

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) -2660/I&BP/MB/2018

Under Section 7 of the I&B Code, 2016

In the matter of

Dena Bank
Dena Corporate Centre, C-10,
G- Block, Bandra – Kurla Complex,
Bandra (East). Mumbai – 400 051
.... Petitioner

Vs.

EMI Transmission Limited
101, 1st Floor, Centre Point,
Dr. Babasaheb Ambedkar Road,
Parel, Mumbai - 400012
.... Corporate Debtor

Order delivered on: 11.04.2019

Coram:

Hon'ble Shri. Bhaskara Pantula Mohan, Member (J)
Hon'ble Shri. V. Nallasenapathy, Member (T)

For the Petitioner: Adv. Asleem Sanjid a/w Adv. Athul Lagi.

For the Respondent: Adv. Swati Deshpande i/b Adv. Devanshu Desai.

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. Dena Bank (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of EMI Transmission Limited (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default on 31.08.2017 to the extent of Rs. 598,45,66,731/- under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The followings are the details of the facilities sanctioned by the Petitioner in favour of the Corporate Debtor:

SR. NO.	FACILITY	DATE OF DISBURSEMENT	DEBT GRANTED	AMOUNT IN DEFAULT
1	CASH CREDIT - I	25.05.2000	86,23,00,000/-	440,89,03,569/-
2	CASH CREDIT – II	25.05.2000	5,85,00,000/-	6,21,36,849/-
3	WC DL - I	25.05.2000	70,00,00,000/-	78,56,80,522/-

4	WCDL – II	27.04.2015	50,00,00,000/-	55,77,20,105/-
5	PCFC/PACKAGING CREDIT/FBR/REBA	25.05.2000	632,00,000/-	7,48,99,015/-
6	NEGOTIATION OF BILL UNDER (OUTSIDE CONSORTIUM)	25.05.2000	70,00,00,000/-	64,90,862/-
7	LETTER OF CREDIT	25.05.2000	129,50,00,000/-	1,06,57,855/-
8	BANK GUARANTEE	25.05.2000	196,00,00,000/-	6,55,82,930/-
9	FORWARD COVER		1,40,00,000/-	
10	OTHER CHARGES			1,24,95,020/-
TOTAL			615,30,00,000/-	598,45,66,731/-

3. The Petitioner has enclosed the following security documents connected with the sanction of loan facilities:

- a. 1st to 12th Memorandum of Entry dated 12.06.2000, 18.09.2001, 29.10.2003, 15.05.2004, 21.04.2005, 07.07.2006, 29.04.2008, 29.10.2010, 30.06.2011, 01.04.2013, 07.03.2014 and 08.10.2016 respectively.
- b. Working Capital Consortium Agreement dated 25.05.2000.
- c. Deed of Hypothecation executed by the corporate Debtor in favour of the Petitioner, Canara Bank and State Bank of Patiala dated 25.05.2000.
- d. 1st to 9th Supplemental Deed to the Working Capital Consortium Agreement executed between the Respondent and the Petitioner along with Indian Bank and State Bank of Patiala dated 13.09.2000, 18.04.2001, 26.07.2001, 26.09.2003, 14.05.2004, 20.04.2005, 07.07.2006, 29.04.2008 and 28.10.2010.
- e. 10th to 13th Supplemental Deed to the Working Capital Consortium Agreement executed between the Respondent and the Petitioner along with State Bank of Patiala and Standard Chartered Bank dated 28.06.2011, 30.03.2013, 06.03.2014 and 12.07.2017.
- f. Copies of Mortgage by deposit of title deeds created on 12.06.2000, and further extended on 18.09.2001, 29.10.2003, 15.05.2004, 21.04.2005, 07.07.2006, 29.04.2008, 29.10.2010, 30.06.2011, 01.04.2013, 07.03.2014 and 08.10.2016 on non- agricultural land property situated at Sinnar, Nashik admeasuring 37,977 meters.
- g. A copy of Joint Deed of Personal Guarantee executed on 12.07.2017 by Mr. S.R Sheth and K.R. Sheth providing personal guarantee against the repayment of loan amount to the extent of Rs. 753.29 crores together with interest, costs, charges, expenses, etc to the Petitioner and other consortium Banks.

- h. Copy of Demand Promissory Note dated 23.10.2015 issued by the Corporate Debtor to the Petitioner for a sum of Rs. 70,00,00,000/- with interest of 4.30% along with interest, tax and other charges.
 - i. Certificate under the Bankers' Book Evidence Act, 1891 dated 23.05.2018.
 - j. CIBIL Report dated 24.05.2018.
4. Further, the Petitioner enclosed the Statement of accounts reflecting total dues of 598,45,66,731/- towards cash credit, working capital and other facilities.
5. The Corporate Debtor in its reply dated 02.11.2018 brought forward *inter alia* the following key facts:
- a. That it is a leading manufacturer of Insulator Hardware fittings for high voltage transmission line. It represented that it is a leader in the domestic market with over 60% market share in the industry.
 - b. That it is an approved supplier to leading Indian power utilities companies' viz. Power Grid Corporation of India Ltd, National Thermal Power Corporation, Reliance Energy Limited, etc as well as global power utilities companies in the Gulf region and some African countries.
 - c. That it regulates 60% of the market share in the power transmission sector and if it is brought under the purview of CIRP then other power companies across the country would be adversely affected.
 - d. That in the year 2011-12, it had to buy-back the shares of Reliance Capital and Temasek Holdings which adversely affected its liquidity, cash flows and reserves.
 - e. That it had invested huge some of monies in Jyoti Structures Limited which is currently under CIRP and therefore recovery of Rs. 25,00,00,000/- is severely affected.
 - f. That it has two major debtors, one a Dubai based entity viz. Alwassmi Equipment Trading (LLC) and the other being an Indian entity viz. Power Engineering & Metal LLP and it has taken steps for recovery of dues amounting to Rs. 225 crores.
 - g. That there have been certain private persons who have expressed interest in granting loans as well as to act as strategic investors in the company.
 - h. That the Power sector in India is generally facing a liquidity crunch and multiple applications for initiation of CIRP have been initiated which have been challenged before the Hon'ble Supreme Court of India.
 - i. That the Hon'ble Supreme Court in the matter of *RBI V. Dharini Sugars and Chemicals Pvt. Ltd* had directed the parties to maintain a status quo on the RBI circular on resolution of stressed assets within 180 days of NPA and the matter was scheduled for hearing on 14th November, 2018.

