

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

C.P. NO.405/I&BP/NCLT/MAH/2018

Under Section 7 of IBC, 2016

In the matter of

SREI Infrastructure Finance Limited
.... Petitioner

vs.

Sterling SEZ & Infrastructure Limited
.... Respondent

Order delivered on 16.07.2018

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

For the Petitioner: Mr. Gaurav Mathur a/w Abhishek Shah and
Mr. Durgaprasad Halwai i/b Singhi & Co

For the Respondent: None present.

Per: Bhaskara Pantula Mohan, Member (Judicial)

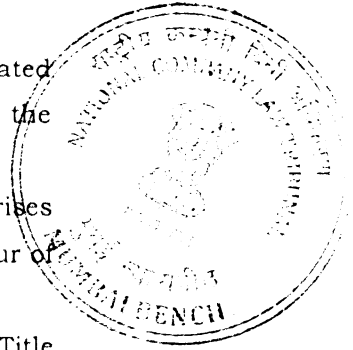


ORDER

1. This is a Company Petition filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code") by the Financial Creditor against the Corporate Debtor, stating that the Financial Creditor defaulted in making the payment of two Term Loans to the extent of Rs.2,97,69,64,504.78/- as on 31.01.2018. The Petition reveals that the Petitioner sanctioned Rupee Term Loan of Rs.60,00,00,000/- on 28.06.2013 and Term Loan facility of Rs.2,75,00,00,000/- on 04.07.2015, to the Corporate Debtor. The petition further reveals that the said Rs.60,00,00,000/- was disbursed in five tranches from 29.06.2013 to 30.06.2014 and a sum of

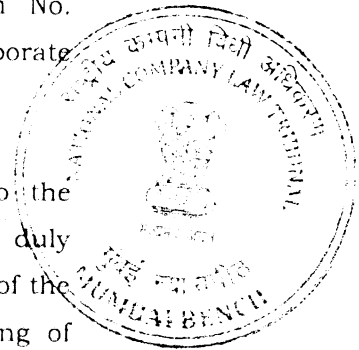
Rs.2,62,40,00,000/- was disbursed on 08.07.2015 in respect of the Second Term Loan.

2. The Petitioner enclosed the following documents as proof of debt:
- a. Rupee Loan Agreement dated 28.06.2013 for Rs.60,00,00,000/- executed by the Corporate Debtor in favour of the Petitioner.
 - b. Rupee Loan Agreement dated 04.07.2015 for Rs.2,75,00,00,000/-.
 - c. Deed of guarantee, undertaking, warranty and indemnity executed by Mr. Chetan Sandesara and Mr. Nitin Sandesara dated 28.06.2013 in favour of Financial Creditor.
 - d. Declaration of equitable mortgage dated 28.06.2013 having exclusive charge on immovable property of Mr. Jayantibhai Chunilal Sandesara.
 - e. Declaration of equitable mortgage dated on 29.06.2013 having exclusive charge on immovable property of Smt. Mayuriben Hiteshbhai Patel.
 - f. Deed of hypothecation dated 04.07.2015 by Corporate Debtor in favour of Financial Creditor.
 - g. Deed of guarantees dated 04.07.2015 executed by Mr. Chetan Sandesara, Mr. Nitin Sandesara, Smt. Dipti Sandesara, Sterling Biotech Limited, Sterling International Enterprises Limited, Sterling Port Limited and PMT Machines Ltd. in favour of Financial Creditor.
 - h. Indenture of pledge of shares of Sterling Biotech Ltd. dated 04.07.2015 executed by various companies in favour of the petitioner.
 - i. Indenture of pledge of shares of Sterling International Enterprises Ltd. dated 04.07.2015 executed by various companies in favour of the petitioner.
 - j. Memorandum recording creation of Mortgage by Deposit of Title Deeds dated 07.07.2015 executed in favour of the Financial Creditor by certain individuals and companies.
 - k. Deed of simple mortgage dated 30.09.2016 executed by Bigline Trading Pvt. Ltd. in favour of the Financial Creditor creating First and Exclusive Mortgage and Charge (by way of an Extension of Mortgage) over the immovable properties.
 - l. Deed of simple mortgage dated 30.09.2016 executed by NS Investment Company Pvt. Ltd. in favour of the Financial Creditor



herein creating First and Exclusive Mortgage and Charge (by way of an Extension of Mortgage) over its immovable properties.

