

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

CP No. 1368/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

The Karad Urban Co-Op. Bank Limited  
..... Financial Creditor

v.

M/s. Khandoba Prasanna Sakhar Karkhana  
Limited  
..... Corporate Debtor

Heard on : 13.12.2017  
Order delivered on : 01.01.2018

**Coram :**

Hon`ble M.K. Shrawat, Member (J)  
Hon`ble Bhaskara Pantula Mohan, Member (J)

**For the Applicant :**

Mr. Uday Kulkarni – Authorised Representative for the Financial Creditor/Applicant.

**For the Debtor :**

None Present.

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

**ORDER**

1. The Applicant 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 7<sup>th</sup> September, 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. Khandoba Prasanna Sakhar Karkhana Limited' having

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CIN : U15421PN2001PLC015691 and having Registered office at, 52/788, Lokmanya Nagar, Near Jogging Park, Pune – 411030.

3. Further, under the Head 'Particulars of Financial Debt' the total amount of Debt granted is stated as ₹ 17.81.84.138/- and the total amount claimed to be in default is stated as ₹ 28,46,86,768/- along with the interest. Alongwith this Application complete details of the type of Loans, Account Nos., Date of Sanction, Balance Outstanding as on date has also been annexed.

4. **Submissions by the Applicant :**

- a) Learned Representative of the Financial Creditor (hereinafter as **Applicant**) has described that, the Corporate Debtor (hereinafter as **Debtor**) made an application to the Branch of Applicant for granting of Term Loan (PMOD limit) of ₹ 2,00,00,000/- for the purpose of purchase of the Machinery and Business growth on 26.11.2013. and thereupon the Applicant has sanctioned, after due scrutiny, amount of ₹ 5,25,00,000/- on 08.03.2014.
- b) It is further submitted that, for the said Loan certain properties are mortgaged with the Applicant, details of which are hereby annexed with the Application.
- c) It is further submitted that, the Debtor has also issued Promissory Note dated 13.03.2014 in favour of Applicant which is annexed with this Application.
- d) It is also submitted that, the accounts of the Debtor were classified as 'Non Performing Assets' as per the guidelines of the RBI, in respect of Mortgaged Loan Account. The said default is in continues till date.
- e) It is also submitted that, the Charge U/s. 132 of the Companies Act, 2013 is also registered with the RoC on the name of Debtor.
- f) It is further submitted that, the Applicant has issued the Notice under SARFAESI Act, 2002 on 13.12.2014 and consequentially thereupon the Applicant has taken the symbolic possession of Mortgaged and Hypothecated properties of the Debtor on 29.08.2017.
- g) It is also submitted that, the Debtor has also filed an Application U/s. 10 of the Code for declaring itself as Commercially Insolvent which bears no. CP 1410/IBC/NCLT/MB/MAH/2017 which is also listed today for hearing. Further that, action of filing Application U/s. 10 of the Code itself shows that the Debtor is admitting

is default as the Debtor itself recognises the Applicant as its 'Financial Creditor' in the said Application.

h) It is further submitted that, the Applicant has categorically established the Default of the Debtor and hence, this Application U/s. 7 of the Code deserves Admission.

5. **Findings :**

- a) Considering the above facts, it is established by the Financial Creditor 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/Financial Creditor has established that the loan was sanctioned and duly disbursed to the Corporate Debtor but there is non-payment of Debt on the part of the Corporate Debtor.
- b) Further, the Debtor has itself filed an Application U/s. 10 of the Code wherein admittedly the Debtor recognises the Applicant herein as the 'Financial Creditor' of the Debtor and also that there is Default in the repayment of Debt from the Debtor's side. Hence, Default has been established by the Debtor only. It may not be out of place to mention that vide a separate order the said Application of this very Corporate Debtor was held as non-maintainable since the present Application U/s. 7 of the Code deserves Admission.
- c) 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 have been completed by the Applicant we are of the conscientious view that this Petition deserves '**Admission**'.
- d) The Applicant has proposed the name of Insolvency Professional. The IRP proposed by the Applicant, Mr. Kiran Gopal Kunte, R/at. Kamet Society, Flat No. 12, Plot No. 88, Rambaug Colony, Paud Road, Kothrud, Pune – 411038 having registration No. IBBI/IPA-001/IP-P00074/2017-18/10159 is appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
- e) 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

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Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

- f) 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.
- g) That the Interim Resolution Professional shall perform the duties as assigned under **Section 15** and **Section 18** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
- h) 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 : 01.01.2018**

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