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NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

(IB)-1650(ND)/2018

In the matter of

Corporation Bank
Through Branch Manager,
Karol Bagh Branch,
2223, Hardhiyan Singh Road,
Karol Bagh, Delhi-110005

.....Petitioner

V/s

M/s. Exclusive Fibres Ltd.
31/3203, Beadonpura,
Karol Bagh, New Delhi-110005

.....Respondent

SECTION: 7 of IBC, 2016

Order delivered on 28.03.2019

COARM:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)
DR. V.K. SUBBURAJ, HON'BLE MEMBER (T)

Present:

For the Petitioner: Mr. Alok Kumar, Ms. Somya Yadava &
Ms. Snighda Singh Advocates

For the Respondent: Ms. Varsha Banerjee &
Mr. Kunal Godhwani Advocates

(IB)-1650(ND)/2018
Corporation Bank Vs. M/s. Exclusive Fibres Ltd.



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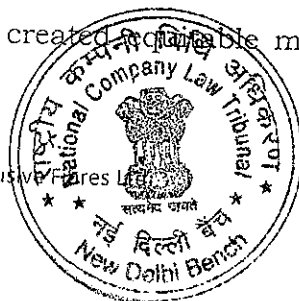
10/04/19

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

This petition has been filed by Corporation Bank as the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 (herein after referred to as the "Code"), praying for initiation of the Corporate Insolvency Resolution of the Respondent/Corporate Debtor for its inability to liquidate its debt. The Financial Creditor, being a bank, had extended financial assistance to the Corporate Debtor.

2. As per averments, the Corporate Debtor is engaged in the business of manufacturing Carpets and Rugs and had maintained an account with the petitioner Bank. In or around October, 2012, the Corporate Debtor approached the Financial Creditor for grant of credit facilities for setting up a manufacturing plant. The Corporate Debtor was initially granted credit facilities for Rs. 25 crores on 16.10.2012, with a sub-limit of Rs. 10 crores for a One Time Letter of Credit Facility under a Term Loan Agreement dated 16.10.2012. Various financial limits were availed by the Corporate Debtor by way of Term Loans, Vehicle loans and other Export credit limits. These limits were renewed from time to time. The total exposure of the applicant bank was enhanced to the tune of Rs. 51.88 crores which were fully availed of by the Corporate Debtor. To avail the said loans, the Corporate Debtor executed and delivered various documents and also created a chargeable mortgage over their immovable



property. It is submitted that the outstanding amount to be paid by the respondent as on 30.10.2018 amounted to over Rs. 41.2 crores which has been duly, acknowledged and confirmed by the Corporate Debtor. It is submitted by the Financial Creditor that the Corporate Debtor failed to adhere to the terms of availment or the repayment schedule. Despite repeated, requests and reminders, the respondents failed to regularise their loans on account of which the loan accounts were classified as a Non-Performing Asset on 15.01.2018. A notice dated 27.04.2018 under Section 13(2) of SARFAESI Act was sent to the Corporate Debtor. Despite that the same the Corporate Debtor has not made any effort to liquidate or reduce the liability. Failure to liquidate the outstanding liability has culminated in filing the present petition under Section 7 of the Insolvency & Bankruptcy Code, 2016.

3. In the reply filed by the Respondent/Corporate Debtor, they seek to resist the prayer on grounds that the Financial Creditor has imposed an exorbitant rate of interest over and above base rate/MCLR which has escalated the liability to repay, making the business highly unsustainable. It is submitted by the Id. Counsel for the Corporate Debtor that failure to adhere to normal rates as applicable to MSMEs expedited the process of being declared an NPA. It is also submitted that the said proceedings are pre-mature as the loans have not been recalled.

4. To rebut the aforesaid statement, Ld. Counsel for the Financial Creditors has placed reliance on the notice under Section 13(2) for recall



of the loan amount. It is also submitted that the interest applicable was in terms of their agreement, agreeing to pay interest at rates over and above the base rate of the RBI.

5. In view of the facts and circumstances of the case, and the acknowledgement of debt and considering the inability of the Corporate Debtor to liquidate the outstanding liability towards the financial assistance availed, this Bench is of the opinion that the Petitioner/Financial Creditor is entitled to the prayer made herein.

6. Accordingly, the petition is Admitted. A moratorium in terms of Section 14 of Code comes into effect forthwith, staying:

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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;



(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.

Further,

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator. (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

"Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

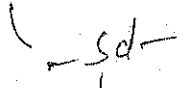
7. The Financial Creditor has proposed the name of Mr. Akash Singhal, as the IRP in this case. His particulars are: Registration No. IBBI/IPA-001/IP-P00137/2017-18/10279, address: G-8&9, Hans

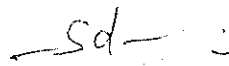


Bhawan, 1, Bahadur Shah Zafar Marg, ITO, New Delhi- 110002, email id: akash@kijco.net. Consent and certificate of eligibility of Mr. Akash Singhal are on record. We therefore confirm him as the IRP in this case. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21. The IRP shall file his report within 30 days as per statutory requirements.

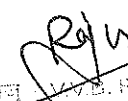
8. Copy of the order be communicated to both the parties as well as to the IRP.

9. To come up on 13th May, 2019 for further consideration.


(V.K. Subburaj)
Member (T)


(Ina Malhotra)
Member (J)




व.वि.बं. राजु V.V.B. RAJU
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