

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

CP (IB) No.482/KB/2017

In the matter of:

ICICI Bank Ltd.

.....Applicant

-Versus-

Eastern Gases Ltd.

.....Respondent

Order Delivered on 8th November 2017

Coram:

V. P. Singh, Member (J)

Jinan K.R., Member (J)

For the Petitioner: 1. Mr Joy Saha, Advocate

2. Mr Avishak Guha, Advocate

3. Ms Ayesha Das, Officer of the Applicant

4. Ms Arundhuti Iyen, Officer of the Applicant

For the Respondent: 1. Mr Vikas Baisya, Advocate

2. Amir Safique Molla, Advocate

ORDER

Per V.P. Singh, Member (J)

Petitioner has filed this application under Sec.7 of the Insolvency and Bankruptcy Code, 2016 (from now on referred to I & B Code, 2016) for initiating corporate insolvency process read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the corporate debtor Eastern Gases Ltd. Petitioner has stated that corporate debtor has committed default in making payment of Rs.21,34,69,146.42.

2. The brief facts of the case, as stated in the application, are that ICICI Bank is a corporate body constituted under the Banking Companies Act, 1956, Identification No. is L65190GJ1994PLC021012. Ms Ayesha Das, Legal Manager,

of the Applicant Bank has filed this application on behalf of ICICI Bank by authorisation letter dated 4/5/2017 annexed with the petition at pages 13 to 17 marked as Exhibit A.

3. The Corporate Debtor Eastern Gases Ltd., Identification No. is L40200WB1995PLC068251. The name and registration number of the proposed interim resolution professional are Mr Kuldeep Verma; Registration No. is IBBI/IPA-001/IP-P00014/2016-2017/10038 of 3, Jagabandhu Modak Road, Shovazar, 4th Floor, Kolkata – 700 005, email address kuverma@gmail.com.

4. Applicant has stated that the applicant had sanctioned and granted financial assistance to the corporate debtor as follows: -

- a) Working capital is aggregating to Rs.11,95,00,000/- comprising of overdraft facility of an initial amount of Rs.11,95,00,000/- which was subsequently reduced to Rs.1,95,00,000/-.
- b) A sub-limit in the form of working capital of Rs.10,00,000/-.
- c) The derivative credit facility is aggregating to Rs.1,10,00,000/-.
- d) Over and above the limits above sanctioned to the corporate debtor, the applicant inadvertently an excess drawing power of Rs.9,99,75,000/- was set up in the overdraft account of which the corporate debtor utilised Rs.7,09,71,097.73 in between 31/8/2016 to 1/9/2016.

Particulars of financial debt mentioned in Part IV at page 7 of the petition. Applicant has further stated that as on 31/8/2017 the amount payable by the corporate debtor is Rs.21,34,69,146.42 together with interest, default interest, future charges and commission.

5. Applicant has recalled loan by issuing recall notice dated 8/5/2017 along with addendum dated 6/9/2017 calling for the repayment of the dues payable by the corporate debtor to the applicant. Copies of the demand cum loan recall notice

along with addendum dated 6/9/2017 are annexed along with the application and marked as Exhibit I.

6. Applicant submits that the corporate debtor has filed proceedings against the applicant in the court of Civil Judge (Sr. Division), Alipore and subsequently an appeal before the Division Bench of the Hon'ble High Court at Calcutta challenging the classification of the loan account of the corporate debtor. Hon'ble High Court had passed an ex parte interim order on 2/8/2017 directing the parties to maintain status quo for a period of four weeks and such period now elapsed. A copy of the order dated 2/8/2017 passed by the Hon'ble High Court at Calcutta is annexed with the application and marked as Exhibit E-1.

7. By filing a reply, the corporate debtor submitted for financial assistance, the corporate debtor approached the financial creditor of an overdraft and fund based limit of Rs.11.95 crore. Financial creditor by letter dated 30/4/2015 to the corporate debtor sanctioned Rs.11.95 crore as fund based credit facility. Copy of the letter is annexed with the reply statement and marked as R-1.

8. For further financial assistance corporate debtor requested for enhancement of the working capital from Rs.11.95 crore to Rs.13.05 crore. Corporate debtor submits that the financial creditor had not taken the consent of the Joint Lenders Forum (JLF) before filing the present insolvency application. The application filed by the financial creditor is an abuse of process of law and the same is liable to be dismissed with exemplary costs.

