

**In the National Company Law Tribunal
Single Bench, Chennai**

CP/588/(IB)/CB/2017

Under Section 7 of the IBC, 2016

In the matter of

State Bank of India

V/s

M/s. Summer India Weaving and Processing Mills Private
Limited

Order delivered on: 27.10.2017

For the Petitioners/FC: Mr. N.Ramadass , Chief Manager, SBI
Mr. E.Omprakash, Senior Counsel for SBI

For the Respondent/CD: Mr. K.Ravichandran, Advocate
Mr. S.S Prabhakaran, Advocate

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under Consideration is a Company Petition filed by State Bank of India (in short, '**Petitioner/Financial Creditor**') against M/s. Summer India Weaving and Processing Mills Private Limited (in short, '**Respondent/Corporate Debtor**') under section 7 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**') on grounds of respondent's inability to pay debt.

2. The petitioner is State Bank of India, a Banking company whereas the Respondent/Corporate Debtor is a Company registered under the Companies Act, 1956 and engaged in the business of Weaving and Processing mills.

3. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.

4. Shri E.Omprakash, the learned counsel appearing on behalf of the petitioner/FC submitted that the Corporate Debtor availed two credit facilities from the petitioner of Rs. 31,16,71,064/- and Rs. 1,18,80,684.75 amounting to Rs. 32,35,51,748/- dated 22.08.2017. The corporate debtor also stood as the corporate guarantor to the facilities availed by a group company, M/s. Summer India Textiles Mills Private Limited for the facilities sanctioned to the aggregate limit of Rs. 156.81 Crores dated 08.08.2012.

5. It is further submitted that the petitioner vide its letter dated 12.09.2017 had considered a scheme for One Time Settlement (in short 'OTS') of non-performing assets in connection with amount due from CD for settlement under SBI OTS 2017 outstanding (excluding accrued interest from the date of NPA) is Rs. 17,63,61,057/- as on 31.03.2017.

6. The learned counsel submitted that the above said condition as admitted by the CD was not adhered to and the CD had defaulted in conforming to the terms as agreed.

7. It is further submitted that the petitioner, having awaited for a long period of time for their legitimate dues and despite of the respondent acknowledging its dues to the petitioner, approached this Adjudicating Authority for the payment of Rs. 32,35,51,748/- as on 22.08.2017 with further interest and other charges in the capacity of an Operational Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD on the grounds of respondent's inability to pay debt.

8. Shri K.Ravichandran, the learned counsel for the Respondent/CD caused appearance, denied all the allegations contained and submitted that the petition is not maintainable on the grounds of technical laches as there are some serious defects in the Application filed by the petitioner and the amount in default & the principal outstanding amount shown are grossly erroneous. He further submitted that the financial Creditor came out with a scheme for One Time Settlement (OTS) for the management and recovery of non-performing assets in the current financial year for covering the manufacturing, trade, services & agriculture sector with outstanding

more than Rs. 20 lakhs & upto 25 crores as on 31.03.2017. In term of the said scheme, the Applicant/FC wide letter dated 12.09.2017, 19.09.2017 and 09.10.2017 conveyed its consent for one time settlement of all dues and requested the respondent to express its willingness in terms of the conditions. The respondent had, in accordance with the scheme and the proposal of petitioner, evinced its interest and expressed willingness to utilize the OTS under the said scheme. In fact the respondent had with regard Account No: 52095859147 approached the petitioner/FC with Demand Draft of an amount equivalent to 5% of outstanding as on 31.03.2017. With regard to other loan account no. 34219327835, the respondent is in the process of making an application with deposit of 5% as time is granted till 31.10.2017.

9. It is further submitted that in view of the subsequent events, the claims made out and shown as due in form no. 1 along with the statement of accounts would no longer be relevant and would be novated by terms of the OTS. Therefore the company petition should be dismissed as the cause of action ceases to exist and further under the aforementioned scheme, there is no default by the respondent/CD under section 7 of IB Code, 2016.

10. He further submitted that the company petition is not maintainable since the petition discloses multiple cause of action which is established by the simple fact that the applicant has claimed dues from two different loan accounts which are distinct and different from each other. Further, the applicant/FC has filed separate Original Applications before DRT with respect to each of the loan accounts viz. O.A No. 618 of 2014 and O.A No.686 of 2014 and the petitioner has not taken any steps to merge the two OAs filed before the DRT which clearly points to the fact that they are distinct and separate. The Petitioner has also in its Form-1 part V has specified the pendency of O.A 618 of 2014 before Hon'ble DRT Madurai by stating that a sum of Rs.131,63,82,382.66 is payable as on 10.08.2014. However, the aspect of counter claim has been concealed which amounts to suppression of material facts and the petition should be dismissed on this basis only.

11. He further submitted that the instant petition has been filed by the State Bank of India through its Stressed Assets Management Branch, which ought to have been filed by the State Bank of India, Commercial Branch. Furthermore, no authorization letter has been given by the State Bank of India to and in favour of Stressed Management Branch to institute the proceedings.

12. With regard to the contentions put forth by the counsel for the respondent, the learned counsel for the petitioner submitted that from record, it is clear that the respondent has admitted the amount in question and defaulted on several occasions and plea put forth by the respondent is nothing but a moonshine defence.

13. The Petitioner has also filed rejoinder and replied each and every averments made in the counter by the respondent.

14. While submitting arguments the learned counsel for Corporate Debtor pointed out that there are discrepancies i.e in form-1 EPC Facility (A/c No.10482651992) is shown and in rejoinder it is mentioned that this account number is for Term loan, likewise the limit of sanction and statement of account differs from form-1 and rejoinder as per the documents filed in support of the claim.

15. As per the submission of the counsel for the petitioner, the Petitioner has complied with all the requirements as stipulated under the provisions of the IB Code, 2016 and the rules formed thereunder.

16. After hearing submissions of the counsel for the petitioner and respondent and having perused the record, this Adjudicating authority is satisfied that the petitioner has proved by placing overwhelming evidence that default has occurred which the Corporate Debtor was responsible to pay. In relation to the technical laches as pointed out by

the counsel for respondent, it is pertinent to mention that the petitioner has established clearly that the amount in default is genuine and is supported by the documentary evidence placed by them. This Adjudicating Authority is also satisfied with the submission stated in the rejoinder. Therefore, I am of the opinion that the said technical objection is not a valid ground of rejection of the instant petition. In the circumstances, I am inclined to admit the instant application.

17. Therefore, the instant petition is admitted and I order the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

18. I appoint Shri C.V. Madhusudhanan as Interim Resolution Professional (IRP) proposed by the Financial Creditor. There is no disciplinary proceedings pending against the IRP and his name is reflected in IBBI website. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I &B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

19. I declare the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. I order to prohibit 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 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 (54 of 2002);*
- (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.*

20. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

21. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016. Accordingly, the application is admitted.
22. The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.
23. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
24. The address details of the IRP are as follows: -

Shri C.V. Madhusudhanan
Regn. No: (IBBI/IPA-IP/2016-2017/1059)
1/4th Rangas, 4th Main Road, R A Puram, Chennai- 28
Email: madhu@ksrandco.in
Contact No.: 9442162014


K. ANANTHA PADMANABHA SWAMY
Member (J)