

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPANY PETITION NO. 1043/ I & BP / NCLT/MB/MAH/2017

APPLICATION BY FINANCIAL CREDITOR(S) TO INITIATE CORPORATE
INSOLVENCY RESOLUTION PROCESS UNDER THE CODE

(Section 7 of the Insolvency and Bankruptcy Code 2016 and Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016).

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

Indus Finance Ltd
Kothari Building, 4th Floor,
No.114, Mahatama Gandhi Salai,
Nungambakkam,
Chennai- 600 034.

Through:

Indus Financial Limited
603, Keshava, 6th Floor, Bandra Kurla Complex,
Bandra€, Mumbai – 400 051.

).....Petitioner.

Versus

Quantum Ltd.
Arjun Tower-II
Mount Mary Road, Bandra (W),
Mumbai – 400 050.

)Respondent.

PRESENT ON BEHALF OF THE PARTIES

FOR THE PETITIONER

Mr. Vinu Jagtap, Advocate
i/b Ms. Neha Jagtap
Mr. Bala Kutti, Chairman

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FOR THE RESPONDENT

Mr. Vinay Kumar
i/b M/s. Quantum Ltd.
Mr. Inderjit Singh Chawan, Director

ORDER

Heard and Pronounced on: 29.05.2017.

- 1) This Petition is submitted before NCLT on 25th May, 2017 on Form No.1 in the capacity of "Financial Creditor", as defined under the Insolvency & Bankruptcy Code 2016 (hereinafter referred as The Code) , with a prayer to initiate Corporate Insolvency Resolution Process. It is intimated that out of the debt sanctioned of Rs. 10 Cr. by the Petitioner functioning as NBFC , only a sum of Rs.2 Crore was disbursed in favour of the Respondent i.e. the Corporate Debtor on 20th June, 2011 and 10th August, 2011 i.e. Rs. one Crore on each date. It is also clarified that the debt amount was repaid however the interest payment was defaulted. As per the Petition the amount in 'Default' is Rs.93,29,633/- which was treated as NPA as on 31st March 2013 being a defaulter of payment of monthly interest. The Petitioner has stated that due to non payment of monthly interest, pending since long, admitted factual position is that the Corporate Debtor had committed "Default", as prescribed under The Code.
- 2) One more fact has been brought to the notice that one more creditor viz. J.M. Financial Asset Reconstruction Company Private Ltd. had filed a Petition before the Debt Recovery Tribunal, Pune and vide an order dated 5th May, 2014 an order was pronounced, relevant portion is extracted below:-

"ORDER

The Application is allowed ex parte against defendant No. 1 to 3.

Issue Recovery Certificate in favour of Applicant for Recovery of 14,58,46,527.00 (Rupees Fourteen Crores Fiftyeight Lakhs Fortysix thousand Five Hundred Twentyseven only) together with simple interest at the rate of 12% from the date of filing the application in the Tribunal i.e. 09.05.2013 till realization of the amount along with the cost of the application from defendant Nos 1 to 3 jointly and severally.

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Charge of the said amount is kept on the properties hypothecated and / mortgaged namely all that piece and parcel of land lying and situated at Zone No. A, B, C D, Pune Rajiv Gandhi, I.T.B.T. Park Plot No. 5A and 5B Phase II, admeasuring at about 8296.04 Sq. mtrs. situated at Village Mann, Taluka Munshi, Dist Pune more particularly described in Annexure –“A” and also Flat No. 702 admeasuring about 700 Sq.ft. situated on 7th Floor in Building known as “Arjun Towers” at 2- Mount Mary Road, Bandra (W), Mumbai and 2,50,000 equity shares of Indowind Energy Ltd. with face value of Rs.10/- each pledged in favour of the applicant.

The applicant is at liberty to sell the mortgaged properties after two months from the date of this order for recovery of the dues.”

