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IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

IBA/307/2019

Under Section 7 r/w rule 4 of the IBC, 2016

In the matter of M/s. Bhatia Coke and Energy Limited

State Bank of India

---Financial Creditor

V/s

M/s. Bhatia Coke and Energy Limited

---Corporate Debtor

Order delivered on: 22.05.2019

Coram:

B.S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : Mr. Manojkumar Mishra, Advocate
Mr. A.G. Sathyanarayana, Advocate

For the Corporate Debtor : Mr. Lakshmikumaran, Advocate
Mr. Sridharan, Advocate
Mr. Krithika Jaganathan, Advocate
Mr. A. Lawrence, Advocate
Mr.P.S. Raman Raghavan, Advocate

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order pronounced on: 22.05.2019

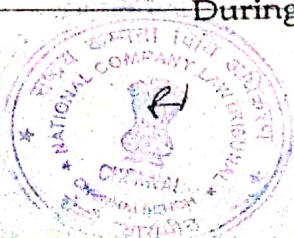
The Applicant 'State Bank of India' (in short, "Financial

Creditor") has furnished Form No. 1 under Rule 4 of the Insolvency

and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (Rules) in the capacity of "Financial Creditor" on 17.01.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (Code) against M/s. Bhatia Coke & Energy Limited ("Corporate Debtor") to initiate Corporate Insolvency Resolution Process (CIRP) on the ground that as on 31.12.2018, the Corporate Debtor has defaulted in making a total repayment of ₹125,89,60,431.52 (Rupees One Hundred and Twenty Five Crores Eighty Nine Lakhs Sixty Thousand Four Hundred and Thirty One and Fifty Two Paise). The date of default in repayment of the debt by the Corporate Debtor is mentioned as 11.08.2017.

3. The Corporate Debtor, a limited company, engaged in the business of trading of coal, coke oven manufacturing, coal washery and government tender, was incorporated on 13.06.2008 under the Companies Act, 1956 having its registered office at Ketnamallee village, Gummidipoondi, Thiruvallur District, Tamilnadu-601201.

~~During September 2009, in order to meet its business requirements~~



for setting up and operating the Plant, the Corporate Debtor approached the Financial Creditor bank for availing credit facilities.

4. On perusal of the record, it appears that since September 2009, the Corporate Debtor availed various credit facilities from State Bank of India and erstwhile State Bank of Mysore (e-SBM) as given below:

Facility	Amount (in crores)	Date of Disbursement
<u>State Bank of India</u>		
Term Loan-I	30.00	12.03.2010
Term Loan-II	73.00	18.02.2011
Corporate Loan	35.00	13.09.2013
Cash Credit	9.00	30.03.2011
erstwhile <u>State Bank of Mysore (e-SBM)</u>		
Cash Credit	5.00	28.03.2011
Term Loan-I	7.50	23.09.2009
Term Loan-II	30.00	21.02.2011

5. On the Inter se Agreement between State Bank of India and State Bank of Mysore dated 16.09.2009, the above loans were sanctioned to the Corporate Debtor in accordance with the terms and conditions of

Personal Guarantee/Corporate Guarantee Agreement and (Volume-II)

at page 253). The loans disbursed by the Financial Creditor is primarily secured by land and building, plant and machinery, equitable mortgage of 77 different properties on *pari passu* basis, hypothecation of current assets of the company and personal guarantee/guarantors for the Corporate Debtor.

6. To support their claim, the Creditor Banks have filed dates and events disclosing existence of debt and occurrence of default, which are as follows:

S.No.	DATES	EVENTS
1.	29.07.2009	Loan Sanction letter by State Bank of India
2.	03.09.2009	Loan Sanction letter by State Bank of Mysore
3.	16.09.2009	Deed of Guarantee Agreement and Deed of Hypothecation (Vol.2, P.230)
4.	17.03.2011	Joint Working Consortium Agreement for old and new working capital facilities between Corporate Debtor and Financial Creditors namely, State Bank of India, State Bank of Mysore, Punjab National Bank and SBICAP Trustee Company Limited(Vol.2, P.392)
5.	27.07.2013	Agreement of Loan, Security Trustee Agreement and Deed of Hypothecation (Vol.1, P.77), Entry for date of creation of mortgage and declaration by various persons as a confirmation for extension of equitable mortgage (Vol.4, P.709)
6.	30.07.2013	Memorandum of deposit of title deed by Corporate

