

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP(IB)No.1880/NCLT/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

**Small Industries Development Bank of
India**

...Financial Creditor/ Petitioner
v/s

Swiss Ribbons Private Limited

...Corporate Debtor

Order Dated 16th July 2019

Coram: Hon'ble Member (Judicial) : Mr. V.P. Singh

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner : Adv. Kunal Kanungo, Smit H. Shah

For the Respondent: Adv. Nipun Singhvi

Per: V.P. Singh, Member (Judicial)

ORDER

1. This is a petition being CP 1880 (IB)/MB/2018 filed by **small Industries Development Bank of India**, Financial Creditor or Petitioner, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Swiss Ribbons Private Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**). The petition was filed on 5th January, 2018 before the Ld. NCLT, Ahmedabad Bench and eventually transferred to this Bench vide order of Hon'ble President, NCLT dated 17.05.2018.
2. The Petition is filed claiming a total default of ₹8,27,17,184/- (Rupees Eight Crores Twenty Seven Lakhs Seventeen Thousand One Hundred and Eighty Four only) as on 31.12.2017. The Petitioner is a financial institution and has provided financial assistance to the Corporate Debtor. The Corporate Debtor is a company registered under the Companies Act, 1956 and is engaged in the manufacturing and export of Laces, Ribbons, Trimmings, Tassels, Cords, Military Braids & Pilot Gallons, Zari Laces, Imitation Laces, Printed Ribbon, Embroidered Lace.

3. The Petitioner submits that under the request made by the Respondent; the Petitioner vide its Letter of Intent dated 04.02.2014, granted financial assistance of term loan of ₹6,30,00,000/- (Rupees Six Crores Thirty Lakhs Only) to the Corporate Debtor under the Secured Business Loan Scheme. The Corporate Debtor passed the board resolution at the meeting dated 03.03.2014 to avail the financial assistance from the Financial Creditor and accordingly, the Corporate Debtor entered into a Loan Agreement with the Petitioner on 05.03.2014.
4. The Corporate Debtor agreed to repay the Petitioner the said financial facility together with all interest, further interest and other charges on the outstanding amounts as per the Letter of Intent dated 04.02.2014.
5. That in pursuance of the financial assistance granted by the Petitioner, the Petitioner and the Corporate Debtor through its Director/ Promoter entered into, and executed the following deeds:
 - a) The deed of guarantee and personal guarantees, executed in favour of the Petitioner, dated 05.03.2014 of the following persons (i) Dineshkumar Bhagwandas Jariwala, (ii) Harish Bhagwandas Jariwala (iii) Jayvadan Bhagwandas Jariwala, (iv) Navinchandra Bhagwandas Jariwala (v) Mehul Navinchandra Jariwala, (vi) Ankur Navinchandra Jariwala (vi) Vishal Dineshchandra Jariwala and (viii) Sagarkumar Dineshchandra Jariwala;
 - b) Undertaking for non-disposal of the shareholding and non-withdrawal of unsecured assets dated 05.03.2014;
 - c) Declaration and Undertaking by Mr Sagarkumar Jariwala concerning Mortgage dated 05.03.2014. Declaration and undertaking dated 05.03.2014 in respect of litigation, statutory liabilities and various other obligations of the company and Miscellaneous undertaking of the Company that the shares of the company shall not be transferred;
 - d) Affidavit in respect of litigation, statutory liabilities and various other obligations by Mr Sagarkumar Jariwala;

