

পশ্চিমবঙ্গ পশ্চিম বঙ্গাল WEST BENGAL

08AB 229666

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH

Company Petition. No. 170 / 2017

In the matter of the Companies Act, 2013: Section – 7

AND

In the matter of: RBL Bank Limited.

-Versus-

MBL Infrastructures Ltd. & Ors.

Certified copy of the Order dated 30.03.2017 Passed by this Bench.



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

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Shri Vijai Pratap Singh
Hon'ble Member (J)

Shri S. Vijayaraghavan
Hon'ble Member (T)

Company Petition No.170/2017

In the matter of :

Application under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

And

In the matter of:

MBL Infrastructures Limited, having Corporate Identity Number L27109WB1995PLC073700, a company incorporated under the Companies Act, 1956 and having its registered office at 2/3, Judges Court Road, Divine Bliss, 1st floor, Kolkata – 700 027, in the state of West Bengal, within the aforesaid jurisdiction;

And

In the matter of :

RBL Bank Limited, a Banking Company and having Identification Number U65191PN1943PLC007308, a company incorporated under the Companies Act, 1956 and having its registered office at Fist Lane, Shahupuri, Kolhapur- 416 001 and having one of its Zonal Office at 28, Dr. Gopal Das Bhawan, GF, Barakhamba Road, Connaught Place, New Delhi – 110 001.

..... Applicant

-Versus-

MBL Infrastructures Limited, having Corporate Identity Number L27109WB1995PLC073700, a company incorporated under the Companies Act, 1956 and having its registered office at 2/3, Judges Court Road, Divine Bliss, 1st floor, Kolkata – 700 027, in the state of West Bengal, within the aforesaid jurisdiction

..... Corporate Debtor

Counsels on Record:

- | | |
|-----------------------------------|---------------------------|
| 1. Ms.Sushmita Banerjee, Advocate |] For the petitioner
] |
| 2. Mr. Narayan Debnath, Advocate. | |



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- | | | |
|--------------------------------------|---|---------------------|
| 1. Mr. Abhijit Mitra, Sr. Advocate |] | |
| 2. Mr. Samapriya Mukherjee, Advocate |] | For the Respondents |
| 3. Ms. Rajshree Kajaria, Advocate |] | |

Date of Pronouncing the order : 30 - 3 - 2017

ORDER

Per Sri Vijai Pratap Singh, Member(J)

The applicant being a Financial Creditor has filed this application in Form 1 as provided under section 7 of the Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

Brief facts of the case are such that the Financial Creditor, RBL Bank Limited (hereinafter referred to as "Applicant"), a Banking Company, having Identification No. U65191PN1943PLC007308 and having its registered office at First Lane, Shahupuri, Kolhapur- 416 001 and one of its Zonal Office at 28, Dr. Gopal Das Bhawan, GF, Barakhamba Road, Connaught Place, New Delhi – 110 001 is duly recognised as a banking institution by the RBI.

MBL Infrastructures Limited (hereinafter referred to as the "Corporate Debtor") having Corporate Identity Number L27109WB1995PLC073700, a public limited company incorporated under the Companies Act, 1956 and having its registered office at 2/3, Judges Court Road, Divine Bliss, 1st floor, Kolkata – 700 027, in the state of West Bengal, within the aforesaid jurisdiction.

The Applicant has, in its course of its business of lending, had extended financial assistance of Rs.70 Crores in form of credit facilities to the Corporate Debtor vide its sanction letter dated 15.04.2014 at the request of the Corporate Debtor after fulfilling certain terms and conditions. Both the applicant and Corporate Debtor executed several documents towards availing the credit

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facilities in May 2014 and at the request of the Corporate Debtor, the applicant has also disbursed the credit facilities on 15.05.2014.

The Applicant stated that as per the agreement with the Corporate Debtor, the Applicant had entered into a consortium led by State Bank of Mysore, and had merged the credit facilities with the Consortium and formed a new consortium in or around 27.06.2014. The Corporate Debtor and Consortium Banks have executed several documents time and again towards availing the credit facilities and Mr. Anjanee Kumar Lakhota further extended his personal guarantee for availing the said credit facilities and for this purpose, the Corporate Debtor has mortgaged/ hypothecated some properties in favour of the Applicant and the other Consortium Member banks.

The Applicant submitted that on 12.08.2015, at the request of the Corporate Debtor, the credit facilities were enhanced by the applicant, i.e. Letter of Credit was enhanced from Rs.20 crore to Rs.40 crore but the same was not disbursed due to receipt of negative feedback about the Corporate Debtor from reliable sources. The Corporate Debtor vide letter dated 16.01.2016 assured the Applicant of complete payment of the dues by 30.01.2016 but the Corporate Debtor failed to comply with the assurances made to the Applicant. On 17.11.2016, the bank guarantees were invoked to the tune of Rs.7 crore by the beneficiary, i.e. SICOM Limited and accordingly the Applicant paid Rs.,7 crore to the beneficiary. The Applicant vide its letter dated 29.11.2016, demanded the said amount from the Corporate Debtor, which remains unpaid till date, resulting in accumulation of huge outstanding. As on 01.03.2017, a sum of Rs.7,26,47,146/-(Rs.7,00,00,000/-+ Rs.26,47,146/-) towards the principal and interest is outstanding which is payable by the Corporate Debtor. Later on, the Applicant made correspondence with the Corporate Debtor regarding the repayment of loans and failing which recalled all the loan facilities granted to the Corporate Debtor and further called upon it to make the payment of Rs.7,16,46,626/- along with future interest from 23.01.2017. The applicant through its Advocate called upon the Corporate Debtor to make the payment of Rs.7,16,46,626/- alongwith future interest. But



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despite the said Demand Notice, no payment has been made by the Corporate Debtor.

