

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

C.P. NO.1308/I&BP/NCLT/MAH/2017

Under Section 7 of IBC, 2016

In the matter of

L & T Finance Limited. Petitioner

vs.

GMV Agencies Pvt. Ltd. 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. Rohit Gupta a/w Ms. Ashwini Hariharan and
Mr. Darpan Bhatia, i/b HSA Advocates

For the Respondent: Mr. Dharmesh Shah, Advocate, i/b GMS Legal
Solicitors & Advocates.

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

ORDER

Oral Order dictated in the open court on 27.09.2017

1. This is a Company Petition filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 by the Financial Creditor against the Corporate Debtor, stating that the Financial Creditor sanctioned loan facility of ₹1,50,00,000 on 23.11.2015 by disbursing the loan amount on 18.2.2016 to the Corporate Debtor herein on execution of a Loan Agreement on 5.10.2015 and Demand Promissory Note on 24.11.2015. When this Corporate Debtor defaulted to repay the same even after recall notice had been given on 4.10.2016, this Petitioner issued legal notice on

27.10.2016 demanding repayment of loan amount, on which also, when this Corporate Debtor failed making repayment, this Petitioner has filed this petition to initiate Insolvency Resolution process against the Corporate Debtor.

2. To prove the case of the Petitioner, the Petitioner has filed Facility agreement dated 5.10.2015, reflecting the limits sanctioned, interest clause and repayment clause and a Demand Promissory Note executed by the Company in favour of the Petitioner for the loan amount of ₹1,50,00,000 payable @14.5% interest. Though Promissory Note as well as Loan Agreement discloses interest component @ 14.5%, since the Petitioner and the Corporate Debtor together agreed for charging interest @36% on delayed payments, now the petitioner could not argue that 36% interest on delayed payments is exorbitant and usurious.

3. To further prove that the debt is in existence and the petitioner defaulted in repaying it, the Petitioner filed loan document, statement of account reflecting disbursement of loan to the Corporate Debtor and payments made by the Corporate Debtor and CIBIL report reflecting that the Corporate Debtor defaulted in making repayment from 7.12.2016. Apart from this, notices given from time to time have also been filed, whereby this Bench has noticed that the Petitioner filed requisite documents to prove that the Corporate Debtor availed loan and thereafter, defaulted in making repayment.

4. The Corporate Debtor counsel though principally has not disputed the debt and default, he has raised a contention to provide cover of moratorium u/s 14 over section 138 of Negotiable Instruments Act proceedings pending against the company as well as directors of the Debtor Company and also personal guarantee given by one of the Directors on the ground that these proceedings before Negotiable Instruments Act and Personal Guarantee given by the Director arose from this very loan transaction covered in this petition.

5. To which, the Petitioner Counsel has replied saying that it is a criminal proceeding taken out against this Corporate Debtor as well as its Directors

therefore, it will not be covered under any of the clauses mentioned under Section 14 of the Insolvency and Bankruptcy code, 2016.

6. Section 14 speaks of the institution of suit or continuation of pending suits or proceedings against the Corporate Debtor which normally to be construed as civil proceedings unless and until specifically mentioned that criminal proceedings are covered under respective section.

7. To justify this contention, the Petitioner Counsel has relied upon the case in between *Kusum Ingots & Alloys Ltd. vs. Pennar Peterson Securities Ltd and Others (2000) 2 Supreme Court Case 745* and also *Indorama Synthetics (I) Ltd, Nagpur vs. State of Maharashtra & Ors*, saying that this issue has been specifically dealt with by Honourable Supreme Court u/s 22(1) of SICA, saying that protection of section 22 of SICA will open to the company in the event company along with others is convicted and fine imposed, the counsel says, likewise under this Code also, protection of section 14 of the Code will come into operation when fine is imposed against the corporate debtor, therefore, Criminal proceedings against the company should not be foreclosed.

8. In view of the ratio placed before this Bench, we are of the view that criminal proceedings pending before the Criminal Court shall not be construed as covered u/s 14 of Insolvency and Bankruptcy code, 2016 henceforth, the contentions raised by the Corporate Debtor is hereby rejected and since the existence of the debt and default is proved beyond doubt, this Petition is hereby admitted as follows.

9. 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. Dhiren Shantilal Shah, B-102, Bhagirathi Niwas, Near Natraj Studio, Sir M.V. Road, Andheri (east), Mumbai – 400 069, Registration No. IBBI/IPA-001/IP-P00220/2017-18/10419 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

10. Accordingly, this Petition is admitted.

11. 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)