- e) Affidavit and Registered Memorandum of Deposit of Title Deeds dated 05.03.2014.
6. The repayment of the said Term Loan as per the Letter of Intent dated 04.02.2014 was agreed to be repaid by the Borrower, i.e. the Corporate Debtor to the Petitioner in 78 months equal instalments after a moratorium of 6 (six) months from the date of the first disbursement of the loan as per the repayment schedule annexed to the letter of intent.
 7. It is submitted by the Petitioner that the Corporate Debtor has duly accepted the terms and conditions stated in the Letter of intent vide its Board resolution dated 03.03.2014. The board resolution above is annexed to the Petition.
 8. It is submitted by the Petitioner that the Corporate Debtor has admitted its liability to repay the loan amount by accepting and acknowledging the debt in terms of the Balance Confirmation Letter dated 07.01.2015 and acknowledgement of debt under section 18 of the Limitation Act, 1963 as on 30.06.2015. Copy of the Balance Confirmation Letter is annexed to the Petition.
 9. The Petitioner has further submitted that as the Corporate Debtor requested for the restructuring of the term loan, the Petitioner restructured the term loan by extending the terminal date vide letter dated 03.07.2015. Copy of the said letter is annexed to the Petition.
 10. The Corporate Debtor in its Board Resolution dated 04.07.2015 accepted and acknowledged the restructured Term Loan. The acceptance of the Restructured term loan was submitted upon a Stamp-Paper on 06.07.2015 to the Petitioner. Copy of the Communication of Acceptance on Stamp Paper dated 06.07.2015 is annexed to the Petition.
 11. The Petitioner submits that the Corporate Debtor did not honour the repayment schedule and due to its default in making the necessary payments, the Corporate Debtor's account has been classified as a Non-Performing Asset on 08.11.2015 as per the guidelines issued by the Reserve Bank of India.

12. The Petitioner issued a notice dated 05.02.2016 under section 13(2) of the Securitisation and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 calling upon the Respondent to pay the entire outstanding dues within 60 days from the date of the notice. Copy of the Notice dated 05.02.2016 is annexed to the Petition.
13. The Corporate Debtor vide letter dated 17.02.2016 filed Reply to the Notice dated 05.02.2016. The Petitioner issued a Rejoinder dated 26.02.2016 and rejected the objections of the Respondent. Copies of the Notice, Reply to notice and the Rejoinder to Notice to the Petition is also filed by the Financial creditor.
14. The Petitioner issued Possession Notice dated 12.04.2016 under section 13(4) of the SARFAESI, Act 2002. Copy of the Possession Notice dated 12.04.2016 is annexed to the Petition.
15. The Petitioner filed a Miscellaneous Application bearing M.A. No. 165/2016 before Chief Metropolitan Magistrate, Ahmedabad under section 14 of SARFAESI Act, 2002 seeking physical possession of the mortgaged property. The said application was decided by the CMM Court, allowing the Petitioner to take physical possession of the said property and order was passed in favour of the Petitioner on 30-01-2017. Copy of the Order dated 30.01.2017 is annexed to the Petition.
16. The Petitioner filed an Original Application bearing O.A. NO. 465/2016 under section 19 of the R.D.D.B Act, 1993 before the Debt Recovery Tribunal, Ahmedabad for the recovery of the ₹ 6,70,89,720/- against the Corporate Debtor and its Directors / Promoters those who had given their guarantees. The said Application is pending consideration, however the Ld. DRT has passed an ex-parte order dated 08.07.2016 granting an interim injunction restraining the Corporate Debtor and its Directors from alienating the secured assets and also as directed by the Ld. DRT, the Court commissioner also prepared a report. The Copies of O.A No.465/2016 filed by the Petitioner, Court Commissioner's Report, Copy of Commercial Credit Information Report of the Corporate Debtor issued by the Trans Union CIBIL are annexed to the Petition.

17. It is the contention of the Petitioner that Petitioner's claim is undisputed and that the Corporate Debtor has accepted and acknowledged its debt and liability under the Balance Confirmation Letter dated 07.01.2015, and the Balance Confirmation Letter dated 30.06.2015 and also under the Reply Letter dated 17.02.2016 to the Notice under section 13(2) of the SARFAESI Act, 2002.
18. The Ld. Advocate for the Corporate Debtor filed its objections to the Petition by way of the affidavit dated 03.03.2018 and contends that as the Petitioner has already preferred an original application bearing O.A No. 465/2016 before Ld. DRT, Ahmedabad under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the same is pending consideration. Therefore, the Petitioner cannot file this Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 as the same would amount to parallel proceedings and the same is barred by the law.
19. It is also the contention of the Corporate Debtor that the Special Civil Suit No.439/2017 is preferred by the Corporate Debtor against the Financial Creditor claiming damage of ₹25 crores before the Ld. Principal Senior Civil Judge, Surat before the filing of the present petition. The Corporate Debtor contends that since there is a pre-existing dispute between the parties, the Petition deserves to be dismissed.
20. It is further contended that there cannot be multiple proceedings in various forums for recovery of the amounts arising out of the same transaction.
21. We have heard the parties and perused the records.
22. The Petition is filed by Ms Sudha Padmanabhan, Deputy General Manager of the Petitioner-Bank, authorised vide its Letter of Authorisation dated 01.01.2018. The Petition is filed on 05.01.2018. The letter of Authorisation dated 01.01.2018 is annexed to the petition.
23. The Petitioner has issued the letter of intent dated 04.02.2014, sanctioning a loan of ₹6,30,00,000/- (Rupees Six Crores Thirty