- j. That the revival of the Corporate Debtor is imminent and admission of this petition will worsen the situation as the orders placed by power utilities will be adversely affected.
- k. That the claim is illegal, malafide and bad in law.

6. The Petitioner filed its Rejoinder and denied each and every submission made by the Corporate Debtor in its Reply. The Petitioner contended that there was clearly debt that was due and default was committed by the Corporate Debtor and hence it has the right to initiate action under the Code. Further, the Petitioner contended that the RBI circular bearing No. DBR. No. BP. BC.101/21.04.048/2017-18 dated 12.02.2018 does not prohibit the Petitioner from taking any action under the Code but on the contrary it calls for early resolution to safeguard the interest of the stakeholders.

7. In the course of hearing on 10.01.2019, Mr. Sanjeev Sheth, Mr. Vasudev Balani came forward to invest in the Corporate Debtor to an extent of about Rs. 400 crores and to prove their bonafides, they further expressed their willingness to deposit 10% of the OTS amount with the Bank only if the OTS proposal is acceptable by the Bank. We have recorded in our order directing the Bank to report their decision before the next date of hearing and posted the matter on 14.01.2019. Again on 14.01.2019 the proposed investors were present and this Bench recorded the proceedings in daily orders and made best efforts to see that the matter is amicably settled in view of the fact that the proposed investors have made a statement that the entire amount of Rs. 400 crores can possibly be invested by them within a period of 90 days. Even the senior officers of the banks who are present in the Court have promised to co-operate with the Corporate Debtor and the proposed investors for settlement of the matter and the matter was posted to 16.01.2019 for further consideration. Again on 16.01.2019, a detailed hearing had taken place in the presence of all the senior bank officers and the proposed investors, who had given a detailed schedule of payments of Rs. 400 crores to be made by them once the OTS proposal is accepted. It is also brought to the notice of this Bench that the investors would not be in a position to make the payment without a proper approval from RBI and once the amount is put in to the Corporate Debtor, if the OTS proposal is not accepted, the amount cannot be taken back by them and they shall incur heavy loss. It was also put forth before Bench that the acceptance of OTS proposal is a condition precedent, so that the amounts can come in to the Corporate Debtor as per the schedule. This Bench made all the possible efforts and also directed the Managing Director of the Petitioner Bank to take all the efforts to settle the matter amicably and report the developments to this Bench on 24.01.2019. But on 24.01.2019, the Petitioner sought time for a day and the matter was posted on 25.01.2019, on which day the Petitioner reported that the OTS proposal is rejected.

8. We have gone through this case very carefully, and it was also informed that the Corporate Debtor is a very old company and there are several Debtors also on behalf of the Government/Public Companies who are into power sector where the Hon'ble Supreme Court ordered status quo by directing the Banks and Financial Institutions from initiating CIRP proceedings. This is the direct impact on the small companies like Corporate Debtor and the proposal of OTS as submitted by the proposed investors should have been considered positively by the Petitioner in a more practical manner to maximise the asset value of the company which is the prime object of IBC. The Petitioner rather than choosing the practical solution used IBC to recover monies from the Corporate Debtor without any forethought. We have observed in many cases there are huge haircuts for the Financial Creditors and ordering Insolvency Proceedings is not effectively bringing in sufficient amounts into the coffers of the Financial Creditors, particularly the public sector banks. In the said scenario the amount of Rs. 400 crores as offered by the proposed investors appeared to be a good offer for this Bench, though we are not here to decide on the business decisions of the Financial Creditors. The prerogative of accepting or rejecting the OTS proposal is with the Petitioner but the decision to reject it is certainly painful in so far as this Bench is concerned for the reason that the Corporate Debtor is an old company and the same could have been revived with the timely investment with the co-operation of Petitioner Bank. However, in view of the settled legal position, we are bound to pass appropriate orders as per law.

9. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:

- (I) (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act);
- (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 the 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 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 11.04.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, 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 the Code.
- (VI) That this Bench hereby appoints, Mr. Shailesh Bhalchandra Desai having his address at Headway Resolution and Insolvency Services Pvt. Ltd, 1006, Raheja Centre, Free Press Marg, Nariman Point, Mumbai – 400021 having Registration No. IBBI/IPA-001/IP-P00183/2017-18/10362 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

10. Accordingly, this Petition is admitted.

11. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Bhaskara Pantula Mohan
Member (J)