

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

CP No. 1514/IBC/NCLT/MB/MAH/2017

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

In the matter of

Allahabad Bank

..... Financial Creditor

v.

M/s. Biotor Industries Limited

..... Corporate Debtor

Heard on : 12.12.2017

Order delivered on : 01.01.2018

Coram :

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Applicant :

Mr. Navid Memon, Advocate i/b. Sanjurist Advocates – Advocates for the Financial Creditor/Applicant.

For the Debtor :

Mr. Rohit Gupta, Advocate a/w. Mr. Kaushal Parsekar, Advocate i/b. Joy Legal Consultants – Advocates for the Respondent.

Per: M. K. Shrawat, Member (J)

ORDER

1. The Applicant has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of 'Financial Creditor' on 26th October, 2017 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head 'Particulars of Corporate Debtor' the description of the debtor is stated as 'M/s. Biotor Industries Limited' having CIN :

U15142MH1976PLC019209 and having Registered office at, 13, Sitafalwadi, Dr. Mascarenhas Road, Mazgaon, Mumbai - 400010.

3. Further, under the Head 'Particulars of Financial Debt' the total amount of Debt granted is stated as ₹ 50,00,00,000/- and the total amount claimed to be in default is stated as ₹ 133,15,91,153/- along with the interest.

4. Submissions by the Applicant :

- a) Learned Advocate for the Financial Creditor (hereinafter as **Applicant**) has described that, the Corporate Debtor (hereinafter as **Debtor**) made an application to the Applicant for sanction of Short Term Loan of ₹ 50 Crores on 26.02.2009 and thereupon the Applicant has sanctioned, after due scrutiny, the said amount vide a sanction letter dated 28.03.2009.
- b) It is further submitted that, for the said Loan there is no Primary Security held with the Applicant but charge has been created on one unit of the Company as the Collateral Security and the detail of said security is hereby annexed with the Application.
- c) It is further submitted that, the Debtor has immediately after the receiving of sanction letter issued a Promissory Note dated 28.03.2009 amounting to ₹ 50,00,00,000/- in favour of Applicant which is annexed at **Exhibit 10** to the Application.
- d) It is further submitted that, the Short Term Loan Agreement is also executed between the Applicant and the Debtor on 28.03.2009 wherein it was mentioned that the Debtor will repay the Loan Amount in 12 instalments starting from 28.04.2010 till 28.03.2011. Thereafter subsequently there is another Loan Agreement also executed between the Applicant and Debtor on 06.01.2010 wherein the same schedule of instalments has been agreed between the parties. But the Debtor has failed to repay the loan amount.
- e) It is also submitted that, the Charge is also registered with the RoC in the name of the Debtor U/s. 132 of the Companies Act, 2013.
- f) It is also submitted that, the accounts of the Debtor were classified as 'Non Performing Assets' as per the guidelines of the RBI, in respect of Mortgaged Loan Account. The said default is in continues till date.
- g) It is also submitted that, the Applicant has issued the Notice under SARFAESI Act, 2002 on 04.11.2010 and consequentially the Applicant has taken the symbolic possession of Mortgaged and Hypothecated properties of the Debtor on 19.01.2011.

- h) It is further submitted that, the Applicant has categorically established the Default of the Debtor and hence, this Application U/s. 7 of the Code deserves Admission.

5. Submissions by the Debtor :

- a) The Learned Advocate for the Debtor has approached and submitted that, the Debtor has no objection to declare it as Commercially Insolvent as there is default on the part of the Debtor.
- b) It is also submitted that, the Moratorium may not be applicable to the personal properties of the Directors of the Debtor.
- c) It is also submitted that, the Debtor will fully co-operate with the appointed Insolvency Professional will help him to arrive at the Resolution and Revival of the Company.

6. Findings :

- a) Considering the above facts, it is established by the Financial Creditor that the nature of Debt is a 'Financial Debt' as defined under section 5 (8) of the Code. It has also been established that admittedly there is a 'Default' as defined under section 3 (12) of the Code on the part of the Corporate Debtor. On the basis of the evidences on record the Applicant/Financial Creditor has established that the loan was sanctioned and duly disbursed to the Corporate Debtor but there is non-payment of Debt on the part of the Corporate Debtor.
- b) Further, the compilation consist acknowledgement of Debt dated 06.01.2010 in favour of Applicant issued by Managing Director of Debtor acknowledging debt of ₹ 52,67,85,365/-. Alongwith this a Demand Promissory note in favour of Bank has also been signed by the Debtor on the same date.
- c) As to the submissions of the Debtor, we are of the opinion that, the Moratorium will not affect the Personal Properties of the Guarantors/Directors of the Debtor however, the Guarantors/Directors can approach this Bench for any clarification hereinafter by invoking appropriate provisions of the Law.
- d) As a consequence, keeping admitted facts in mind that the Applicant had not received the outstanding Debt from the Debtor and that the formalities as prescribed under the Code have been completed by the Applicant we are of the conscientious view that this Petition deserves '**Admission**'.
- e) The Applicant has proposed the name of Insolvency Professional. The Insolvency Professional proposed by the Applicant, Mr. Sanjay Kumar Agarwal, R/at. Draupadi

Mansion, 3rd Floor, 11, Brabourne Road, Kolkata – 700001 having registration No. IBBI/IPA-001/IP-P00062/2017-18/10140 is appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

- f) Having admitted the Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by 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 or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.
- g) That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
- h) That the Interim Resolution Professional shall perform the duties as assigned under **Section 15** and **Section 18** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.
- i) The Petition is hereby “**Admitted**”. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 01.01.2018