19

BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B) No. 81/7/NCLT/AHM/2017

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU**
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 06.09.2017

Name of the Company: IDBI Bank Ltd.
V/s.
BCC Estate Pvt Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Baiju Bhagat	Advocate	Applicant	
2.	Gopi Sisodiya for & onbehalf of Arjun Sheth	Advocate	Corporate Debtor	

ORDER

Learned Advocate Mr. Baiju Bhagat present for Petitioner. Learned Advocate Mr. Gopi Sisodiya i/b Learned Advocate Arjun Sheth present for Respondent.

Order pronounced in open Court. Vide separate Sheet.

6.9.17

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 6th day of September, 2017.

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH

C.P. No.(IB) 81/7/NCLT/AHM/2017

In the matter of:

IDBI Bank Limited
Registered Office at
IDBI Tower, WTC Complex,
Cuffe Parade,
Mumbai-400005
Corporate Office at
Specialised Corporate Branch
Upper Ground Floor,
Captain C.S. Naidu Arcade,
Near Grater Kailash Hospital,
10-2 Old Palasia,
Indore-452001,
Madhya Pradesh : Applicant
[Financial Creditor]

Versus

BCC Estates Private Limited
Registered Office at
8/5 Manormaganj Navratan Bagh,
Main Road,
Indore-452001
Madhya Pradesh : Respondent
[Corporate Debtor]

Order delivered on 6th September, 2017.

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

Mr. Baiju Bhagat, learned Advocate for Applicant.
Mr. Arjun Sheth, learned Advocate for Respondent.

ORDER

1. IDBI Bank Limited filed this Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ["IB Code" for short] read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("IB Rules" for short) against BCC Estates Private Limited, treating as 'Corporate Guarantor/Corporate Debtor' with a request to initiate Corporate Insolvency Resolution Process.

2. IDBI Bank Limited is a Company incorporated under the Companies Act having its Registered Office in Mumbai. According to the Applicant, in 113th Meeting of the Board of Directors of the IDBI Bank held on 12th February, 2016 there was Comprehensive Revision in Delegation of Powers which came into force with effect from 1st March, 2016. It is further stated that as per Chapter 25 of the Delegation of Powers in respect of Court matters, DGM (Retail Recovery) and AGM (Retail Recovery) are entitled to sign the Applications for filing claims before any Court, Tribunal etc.

3. The case of the Applicant is that Respondent Company stood as a Corporate Guarantor to Bhatia Global Trading Ltd., which is due to pay an amount of Rs. 82,04,12,819.41 to the Applicant Bank. Applicant Bank also filed Insolvency Petition against the Principal Borrower, viz., Bhatia Global Trading Ltd. The said Petition was admitted by this Authority by order dated 23.5.2017.

4. Respondent Company is a Company registered under the Companies Act having its Registered Office in Indore, Madhya Pradesh. The Paid-up Share Capital of the Respondent Company is Rs. 1,59,88,500. The Main Object of the Respondent Company is to carry out the business of Real Estate. Respondent Company has given unconditional and irrevocable Corporate Guarantee for the financial assistance to the tune of Rs. 85.00 Crores granted and disbursed to Bhatia Global Trading Ltd., on 17.3.2011. The financial

facilities granted to Bhatia Global Trading Ltd., was secured by Guarantee Agreement executed by the Respondent in favour of the Applicant on 17.3.2011. Bhatia Global Trading Ltd., availed the loan aggregating to Rs. 80 Crores which was secured by the Corporate Guarantee of the Respondent Company. Inspite of repeated reminders sent to the Respondent Company no payments were made to the Applicant. At no stage Respondent disputed the amounts due and payable by the Applicant. The Board of Directors of the Respondent Company by a Resolution dated 3.6.2016 resolved that Respondent is one of the Guarantors in respect of the Working Capital Facility of Rs. 1299 Crores availed by Bhatia Global Trading Ltd., Respondent Company executed Revival Letters 20th December, 2013, and 25.8.2016 acknowledging liability to the lenders and other secured parties. Respondent Company being a Corporate Guarantor failed and neglected to pay the amount due and payable by Bhatia Global Trading Ltd., in its capacity as 'Principal Borrower'.

5. Applicant issued a notice dated 7th March, 2017 to the Respondent Company calling upon them to pay forthwith an amount of Rs. 82,04,12,819.41 together with further interest from 15th February, 2017 at the contractual rate with compound interest. The said notice was duly served on the Respondent Company, but Respondent Company did not choose to give reply or make payment. On the other hand, Respondent Company acknowledged the Balance Confirmation. Respondent Company as a Corporate Guarantor is liable to pay Rs. 82,04,12,819.41 to the Applicant. Respondent Company filed its last Annual Return for the year ended 31st March, 2016. Applicant proposed the name of Shri Ravi Kapoor, as Interim Resolution Professional and filed his Written Communication. Applicant filed this Application on 12th July, 2017. Applicant despatched copy of the Application to the Respondent. This matter was listed for the first time before this Authority on 17th August, 2017. This Adjudicating Authority directed the Applicant to serve notice of date of hearing. Respondent appeared through their Counsel. Learned Counsel for the Respondent filed Objections on

28.8.2017. Applicant also filed an Affidavit along with further documents. Heard the arguments of the learned Counsel appearing on both the sides.

6. The first objection raised is that Mr. Amit Kumar Nanda has no proper authority to file this Application and therefore it is liable to be rejected. In view of the Delegation of Powers, Chapter No.25, Mr. Amit Kumar Nanda being the Deputy General Manager of the Applicant Bank is duly authorised to file this Application which is approved by the Board of Directors of the IDBI Bank.

