

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

CP/608/ (IB)/CB/2017

Under Section 7 of the IBC, 2016

In the matter of

M/S. ICICI BANK LIMITED

V/s

M/S. RATHNA STORES PRIVATE LIMITED

Order delivered on: 03.11.2017

For the Petitioner/OC : Shri. Shiva Kumar, Advocate

For the Respondent/CD: Shri. Sanjay Kumar, Advocate

Shri. R. Sreedhar, Advocate

Shri. E. Raja Balaj, Advocate

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

ORDER

Under consideration is a Company petition filed by M/s. ICICI Bank Limited (in short Petitioner/Financial Creditor) against M/s. Rathna Stores 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 Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, IB Rules 2016).

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

3. The petitioner/FC is Bank having its registered office at ICICI Bank Tower, Near Chakil Circle, Old Padra Road, Vadodara, Gujarat – 390 007 and Respondent/CD is a private Company limited by shares having its registered office at New No. 79, Usman Road, T. Nagar, Chennai – 600 017.

4. The learned Counsel for the Applicant submitted that the respondent has availed various loans from the Applicant and on default of payment, the Applicant declared the loan as NPA and issued notice to the Respondent under section 13(2) of SARFAESI Act, 2002 on 15.07.2014, to one Mr. S. Ganesh who had mortgaged his personal property to secure the facilities availed by the Respondent. Subsequently the Respondent made a part payment of Rs 91 lakhs in various tranches. Since the Respondent failed to pay the balance amount, the Applicant proceeded with the auction sale of the personal property of the Mr. Ganesh and sold the same for Rs. 9,00,90,000/- on 28.09.2015. Thereafter, the Applicant instituted recovery proceedings before DRT-II in OA. No. 653/2015 and in the said proceedings the Respondent and others were set ex-parte. The DRT made final orders on 31.05.2016 against the Respondents directing them to pay Rs. 11,72,05,503 together with the interest of 12% per annum. Taking into consideration of the amounts received from the auction sale, the DRT made a final order and issued a Recovery Certificate and the Recovery Officer issued a demand notice for a total sum of Rs. 3,07,97,285.58,(DRC No. 358/2015 dated 30.06.2016 in OA No. 653/2015), however, the same has not been deposited by the Respondent.

5. The learned Counsel for the Applicant has further submitted that the Applicant has filed a winding up petition before the High Court, Madras and on the constitution of this Tribunal, the same was transferred to this Tribunal and it was pending in TCP No. 48/IB/2017. The said petition was abated by this Tribunal vide order dated 31.07.2017 as per notification No. GSR 732(E) dated

29.06.2017 and therefore the fresh petition under I& B Code, 2016 was filed before this Tribunal. The Recovery Certificate issued by the DRT is a decree and when the Corporate Debtor was unable to pay its financial debt which became due and payable to the Applicant, then the petitioner, left with no other option except approaching this Adjudicating Authority claiming the payment of Rs. 3,07,97,285.58/- including the interest against the corporate debtor in the capacity of a Financial Creditor under the provisions of the IB Code, 2016. The learned Counsel submitted that the Corporate Debtor has become commercially insolvent due to its inability to pay its debts and thus prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.

6. The learned Counsel for the Respondent filed a counter Statement and vehemently opposed the contentions raised by Counsel for the applicant and submitted that the instant petition is not maintainable in law and facts for the reason that the petition is filed by stating that this Tribunal has given liberty to the Applicant when the TCP No. 48/IB/2017 was abated whereas as no such liberty has been given to the Applicant by the Tribunal. He has further submitted that the Applicant has initiated recovery proceedings before the DRT and sold the mortgaged property and appropriated the amount towards the loans. The property is also under the mortgage of UCO Bank and the Income Tax Authorities have also attached the same property. The Applicant failed to array various parties in this application as the Respondent is contesting various cases relating to settlement of debts in DRT, DRAT and High Court. The learned Counsel submitted that if any adverse order is passed against the Respondent it would greatly prejudice the other stakeholders and in view of the pending proceedings the Applicant cannot enforce the debt under IB Code.

7. Heard. Perused the pleadings and documents submitted by both the parties.

8. With regard to the submission of the learned Counsel for the Respondent that this Tribunal has not given any liberty to file fresh petition, I wish to state that such liberty is not to be given by this Tribunal as the same is given in the notification No. GSR 732(E) dated 29.06.2017 itself and therefore the said submission of the learned Counsel for the Respondent is unsustainable. It is on record that the Applicant initiated recovery proceedings before the DRT and sold the mortgaged property and appropriated the sale amount towards the loans. The Applicant has further obtained a Recovery Certificate from DRT for Rs. 3,07,97,285.58/-, the balance amount and according to the Applicant it is a decree made by the DRT and the Applicant is enforcing the same in the present proceedings before this Tribunal. It is also on record that the DRT has issued a Recovery Certificate and according to the Respondent the appeal is pending before DRAT. Besides, there are cases before High Court and other parties are also involved in the litigations in the matter. However, the Respondent has not placed any documentary proof to that effect. Therefore, in my considered view, since the petition has been filed on the basis of Recovery Certificate issued by the DRT, admitting the petition under I & B Code, 2016 is proper and in view of the above I am inclined to admit the petition.

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

10. I appoint Mr. V. Nagarajan, (Registration No. IBBI/IPA-02/IP-N/00055//2016-2017/10107, having office at New No. 29, Kavarai Street, West Mambalam, Chennai – 600 033 (E-Mail:csnagarajan@gmail.com) as Interim Resolution Professional (IRP) proposed by the Applicant. 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 of the copy of this order is received and call for submissions of claim in the manner as prescribed.

11. I declare the moratorium which shall have effect from the date of this order till the completion of Corporate Insolvency Resolution Process for the purpose referred to in Section 14 of the I & B Code, 2016. I order to prohibit all of the following, namely:

- (i) 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.
- (ii) Transferring, encumbering, alienating or disposing of by the corporate debtors any of its assets or any legal right or beneficial interest therein;
- (iii) 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)
- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

12. 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.

13. 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. Accordingly, the application is admitted.

14. 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 the I & B Code, 2016.

15. The Registry is also directed to communicate this order to the Financial Creditor and the Corporate Debtor.

16. With the above directions the application is disposed of.



K. Anantha Padmanabha Swamy

Member (Judicial)