

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

CP (IB) - 4374/I&B/MB/2018
Under Section 7 of the I&B Code, 2016

In the matter of

Central Bank of India,
Chandermukhi Building, Nariman Point,
Mumbai 400021

...Petitioner

Vs.

Sri Adhikari Brothers Television Network
Limited
6th Floor, Adhikari Chambers, Oberoi
Complex, New Link Road, Andheri West,
Mumbai-400053

....Corporate Debtor

Order delivered on: 20.12.2019

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)

Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Ms. Rathina Maravarman, Advocate

For the Corporate Debtor:, Mr. Rahul Narichania, Adv. Parul Sharma
and Adv. Jigar Kamdar, Advocates i/b
Zoya Syed ANM Global Inc.

Per: Shri Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This is an application filed under Section 7 of the Insolvency and Bankruptcy (I&B) Code, 2016 by Central Bank of India (hereinafter called the 'Petitioner') seeking the Corporate Insolvency Resolution Process of Sri Adhikari Brothers Television Network Ltd. (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed default in repayment of the loan agreement and credit facilities entered into both the parties.
2. The Petitioner is a bank incorporated on 21/12/1911, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and has filed this petition through its authorised person named Mr. T.V. Subbaiah, Assistant General

Manager, Corporate Finance Branch. The Corporate Debtor is a company incorporated on 09/01/1995 bearing CIN L32200MH1994PLC083853, having a Paid-Up Share Capital of Rs. 34,94,45,000/-.

3. The counsel for the petitioner submitted that vide their Sanction Letters dated 11/09/2014, 09/12/2015 and 27/12/2016 three term loans each of Rs.10,00,00,000/- were sanctioned in favour of the Corporate Debtor. Therefore, the total amount disbursed was Rs. 30,00,00,000/- and the amount to be in default is Rs.27,57,60,105.77/- along with interest @12.30% per annum.
4. The abovementioned term loans were sanctioned against hypothecation of programme rights and Pledge of shares of the Corporate Debtor for which the Deed of Hypothecation, Term Loan Agreements, Agreements for Pledge of shares, Undertaking and Trust and Retention Account Agreement were executed to secure the Term Loan Facilities which have also been annexed as Annexure-6 with the copy of the petition by the petitioner.
5. The petitioner further mentioned that the Corporate Debtor failed to repay their outstanding due as per their Undertaking and that several correspondences were exchanged between both the parties but in vain. Further, on 28/09/2017, the company slipped into NPA.
6. The petitioner also issued Notice/Recall Letter calling upon repayment of the dues dated 09/10/2018 at the Registered Office Address of the Corporate Debtor and if they failed to do so, proceeding would be initiated against them. To this notice the Corporate Debtor replied on 19/10/2018 wherein they have acknowledged the loan amount received, the non-payment on their part and also requested to consider the restructuring proposal already made on 22/12/2017. Their willingness to submit a fresh plan in view of the subsequent events and the present scenario was also mentioned therein. But despite of this, there was no payment made by the Corporate Debtor and the petitioner mentioned that therefore, this petition under Section 7 was preferred by the them as they are of the view that there is a mismanagement of funds and therefore, it needs strong restructuring plan under the supervision of this Tribunal.

7. The petitioner submitted the following documents in support of their contentions which are as under:
 - a. Copy of Certificate for ascertaining utilisation of Loan Proceeds (Valuation Reports/Auditors reports)
 - b. Memorandum and Article of Association of Neptune Developers Ltd.
 - c. Complete set of security documents executed to secure the Term Loans sanctioned to Corporate Debtor.
 - d. ROC Search Report
 - e. Notice issued by Central Bank of India and reply by the Corporate Debtor to it.
 - f. CIBIL Reports
 - g. Statement of Accounts along with Interest Calculation Sheets (with Bankers Certificate)
 - h. Particulars of Claim as on 29-10-2018.

8. The Corporate Debtor in his reply has stated that, inspite of grant of term loan facilities and even after execution of security documents, the Petitioner charged several illegal and unauthorized debit entries in the account of the Respondent, which created short term liquidity crunch for the Respondent. The counsel further mentioned that their financial condition started to worsen from mid-2017 owing to various factors namely sudden policy changes made by the Government, Implementation of GST, change in consumer preferences etc. therefore, in pursuance of such downturn, they approached the petitioner for restructuring. But the petitioner instead of considering this request, sold the shares pledged with it which resulted into a substantial fall in the market prices of the shares of the Corporate Debtor.

