

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP. No. 1487/I&BP/NCLT/MAH/2017

Under Section 7 of the I&B Code, 2016

In the matter of

ICICI Bank,
ICICI Bank Tower,
Near Chakli Circle, Old Padra Road,
Vadodara – 397007.
Gujarat, India

.... Petitioner

Vs.

Western India Shipyard Ltd.
P.B. No.21, Mormugao Harbour,
Mormugao,
Goa – 403803, India

.... Respondent

Order delivered on : 12.12.2017

Coram:

Hon'ble Mr. B.S.V. Prakash Kumar, Member (J)
Hon'ble Mr. V. Nallasenapathy, Member (T)

For the Petitioner: Mr. Anush Matkar, Adv.
Ms. Saloni Kapadia, Advocate
i/b Cyril Amarchand Mangaldas

For the Respondent: Mansi Jani, Advocate
i/b Panindia Legal

ORDER

Per V. Nallasenapathy, Member (T)

1. ICICI Bank Ltd. (hereinafter called 'ICICI') has sought the Corporate Insolvency Resolution Process of Western India Shipyard Ltd.. (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 1.5.2016 onwards in repayment of various facilities granted to the Corporate Debtor to the extent of ₹74,14,39,489.86, under Section 7 of Insolvency

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and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Counsel for the Corporate Debtor candidly admitted that as claimed by ICICI in this Petition, the debt is due and there is a default also.

3. The Petition reveals that the following are the facilities sanctioned by the Petitioner to the Corporate Debtor.

| Sr. No. | Facility | Debt Granted (Rs) | Date of Disbursement |
|---------|-----------------------------------|----------------------|----------------------|
| 1. | Term Loan Facilities | | |
| | Facility F1 | 35,51,00,000 | July 08,2010 |
| | Facility F2 | 18,49,00,000 | June 29, 2010 |
| 2. | Facility F3 | 42,08,00,000 | June 29, 2010 |
| 3, | Working Capital Facilities | | |
| | Cash Credit | 15,00,00,000 | June 28,2011 |
| | Bank Guarantee | 3,60,00,000 | June 27, 2008 |
| | | 10,00,00,000 | June 28, 2011 |
| | | 5,00,00,000 | June 28, 2011 |
| 4. | Working Capital Term Loan | 6,00,00,000 | November 2, 2013 |
| | | 9,00,00,000 | April 21, 2015 |
| | TOTAL | 142,43,25,819 | |

4. The following are the details of outstanding as on 30.9.2017 and the details of date of default.

| Sr. No. | Facility | Outstanding Amounts at Sept.30, 2017 | | | Initial Date of Default |
|---------|----------------------|--------------------------------------|----------------|------------------------|-------------------------|
| | | Principal (Rs.) | Interest (Rs.) | Total Overdue (Rs.) | |
| 1 | Term Loan Facilities | | | 24,81,31,596.21 | |

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| | | | | | |
|----|----------------------------|------------------------|------------------------|------------------------|---------------|
| | Facility F1 | 12,68,21,426.00 | 3,26,48,082.40 | 15,94,69,508.40 | May 16, 2016 |
| | Facility F2 | 6,91,73,317.81 | 1,94,88,770.00 | 8,86,62,087.81 | May 2, 2016 |
| 2. | Working Capital Facilities | | | 33,05,73,406.45 | |
| | Cash Credit | 2,50,000,000.00 | 6,55,64,825.00 | 31,55,64,825.00 | May 1, 2016 |
| | Devolved Bank Guarantee | 14,024,870.45 | 9,83,711.00 | 1,50,08,581.45 | June 16, 2017 |
| 3. | Working Capital Term Loan | | | | |
| | WCTL | 1,35,000,000.00 | 2,77,34,487.20 | 16,27,34,487.20 | May 1, 2016 |
| | Total | 59,50,19,614.26 | 14,64,19,875.60 | 74,14,39,489.86 | |

5. The Corporate Debtor executed the following Security documents as security for the repayment of the loan sanctioned by the Petitioner:

- a. Memorandum of Entry dated 29.6.2010 for delivery and deposit of Title Deeds of properties belonging to the Petitioner;
- b. Declaration dated 29.6.2010 by a Director of Corporate Debtor for mortgage by deposit of Title Deeds of immovable property in favour of the Petitioner;
- c. Memorandum of Entry dated 14.11.2015;
- d. Memorandum of Entry dated 12.8.2016
- e. Declaration dated 12.8.2016 by a Director of Corporate Debtor for mortgage by deposit of Title Deeds of immovable property in favour of the Petitioner;
- f. Deed of Hypothecation dated 29.5.2010 in favour of the ICICI Bank;

- g. Deed of Hypothecation dated 30.5.2011
 - h. Deed of Hypothecation dated 30.5.2011
 - i. Deed of Hypothecation dated 29.10.2013
 - j. Deed of Guarantee executed by the Corporate Debtor on 28.6.2011
 - k. Copies of Certificate of Registration/Modification of Charges registered with the Registrar of Companies.
6. The Petitioner also enclosed the record of default as available with TransUnion CIBIL, copy of Certificate under the Bankers' Books Evidence Act, 1891 and statement of accounts of the Loan Accounts of the Corporate Debtor disclosing the balance due.
7. This Adjudicating Authority, on perusal of the documents filed by the Creditor, it is evident that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional, having this Bench noticed that default has occurred and there is 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:
- 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);

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- (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 12.12.2017 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. Om Prakash Kanoongo, C-1109, Upvan Tower, Upper Govind Nagar, Malad East, Mumbai – 400 097 , Email opkanoongo@gmail.com, having Registration No.IBBI/IPA-001/IP-P00410/2017-18/10726 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/-

B. S.V. PRAKASHKUMAR
Member (Judicial)