

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI

T.C.P.NO.172/I&BP/NCLT/MB/MAH/2017

SBI GLOBAL FACTORS LIMITED,
Metropolitan Building, 6th Floor,
Bandra Kurla Complex, Bandra (East)
Mumbai – 400 051.

... **Petitioner.**

Versus

M/s. Sanna Syntex Private Limited,
Office at 135/5B, Sanjay Building,
Mittal Industrial Estate,
Andheri (East), Mumbai – 400 059.

... **Respondent.**

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

SHRI BHASKARA PANTULA MOHAN
Member (Judicial)

PRESENT ON BEHALF OF THE PARTIES

Aparna Wagle Senior Associate Advocate for Petitioner is present.

The Learned Representative Nilofar Shaikh for SBIGFL is present.

Per : SHRI M.K. SHRAWAT, MEMBER (JUDICIAL)

ORDER

Pronounced on : 22.08.2017

1. Initially the Petitioner has filed a Petition before the Hon'ble Bombay High Court by invoking the provisions of section 433 (e), 434 and section 439 of the Companies Act against M/s. Sanna Syntex Private Limited. Due to change in Law the said Petition was transferred to NCLT, Mumbai Bench.
2. On issuance of certain Notifications and in compliance thereupon, the Petitioner has moved a Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter The Code) by filing Form No. 1 under Rule 4 of I&BP (Application to Adjudicating Authority) Rules 2016 on 7th July, 2017 for claim of Financial Debt of ₹ 4,49,52,249/- outstanding against the Financial Corporate Debtor viz. M/s. Sanna Syntex Private Limited, Andheri (East), Mumbai.
3. The brief background in respect of the financial debt in question is that the Petitioner has sanctioned a Loan Facility of ₹ Three Crores on 11th May 2010.

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At this place it is worth to mention that the Petitioner is a Subsidiary of State Bank of India. Originally it was incorporated under the name and style of Global Trade Finance Limited which stood amalgamated vide an Order dated 15th January 2010 of Hon'ble Bombay High Court. The name was changed accordingly as per the title hereinabove of the Petition. It is also worth to mention at the outset itself that, pursuant to the merger the debts owed by the merged Company is now the debt of the resulting company, as per the title of the Petition supra.

- 3(1) The Respondent Company vide a Resolution of 21st May 2010 had authorized one of the Director to execute all the documents pertaining to the Loan sanctioned on 11th May 2010. As a result, the Creditor and the Debtor have executed a Global Account Receivable Management Agreement dated 21st May 2010 which was effective from the date of the Sanction. The Petitioner was accordingly entitled to receive the payment such purchase price directly from the buyer-debtor on the due date. Since it was a Trade Facility hence the repayment was to be made as agreed upon, however the debtor defaulted in payment. On 26th August 2015 the Petitioner through Advocate called upon the Respondent to pay the Principal Amount with interest. Due to non-compliance Two Legal Notices were issued on 31st December 2015 and 29th February 2016 calling upon the Respondent to repay the outstanding debt. A Petition was filed before the Hon'ble Bombay High Court. In the Petition filed before the Hon'ble High Court it was informed that vide a Hypothecation dated 21st July 2010 in order to secure the repayment of the "Domestic Factoring Facility" sanctioned in favour of the debtor a charge was created by way of hypothecation on all the assets, book-debts etc. Again on 16th July 2010 one more "Global Accounts Receivable Management Agreement" was executed containing the approved names of the "Buyer-debtors" of the Respondent Company in respect of whom availed the "Domestic Factoring Facility".
- 3(2) The Learned Counsel has drawn our attention on a Letter of Waiver dated 5th January 2011 whereby the Respondent Company had pleaded for Waiver of the presentment of Demand Promissory Note and undertook to pay the principal amount of Rupees Three Crores. Even that was not honoured and a Renewal Letter was written for consideration by the Creditor. The period was extended upto 29th June 2013. The copies of the Notice of Demand issued are placed on record along with several other evidences to establish that undisputedly the "financial debt" in question had existed and the debtor had not paid the said debt.

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- (3) The Learned Counsel of the Petitioner has further pleaded that several other remedies to recover the debt amount had exhausted. One of the recourse adopted in the past was to refer the matter to an Arbitrator, however, vide an Award pronounced on 22nd December 2016 the claim for recovery was affirmed and the Respondent was directed to pay the claim amount with interest. Even then the debtor had not obeyed the said Award although unconditionally participated in proceedings and never objected the Debt amount.
4. The Respondent "Corporate Debtor" remained absent throughout before NCLT. Records of the case have also established that on the part of the debtor there was no denial of the fact that the debt amount is admittedly payable. The continuous non-appearance and non-repayment has thus established that the debtor has nothing to say in defence about the debt amount.
5. **FINDINGS :-**
- 5(1) On due consideration of the submissions and the evidence placed on record the admitted factual position is that the Debt in question falls under the category of "Financial Debt" as defined under section 5(8) of The Code which prescribes that a Debt for consideration for the time value of money having component of Interest is to be classified as a "Financial Debt".
- 5(2) A Financial Creditor is to file an Application under section 7 of The Code for initiation of CIRP against the Corporate Debtor. The "Default" as defined under section 3(12) has also been established by the Petitioner. Even the Debtor has not objected that there was a non-payment of Debt, rather remained silent throughout. The Petitioner has placed on record the Sanction Letter and other evidences to corroborate that the debt was duly acknowledged by the Respondent/ Debtor. The Petitioner has also proposed the name of the IRP. As a result, prima facie the requirements of The Code appears to have been accomplished by the Petitioner.
- 5(3) In general the Financial Debtor usually plead that due to recession in the Market the liability of repayment could not be squared up. Although in this case there is no such defence either, but the fact of the matter is that a liability does not get extinguished on the aforesaid ground of Market Recession. There could be a situation of bad finances beyond the control of a Debtor, but in the eyes of law if the Debtor had undertaken a legal responsibility by executing Debt-Agreement and failed to make the payment then it is worth to mention that there is no escape route for the defaulter in respect of an unqualified liability undertaken by him. In the eyes of law if a financial debt is in existence, duly corroborated by evidences, then whatsoever be the reason the liability cannot get extinguished. It can get extinguished only subject to repayment.

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6. *Interalia*, considering the totality of the facts and circumstances of the case we hereby direct that the provisions of Section 14 of The Code shall apply. The "Moratorium" shall commence henceforth 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 to the Debtor shall not be terminated during Moratorium Period. It shall be effective till completion of the Insolvency Resolution Process or till the approval of the Insolvency Resolution Plan under section 13 of The Code.
7. The name of the IRP proposed by the Petitioner is hereby approved as under :-
Mr. Divyesh Desai, 301, Kadambari, HN Compound, Goregaon (West), Mumbai-400 062, Tel : 9820289402, Email : desaidivyesh@hotmail.com IP : IBBI/IPA-001/IP-P00169/2017-18/10338.
8. That the IRP shall perform the duties as assigned under section 18 of The Code and inform the progress of the Resolution Plan as well as Compliance Report to this Bench within 30 days time.
9. The Petition is "Admitted". The commencement of the Corporate Insolvency Resolution Process is pronounced and effective from the date of this Order.

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)

22.08.2017

Sd/-

M.K. Shrawat
Member (Judicial)