However, in spite of all efforts taken by the Applicant, the Corporate Debtor has not responded to make the payment. Therefore, the applicant has submitted this application in the prescribed Form-1.

In the circumstances, the applicant/Financial Creditor has filed this application to initiate Corporate Insolvency Resolution Process under the Insolvency & Bankruptcy Code, 2016. The application is supported by an affidavit of Ms. Monica Gupta, who is the Assistant Vice President in the applicant company RBL Bank Limited and she is authorised by the said company to present this petition on this behalf.

On the basis of documents attached with the application and all the correspondences with the Corporate Debtor and demand notices, it appears that Corporate Debtor has committed default in making payment of credit facilities and credit facilities were extended to the tune of Rs.7,00,00,000/- and charge was created by way of hypothecation of assets. The applicant has filed the application under section 7 of the IBC, 2016 and has proposed the name of Mr. Atanu Mukherjee as Interim Resolution Professional whose address is mentioned as below.

Mr. Atanu Mukherjee, Advocate
54, Lawyers Chamber,
Supreme Court of India,
Delhi- 110 002
Email- atanumukherjea@gmail.com
Registration No.IBBI/IPA-002/IP-00088/2016-2017/1115.

The consent letter of the Interim Resolution Professional is attached as Annexure A-11 with the petition. Smt. Monica Gupta, who has represented this petition on behalf of the petitioner company, has certified that Mr. Atanu Mukherjee is fully qualified and permitted to act as an Insolvency Professional in accordance with Insolvency & Bankruptcy Code, 2016.



In this context, it is observed that the Corporate Debtor has written a letter dated 27.12.2016 regarding Loan Recall Notice and Bank Guarantee. They have submitted that without any reason suddenly RBL Bank Limited opted out of the Consortium and the enhanced facilities were not disbursed causing cash crunch and financial difficulties to the company and resultantly caused damages to the Corporate Debtor by sending damaging communication verbally as well by mail to the Consortium of banks which resulted in further cash crunch to the company.

The Corporate Debtor vide above letter further submitted that the credit facilities were used in terms of the consortium arrangement and all the bank accounts were regular. In fact, despite breach of contract by unilaterally opting out of the consortium by RBL Bank Limited, the fund based facilities were fully paid off and the non-fund based facilities were reduced to only Rs.7 crores.

In the circumstances mentioned above, we admit the petition for initiating the Corporate Resolution Process and declare a moratorium and public announcement as stated in section 13 of IBC 2016. The relevant sections 13 and 14 are reproduced below for the purpose of convenience.

13. Declaration of moratorium and public announcement

(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order-

(a) declare a moratorium for the purposes referred to in section 14;

(b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15; and

(c) appoint an interim resolution professional in the manner as laid down in section 16.

(2) The public announcement referred to in clause (b) of sub-section (1) shall be made immediately after the appointment of the interim resolution professional.



14. Moratorium

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-

(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 (54 of 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.

(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."

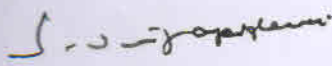
Necessary public announcement as per section 15 of the IBC, 2016 may be made by the Company.



We hereby appoint Mr. Atanu Mukherjee, Advocate as Interim Resolution Professional. On the basis of records available with the applicant, it appears that the Corporate Debtor has committed default in making payment of the loans amounting to Rs.7 crores and interest of Rs.26,47,146/-. The above order may be communicated to the Financial Creditor and the Corporate Debtor.

In the circumstances mentioned above, we admit the petition for initiating the Corporate Insolvency Resolution Process and declare a moratorium and public announcement as stated in section 13 of the IBC, 2016. Necessary public announcement as per section 15 of the IBC 2016 may be made by the applicant company. Shri Atanu Mukherjee is hereby appointed as Interim Resolution Professional. He will initiate the process as per Rules.

List the matter on ¹⁸ ~~15~~ 4/17 for further orders.


(S. Vijayaraghavan)
Member(T)


(Vijai Pratap Singh)
Member (J)

Signed on this 30th day of March, 2017



Certified True
Date of Application..... M.A. No. 1138/2017
Number of pages..... Eight
Fee Paid Rs..... 100/- on..... 30/3/17
Applicant called for collecting copy on..... 30/3/17
Copy prepared on..... 30/3/17
Copy issued on..... 30/3/17


M. KANNAN
DY. DIRECTOR
National Company Law Tribunal
Kolkata