexure Z-27. As the account of the corporate debtor is NPA, the applicant recalled the loan by a notice dated 11/5/2013 annexed with the application as Annexure Z-27.

10. The Respondent/Corporate Debtor filed written statement denying the allegation of the applicant and submitted the application filed by the financial creditor is not maintainable as there is no cause of action arose at any point in time. The application is frivolous, false and harassing in nature and the application is barred by law of limitation as also barred by the principles of waiver, estoppel and acquiescence.

11. It is the case of the corporate debtor that the respondent company availed Venture Capital Assistance of Rs.587 lakh and Venture Capital Fund Scheme of Rs.147 lakh on the execution of loan agreement dated 7/11/2000 and 6/5/2003 respectively. The salient features of loan agreement under VCF Scheme are as follows: -

- a) applicant bank is the business partner;
- b) applicant has lien/rights over the sale of technology, know-how etc.
- c) applicant has right to appoint management of the company.
- d) interest on the loans under the VCF scheme is to be charged on simple terms.
- e) if the default is made in repayment of three consecutive instalments, the same shall not be construed as default.

12. The Respondent/Corporate Debtor further submitted that in the instance of the applicant bank the respondent submitted OTS proposal of Rs.375 lakh on 17/1/2015 with an upfront payment of Rs.40 lakh. The respondent contends that there is an excess payment of Rs.39.61 lakh and the claim of the applicant is liable to be dismissed with cost.

13. In it's additional written statement, the respondent submits that it had paid the financial debt and there is no default, as such, the application should be dismissed. In its application of the financial creditor filed under Sec.19 of the Recovery of Debts due to Banks and Financial Institutions Act,

1993 before the DRT-I, Kolkata, the Respondent/Corporate Debtor has filed a written statement as also counterclaim.

14. Heard the argument of Ld. Advocates of both sides and perused the case record.

15. The Financial Creditor/Applicant has filed the following documents in support of his claim:

Deed of Hypothecation of all movable property situated at 9/10, Calcutta Jetty, Hooghly River, Kolkata including plant and machinery and other movable properties copy of which dated 7/11/2000, 15/3/2002, 6/5/2003, 5/9/2003, 11/2/2005, 29/3/2005 and 17/3/2008 are annexed with the petition and collectively marked as Annexure B ; copy of the agreement of pledge and shares dated 5/12/2000 marked as Annexure C; A supplementary facility agreement for restructuring of the loan account which was entered into between the applicant and corporate debtor dated 17/3/2008 and annexed with the application and marked as Annexure M; A copy of the statement of accounts certified under Bankers' Book of Evidence Act added with the petition; Copy of report from the CIBIL dated 14/6/2017 attached with the petition as Annexure-N.

16. The Financial Creditor/Applicant has also submitted Balance Sheet for the financial year 2011-12 and 2013-14 of the corporate debtor where under the default in payment by the corporate debtor has been acknowledged which is marked as Annexure Z-28.

17. The Applicant/Financial Creditor has also annexed the statutory notice dated 18/5/2016 under Sec.13(2) of the SARFAESI Act, 2002 of the financial creditor annexed with the application as Annexure Z 30.

18. By the admission of the Corporate Debtor, it is undisputed that corporate debtor has taken various financial credit facilities from the applicant/financial creditor. The certified copy of the statement of account, Annexure O & P, clearly shows that up to 1/7/2017 total amount of Rs.3,22,46,170/- was due on the corporate debtor. Applicant/financial creditor has also filed letter dated 11/5/2013 annexed with the application as Annexure Z 26. By the said letter the applicant recalled its entire principal amount of the loan, interest and other monies due in respect of the loan granted.

19. The Petitioner has also annexed a copy of the Credit Rating Agency wherein the record of default is available and status classification report of the corporate debtor issued by CIBIL dated 14/6/2017, stated in Annexure N, shows the account status of the corporate debtor as Substandard and Doubtful.

20. The Ld. Counsel for the Corporate Debtor has emphasised the point of limitation whereas the Act of Limitation does not apply in I & B Code. Hon'ble NCLAT has held in the case of Neelkanth Township and Construction Pvt. Ltd. Vs. Urban Infrastructure Trustees Ltd. [CA (AT) (Insolvency) No.44 of 2017]. In the said case Hon'ble NCLAT has held under: -

“if there is a debt which includes interest and there is the default of debt and having a continuous course of action, the argument that the claim of money by the respondent is barred by Limitation cannot be accepted.”

21. Given the law laid down by the Hon'ble NCLAT in the case mentioned above it is clear that the petition under the I & B Code cannot be dismissed on the ground of limitation.

22. By the documents which are certified under Banker's Books of Evidence Act, filed by the Financial Creditor, it is proved that the corporate debtor has

committed default of Rs.32,22,46,170/-. Applicant/financial creditor has also filed a copy of a copy of the Credit Rating Agency wherein the record of default is available and status classification report of the corporate debtor issued by CIBIL dated 14/6/2017 shows the account status of the corporate debtor as Substandard and Doubtful. The corporate debtor has failed to make payment of the due amount.

23. It reveals from the record that the application filed by the applicant/financial creditor is in the proper format as prescribed in I & B Code and Adjudicating Authority Rules which is complete.

24. The financial creditor has proposed the name of Mr.Sanjay Gupta, who is competent to work as IRP. No disciplinary proceeding is pending against him.

On the above basis, it is thus apparent that the application filed by the Financial creditor under Section 7 of the I & B Code deserves to be allowed.

ORDER

The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

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1 Page

Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

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.

The order of moratorium shall affect the date of such order till the completion of the corporate insolvency resolution process.

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the

resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

Necessary public announcement as per Sec.15 of the IBC, 2016 may be made.

Mr Sanjay Gupta, Registration No. IBBI/IPE/2016-17/0002 of B-143-144, LGF, Lajpat Nagar-I, New Delhi-24, email address ramesh.giri@aaacapitalservices.com. is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

Let the certified copy of the order be issued upon compliance with requisite formalities and a copy of the order may also be sent to the Applicant/Financial Creditor as well as Corporate Debtor and IRP through email.

List the matter on 30th January, 2018 for the filing of the progress report.

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(Jinan K.R.)
Member (J)

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(V. P. Singh)
Member (J)

Signed on this, the 10th day of January, 2018