7.	12.10.2013	Debtor (Vol.6, P.1067) Copy of resolution of Corporate Debtor (Vol.6, P.1109)
8.	25.08.2016	Revival Letter (Vol.6, P.1105) Gazette of State Bank of India regarding Authorization dated 02.05.1987 (Vol.6, P.1135)
9.	11.08.2017	Recall Notice (Vol.6, P.1138)
10.	30.07.2018	Valuation Report of Plant, Machineries (185 crores), Land & Building (32 crores) of the Corporate Debtor (Vol.6, P.1140 to 1187)
11.	25.10.2018	Computation of outstanding debts (Vol.6, P.1188 to Vol.9 P.1886)

7. Looking at the dates and events as well as the annexure to the application, it is apparent that the Financial Creditor has furnished material disclosing the Creditor Banks having provided credit facilities as mentioned above but the Corporate Debtor defaulted in repaying the same.

8. The learned counsel for the Financial Creditor submitted that as per Joint Working Consortium Agreement dated 17.03.2011, the Corporate Debtor availed Joint Working Loan of ₹97 crores (₹51 crores from State Bank of India; ₹31 crores from State Bank of Mysore and ₹15 crores from Punjab National Bank). It is further submitted that a revival letter dated 25th August 2016 was executed

by the Corporate Debtor and all Guarantors involved for the continuation of acceptance of the conditions given in the loan facility.

The word appearing therein is:

"I/We acknowledge for the purpose of section 18 of the Limitation Act, 1963 and any like limitation law in order to preclude any question of Limitation Law, that I/we am/are liable to you for the payment of all outstanding with interest, cost, charges and expenses and other monies due and payable by me/us to you in respect of the said credit facilities granted and/or to be granted under the said documents or in any other manner and which said documents shall remain in full force with relatives securities, agreement and obligations".

With the above wordings, the Corporate Debtor, all Corporate Guarantors and individual guarantors bound themselves for their liability against the outstanding dues in favour of the Financial Creditors. The account of the corporate debtor became "Non Performing Asset" (NPA) from 11.08.2017.

8.1 The learned counsel for Corporate Debtor submitted that the Corporate Debtor which had earlier enjoyed 100% interchangeability of Bank Guarantees with Foreign Letter of Credits was restricted to



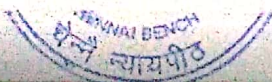
50% without any due warning or notice. On account of this sudden restriction, the working capitals proved inadequate for the Corporate Debtor to continue to effectively run the plant;

8.2 It is submitted that the Corporate Debtor in order to demonstrate its commitment to repay liabilities, remitted ₹6.87 crores. To give justification to this argument, the corporate debtor stated that they came forward with a Settlement Proposal vide letter dated 05.04.2019 offering upfront payment of 10% of principal outstanding i.e. Rs.10.60 crores and balance amount of ₹95.42 crores in 5 equal quarterly instalments of ₹19.084 crores payable on 31.07.2019, 31.10.2019, 31.01.2020, 30.04.2020 and 31.07.2020.

8.3 To fortify its argument, the Corporate Debtor relied upon the case in between Dharani Sugars and Chemicals Ltd. -vs- RBI 2019 SCC OnLine SC 460, in which the Hon'ble Supreme Court has quashed the RBI Circular dated 12.02.2018 which had mandated Banks to necessarily file Applications under the Act for recovery of stressed assets. The present proceeding has been initiated against the

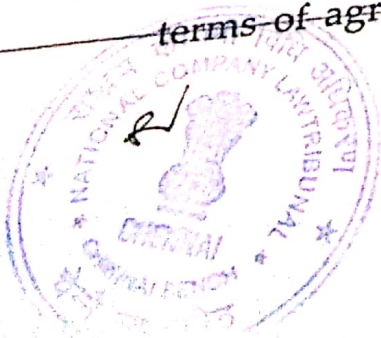
Corporate Debtor, being a power-generating company, in the aftermath of the above circular and hence has to be quashed as being *non est* as held by the Hon'ble Apex Court.