- m. Deed of hypothecation dated 04.07.2015 executed by Sterling Port Ltd. for creating Subservient Charge on all project assets of the hypothecator.
3. The petitioner issued a recall notice dated 10.05.2016 to the Corporate Debtor against the loan of Rs.60,00,00,000/- and Rs.2,75,00,00,000/- demanding a sum of Rs.55,42,06,978/- and Rs.2,82,38,25,922/- respectively outstanding as on 09.05.2016 including interest from the Corporate Debtor.
 4. The petitioner issued Notice of Invocation of Guarantees on 18.05.2016 by issuing notice to the Guarantors Mr. Nitin Sandesara and Mr. Chetan Sandesara demanding a sum of Rs.55,42,06,978/- in respect of the First Term Loan. Further the Petitioner issued notice of Invocation of Guarantees on 18.05.2016 to the guarantors Mr. Nitin Sandesara and Ms. Dipti Sandesara demanding a sum Rs. 2,82,38,25,922/- outstanding as on 09.05.2016 in respect of the second term loan.
 5. The petitioner has enclosed the statement of accounts for both the term loans.
 6. The petitioner has enclosed the copy of Original Application No. 408/2016 pending on the file of DRT, Kolkata, against the Corporate Debtor and the Guarantors claiming a sum of Rs. 3,37,80,32,900/.
 7. The Petitioner submits that the copy of Petition was sent to the Corporate Debtor vide speed post-dated 13.03.2018 and it was duly served on the Corporate Debtor on 17.03.2018. Further, the copy of the petition and the letter of intimation of the next date of hearing of 24.04.2018 was sent by speed-post on 19.04.2018 and it was duly served on the Corporate Debtor on 20.04.2018. The Petitioner filed an Affidavit of service on 15.05.2018 stating that they had again intimated the next date of hearing of 17.05.2018 to the Corporate Debtor on 04.05.2018 and the said notice was served upon them on 11.05.2018. However, the Corporate Debtor was not present for any of the hearings.



8. This Bench on 17.05.2018 directed the Petitioner to take out substituted service in the newspapers, which was duly complied with by the Petitioner. Affidavit of substituted service was also filed on 07.06.2018. Subsequently, the case was posted for hearing on 08.06.2018, 14.06.2018 and 25.06.2018, but the Corporate Debtor failed to appear on the aforesaid dates.

9. This Adjudicating Authority, on perusal of the documents filed by the Creditor, it is evident 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, having this Bench noticed that default has occurred and there is 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:

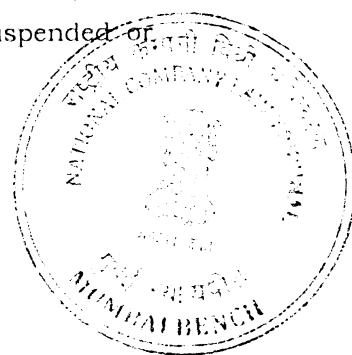
(I) (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(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.



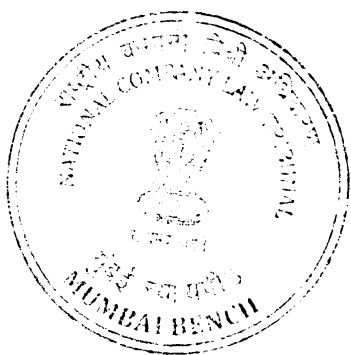
- (III) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - (IV) That the order of moratorium shall have effect from 16.07.2018 till the completion of the corporate 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 CA. Vishal Ghisulal Jain, having his address at B-3/7/1-2, Sector-15, Vashi, Navi Mumbai-400703, Registration No. IBBI/IPA-001/IP-P00419/2017-18/10742 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
5. Accordingly, this Petition is admitted.
6. The Registry is hereby directed to communicate this order to both the parties within seven days from the date the order is made available.

sd/-

V. NALLASENAPATHY
Member (Technical)

sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)



Certified True Copy
Copy tested "free of cost"
On 23/7/2018


Assistant Registrar

National Company Law Tribunal Mumbai Bench