9. The Corporate Debtor contended that there is no financial debt due on them and payable to the petitioner because the valuable security in the form of pledged shares are already lost by them. Rather, the Corporate Debtor mentioned that they themselves should file appropriate proceeding against the petitioner towards damages and recovery of shares illegally sold by petitioner.

10. The Corporate Debtor also mentioned that the petitioner did not stop there but went on to declare the Corporate Debtor as NPA on

28/09/2017 and soon after that proceeded with selling a large chunk of pledged shares at a price lower than their actual market price and this has caused huge losses to the Corporate Debtor.

11. The counsel appearing on behalf of the Corporate Debtor mentioned that they, along with one M/s Global Showbiz Pvt. Ltd. and M/s Inayata Constructions Pvt. Ltd. has pledged shares in favour of the Petitioner i.e. 9,50,000 equity shares of the Corporate Debtor at Rs. 256.35/- each amounting to Rs. 24,35,32,500/-. 9,50,000/- equity shares of TV Vision Ltd. at Rs. 277,50/- each amounting to Rs. 26,36,25,000/- and 2,85,000 equity shares of SAB Events and Governance Now Media Ltd. at Rs. 50/25/- each amounting to Rs. 1,43,21,250/-. The aggregate value of the pledged shares with the petitioner before classifying the Corporate Debtor as NPA was approximately Rs. 52.14 Crores. It was mentioned by the Corporate Debtor that the petitioner not being able to re-deliver the pledged shares lodged with it for the specific purpose of securing the alleged facilities, the Corporate Debtor is liable to be discharged to such an extent. It is a well settled law that the right of the pawnee to sue on the debt assumes that the pawnee i.e. the petitioner herein is in a position to redeliver the security pledged, the pawnee cannot obtain a decree. The counsel further submitted that in absence of specific averments in respect of pledge security of shares in this petition, it can be safely presumed that the petitioner is not in a position to redeliver the security pledged with it and therefore, in such event the petitioner cannot have both the payments of the debt and also the security. At no point of time either the petitioner or pledgors received mandatory notice from the petitioner about sale of pledged shares and consequently in absence of such notice, sale if any is illegal. And therefore, the counsel contended that this petition is not maintainable because the petitioner is attempting to recover the amount claimed by them without being in a position to re-deliver the security pledged which cannot be permissible in law.
12. The counsel for the Corporate Debtor further mentioned about the several e-mails dated 07/12/2017, 22/01/2018, 29/01/2018, 08/02/2018, 23/02/2018, 05/03/2018 and 26/09/2018 sent to the petitioner requesting to furnish the details of the shares sold by

them but did not inform about the current position of the shares lying with them.

13. Again, the counsel for the Corporate Debtor argued that the petition is bad in law and made out of grudge on the part of the bank officials. The counsel mentioned that the petition is filed with an attempt to thwart the efforts of the Corporate Debtor at reviving its business by having the management of the company vested with another person in the name of an Interim Resolution Professional and this attempt will result into a total chaos in the operation of the Respondent and will not help the petitioner to yield any significant amounts.
14. The counsel for the Corporate Debtor also argued upon the maintainability of the petition by stating that the petitioner is attempted to recover the amount claimed by them without being in position to re-deliver the security pledged which cannot be permitted in law.
15. The petitioner has filed rejoinder wherein the contentions made by the Corporate Debtor are denied in toto. The petitioner mentioned regarding the request made by the Corporate Debtor that once the account is slipped into NPA, restructuring cannot be granted. Further to allow restructuring also there are certain requirements which are to be complied with and the Creditor has to take up a conscious decision not to deviate from any of the RBI circulars/directives as per which the account has to be necessarily declared as NPA. If an account is not serviced with the instalments for more than 90 days, the said account is to be necessarily declared as NPA as per the RBI directives. The Corporate Debtor cannot make any grievance on the same and further as a matter of right cannot insist that their account has to be restructured by this Financial Creditor.
16. The counsel for the petitioner mentioned that as the two Pledge Agreements that have been executed by the Corporate Debtor in their favour, the Corporate Debtor in their capacity as Pledgor agreed that if the loan and other money or any portion thereof remains unpaid, the petitioner is entitled to sell the pledged shares and accordingly had sold them amounting to Rs.2,26,10,871/- and adjusted the sale

proceeds towards the loan account of the Corporate Debtor thus taking all steps to protect the interest of the Corporate Debtor.