8.4 The Corporate Debtor counsel stated that they had received a copy of impugned application only on 02.04.2019. Aggrieved by the filing of the above application, a Writ Petition No.11082/2019 was filed in the Hon'ble High Court of Madras on 02.04.2019 praying for a Writ of Mandamus to forbear the Financial Creditor from proceeding with the impugned application pending consideration of the settlement proposal by the Corporate Debtor. In the Miscellaneous Petition No.52783/2019 filed before the Hon'ble High Court, Madras, on 15.04.2019, the Corporate Debtor argued that as per the terms specified in the Restructuring Packaging (at page 28), the Corporate Debtor is required to pay its Term Loan and Corporate Loan commencing from 01.01.2017 to 31.12.2024. The Restructuring Package is still in vogue because the Financial Creditor has not ~~revoked the restructuring package nor cancelled it as on date. The~~



Financial Creditor has filed the present application with undue haste, without considering any of the proposals for One Time Settlement mooted by the Corporate Debtor.

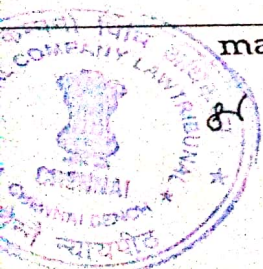
9. In the additional written submission filed by the Financial Creditor on 29.04.2019, it is stated that a copy of the application in nine volumes had been sent to the corporate debtor by Speed Post on 12.02.2019 which was returned with an endorsement 'refused' on 15.02.2019 and filed proof of track delivery report. It is contended that the Hon'ble High Court does not have jurisdiction in the application filed under Section 7 of the IBC, 2016. It is stated that as per clause 5.1(a) of Agreement of Loan for Corporate Term Loan Facility (Vol.1, page 91), *"in respect of all credit facilities granted by the bank to the borrower, the borrower shall pay to the bank forthwith on demand by the bank the balance or balances then outstanding and owing to the bank together with interest costs, charges and expenses due in respect thereof"*. Therefore, as per the terms of agreement, the Financial Creditor can ask the outstanding



dues at any time and Corporate Debtor is bound to repay entire sum forthwith. Due to the default committed by the Corporate Debtor in servicing their repayment or the guarantees, a recall notice has been issued to the Corporate Debtor on 11.08.2017 calling for a settlement of entire dues within a period of 15 days.

10. On looking at the submissions of either side, it has been proved that the Financial Creditors have not accepted the OTS proposal offered by the Corporate Debtor. With regard to the claim that they have filed a Writ Petition No.11082/2019 and the Miscellaneous Petition No.52783/2019 before the Hon'ble High Court, Madras on 02.04.2019 and 15.04.2019 respectively, the Corporate Debtor has not mentioned that a stay order has not been granted by the Hon'ble High Court. The Orders of the Hon'ble Apex Court will specifically apply only to those companies against whom insolvency proceedings have been initiated based on RBI Circular.

11. In view of the reasons aforementioned and on perusal of the material furnished by the Financial Creditor, this Bench is of the view



that the Corporate Debtor has defaulted in repaying outstanding debt of ₹125,89,60,431.52 (Rupees One Hundred and Twenty Five Crores Eighty Nine Lakhs Sixty Thousand Four Hundred and Thirty One and Fifty Two Paise). The defense of Corporate Debtor that they had given a proposal for OTS is not tenable since the Financial Creditor has rejected the OTS proposal. This Bench hereby holds that it is a fit case for admission and orders commencement of Corporate Insolvency Resolution Process which shall ordinarily get completed within 180 days, reckoning from the day this order is passed.

12. Since the Financial Creditor has filed consent letter given by the Interim Resolution Professional in Form-2, this Bench hereby appoints Mr. Motappa Thimmaraya Swamy as Interim Resolution Professional and 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.

- I. That Moratorium is hereby declared prohibiting all of the following actions, 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 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.

- II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints Mr. Motappa Thimmaraya Swamy, having Registration Number : IBBI/PA-003/IP-N00091/2017-2018/10891, No.228, 5th Main, 5th Cross, Shivkrupa, K.G. Nagar, Bengaluru-560019, E-mail: swamypotappa@gmail.com, Mobile: 9483069944 as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.



13. Accordingly, this Petition is admitted.

14. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.


-SD-
(S. VIJAYARAGHAVAN)
MEMBER (Technical)

KNP/TJS

-SD-
(B. S.V. PRAKASH KUMAR)
MEMBER (Judicial)



Certified to be True Copy


22/10/15
N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
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