- 3) Further it is brought to the notice that one more order was passed by DRT, Mumbai on 21st March, 2017 in IA No. 243 of 2017 wherein directed as under:-

“The counsel appearing for the Applicants addressed his arguments at length on the point of fixing of low reserve price for the secured asset and also for confirming the bid in favour of the alleged successful bidder for a low amount of Rs.19.26 Crores. The learned counsel appearing for the Respondent Bank seriously disputed the contention of the Applicants and after conclusion of arguments on both the sides, Mr.Rishabh Shah, the learned counsel appearing for the Applicants on instruction from his clients who was present in the open court finally submitted that the Applicants are ready and willing to redeem the property for an amount of Rs.19.26 Crores with interest from the date of auction within a period of six months, however left the fixation of period of redemption to the discretion of this Tribunal in order to protect the property. It appears the Respondent Bank also obtained Recovery Certificate against the Applicant Company from DRT-Pune and total dues payable by the Applicant under R.C. also appears to be around Rs.20 Crores or so. Since the auction purchaser has not deposited the entire sale consideration, the Applicant have got every right to redeem his property.

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- 4) *Under these circumstances, this Tribunal is inclined to grant stay of all further proceedings subject to the condition that the Applicants shall deposit Rs.5 Crores within four weeks and the remaining amount of Rs.14.26 Crores with interest at 12% per annum from the date of auction till the date of redemption within six weeks thereafter. If the Applicants fail to comply any of the conditions, the Respondent Bank may move an appropriate Application for vacation of stay."*
- 5) The Petitioner has also narrated the brief facts that Indus Finance Ltd. sanctioned Term Loan facility to Quantum Ltd. vide its sanction letter No.IFCL/QL/007/11-12 dated 15-06-2011. A sum of Rs.1,00,00,000/- (Rupees One Crore only) was disbursed on 20.06.2011 and a further amount of Rs.1,00,00,000/- (Rupees One Crore only) disbursed on 10.08.2011. The total amount disbursed to Quantum Ltd. was Rs.2,00,00,000/- (Rupees Two Crore only). Interest on the said debt was regularly serviced by Quantum Ltd. for the period 26.02.2011 to 31.03.2012. However, the payment of interest from 01.04.2012 to 31.12.2012 was highly irregular and the account turned into NPA as on 31.03.2013. The financial Creditor regularly pursued with the Corporate Debtor for recovery of its principal and interest. The Corporate Debtor made the repayments thereafter intermittently by the account remained irregular. Meanwhile, the credit facilities enjoyed by the Corporate Debtor with Corporation Bank also turned into NPA and the said Bank sold this liability to J.M. Financial Asset Reconstruction Company Pvt. Ltd., ARC. Hence this application is being filed before this Hon'ble Tribunal for the resolution of the Corporate Insolvency Process in the matter of Quantum Ltd. (Corporate Debtor). As per the Applicant the present position is that vide order of the DRT dated 21st March ,2017 (supra) the Auction Purchaser had not deposited the entire sale consideration hence it was held by the DRT that the Applicant i.e. Quantum Ltd.(Corporate Debtor) got every right to redeem his property. The Respected DRT had granted stay of further

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proceedings subjected to the direction that Quantum Ltd. (Corporate Debtor) shall deposit Rs.5,00,00,000/- within four weeks and remaining Rs.14.26 Crore within 6 weeks. According to this Petitioner if the Corporate Debtor feels to make the balance payment then the original position of the auction may come and revive into operation .

- 6) According to the argument of the Ld. AR representing the Petitioner the period is **expiring tomorrow i.e. on 30th of May, 2017**. A question has been raised by the Bench that in a situation when proceedings are already in progress before the respected DRT then why a parallel proceedings be initiated before this Tribunal i.e. NCLT ?. To answer this query it is pleaded that there is no overstepping in the jurisdiction of the Hon'ble DRT due to the reason that as per the provisions of Section 14(1) (c) of I& B Code the NCLT by an order can declare Moratorium, prohibiting any action to foreclose or recovery pertaining to a Corporate Debtor including any action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002). A statement at Bar has also been made that the Petitioner i.e. Indus Finance Ltd. is ready to induct more funds so that the dispute with J.M. Finance of the Corporate Debtor should be resolved and the company may be revived by saving from winding up proceedings. Ld. AR has also pleaded that as per the SRFAESI Act 2002 there was no provision for joining a dispute of recovery by unsecured creditor hence the petitioner was prevented in not joining dispute before DRT. The recovery proceedings initiated by J.M.Financial may adversely effect the right of recovery of the Petitioner.
- 7) From the side of the Respondent (Corporate Debtor) Ld. AR along with one of the Director are present. The Corporate Debtor has also expressed that with the help of certain Financial Institutions the existing debts shall be squared up, so that the company may revive its business activity in near future.

