
(2020) 05 NCLT CK 0036

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

Case No : Interlocutory Application No. Of 2020 In CP No. 547(IB) Of 2020

State Bank Of India

APPELLANT

Vs

Aditya Fabrication Private Limited

RESPONDENT

Date of Decision : 15-05-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 13, 14(1), 31(1), 33, 60(2)

Citation : (2020) 05 NCLT CK 0036

Hon'ble Judges : B.S.V. Prakash Kumar, J

Bench : Single Bench

Judgement

B.S.V. Prakash Kumar, J

It is a Company Application filed u/s 7 of the Insolvency & Bankruptcy Code, 2016 (the Code) by State Bank of India (referred as "Financial Creditor") for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Aditya Fabrication Private Limited (referred as "Corporate Debtor/Guarantor") on the ground that this Corporate Debtor/Guarantor has failed to discharge the duty of Guarantor in respect to the loan of Rs. 104 Crores sanctioned to M/s. Aditya Vidyut Appliances Limited (Borrower) and CIRP having already been initiated against the Principal Borrower (M/s. Aditya Vidyut Appliances Limited) by filing CP 193/2019 by an Operational Creditor, in view thereof, for the principal the borrower defaulted in repaying total outstanding of Rs. 72,63,63,218.08 Crores as on 31.08.2019, this Financial Creditor by invocation of guarantee, sought for initiation of CIRP against the Corporate Debtor in lieu of Section 60(2) of the Code.

2. As I have gone through this Company Application, it is evident that the Borrower Company (Aditya Vidyut Appliances Limited) along with the Corporate Debtor/Guarantor executed Working Capital Consortium Agreement with this financial creditor and other lenders on 07.08.2013, thereafter executed several supplemental agreements. This Corporate Debtor specifically executed the Deed

of Guarantee in favour of Consortium arrangement and Corporate Guarantee on 07.08.2013, 08.08.2013, 27.09.2014, 17.02.2016 and 18.04.2017, and also on 17.02.2018, apart from the above deeds, this Corporate Debtor executed several deeds to stand as guarantor to the overall limits extended.

3. In pursuance of the request of the Principal Borrower and the Corporate Debtor, the Financial Creditor sanctioned fund/Non-fund based limits to Borrower Company which are as follows:-

? Rs. 19,50,00,00 towards Fund based working Capital (Demand Cash Credit)

? Rs. 26,00,00,00 towards Non Fund Based Working Capital -Letter of Credit

? Rs. 58,50,00,000 towards Non Fund Based Working Capital -Bank Guarantee

4. The entire outstanding was secured by way of the Joint Deed of Hypothecation and Supplemental Joint Deed of Hypothecation, registered mortgage, charge over the property of the Corporate Debtor, which are as follows:

1. The Deed of Registered Mortgage dated 29.08.2013 at Serial No. BVD1/7457/2013 executed between the Borrower Company, Corporate Debtor and the Consortium Banks SBI, TJSB Sahakari Bbak Ltd and Bank of India; and

2. The Deed of extension of charge and the mortgage of additional Security dated 09.04.2014 at serial No BVD1-3070-2014 executed between the Borrower Company and Corporate Debtor and consortium Arrangement; and

3. The Deed of extension of charge dated 18.09.2014 at serial No BVD2-4738-2014 executed between the Borrower Company and Corporate Debtor and SBI and other Lenders TJSB and BOI; and

4. The Deed of extension of charge dated 05.07.2016 at serial No BVD2-4354-2016 executed under consortium arrangement and the deed of Extension of charge dated 31.07.2018 at BVD1-60369-2018 executed under consortium Arrangement; and

5. The deed of Registered Mortgage dated 08.08.2012 at Serial No. BVD1-06570-2012 executed between the Corporate Debtor, the Borrower Company and the Petitioner Bank and other lender namely TJSB; and

6. The deed of General Indemnity Agreement dated 19.09.2015 and Agreement cum Indemnity dated 24.08.2018 along with Promissory Notes.

The Schedule of the property provided under security is mentioned below:

"Free hold plots of land bearing S. No 168/6, 168/9 (2 parts) and 168/10 (together Adm about 8700 sq mtrs) and the plot of land bearing S. No. 168/13 (2 parts) and 168/4 (together measuring about 10800 sq mtrs) which is located at village Sonale, alongside Thane, Nasik Highway, Taluka Bhivandi, Dist.

5. As the Principal Borrower has failed in making payment to the Financial

Creditor, the account of the Principal Borrower was classified as Non-Performing Asset (NPA) on 30.09.2018, in the meanwhile, CIRP was already initiated against the Principal Borrower in CP 193/I&BP/2018 before Mumbai NCLT.

6. It has been mentioned that the balance outstanding as on 31.08.2019 towards cash Credit facility and Bank Guarantee Account is as follows:

Outstanding for Cash Credit A/c 30182202926

Rs. 42,71,42,692.58

Interest receivable as 31.08.2019

Rs. 6,17,20,525.50

Unapplied Interest/Charges as 30.08.2019

N.A

Total

Rs. 48,88,63,218.08

Bank Guarantee A/c 30171846501

Rs. 23,75,00,000.00

Interest receivable as 31.08.2019

N.A

Unapplied Interest/Charges as 30.08.2019

N.A

Total

Rs. 23,75,00,000.00

7. Therefore, the total outstanding Rs. 72,63,63,218.08 Crores (Total Outstanding against the Corporate Debtor inclusive of unpaid interest as on 31.08.2019 with further interest 13.85% p.a. with monthly rest.

8. The petitioner counsel has submitted that since Hon'ble NCLT, Mumbai Bench has initiated CIRP against the Borrower Company (Aditya Vidyut Appliances Limited) in CP 193/I&BP/2019 vide order dated 11.09.2019, for this Corporate Debtor having failed to fulfil the obligation of making payment ought to have been made by it on the Principal Borrower behalf as agreed through Deeds of Guarantee, the petitioner has filed this application under section 60(2) of the Code to initiate CIRP against the Guarantor of the Principal Borrower before the same Bench where CIRP against the Principal Borrower is pending. To which, the Corporate Debtor/Guarantor has not raised objection, perhaps because the functioning of this guarantor and the functioning of this Principal Borrower are dependent upon each other.

9. For this Corporate Debtor having failed to discharge its liability on both Accounts, this Financial Creditor filed this application seeking initiation of CIRP against Corporate Debtor.

10. As against this petition, the Corporate Debtor Counsel having not disputed existence of debt and default against the Principal Borrower and failure of the Corporate Debtor discharging its obligation on behalf of the Principal Borrower, this Bench being satisfied that the Petitioner has proved existence of debt obligation and failure of discharging its obligation, I am of the view that this case is fit for admission whereby this Bench hereby admits this petition by appointing Mr. Kshitiz Gupta, as Interim Resolution Professional (IRP) looking at the consent given by the Insolvency Professional with directions as follows:

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 15.05.2020 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. Kshitiz Gupta, having Reg. No: [IBBI/ IPA-002/IP-N00721/2018-19/12140], Regd Office Flat No. C/104, Lotus CHSL,

Gundecha Valley Flowers, Thakur Village, Kandivali Est, Mumbai-400101 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.

11. 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.