17. The counsel for the petitioner further mentioned that vide e-mails dated 06/10/2017 and 06/11/2017, they had already intimated to the Corporate Debtor about the particulars of sale of the pledged shares. Hence, no grievance shall be raised by the Corporate Debtor in this regard.
18. In reply to this rejoinder, the Corporate Debtor has filed his Sur-Rejoinder wherein they have repeated and reiterated that they had pledged shares in favour of the Petitioner Bank and the aggregate value of all the Pledged shares with them at the time of creation of pledge was approximately Rs. 52.14 Crores. Also, stress has been paid upon their previous contentions that they were not informed about their account slipping into NPA by the petitioner. It was further stated that the price of the pledged shares according to the data procured from the website of NSE and BSE was amounting to Rs.21,62,19,050/- as on the date of invocation i.e. on 27/09/2017.
19. The counsel for the Corporate Debtor contended that the petitioner according to the table provided by the petitioner, for the first time by the way of the Rejoinder annexed at Annexure-I, it is quite evident that most of the pledged shares were sold by them in and after the month of February, 2018 even after invoking the shares as on September, 2017. Also, the Corporate Debtor on several occasions had requested the petitioner to furnish the details of sale of the pledged shares and despite the repeated requests, the petitioner never provided the details of the same until they filed their rejoinder before this Bench under reply. Also, it was mentioned that as on the date of invocation, the market value of the pledged shares was Rs. 21,62,19,050/- and the petitioner was bound to have sold the shares, at the best possible value but instead chose to sit over the right of the Corporate Debtor and sold majority shares from the month of February 2018, after almost four months from its invocation.
20. The Corporate Debtor again submitted that it is a well settled principle of law that the right to pawnee to sue on the debt assumes that the pawnee i.e. the petitioner herein is in a position to redeliver

the security pledged on payment of debt and if the pawnee is not in a position to redeliver the security pledged, the pawnee cannot obtain a decree. It was also mentioned that the petitioner is not in a position to redeliver the security pledged with it and therefore, in such event they cannot have both the payments of the debt and also the security.

21. To this Sur-Rejoinder filed by the Corporate Debtor, the petitioner again filed an Additional Rejoinder wherein it was submitted that the first set of pledged shares of SAB Events were sold on 18/10/2017 i.e. 20 days after the account was declared NPA, the second set of SABTNL were sold on 21/02/2018 i.e. 4 months after the account was declared as NPA and the third set of pledged shares of TV Vision were sold on 26/02/2018 i.e. 4 months after the account was declared NPA and therefore, submitted that these shares were not sold by them with inordinate delay and also denied that the Corporate Debtor was not informed about the sale.
22. It was also submitted that before declaring the Corporate Debtor as NPA, many requests were made by the petitioner Bank to regularised their account and were categorically informed that if the outstanding is not paid, the Bank would be forced to take measures inter alia inclusive of the sale of the pledged shares. The Corporate Debtor vide letter dated 22/09/2017 which was received by the petitioner on 27/09/2017 requested for grant of more time to set the things right and also had asked for co-operation.
23. The counsel further submitted that upon request of the Corporate Debtor for deferring sale, the petitioner Bank had deferred the coercive steps genuinely for a short duration before commencing sale of the shares. Also, as mentioned by the Corporate Debtor that there were no high volumes of trading with regard to the pledged shares and hence a sudden selling spree of the said shares would have disastrous effect causing pandemonium of huge loss to the Corporate Debtor and hence the bank was forced to gradually offload the pledged shares without triggering the shares price to fall steeply. The counsel mentioned that if huge volumes of pledged shares are sold one at a time, the share prices will crash and also that there were no buyers to purchase the shares in the market. Hence the counsel mentioned that the allegations of the Corporate Debtor

about the intentions of the bank are not correct and hence denied being false.

24. The next main contention of the petitioner is that they have been wrongly blamed and, on several occasions, accommodated the Corporate Debtor to the fullest extent till whatever time it was possible and there cannot be any accommodation that could be given beyond the guidelines/circulars of RBI pertaining to the restructuring and NPA norms. The contentions made by the Corporate Debtor that the shares were not sold for the right price and at the right time and one with malafide intentions is not correct and hence denied.

