

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
C.P. NO.1407/I&BP/NCLT/MAH/2017
Under Section 7 of IBC, 2016**

In the matter of

ICICI Bank Ltd. Financial Creditor/Petitioner

vs.

Bluplast Industries Ltd. ... Corporate Debtor/Respondent.

Order delivered on 5.10.2017

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

For the Petitioner: Ms. Anjala Parveen, Advocate.

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 the open court on 03.10.2017

It is a Company Petition filed by ICICI Bank Ltd under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Corporate Debtor, namely Bluplast Industries Ltd, on the ground that the Corporate Debtor availed loan facility of ₹24 crore on 30.6.2007 thereafter, since this Corporate Debtor defaulted in making repayment on 31.12.2014, this debt has become NPA on 31.3.2015. Since this Corporate Debtor has not paid the principal amount alongwith interest, amounting to ₹ 34,35,04,602.30 as on 10.7.2017, this Petitioner filed this Company Petition for initiation of Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016, hence this Petition.

Brief facts of the Case:

2. The Petitioner submits that this Creditor provided credit arrangement facility sanctioning fund based and non fund based credit facilities totalling to ₹199.10 million to the Corporate Debtor providing ₹163.4 million as working capital facilities and ₹35.6 million towards term loan facilities.
3. Thereafter, on 30.7.2007, the creditor and the Corporate Debtor entered into Master Facility Agreement to avail various working capital facilities from the creditor not exceeding ₹148 million on the terms and conditions contained in this Agreement. Likewise, on the same day, in addition to the Master Facility Agreement, Deed of Hypothecation has been provided by the Corporate Debtor to the Bank, in addition, the Deed of Guarantee were executed by Mr. Kamlesh Kumar Jain, Mr. Indermal Pannalal Jain, Mrs. Rekha Kamlesh Jain, Mrs. Naina Indermal Jain and Mr. Pannalal Jain in favour of the Bank for securing due repayment of the facilities granted by the Petitioner to the Corporate Debtor, i.e. Rupee Term Loan of ₹35.7 million and Working Capital Facilities upto overall limits not exceeding ₹118 million.
4. On 6.11.2007, one Mrs. Rekha Indermal Jain deposited the title deeds to secure the due repayment by the borrower towards the facilities granted under the Master Facility Agreement dated 30.7.2007. Likewise, the Corporate Debtor also deposited the title deed to secure due repayment towards the facilities granted under the Master Facility Agreement dated 30.7.2007 and HDFC Bank.
5. There has been enhancement of credit facilities of ₹118 million to ₹158 million on 25.1.2008. Similar to this enhancement, several enhancements have taken place until 2013.
6. This Corporate Debtor cleared Term Loan Facility of ₹35.7 million. Finally on 28.11.2013, Credit Arrangement Letter was given by the applicant providing credit facilities aggregating to ₹269 million was renewed by the Corporate Debtor.
7. On 31.12.2014, the Corporate Debtor defaulted in honouring its repayment towards the applicant bank resulting this account into Non Performing Asset by 31.3.2015. This debt outstanding liability was acknowledged by the Corporate Debtor as ₹24,20,93,960.82 as on 11.1.2016 in respect to the working capital facilities governed by the Agreement dated 30.7.2007.

8. When no payment came from the Corporate Debtor, the Petitioner sent a recall notice cum invocation of Guarantee to the Corporate Debtor and the Guarantor calling upon the Corporate Debtor and the Guarantor to repay an aggregate of ₹29,41,59,732.50 payable as on 31.3.2016 within 15 days from the date of notice.

9. In continuation of this, there has been back and forth correspondence between the Petitioner and the Corporate Debtor until winding up notice has been given on 17.5.2016, demanding to repay a sum of ₹30,10,20,223.65 payable as on 12.5.2016. Since payment was not made despite notice was given under Section 434 of the Companies Act, 1956, this Petitioner filed a winding up Petition under Section 432 and 433 of the Companies Act, 1956, for repayment of loan facilities alongwith interest aggregating to ₹28,66,32,604.63.