7. The second objection raised is that Applicant did not place copies of entries in Bankers' Book in accordance with the Bankers' Books Evidence Act.

7.1. Applicant along with Additional Affidavit filed copies of Statement of Account of Principal Borrower. In fact, Applicant filed along with Application, Certificate issued under Bankers' Books Evidence Act and therefore there is no substance in the said objection.

8. The third objection is there are other financial creditors that are Banks and they constitute consortium of Banks and therefore this Application is not maintainable.

8.1. Section 7 of the Code says that any one of the financial creditors can file an application to trigger Corporate Insolvency Resolution Process either jointly with other financial creditors or individually. Therefore, this objection does not sustain.

9. The objection that this Application is against the RBI guidelines and circulars that deals with distressed entities does not merit acceptance for the simple reason that the Circulars given by RBI cannot override the effect of the provisions of the Code. It is for the Financial Creditor either to initiate Resolution Process or not.

10. The next objection is that Respondent Company is only a Guarantor but not a Principal Borrower and therefore this Application is not maintainable.

10.1. It is a settled law that liability of the Guarantor is co-extensive with that of the Principal Borrower. It is for the Creditor to choose against whom he wants to proceed. There is no bar in the Law which prevents any Creditor to proceed both against the Principal Borrower and Guarantor. Therefore, this objection is also not sustainable.

11. The next objection is that the Principal Borrower is already undergoing Corporate Insolvency Resolution Process in an Application filed by IDBI and therefore if Resolution Process is commenced against the Corporate Debtor it amounts to redundancy since the Corporate Debtor submitted Resolution Plan which consists of assets of the Guarantors also.

11.1. Respondent is a Corporate Body. Respondent stood as a Corporate Guarantor to the Principal Borrower, Bhatia Global Trading Ltd. In such a case on the ground that Corporate Insolvency Resolution Process already commenced against the Principal Borrower, the Guarantor cannot avoid Corporate Insolvency Resolution Process when it failed to repay the amount borrowed by the Principal Borrower. The Guarantee Agreement executed by the Respondent Company is a continuing Guarantee and an Irrevocable Guarantee. Applicant by issuing a notice revoked the Guarantee and recalled the entire loan amount. The account copies and the other documents executed by the Respondent Company such as Guarantee Agreements etc., clearly establish that Respondent as a Guarantor failed to repay the loan amount borrowed by the Principal Borrower from the Applicant Bank.

12. Another objection raised by the Respondent is regarding the validity of the registration of the proposed Interim Resolution

Professional. Applicant filed a copy of the Registration of Interim Resolution Professional which shows that the Certificate is valid from 2nd June, 2017 and therefore this objection also does not survive.

13. Sub-Clause (i) of sub-section (8) of Section 5 of the Code says, 'the amount of any liability in respect of any of the guarantee for any of the items referred to in sub-clauses (a) to (h) of Clause 8 is a financial debt. In the case on hand, the Principal Borrower borrowed money from the Applicant Bank against the payment of interest by executing the Loan Agreement, Mortgage Deeds etc. For such loan transaction, Respondent Company stood as a Guarantor as a Corporate Guarantor. Therefore, Respondent Company is under a legal obligation to repay the loan amount borrowed from the Principal Borrower. Therefore, the amount due to the Applicant from the Principal Borrower is a financial debt and as the Respondent stood as a Guarantor for the financial debt the Respondent shall be treated as a Corporate Debtor because the financial debt is due from him also to the Applicant.

14. The material on record clearly goes to show that Respondent committed default in repayment of the loan amount even after demand made by the Applicant Company.

15. The Hon'ble National Company Law Appellate Tribunal, on 17th January, 2017, in ***Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017*** in the matter of ***M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr,*** held that in an application filed by the Financial Creditor under Section 7 for initiation Corporation Insolvency Resolution Process, the Adjudicating Authority is required to satisfy-

(a) Whether a default has occurred;

(b) Whether an application is complete; and

(c) Whether any disciplinary proceeding is against the Proposed Insolvency Resolution Professional.

In the case on hand, Respondent Company committed a default in repayment of the outstanding amount. The Application is complete in all respects. The material on record show that no disciplinary proceeding is pending against the proposed Interim Resolution Professional.

16. In view of the above discussion, this Application deserves to be admitted and it is accordingly admitted under Section 7 (5)(a) of the Code. This Adjudicating Authority hereby appoint Shri Ravi Kapoor, Company Secretary, as 'Interim Insolvency Resolution Professional' residing at 7th Floor, 737, Fortune Tower, Sayajigunj, Vadodara-390005 and having Registration No. IBBI/IPA-002/IP-N00121/2017-18/10290 under Section 13 (1) (c) of the Code.

17. The Interim Insolvency Resolution Professional is hereby directed to cause public announcement of the initiation of 'Corporate Insolvency Resolution Process' and call for submission of claims under Section 13(1)(b) read with Section 15 of the Code and Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. This Adjudicating Authority hereby order moratorium under Section 13(1)(a) of the IB Code prohibiting the following as referred to in Section 14 of the Code;

(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 (54 of 2002);

(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.

(i) However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.

(ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.

(iii) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

19. This Application is disposed of accordingly. No order as to costs.

20. Communicate a copy of this order to the Applicant Financial Creditor, and to the Respondent Corporate Debtor and to the Interim Insolvency Resolution Professional.

Signature: 06.9.17

Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.