

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-272(PB)/2017

IN THE MATTER OF:

Central Bank of India
v.
Moser Baer Solar Ltd.

.....Financial Creditor
.....Corporate Debtor

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016

Judgment delivered on 14.11.2017

Coram:

CHIEF JUSTICE (Retd.) M.M. KUMAR
Hon'ble President

Ms. Deepa Krishan
Hon'ble Member (T)

For the Financial Creditor: Ms. Reema Khorana & Mr. Kartik Rathi, Advs.,
Mrs. Swarnima Singh, Law Officer, Central
Bank of India.

For the Respondent: Ms. Varsha Banerjee, Advocate

JUDGMENT

Deepa Krishan, Member (Technical)

The 'Financial Creditor'-Central Bank of India has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to

trigger the Corporate Insolvency Resolution Process in the matter of Moser Baer Solar Ltd. It is appropriate to mention that the 'financial creditor' is a body corporate constituted by and under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (for brevity 'Banking Companies Act'). The 'financial creditor' has its head office at Chandermukhi, Nariman Point, Mumbai-400021 and its branch office is at Corporate Finance Branch, Jeevan Tara Building, 5 Parliament Street, New Delhi-110001.

2. Mr. R. Radhakrishnan, Assistant General Manager has been authorized by the power of attorney dated 09.01.2017 (Annexure-1) to sign and submit the petition.

3. The Corporate Debtor- M/s Moser Baer Solar Ltd. was incorporated on 06.03.2007. The identification number of the Corporate Debtor is U74999DL2007PLC160162 and its registered office is situated at 43-B, Okhla Industrial Estate, New Delhi-110020. Its paid-up share capital is Rs. 982.50 crores (Rupees Nine Hundred and Eighty-Two Crores and fifty lacs) as per the



audited balance sheet for financial year 2015-16 as mentioned in Part-II of the application.

4. In the application, the Financial Creditor has given the details of financial debt granted to the 'Corporate Debtor' with the dates of disbursement. A perusal of part IV of the application has highlighted the following particulars of financial debt:

"PARTICULARS OF FINANCIAL DEBT"		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Initially in September, 2010, the Financial Creditor had sanctioned fund based working capital limits of Rs. 25.00 Crore and term loan of Rs. 50.00 Crore. The Creditor allowed a corporate debt restructuring in March, 2013, which subsequently failed and the concessions granted were withdrawn. Total amount of debt granted to the Corporate Debtor from time to time is more particularly described in Annexure 1-A.

The aforesaid details would show that in September, 2010, financial creditor had sanctioned funds based on working capital limits of Rs. 25 crores and term loan of Rs. 50 Crores. Subsequently, a Corporate Debt Restructuring was allowed in March, 2013, which subsequently failed and the concessions granted were withdrawn. The details concerning dates of disbursement and the total amount of debt granted to the Corporate Debtor from time to time have been annexed as Annexure 1-A.

5. As per the averments of the 'Financial Creditor', the total amount in default is claimed to be Rs. 114,03,90,617.00 (Rupees One Hundred and Fourteen Crores Three Lacs Ninety Thousand Six Hundred and Seventeen Only) as on 31.07.2017. It is stated that the account was classified as NPA on 30.12.2015. The detailed computation of amount of default and dates of default have been placed on record in Annexure 1-B.

6. The 'financial creditor' has placed on record overwhelming evidence to prove the amount advanced. The details of the

security held by, or created for the benefit of 'financial creditor'- Central Bank of India have been given in Part V of the application and in Annexure 1-C which are set out below: -

I. Particulars of Security:

A. Primary Security:

1. Term Loan/WCTL/FITL:

1. First *pari passu* charge on the entire fixed assets of the company.
2. First *pari passu* charge on property no. 66B, Udyog Vihar, Phase-II, Greater Noida, Uttar Pradesh, together with all buildings, erections, godowns and constructions of every description which are standing, erected or attached to the earth or permanently fastened to anything attached to earth.
3. First *pari passu* charge on Plant & Machinery.
4. Second charge on the current assets of the company.