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- 8) Having heard the submissions of both the sides and on due considerations of the facts and circumstances of the case, prima-facie it appears that the petition under consideration is legally permissible to be 'Admitted'. A legal question has come up that weather two parallel proceedings, i.e. one before the respected DRT, and another before the NCLT can run side by side?. Answer to this question is that Section 14 itself has prescribed that while setting "Moratorium" in motion then the other proceedings as defined therein shall be abated. For ready reference **Section 14 of I & B Code 2016** is reproduced below:-

"Moratorium.

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-
- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 (54 of 2002);
 - (d) The recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.
- (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) 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.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."

(Signature)

8.1) On due analysis of this section it is unambiguous that the Adjudicating Authority (NCLT) shall by an order declare Moratorium for prohibiting any action to recover or to enforce any security interest created by a "Corporate Debtor" in respect of his property, including any action under SRFAESI Act. Moreover, in my humble opinion, the life of the "Insolvency Resolution Process" under The Code is very limited , stated to be 180 days. This period is not eclipsing the provisions of SRFAESI Act for an unlimited period. The application of I & B Code is for a limited period, but in no way in contradiction to the provisions of the SRFAESI Act. Under the said act a creditor can demand for recovery of his debt but there is no provision in the said Act to involve other creditors. Therefore the import as also the significance is that all the other creditors should also be provided an equitable option to assume and/or undertake due legal recourse for redressal under some other Statute. In the wisdom of Hon'ble Legislatures a new Act / Code is therefore needed to safeguard the interest of all the creditors , thus resulted into enactment of Insolvency & Bankruptcy Code 2016. As a result it can be safely concluded that the provisions of I & B Code 2016 are not in conflict with the provisions of SRFAESI Act.

8.2) Certain conditions precedent for 'Admission' of a petition under I&B Code, prima-facie, have been presently completed , like the 'Default' of non-payment is established. Rather the Corporate Debtor being present in the court has not objected for the impugned default in making the payment of the outstanding dues as claimed by the Petitioner. As a result the provisions of Section 7 of The Code have come into operation, which prescribes that a financial creditor may file an application for initiating Corporate Insolvency Resolution Process against a Corporate Debtor when a default has occurred. It is required that a Financial Creditor shall furnish the record of the default. When the Adjudicating Authority is satisfied that a default has occurred and the application is complete and the proposed Insolvency Resolution Professional is a qualified person, then by an order under Sub Section(5) of Section 7 can admit a petition. Resultantly, the petition is hereby declared as Admitted.

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8.3) The consequence of passing the order under Section 7(5) (a) of The Code is that the "Moratorium" as prescribed under Section 14 of The Code shall come into operation. In the present case the consequence is that once the "Moratorium" is set in motion then the rights of the Petitioner shall get protected. As a consequence, the assets of the Corporate Financial Debtor must not be liquidated until the Corporate Insolvency Resolution Process is completed. The process of Moratorium shall be effective from today i.e. 29th May,2017 till the completion of the Corporate Insolvency Resolution Process or by any other order of this bench, if deem fit.

8.4) The petitioner has proposed the name of Mr. Anil Goel, CA, E-10A, Kailash Colony, New Delhi 110048. E mail ID : anilgoel@akgindia.in. Reg. No. IBBI/IPA-001/IP. 00020/2016-17/1623 as Interim Resolution Professional. His name is therefore approved and appointed to proceed as per the provisions to finalise the Insolvency Resolution Process within the prescribed period. The Petitioner shall also act upon under the provisions of Section 13 of The Code by making a public announcement to comply the provisions of Section 15 of The Code.

9) The commencement of the Corporate Insolvency Resolution Process is hereby declared.

Sd/-

M.K. SHRAWAT
MEMBER (JUDICIAL)

Date: 29TH May,2017.