

(2021) 01 NCLT CK 0024

In the National Company Law Appellate Tribunal, Principal Bench, New Delhi

Case No : IB-2322/(ND) Of 2019

Kotak Mahindra Bank Ltd.

APPELLANT

Vs

M/S Shobha Cards Pvt. Ltd.

RESPONDENT

Date of Decision : 18-01-2021

Acts Referred:

Insolvency And Bankruptcy Board Of India (Insolvency Resolution Process For Corporate Person) Regulations, 2016 — Regulation 6(1)
Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 9(1)
Insolvency And Bankruptcy Code, 2016 — Section 7, 7(3)(a), 7(3)(b), 7(5)(a), 13(2), 14, 14(1)(a), 14(1)(b), 14(1)(c), 14(1)(d), 14(3)(b), 15, 17, 18, 19, 20, 21
Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13(2)

Citation : (2021) 01 NCLT CK 0024

Hon'ble Judges : P.S.N. Prasad, J;Dr. V.K. Subburaj, Member (Technical)

Bench : Division Bench

Advocate : Rajiv R. Raj, Mahesh Sharma, Ajay Garg

Judgement

1. This is an application filed by Kotak Mahindra Bank Limited to initiate corporate insolvency resolution process ("CIRP") against M/s Shobha Cards

Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an

amount of Rs. 4,08,65,305.39/- (Four Crore Eight Lakhs SixtyFive Thousand Three Hundred five) paid to the Applicant. The details of transactions

leading to the filing of this application as averred by the Applicant are as follows:

a. That the applicant Kotak Mahindra Bank (earlier ING Vysya Bank) sanctioned various facilities on 01.10.2014 to the Respondent which the

applicant submits were extended from time to time and last was modified on 09.05.2019

b. The applicant states that the facility sanctioned and availed by the Respondent initially were cash credit of Rs. 150.00 Lakhs and WTCL of Rs.

850.00. Lakhs Hence, the Total exposure was of Rs. 1000.00 Lakhs.

c. That the financial facilities were renewed and modified from time to time on 15.02.2016, 04.04.2017 and lastly on 09.05.2018.

d. The applicant submits that the Respondent was irregular in making repayment of loan and in the month of June 2018 the Respondent account was declared as NPA in accordance with RBI guidelines.

e. That the applicant bank recalled the loan and invoked the guarantees and subsequently on 04.02.2019 the bank issued notice under section 13(2) of SAREFAESI Act, 2002 to the borrowers, guarantors and mortgagors. That, no payment has been made by the Respondent to the applicant bank after the default which occurred in June, 2018.

f. The applicant bank has filed Master fund-based facility agreement, Deed of Hypothecation, Deed of Guarantee and Loan Renewal letters made in favor of the respondent, along with the copies of entries for the period from 30.06.2016 to 31.07.2019 and copy of statement of accounts.

2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:

i. The Respondent submits that the present application filed under section 7 of IBC, 2016 is not maintainable as the application is incomplete. It was further submitted in the reply that the present application does not comply with the requirements of section 7(3)(a) which reads as: (a) record of the default recorded with the Information utility or such other record or evidence of default as may be specified, and IU (National e-Governance Services Limited) has been created and is working whereas the respondent alleges that the applicant has failed to comply with the necessary requirements of IBC, 2016.

ii. The Respondent in its reply further submits that the applicant bank never complied with the directions issued by the Reserve Bank of India in relation to submission of financial information to Information utilities.

iii. The Respondent submits that the present application is accompanied by multiple photocopies of documents which as alleged are unclear, blank unsigned and incomplete.

iv. Further, the respondent in its reply states that the application is devoid of execution of the supporting affidavits, absence of proper indexing etc. that

the written consent of the proposed IRP is not in accordance with the prescribed Form-2 as specified in the code. The respondent submits that the

name of proposed IRP mentioned in the certificate of Registration issued by IBBI is different from the name mentioned in Form-2 and the eligibility

certificate signed by the proposed IRP.