25. After a long and detailed hearing of both the sides in regard to this matter, the following order is hereby passed:

ORDER

26. We have heard both the parties at length, taken all their submissions into account and perused the documents and evidences placed on record by them. It has become very clear that there were three express Loan Agreements entered between both the parties which is also admitted by both of them. A total amount of Rs. 30,00,00,000/- was disbursed by the petitioner in favour of the corporate debtor vide sanction letters dated 11/09/2014, 09/12/2015 and 27/12/2016. Therefore, both the parties shared a relationship of creditor and debtor. Also, certain securities were granted by the Corporate Debtor in favour of the petitioner.

27. After perusing all the documents on record and hearing both the parties, we have come to a conclusion that the said amount is due on the Corporate Debtor and there is a default in making the payment towards the liability to the Petitioner. This fact is even not denied by the Corporate Debtor which is also evident from the documents including the various e-mails. The Corporate Debtor contended that the petitioner sold the pledged shares at a lower price and therefore, this petition is not maintainable because the petitioner who is the pawnee in this case is not in a position to redeliver the security pledged and thus cannot obtain a decree.

28. Also, the Corporate Debtor mentioned that they were not informed about the shares being sold by the petitioner which was their main contention which is denied by the petitioner and in support of which has relied upon the judgment in the matter of **Tendril Financial Services Pvt. Ltd. & Ors. V. Namedi Leasing & Finance Ltd. & Ors., (2018 SCC OnLine Del 8142)** wherein the Hon'ble High Court of Delhi held that ".....Thus, (a) while Section 176 provides for a notice to pledgor prior to effecting sale, Regulation 58 provides for notice post invocation and on which invocation beneficial ownership of pledged shares changes from that of the pledgor to that of the pledgee and which is equivalent to sale under Section 176. To hold that a prior notice under Section 176 of Contract Act is also required in the case of pledge of dematerialised shares would interfere with transparency and certainty in the securities market, rendering fatal blow to the Depositories Act and Regulations and the object of enactment thereof."

In the light of the above, it can be safely concluded that the petitioner was not under an obligation to inform the Corporate Debtor before selling the shares pledged. Also, the pledged shares were all in DEMAT form and not in physical form. It is well settled principle by the judgments of various High Courts including the above cited judgment of the High Court of Delhi, that the pledged of dematerialized shares is not possible under the provisions of the Contract Act and the pledgement of the dematerialized shares are only governed by Depositors and Regulations (58) (1) to (6) made thereunder and hence Section 176 of the Contract Act will not apply in the present matter.

29. The account of the Corporate Debtor was declared as NPA on 28/09/2017 and the first set of pledged shares of SAB Events were sold on 18/10/2017 i.e. 20 days after the date of declaration as NPA. The second set of pledged shares of SABTNL were sold on 21/02/2018 i.e. 4 months after the account was declared as NPA and the third set of pledged shares of TV Vision were sold on 26/02/2018 i.e. 4 months after the account was declared NPA and therefore, as the petitioner mentioned along with necessary documents that these shares were not sold by them with an inordinate delay as well as denied that the Corporate Debtor was not informed about the sale. The account was also declared NPA in strict

compliance to the RBI circulars. Also, the details of the stock price pertaining to the 3 sets of pledged shares belonging to different Companies is filed by the petitioner as Exhibit A/3 to their Additional Rejoinder. Therefore, the contention of the Corporate Debtor cannot be relied upon and it cannot be denied that they are liable to pay to the petitioner the amounts due upon them and here it is pertinent to note that the Corporate Debtor time and again requested the petitioner for restructuring of the loan amount. Therefore, it can be said that there was an acknowledgement of the debt by the Corporate Debtor.

30. Hence, it is to be noted that this petition fulfils all the requisite conditions to admit a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 and therefore, the petition deserves to be admitted.

31. 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. In the light of above facts and circumstances, the existence of debt and default is reasonably established by the petitioner/Financial Creditor as a major constituent for admission of a petition under section 7 of the I&B Code. 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 20.12.2019 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. Vijendra Kumar Jain, having office at 401/402, Sai Trishul, Raviraj Oberoi Complex, Off new Link Road, Andheri (West) Mumbai-400053 and having Registration No. IBBI/IPA-001/IP-P00721/2017-18/11253 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code, 2016.

32. Accordingly, this Petition is admitted.

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

Sd/-
Shyam Babu Gautam
Member (Technical)

Sd/-
Bhaskara Pantula Mohan
Member (Judicial)