

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

CP No. 1284/IBC/NCLT/MB/MAH/2017

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Central Bank of India

..... Financial Creditor
(Applicant)

V.

M/s. Dev Blessing Traders Private Limited

..... Corporate Debtor
(Respondent)

Order delivered on: 01.12.2017

Coram :

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Adv. Khusboo Shah Rajani i/b. MDP Partners – Advocates for the Applicant/Petitioner.

For the Respondent :

None Present

Per: M. K. Shrawat, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'Central Bank of India' has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of 'Financial Creditor' on 4th August, 2017 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as 'M/s. Dev Blessing Traders Private Limited' having Registered office at, Building No. 141, Room No. 3824, Pant Nagar, OM Niwas, CHS Near Sai Baba Mandir, Ghatkopar (E), Mumbai – 400075.

3. Further under the Head "Particulars of Financial Debt" the total amount of Debt granted is stated to be ₹ 400/- Lakhs. And the total amount claimed to be in default is stated as ₹ 5,19,29,626/-.
4. Learned Counsel of the Financial Creditor (hereinafter as **Applicant**) has described that, the Corporate Debtor (hereinafter as **Debtor**) have approached the Applicant for Cash Credit facility to the tune of ₹ 400/- Lakhs vide Application dated 20.08.2013. Pursuant to the said application the Applicant has sanctioned the said Cash Credit Facility to the Debtor vide a Sanction Letter dated 14.10.2013.
5. It is further submitted that, between Applicant and Debtor there is Hypothecation Agreement was also executed dated 31.10.2013. Vide this Hypothecation Agreement to the loan facility a Primary Security was issued by the Debtor in term of Stock and Book Debts along with Collateral Security in terms of personal properties of Directors. And the Directors of the Company stands as Personal Guarantors.
6. It also submitted that, the Debtor has neglected to make the repayment of availed Cash Credit Facility and consequentially the loan account of the Debtor became NPA on 29th December, 2015. Hence, the Applicant has issued a notice U/s. 13 (2) of the SARFAESI Act, 2002 on 28.04.2016 and further the Applicant has issued the 'Possession Notice' under provisions of SARFAESI Act, 2002 and Rules made thereunder.
7. It is further submitted that, the Applicant through its Advocate has also issued a 'Loan Recall Notice' dated 01.07.2015 through R.P.A.D. Further on 04.05.2017 again a Notice of Demand for claiming the amount in default has been issued by the Applicant.
8. It is also submitted that, the Debtor has neglected all the notices and no reply has been received from side of Debtor.
9. Further it is submitted that, this application under Code filed before the Tribunal, is also served upon the Respondent and to that effect the tracking report of India Speed Post is submitted along with **Affidavit of Service** dated 11th August, 2017 before this Tribunal. But no one from the side of Respondent has approached either before Tribunal or to the Applicant.
10. Further that, on the subsequent dates the Applicant has issued a notice to the Debtor intimating the date of hearing and to that effect **Affidavit of Service** along with

tracking report of India Post also placed on record. But no one from the side of Debtor has approached either before Tribunal or to the Applicant.

11. It is further submitted that, the non-appearance or non-communication of the Debtor has thus established that, the Corporate Debtor has nothing to say in defence in respect of the impugned outstanding/claimed amount.
12. **FINDINGS :-** Considering the above facts, it is established by the Applicant that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Corporate Debtor. On the basis of the evidences on record the Applicant has established that the loan was sanctioned and duly disbursed to the Debtor but there is non-payment of Debt on the part of the Debtor.
13. We have perused the Application under S. 7 of the Code and during the perusal we came to know that, the Registry of this Tribunal has also issued notice of hearing dated 21st August, 2017 to the Debtor but the said notice was returned to the Registry marked as **unclaimed**.
14. As a consequence, after the lapse of opportunity to reply and keeping admitted facts in mind that the Applicant had not received the outstanding Debt from the Debtor and that the formalities as prescribed under the Code and the Rules have been completed by the Petitioner we are of the conscientious view that this Petition deserves '**Admission**'.
15. The Applicant has proposed the name of Insolvency Professional. The IRP proposed by the Applicant, Mr. Tejas Parikh having Registration No. IBBI/IPA-001/IP-P00004/2016-17/10012 is appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
16. Having admitted the Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under **Section 31** of the Code.

17. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
18. The IRP so appointed shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
19. The Petition is hereby **"Admitted"**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 1st December, 2017