

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

CP/604/ (IB)/CB/2017

Under Section 7 of the IBC, 2016

In the matter of

ICICI Bank Limited

V/s

M/s. NSR Elkemet Private Limited

Order delivered on: 02.11.2017

For the Petitioners/FC: Ramalingam & Associates
Mr. E.Omprakash, Sr.Advocate

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

ORDER

1. Under Consideration is a Company Petition filed by ICICI Bank Limited (in short, '**Petitioner/Financial Creditor**') against M/s. NSR Elkemet 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 repay the loan.
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 is ICICI Bank Limited, a Banking company whereas the Respondent/Corporate Debtor is a Company registered under the Companies Act, 1956 and engaged in the business of manufacture buy, sell, import, deal in, assemble , distribute, fit, repair, convert overhaul, alter, maintain and improve all types of components, devices, equipments and appliances etc.
4. Shri E.Omprakash, the learned counsel appearing on behalf of the petitioner/FC submitted that the Corporate Debtor availed credit facilities in the nature of fund based and non-fund limits aggregating total Rs. 120 Million (i.e Rs. 12.0 Crores) consisting of fund based limits in the nature of cash credit facilities Rs. 10.1 Million (i.e 10.1 crores), a Rupee Term Loan of Rs. 6.5 million (i.e Rs. 65 lakhs), and non-fund based limits in the nature of Letter of Credit (LC) of Rs. 10 million (i.e Rs. 1 crore) and Bank Guarantee (BG) of Rs. 2.5 million (i.e Rs. 25 lakhs) with full sub-limits of counter Bank Guarantees, sanctioned in and by way of a credit armament letter dated on 14.12.2013. The Financial Creditor claimed amount from corporate debtor of Rs. 13,40,00,355.91 as on 04.09.2017 together with further interest and charges as applicable.



5. It is further submitted that the Financial Creditor had given said loan to Corporate Debtor by way of security held by way of Hypothecation and Mortgage of entire current assets of corporate debtor, the mortgaged industrial properties located at Vengailvasal Village, Medavakkam, Membakkam Road valued at Rs. 15.78 crores and commercial property located at No.41, Mowbrays Road, Alwarpet, Chennai-18 valued at Rs. 2.75 Crores. The aforesaid collateral securities are cross collateralized to facility availed from Financial Creditor by M/s. N.S Rama Rao Body Works, a Partnership firm.
6. Further submitted that the applicant/FC has filed separate Original Applications before DRT-1 Chennai as per O.A. No. 243 of 2016 for seeking recovery of Rs. 11,40,62, 734.36/- as on 07.09.2016 with further interest at the rate 13.10% p.a. The Financial Creditor has issued recall notice dated 01.07.2016 to Corporate Debtor and Guarantee Invocation Recall Notice to corporate debtor on 05.07.2016 and the Demand Notice issued on 11.07.2016 under section 13(2) of the SARFAESI Act, 2002 by the Financial Creditor to Mortgagors and also issued Statutory Notice Dated 08.08.2016 under the Companies Act, by Financial Creditor to the Corporate Debtor, reply has been

u

sent by the Corporate Debtor to Financial Creditor on 31.08.2016, the Financial Creditor has sent rejoinder to the Corporate Debtor on 13.09.2016.

7. It is further submitted that the petitioner, after making several notices to Corporate Debtor for settling the loan amount and having waited for a long period of time for legitimate loan amount, has filed the application under section 7 of the IBC, 2016 r/w rule 4 before this Tribunal and sent notice to Corporate Debtor on 11.10.2017 and also served a copy of this application with documents as bound books on 07.09.2017, which has been duly acknowledged. An affidavit of service has been filed to this effect. The Financial Creditor has prayed for initiating Corporate Insolvency Resolution Process against the Respondent/CD.
8. Before proceeding with the matter, it is necessary to mention herein that the Respondent was set ex-parte vide order dated 02.11.2017 due to non-appearance on several occasions. The Respondent neither gave a reply to the Notice dated 16.10.2017, nor filed any counter resisting the claim. Therefore there are no submissions nor any pleadings on behalf the Respondent/CD by appearing before this Adjudicating Authority in spite of several



notices. The petitioner has also placed on record, proof of sending notices and its service by hand. The Petitioner has complied with all the requirements as stipulated under the provisions of the I&B Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process.

9. After hearing submissions of the counsel for the Petitioner/FC and having perused the record, this Adjudicating authority is satisfied that the Petitioner/FC has clearly made out his case by establishing that the Corporate Debtor has defaulted the repayment of loan on various occasions to the Petitioner/FC. Also, the petitioner has proved by placing overwhelming evidence viz. Invoices, Demand Notice, Statutory Notices, Financial Transactions and Bank Statements that default has occurred which the Corporate Debtor was responsible to pay. Therefore, I am of the opinion that the Petitioner/FC has established clearly that the loan amount in default committed by the corporate debtor is genuine and is supported by the documentary evidence placed before this Adjudicating authority. In the circumstances, having satisfied with the submissions put forth by the learned counsel for the Petitioner/FC, I am inclined to admit the instant petition.



10. 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.

11. I appoint Shri V. Mahesh 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 of the copy of this order is received, and call for submissions of claim in the manner as prescribed.

12. 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.*

13. 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.

14. 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.

ly

15. 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.
16. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.
17. The address details of the IRP are as follows: -

Mr. V. Mahesh

Regn No. IBBI/IPA-002/IP-N00307/2017-2018/10865

**39/19, Aspen Court, III Floor, RA Puram 6th Main Road,
RA Puram, Chennai-600028**

E-Mail: maheshvenki@vmacs.co.in

Mobile No. 044-24331082



K. ANANTHA PADMANABHA SWAMY
Member (J)

TJS