2. Working Capital

1. First *pari passu* charge on the entire current assets of the company including book debts and stocks.



2. Second *pari passu* charge on the entire fixed assets of the company.

B. Collateral Security:

1. Pledge of 51% of issued and paid up equity share capital of Company.

II. Date of creation of security:

The security was created on various dates viz, 15.06.2010, 09.09.2010, 07.03.2011, 12.12.2014, 28.08.2015 on *pari passu* basis with other banks, when the corporate debtor & its guarantors executed the security documents viz., Deeds of Hypothecation, deeds of personal guarantee, share pledge agreements & deed of mortgage for and on behalf of the corporate debtor with the lead bank & Security Trustee under consortium of Financial Creditors.

7. The Financial Creditor has also placed on record details of the creation of charge and registration of same with ROC on 27.05.2014. The latest and complete copy of the financial contract of the Financial Creditor with the Corporate Debtor has been filed as Annexure 1-D. This also includes the letter of Financial Creditor dated 03.09.2010 sanctioning the credit facilities to the Corporate Debtor and the term loan agreement between the

Corporate Debtor and the Financial Creditor dated 15.09.2010. A copy of the letter of hypothecation dated 15.09.2010 has also been attached along with other documents such as deed of hypothecation to secure LC, hypothecation agreement for bank guarantee etc. The complete list of financial contract reflecting all amendments and waivers to date has been placed at page 33 of the application and the corresponding documents are placed as Annexure 1-D.

The record of default as available with credit information company i.e. CIBIL report dated 31.07.2017 has also been filed as Annexure 1-E. Copies of entries in Banker's book in accordance with the Banker's Book Evidence Act, 1891 have been filed as Annexure 1-F.

8. The 'financial creditor' has then attached Annexure 1-G that contains a list of other documents to the application to prove the financial debt, the total amount due and the date of default. These documents are as under: -

1. Notice u/s 13(2) of SARFAESI Act by Financial Creditor.
2. Reply to the notice u/s 13(2) of SARFAESI Act by the corporate debtor.



3. Demand notice dated 25.07.2017 seeking repayment of dues from corporate debtor.

4. Debit balance confirmation from corporate debtor dated 21.01.2017.

9. The Learned Counsel for the Corporate Debtor accepted the notice of the application on 28.09.2017 and stated before us at the hearing that filing of reply would not be necessary. Thus, it is apparent that the Corporate Debtor does not oppose the application of the Financial Creditor filed u/s 7 of IBC and accordingly has nothing to say in respect of commission of default.

10. The 'financial creditor' has proposed the name of Ms. Ritu Rastogi, CA as an Insolvency Professional. Her registration number is IBBI/IPA-001/IP-00204/2017-18/10393. She has also made declaration and filed a written communication dated 01.08.2017 in Form-2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. According to the declaration made by Ms. Ritu Rastogi, no disciplinary proceedings are pending against her and she is serving as a Resolution Professional in three proceedings. It is

also stated in the communication that she is eligible to be appointed as Resolution Professional in respect of the Corporate Debtor in accordance with provisions of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) Regulations, 2016. She has also filed an affidavit dated 01.08.2017 certifying that she is not a related party either of the Financial Creditor or the Corporate Debtor. Accordingly, she satisfies the requirement of Section 7 (3) (b) of the Code.

11. For the reasons, aforementioned this petition is admitted. Ms. Ritu Rastogi who is duly registered with Insolvency and Bankruptcy Board of India IBBI/IPA-001/IP-00204/2017-18/10393 is hereby appointed as an Interim Resolution Professional.

12. 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 Regulations) with regard to admission of this application under Section 7 of the Code. 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). 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 Securitisation 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.”

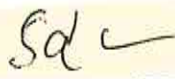
13. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central

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.

14. 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, 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.

15. The Petition is disposed of in the above terms.

16. The office is directed to communicate a copy of the order to the Financial Creditor and the Corporate Debtor at the earliest possible but not later than seven days from today.


(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT


(DEEPA KRISHAN)
MEMBER(TECHNICAL) 14.11.17

14.11.2017
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