9. By filing a rejoinder, the financial creditor submitted that due to technical error and/or an inadvertent slip and mistake the account of the corporate debtor was credited with Rs.10 crore which amount had never been sanctioned by the financial creditor to the corporate debtor. Immediately upon coming to realise such mistake, the financial creditor by its email dated 2/9/2016 intimated the corporate debtor about such mistake and called upon the corporate debtor to immediately repay the overdrawn amount.

10. We have heard arguments advanced by Ld. Counsel for the parties and perused the record.

11. Petitioner has filed this petition under Sec.7 of the I & B Code, 2016 for initiation of corporate insolvency process against the corporate debtor. Petitioner has claimed that corporate debtor has committed default in making payment of Rs.21,34,69,146.42.

12. Petitioner has filed authorization letter issued by the applicant bank, Exhibit A, which shows that the petitioner-bank has appointed Ms Ayesha Das, Legal Manager for presenting the petition under I & B Code and has verified the petition which has been authorized by the Board of the applicant bank which is Annexure A attached with the petition.

13. Petitioner has also annexed bank statement certified under Banker's Book of Evidence Act, which is Annexure H, attached with the petition, which is admissible under Banker's Book of Evidence Act. It is stated that ICICI Bank has given the statement of overdraft account no.694705600162 from 1/6/2015 to 31/8/2017 and working capital demand loan no.694760015003 from 7/1/2016 to 31/3/2017 which is at page 180 of the petition, which shows that total outstanding in the overdraft account on 30/6/2015 was Rs.11,85,10,958. The total outstanding balance against the corporate debtor in the current account no. 694705600162 was Rs.21,34,69,146.42. The detailed copy of the statement of account is given at pages 180 to 217 and the applicant bank has certified the statement of account under Banker's Book of Evidence Act.

14. Petitioner has certified the amount of default on the basis of certified copy of bank statement which is admissible under Banker's Book of Evidence Act.

15. Petitioner has also filed copy of notice regarding recall of credit facility availed by the corporate debtor which is exhibit 1 at page 221 to 229. On perusal of the notice dated 8/5/2017, it is clear that the petitioner has recalled the working capital facility sanctioned in the name corporate debtor. Petitioner has

also filed the guarantee notification notice which is at pages 230 to 235 of the petition. Petitioner has also filed copy of the agreement which is Annexure C which shows that working capital facility of Rs.9 crore was granted in favour of corporate debtor on 1/6/2015. Subsequently, the overdraft facility was enhanced to Rs.10,75,40,000/- and further working capital demand loan facility was set up on 4/1/2016. As a special limit of the aforesaid facility and an amount of \$15,00,000 equivalent to Rs.9,99,75,000/- was transferred to the aforesaid working capital demand loan account on 7/1/2016. Derivative limit was Rs.1,10,00,000/- was set up on 31/12/2015.

16. On the basis of documents filed by the petitioner, it appears that corporate debtor has committed default of 363 days in making payment of loan amount of Rs.21,34,69,146.42.

17. Ld. Counsel for the corporate debtor has filed reply wherein it is stated that a letter of sanction dated 30/4/2015 was issued by the financial creditor to the corporate debtor whereby Rs.11.95 crore was sanctioned as fund based credit facility. Subsequently, in December 2015 the corporate debtor required further financial assistance and in the circumstances the corporate debtor requested for enhancement of working capital limit from Rs.11.95 crore to Rs.13.05 crore. A copy of the sanctioned letter dated 31/12/2015 has been annexed with the reply.

18. Corporate debtor has raised objection that the corporate debtor requested the applicant bank to join consortium agreement so that all banking limits of the corporate debtor are under one umbrella which would be also of ease for all bankers as well as the company and the applicant bank, but the applicant bank did not join the consortium of banks.

19. Corporate debtor alleged that financial creditor has arbitrarily withdrawn the agreed sanction of Rs.10 crore without prior intimation or any reason thereof and this has caused great impact on the corporate debtor. The corporate debtor has further alleged that email dated 2/9/2016 and subsequent mail and

correspondences to withdraw the sanction amount of Rs.10 crore and to ask for remittance is arbitrary unreasonable and bad in law. Corporate debtor alleged that recalling of loan facility is without any basis.

