

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. IB-1825(PB)/2019

IN THE MATTER OF:

Small Industries Development Bank of India

.....Financial Creditor/Petitioner

v.

M/s. Radhey Sham Tandon Manufacturing Pvt. Ltd.

.....Corporate Debtor/Respondent

**SECTION: UNDER SECTION 7 OF THE INSOLVENCY AND
BANKRUPTCY CODE, 2016**

JUDGMENT DELIVERED ON 10.10.2019

CORAM:

**CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT**

**SHRI S.K. MOHAPATRA
HON'BLE MEMBER (T)**

PRESENT:

For the Petitioner:

Mr. Shah Usman, Mr. R.P. Vats & Mr.
Manas Shukla, Advocates

For the Respondent:

M.M.KUMAR, PRESIDENT

JUDGMENT

The 'Financial Creditor'-Small Industries Development Bank of India (SIDBI) has filed the instant petition 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 M/s Radhey Sham Tandon Manufacturing Private Limited-Corporate Debtor.



C.P. No.(IB)-1825(PB)/2019

Small Industries Development Bank of India v. M/s. Radhey Sham Tandon Manufacturing Pvt. Ltd.

2. The Corporate Debtor-M/s. Radhey Sham Tandon Manufacturing Private Limited was incorporated on 17.02.1997. The identification number of the Corporate Debtor is U17114DL1997PTC085178 and its registered office is situated at 6189, RST House, Ground Floor, Nawab Road, Sadar Thana, Delhi-110006.

3. The Financial Creditor has proposed the name of Resolution Professional, Mr. Sameer Rastogi with the address F-116, Lajpat Nagar Part 1, New Delhi-110024 and email id - srastogi@indiajuris.com. His registration number is IBBI/IPA-002/IP-N00226/2017-18/10677. He has filed his written communication which satisfies the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the certificate of registration.

4. The details of financial debt advanced by the petitioner-Financial Creditor have been set out in Part-IV of the proforma. The total amount disbursed in three tranches i.e. on 29.09.2015, 15.06.2015 & 10.09.2015 which were in the form of Term Loan (Term Loan-I) and Subordinated Debt (Term Loan-II) facilities is claimed to be INR 470.00 Lakhs. The amount claimed to be in



default and the details of default have been given in sub para 2 of Part-IV and the same reads as under:

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH DEFAULT OCCURED	<p>Total Amount claimed: Rs. 7,91,84,152.00 (Seven Crore Ninety One Lakh Eighty Four Thousand One Hundred Fifty Two Only)</p> <p>Date of NPA is 08.06.2016</p> <p>Working sheet enclosed (Annexure-3).</p>
----	---	---

5. The Respondent executed several documents for availing the aforesaid financial assistance from the Petitioner. True Copies of each one of those namely, Letter of Intent for Rupee Term Loan dated 11.05.2015, Loan Agreement dated 04.06.2015, Deed of Hypothecation dated 04.06.2015, Modified Letter of Intent for Rupee Term Loan dated 28.09.2015, Letter of Intent for Subordinated Debt Agreement (Term Loan-II) dated 25.05.2015, Subordinated Debt Agreement dated 04.06.2015, Deed of Hypothecation to secure Subordinated Debt (Term Loan- II) of Rs. 300 Lakh and Modified letter of Intent for Subordinated Debt



(Term Loan- II) dated 08.09.2015 have been placed on record (Annexure-5 to 12).

6. The details of the security held by, or created for the benefit of 'financial creditor'-SIDBI along with the certificate of registration of charge issued by the Registrar of Companies have been placed on record which fulfils the requirements of Section 77 & 78 of Companies Act, 2013.

7. It is also submitted by the Petitioner-Financial creditor that the account of the Corporate Debtor was classified as NPA on 08.06.2016. In view of the repeated defaults on the part of the Corporate Debtor to comply with the schedule of repayment of the principal and interest dues, the Financial Creditor issued a notice dated 14.09.2016 (Annexure-16) under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the Corporate Debtor and its Directors..

8. Two certificates under Section 2A(n) of the Bankers Book Evidence Act have been filed by the Financial Creditor along with print out of account statements which relate to the aforesaid accounts of the Corporate Debtor in which financial debt was



transferred by the Financial Creditor. The said certificates further disclosed sufficient compliance with the provisions of Section 2A(n) of the Bankers' Book Evidence Act. It is stated by the officer that the statement of accounts filed by the financial creditor are true and correct copies of the bank records maintained by the Financial Creditor in its computer.

9. A record of default is available with the Credit Information Bureau (India) Limited (CIBIL) as per its commercial credit information report of the Corporate Debtor based on report dated 24.07.2019 (Annexure-14).

10. It is also pertinent to mention that the Corporate Debtor in its balance sheet (Annexure-13) has acknowledged the following amounts as borrowed from the Petitioner-Bank:

"Note 04

<u>Long Term Borrowing</u>	Current Year 2016-17	Current Year 2015-16
.....		
.....		
.....		
.....		
SIDBI	4,64,00,000.00	4,47,20,000.00"

11. The precise case of the Petitioner is that the total amount in default due to the Petitioner by the Respondent-Corporate Debtor

C.P. No.(IB)-1825(PB)/2019

Small Industries Development Bank of India v. M/s. Radhey Sham Tandon Manufacturing Pvt. Ltd.

as on 24.06.2019 is Rs. 7,91,84,152.00/-. A tabular chart depicting working of the amount in default is annexed (Annexure-3).

