

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
C.P. NO.1283/I&BP/NCLT/MAH/2017
Under Section 7 of IBC, 2016**

In the matter of

Axis Bank Limited. Petitioner

vs.

BSR Diagnostic Limited Respondent.

Order delivered on 29.09.2017

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Mr. Shyam Kapadia & Mr. Hridhay Khurana,
Advocates i/b AZB & Partners

For the Respondent: Mr. Ashish Pyasi, Advocate i/b Dhir & Dhir
Associates

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Oral order dictated in open court on 19.09.2017

1. It is a Company Petition filed by Axis Bank Limited u/s 7 of Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor, namely BST Diagnostics Ltd, stating that this Corporate Debtor availed Term loan facility of ₹33,75,00,000 by entering into Term Loan Agreement dated 10.11.2011 and thereafter, the amount was disbursed to the Corporate Debtor on 27.10.2011, 7.12.2011, 9.12.2011 and 23.12.2011. Apart from this, the Corporate Debtor also availed Cash Credit Facility of ₹6,00,00,000 through Letter of arrangement for cash credit on 10.10.2011 and thereafter, disbursed the same on 27.10.2011,

31.10.2011 and 1.11.2011 thereafter, on various occasions, these facilities were availed by the Corporate Debtor.

2. For this Corporate Debtor defaulted in making repayments, the Petitioner recalled these two loan facilities on 5.12.2016, directing the Corporate Debtor to repay the entire amount within seven days from the recall notice which would expire on 13.12.2016 but whereas this Corporate Debtor having failed to repay the entire due amount in pursuance of the recall notice given by the Petitioner, this Petitioner filed this Company Petition for initiation of Corporate Insolvency Resolution Process.

3. Apart from the Term Loan Agreement dated 10.10.2011 and Letter of arrangement of Cash Credit advance dated 10.10.2011, the Petitioner filed several other documents executed by the Corporate Debtor, executing the Composite Hypothecation Deed dated 10.10.2011 to secure an amount of ₹33,75,00,000, creating a charge by way of exclusive first charge on entire movable and immovable fixed assets both present and future financed by Petitioner and exclusive first charge on entire current assets of the company covering both present and future assets financed by Petitioner, a Demand Promissory Note executed by the Corporate Debtor in favour of the Petitioner on 10.10.2011 for ₹6,00,00,000 likewise Delivery cum Waiver Letter executed by the Corporate Debtor in favour of the Petitioner on 10.10.2011 for the same ₹6,00,00,000 mentioned above, another Supplemental Deed of Hypothecation executed by the Corporate Debtor in favour of the Petitioner on 30.4.2014 evidencing first charge of the Petitioner on entire movable and immovable fixed assets both present and future financed by Petitioner, second charge of State Bank of India on the assets financed by the Petitioner, first charge on State Bank of India on movable and immovable both present and future financed by State Bank of India and second charge of the Petitioner on the movable and immovable fixed assets financed by State Bank of India likewise the Memorandum of Entry in order to create equitable mortgage by deposit of title deed on the property located at House No.MIG 202, Padmanabhpur, Durg, Chhattisgarh issued by Shri Surendra Kumar Jain (Promoter of Corporate Debtor) in favour of the Petitioner dated 28.1.2014.

4. Apart from these documents, the Petitioner has filed Deeds of Guarantee executed by various persons namely Mr. M .K. Khanduja, Mrs. Neera Khanduja,

Mr. Rohitash Khanduja, Mr. Surendra Kumar Jain, BSR Super Speciality Hospitals Ltd in favour of the Petitioner on 10.10.2011 and also a joint Undertaking/Indemnity in favour of the Petitioner on 22.9.2011. The Petitioner has also filed a statement of account, reflecting the last payment made by the Corporate Debtor, i.e. for Term Loan on 28.10.2016 and for Cash Credit on 1.3.2016. Since this Corporate Debtor failed to make repayment after issuing this recall notice dated 5.12.2016, the Petitioner issued another notice on 12.6.2017, demanding the Corporate Debtor for making repayment failing which the Petitioner would proceed against the Corporate Debtor under Insolvency and Bankruptcy Code, 2016.

5. The Corporate Debtor being insensitive to the demand made by the Petitioner herein, this Company Petition has been filed on 25.7.2017, thereafter, realising some difficulties present in the Company petition moved by the Petitioner, that petition was withdrawn and this Petition has been filed on 2.8.2017 against this Corporate Debtor.

6. On perusal of these documents and statement of accounts filed by the Petitioner, this Bench has noticed that though record from Information Utility has not been filed by the Petitioner, the Petitioner has filed all financial contracts supported by financials as evidence of debt and the financial statements showing the debt outstanding as on 25.7.2017 therefore, this Bench being satisfied with the proof of documents showing existence of debt and the corporate debtor defaulted in making repayment to the Petitioner and the same has not been repaid by this Corporate Debtor till date.

7. The Counsel appearing on behalf of the Corporate Debtor has come up with two defense against the case of the Petitioner saying that this case has been filed against the spirit of the Corrigendum to the Press Release dated 22.5.2017 issued by RBI to say that RBI issued directions to the Banks to file Insolvency proceedings under Insolvency and Bankruptcy Code in respect of identified accounts, this account not being identified as one among them, this Petitioner should not have filed this Company petition. On seeing this Press Release, it appears to us that this Press Release do not have any binding on Banks to proceed or not to proceed under Insolvency and Bankruptcy Code, 2016 because no

direction is required to any Bank to proceed under Insolvency and Bankruptcy Code, 2016. Moreover, this Press Release has not stated anywhere that Bank should not initiate Bankruptcy proceedings unless and until permission is given by RBI, therefore, this defence argument has no merit to dismiss this Company petition.

8. Moreover, this entire Press Release speaks about accounts classified partly or wholly as non performing assets from amongst top 500 exposures in the banking system. In any event, this could not be said as impediment against the petitioner bank proceeding before this Bench.

9. Another point Corporate Debtor Counsel has highlighted is that some of the documents have not paid requisite stamp duty as mentioned under Indian Stamp Act as amended and adopted by State of Chattisgarh, therefore, none of the documents can be taken into consideration as evidence to decide this Company Petitioner, therefore, this Company Petition is liable to be dismissed.

10. As against this argument, the Petitioner Counsel has stated that the Petitioner has solely relied upon two documents, one is Term Loan and letter of arrangement for Cash Credit limit which do not require stamp duty as canvassed by the Corporate Debtor Counsel, that being correct proposition, we have not found any merit in this argument as well, henceforth, this Company Petition is hereby admitted.

11. In view of the same, this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- I (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 (SARFAESI Act);
- (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.
- (II) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (IV) That the order of moratorium shall have effect from 29.09.2017 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (V) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (VI) That this Bench hereby appoints Mr. Sundaresh Bhat, BDO India LLP, The Ruby – Level 9, NW Wing, SenapatiBapat Marg, Dadar (West), Mumbai – 400 028, Registration No. IBBI/IPA-001/IP-P00077/2017-18/10162 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

12. Accordingly, this Petition is admitted.

13. The Registry is hereby directed to communicate this order to both the parties within seven days from the date order is made available.

Sd/-

V. NALLASENAPATHY
Member(Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)