Lakhs Only) to the Corporate Debtor. The Corporate Debtor passed a board resolution dated 03.03.2014 accepting the terms and conditions contained in the letter of intent. Under the Letter of Intent, the Petitioner and the Corporate Debtor entered into a Loan Agreement dated 05.03.2014. Copy of the Board Resolution dated 03.03.2014 and the Loan Agreement dated 05.03.2014 is annexed to the Petition.

24. The Letter of Intent issued by the Petitioner dated 04.02.2014, the Board resolution dated 03.03.2014 of the Corporate Debtor, accepting the terms of the Letter of Intent, the Loan Agreement dated 05.03.2014 establish the fact that the Corporate Debtor received financial assistance under the Secured Business Loan Scheme.
25. The Corporate Debtor has acknowledged its debt in the Balance Confirmation Letter dated 07.01.2015 and 30.06.2015 and has admitted to its liability in the Reply Letter dated 17.02.2016 issued by the Corporate Debtor in response to the Notice under section 13(2) of the SARFAESI Act, 2002 dated 05.02.2016.
26. The Corporate Debtor has not disputed the fact that it has received the loan under the Secured Business Loan Scheme. Further, the Corporate Debtor has not disputed that it has to repay the amounts so received as a loan. The Corporate Debtor and its Directors have also executed a deed of guarantee and personal guarantees dated 05.03.2014, and various other undertakings that the secured assets of the Corporate Debtor shall not be transferred.
27. The Petitioner has provided the copy of the Commercial Credit Information Report of the Corporate Debtor issued by the Trans Union CIBIL establishes the fact that the Corporate Debtor has defaulted to make necessary payments to the Petitioner. The Petitioner has also annexed the copy of statement of outstanding amount from the default date, copy of the Ledger Account of the Petitioner for the period 10.04.2014 to 31.12.2017 and also the Certificate under the Banker's Book Evidence Act, 1891 and the same establish the fact that the Petitioner has not received the amounts due from the Corporate Debtor.

28. The Corporate Debtor has failed to maintain the financial discipline to repay the loan amounts and has not taken any efforts to make the necessary payments.
29. The Corporate Debtor's submission that the said petition deserved to be dismissed on the ground that the Petitioner has already initiated proceedings under the SARFAESI Act, 2002 and a special civil suit is an untenable argument. In this regard, it is imperative to mention here that section 238 of the Insolvency and Bankruptcy Code, 2016 provides that the provisions of the Code shall have an overriding effect and therefore the proceedings under the SARFAESI Act, 2002 or any other proceedings are no bar to initiate proceedings under section 7 of the I&B Code. Section 238 of the Code is reproduced hereinbelow:
- "The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith, contained in any other law for the time being in force or any instrument having effect by virtue of any such law."***
30. The Petitioner has proposed the name of Mr George Samuel, a registered insolvency resolution professional having Registration Number [IBBI/IPA-003/IP-N00043/2017-18/10319] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code, and given his declaration; no disciplinary proceedings are pending against him.
31. The Application under sub-section (2) of Section 7 of I&B Code, 2016 is complete. The existing financial debt of more than Rupees One Lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor Deserves to be admitted.

ORDER

This petition filed under Section 7 of I&B Code, 2016, filed by **Small Industries Development Bank of India**, Financial Creditor Petitioner, under section 7 of Insolvency & Bankruptcy Code, 2016

(I&B Code) against **Swiss Ribbons Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is at this moment admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 possession of the corporate debtor.
- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code 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 I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, 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 I&B Code.
- VI. That this Bench at this moment appoints Mr George Samuel, a registered insolvency resolution professional having Registration Number [IBBI/IPA-003/IP-N00043/2017-18/10319] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
32. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated registrar is to be submitted today.**

Sd/-
RAVIKUMAR DURAISAMY
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

16th July 2019

Aparna Kulkarni -LRA