10. Owing to transfer of jurisdiction, when that winding up petition came up before this Bench, since the Petitioner realised discrepancies are there in the Company Petition, the petitioner herein withdrew that Company petition and subsequently, filed this Petition showing a claim of ₹34,35,04,602.30 is in default as on 10.7.2017. In support of this claim, the Petitioner herein filed the copies of the following documents:

1. Credit Arrangement letter dated 30.6.2007;
2. Credit Arrangement letter dated 18.7.2007;
3. Deed of Hypothecation dated 26.7.2010
4. Facility Agreement dated 30.7.2007
5. Deed of Hypothecation dated 30.7.2007;
6. Deed of Guarantee dated 30.7.2007
7. Memorandum of Entry dated 6.11.2007
8. Pari Passu Letter dated 20.7.2007 and 30.7.2007 issued by HDFC Bank to the Applicant Bank;
9. The Sanction letter dated 25.1.2008;
10. Supplemental and Amendatory Agreement to the Master Facility Agreement dated 11.2.2008

11. Deed of Guarantee dated 12.2.2008;
12. Memorandum of Entry dated 26.2.2008;
13. Credit Arrangement Letter dated 30.6.2008;
14. Supplemental and Amendatory Agreement to the Master Facility Agreement dated 16.7.2008;
15. Deed of Guarantee dated 16.7.2008;
16. Memorandum of Entry dated 16.7.2008;
17. Credit Arrangement Letter dated 15.7.2009;
18. Letter dated 20.7.2009 to the Amendment Agreement to the Master Loan Facility Agreement;
19. Credit Arrangement Letter dated 25.8.2009;
20. Letter of Amendment dated 28.8.2009 to the Master Loan Facility Agreement;
21. Credit Arrangement Letter dated 22.2.2010, 30.6.2010 and 15.7.2010;
22. Supplemental and Amendatory Agreement to the Master Loan Facility Agreement dated 26.7.2017;
23. Deed of Guarantee dated 26.7.2010;
24. Memorandum of Entry dated 28.7.2010, 25.3.2010 and 28.7.2010;
25. Credit Arrangement letter dated 14.9.2010;
26. Letter dated 14.9.2010 to the Amendment to the Master Loan Facility Agreement dated 30.10.2007;
27. Credit Arrangement letter dated 30.6.2010;
28. Letter dated 19.7.2011 to the Amendment to the Master Loan Facility Agreement dated 30.7.2007;
29. Credit Arrangement Letter dated 13.1.2012;
30. Supplemental and Amendatory Agreement to the Master Loan Facility Agreement dated 27.1.2012;
31. Credit Arrangement Letter dated 11.1.2013;

32. Deed of Modification dated 14.3.2013;
33. Letter dated 14.3.2013 for Amendment to Master Facility Agreement dated 30.7.2007;
34. Credit Arrangement letter dated 28.11.2013 and 4.12.2013;
35. Note of Amendment dated 27.12.2013;
36. Letter dated 11.1.2016 for acknowledgement of debt and confirmation of security issued by the Corporate Debtor;
36. CRILC Report generated on 27.4.2017;
37. Statement of Accounts
38. The Bankers Book of Evidence Certificate;

11. The above said documents having reflected that the debt has been in existence in between the parties, Central Depository Information of Large Credits having reflected that asset has become NPA and the same has been classified as a doubtful debt, we are of the view that petitioner has furnished documentary proof to believe that debt and default is in existence as on the date this petition filed.

12. To further support the debt in default committed by the Corporate Debtor herein, the Petitioner filed statement of accounts reflecting the debt outstanding against the Corporate Debtor and also a certificate certifying the debt outstanding against the Corporate Debtor as envisaged under the Bankers' Book Evidence Act.

13. The Petitioner has filed the consent letter of the Insolvency Resolution professional agreeing to function as Insolvency Resolution professional in this case.

14. By looking at all the documents, we are satisfied that this petitioner has placed material sufficient enough to prove that occurrence of default is in existence as on date of filing this petition and for there has been no defence from the Corporate Debtor in respect to the merits of the case, this Petition is hereby admitted declaring moratorium with the following directions:

- 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 5.10.2017 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. Vishal Bidawatjika, 307, Business Classic, 3rd Floor, S. V. Road, Chincholi Bunder Road, Near HP petrol Pump, Malad West, Mumbai – 400 064, Registration No. IBBI/IPA-001/IP-P00125/2017-2018/10267 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
15. Accordingly, this Petition is admitted.
16. 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)