20. It is also stated that the financial creditor has also issued notice under Sec.13(2) of the Securitization and Reconstruction of Financial Asset and Enforcement for Security Interest Act, 2002. Corporate debtor alleged that the entire application made by the financial creditor is abuse of the process of law and the same would lead multiplicity of proceedings. Therefore, the same is liable to be dismissed with exemplary cost.

21. It is pertinent to mention corporate debtor has not raised any dispute regarding the default amount. The main objection of the corporate debtor regarding arbitrary withdrawal of the facility granted to the corporate debtor.

22. Corporate debtor has contended that on 31/8/2016 there was a meeting between the corporate debtor and the financial creditor and in course of the meeting it was agreed that apart from the existing limit of Rs.13.05 crore, the financial creditor would sanction and disbursed a further sum of Rs.10 crore. It was also agreed that ad hoc disbursement would be made immediately in view of the urgent requirement of the corporate debtor.

23. It was further stated that the said agreement between the parties would be acted upon and the financial creditor disbursed a further sum of Rs.10 crore to the corporate debtor. Corporate debtor claimed that the disbursement of Rs.10 crore was on account of mutual agreement with the bank and it is alleged by the corporate debtor that after sanctioning of the ad hoc amount of Rs.10 crore, the financial creditor has refused to execute necessary documentation or to issue a formal sanction letter.

24. Corporate debtor has further stated that financial creditor on 2/9/2016 purport to contend that in view of the technical error there has been excess drawing power given to the corporate debtor account and it is alleged that the

withdrawal by the corporate debtor is incorrect and the account was overdue by Rs.10 crore.

25. It has been stated that corporate debtor has sanctioned an amount initially Rs.13 crore and thereafter additional Rs.10 crore was sanctioned by the financial creditor. Corporate debtor has not mentioned anything that he has not made payment of the said amount taken on loan.

26. On the basis of the admission of the corporate debtor, it is undisputed that corporate debtor has taken overdraft limit from the financial creditor and has withdrawn money by the financial creditor. On the basis of certified copy of the statement of account, Annexure H, clearly shows that up to 31/8/2017 total amount of Rs.21,34,69,146.42 was due from the corporate debtor. Petitioner has also filed the loan recall notice, Annexure I, which shows that loan recall notice was issued on the corporate debtor for depositing the due amount of Rs.20,21,90,410.42 in connection with the working capital facility due on 7/5/2017.

27. It was also written in the notice to deposit the entire amount along with the outstanding interest; the petitioner has also annexed credit agreement dated 15/5/2015, deed of personal guarantee dated 15/5/2015, deed of corporate guarantee by Hindustan Small Tools Pvt. Ltd. and mortgage deed and also annexed the documentation to substantiate its claim. 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 CRILC dated 28/8/2017, stated in Annexure G, shows the account status of the corporate debtor as Substandard.

28. Corporate debtor has not raised any objection regarding default amount i.e. Rs.21,34,69,146.42. His objection is mainly relating to not issuing proper sanction letter of additional Rs.10 crore for which the financial creditor claimed that due to technical error excess drawing power was given in the account of the corporate

debtor on 31/8/2016, and further the excess drawing power had been withdrawn by the financial creditor. The corporate debtor has itself filed the letter of the financial creditor which shows excess drawing power was withdrawn by email issued to the corporate debtor on 2/9/2016. In spite of recalling the loan and recalling excess drawing power, corporate debtor has failed to make payment and thereby committed default. Petitioner has filed this application in proper format as prescribed in I & B Code and Adjudicating Authority Rules which is complete.

29. Financial creditor has proposed the name of Mr. Mr. Kuldeep Verma, who is competent to work as IRP. No disciplinary proceeding is pending against him. Therefore, application filed by the Financial creditor under Sec 7 of I& B Code deserves to be allowed.

ORDER

The petition filed by the financial creditor under Sec.7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process and declare a moratorium and public announcement as stated in Sec.13 of the IBC, 2016.

The moratorium is declared for the purposes referred to in Sec.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.

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 Kuldeep Verma, Registration No. is IBBI/IPA-001/IP-P00014/2016-2017/10038 of 3, Jagabandhu Modak Road, Shovazar, 4th Floor, Kolkata – 700 005, email address kuverma@gmail.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 copy of the order be sent to the Applicant/Financial Creditor as well as Corporate Debtor and IRP.

List the matter on 21/11 2017.

Sd

Jinān K.R.
Member (J)

Sd

Vijai Pratap Singh,
Member (J)

Signed on 8th November 2017