v. The Respondent submits that he has transferred the amount through RTGS two times on 05.09.2018 and two times on 17.09.2018 and through

these transfers the Respondent paid the total amount of Rs. 16,59,999/-, but the account was declared NPA by the applicant.

vi. That the Respondent transferred through RTGS on 31.08.2018 of Rs. 16,00,059, so that the account of the Respondent could not be declared as

NPA. The respondent further alleges that the applicant bank intentionally entered that transaction in their statement on 05.09.2018 so that account can

be easily declared as NPA.

vii. The Respondent submits that due to cost cutting measures taken by its management, the number of employees has been reduced in the last three

years, whereas its financial revival is on cards.

3. The Applicant has filed written submissions in which he has reiterated the certain points raised by him in the petition and they are as follows:

i. The applicant has submitted the consent term agreement entered by both the parties vide dated 11.11.2019 in the Debt Recovery Tribunal, New

Delhi wherein, the respondent states that the Respondent approached the applicant bank for certain concession, remission and waivers in the entire

outstanding and the applicant has agreed to their request for One Time Settlement and accordingly a sum of Rs. 3,00,00,000/- (Three crore rupees

only) was agreed between both the parties as settlement amount.

4. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the

default on part of the Respondent for the Loan amount of Rs. 4,08,65,305.39/- (Four Crore Eight Lakhs Sixty-Five Thousand Three Hundred five).

5. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP Under Section 7 the applicant is

required to establish that there is a financial debt and that a default has been

committed in respect of that financial debt. That while dealing with an application under section 7 the Adjudicating Authority is not required to consider the question of dispute between the parties as long as the 'debt' and 'default' is proved.

6. The Corporate Debtor in his reply to the present petition has submitted that the present application is not in compliance with requirements of section

7(3)(a) of the IBC, 2016. This contention of the Corporate Debtor does not deserve any merit consideration as the NCLT New Delhi vide circular

No. 25/02/2020-NCLT, dated 07.09.2020 has made it clear that default record for the Information Utility is not mandatory. Another contention raised

is mismatch of name of IRP as indicated in application vis-à-vis in certificate issued by IBBI. On a keen examination in the application the name is

indicated in short form i.e., S.N. Anjum whereas, in the IBBI certificate full name as 'Shaikh Nafis Anjum' is reflected.

7. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the

Financial Creditor's claim that the Corporate Debtor has defaulted on repayment of loan amount.

8. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of

the documents placed on record to substantiate the claim, this Tribunal admits this petition and initiates CIRP on the Corporate Debtor with immediate effect.

9. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the

applicant has proposed the name of Mr. S.N. Anjum, for appointment as Interim Resolution Professional having registration number IBBI / IPA-003 /

IP-N00211/ 2018-19 / 12363, with email - id sn.anjum@aaainsolvency.com. Mr. S.N. Anjum has agreed to accept the appointment as the interim

resolution professional and has signed a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating

Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy

Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Rajiv Bajaj as per the requirement of the IBBI

Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

10. It is thus seen that the requirement of sub-section 5 (a) of Section 7 of the code stands satisfied as default has occurred, the present application

filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

11. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication

as to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the credit

facilities and has committed default in repayment of the outstanding loan amount.

12. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding

financial debt from the corporate debtor and that there has been default in payment of the financial debt.

13. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

14. Mr. S.N. Anjum, having registration number IBBI / IPA-003 / IP-N00211/ 2018-19 / 12363 with email id sn.anjum@aainsolvency.com is

appointed as an Interim Resolution Professional.

15. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately

(3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of

the Insolvency & Bankruptcy Code, 2016.

16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the

provisions of Section 14 (1) (a), (b), (c) &(d) of the Code. Thus, the following prohibitions are imposed:

(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.

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply

of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the

moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the

provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and

transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further

made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the

Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution

Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the

ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make

appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to

protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all

his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

19. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and

the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.