12. Subsequently an affidavit of service was filed by the learned counsel for the petitioner which showed that the service was effected by the email on the address as recorded in the master data as well as by the speed-post sent on 06.08.2019 which was returned undelivered on 13.08.2019. Accordingly, service was complete as effected by the email. However, no one had put in appearance on behalf of the respondent and vide order dated 20.08.2019 respondent was proceeded ex-parte.

13. Thereafter when the matter came up for consideration on 11.09.2019 on behalf of the Respondent, Mr. Akhil Shankhwar had put in appearance and requested for an opportunity to file reply. We granted ten days' time for filing reply which was subject to payment of Rs. 25,000/- as cost payable to the petitioner and the matter was to be heard on 25.09.2019. However, on 25.09.2019 neither the counsel on behalf of the Respondent appeared nor the cost was paid. Even the reply was not filed by



the Corporate Debtor. Eventually, we heard the arguments and reserved the order.

14. According to the learned counsel there is no resistance nor the claim of the Financial Creditor in respect of 'unpaid debt' has been controverted. It must therefore be considered to have been admitted.

15. Learned counsel for the petitioner has argued that all requirements of Section 7 for the initiation of Corporate Insolvency Resolution Process by a Financial Creditor stand fulfilled. In that regard, he has submitted that the petition as prescribed by Rule 4 (1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 7 (2) of IBC is complete in all respects. He has further submitted that the details of default along with the dates have been stated in part IV and the additional documents have been submitted subsequently along with all the minute details. There is overwhelming evidence available to prove default and name of the resolution professional has been specified who does not suffer from any disqualification.



16. Under sub-section 5(a) of section 7 of the code, the application filed by the petitioner financial creditor has to be admitted on satisfaction that:

- (i) Default has occurred;
- (ii) Application is complete, and
- (iii) No disciplinary proceeding against the proposed IRP is pending.

In view of the above no doubt is left that there was an advancement of loan and default on part of the respondent-corporate debtor is established. Even Otherwise there is overwhelming documentary evidence on record which support those findings.

17. We further find that the provisions of Section 7 (2) and Section 7 (5) of IBC have been complied with as discussed in detail in the case of ECL Finance Limited vs. Digamber Buildcon Pvt. Ltd. (IB- 1039(PB)/2018).

18. After a conjoint reading of the aforesaid provision along with Rule 4 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, as already recorded that a default has occurred and the application under sub section 2 of

Section 7 is complete. The IRP proposed does not have any disciplinary proceedings pending against him.

19. As a sequel to the above discussion, this petition is admitted and Mr. Sameer Rastogi is appointed as the Interim Resolution Professional.

20. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

21. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately (3 days) make public announcement with regard to admission of this application under Section 7 of the Code. The public announcement is required to be made in all territories/areas



C.P. No.(IB)-1825(PB)/2019

Small Industries Development Bank of India v. M/s. Radhey Sham Tandon Manufacturing Pvt. Ltd.

where the business have been transacted by the Corporate Debtor so that all stakeholders may have noticed of the fact that Corporate Insolvency Resolution Process has been triggered in respect of the Corporate Debtor.

22. Before parting we wish to observe about the delaying tactics adopted by the Corporate Debtor-Respondent. In that regard it would be appropriate to refer to the orders granting time to the Corporate Debtor-Respondent for filing reply. The aforesaid position would become evident from a series of orders dated 20.08.2019, 11.09.2019 & 25.09.2019 which are set out below:-

“Order dated 20.08.2019

An affidavit of service has been filed which shows that the service has been effected by the email on the address as recorded in the master data. The service sought to be effected by speed-post sent on 06.08.2019 has been returned undelivered on 13.08.2019. Accordingly, service is complete as effected by the email. However, no one has put in appearance on behalf of the respondent. Proceeded ex parte.

List for arguments on 11.09.2019.

Order dated 11.09.2019

On behalf of the Corporate Debtor Mr. Akhil Shankhwar has put in appearance by stating that on 20.08.2019 corporate

debtor was proceeded ex parte and an opportunity be granted to file reply.

Vide order dated 20.08.2019 we have noticed that affidavit of service was filed and service on the registered email as per the master data was effected and the same has not been disputed.

A copy of the paper book shall be supplied to the counsel for the respondent during the course of the day.

In view of the above we grant ten days time to file reply with a copy in advance to the counsel opposite which shall be subject to payment of Rs. 25,000/- as cost payable to the petitioner.

List for arguments on 25.09.2019.

Order dated 25.09.2019

On 11.09.2019 counsel for the respondent had put in appearance and took time to file reply. Ten days time was granted to file reply by imposing cost of Rs. 25,000/-. Today neither the counsel has appeared nor the cost has been paid. Even the reply has not been filed. Therefore, proceeded ex parte.

Arguments heard. Order Reserved.”

The aforesaid details concerning the conduct of the Corporate Debtor-Respondent would reveal that a designed effort has been made to impede the insolvency proceedings by seeking time over and over again for filing reply. The leniency shown by the Bench has been misused. It was therefore, in these

circumstances when cost of Rs. 25000/- was imposed for filing reply and no reply having been filed there was no option except to proceed with hearing of the case. We are constrained to observe that in some of the cases the Corporate Debtor-Respondent has deliberately delayed the proceedings so as to avoid the initiation of Corporate Insolvency Resolution Process. This case thus is another example of contumacious conduct. We say no more on this issue.

23. We direct the Financial Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

24. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

25. Before parting we must notice the complaint made against



C.P. No.(IB)-1825(PB)/2019

Small Industries Development Bank of India v. M/s. Radhey Sham Tandon Manufacturing Pvt. Ltd.

Financial Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-promoter/director of the Corporate Debtor for any such correction if need be and act accordingly by placing it before the Financial Creditor as it is only fair to do so.

26. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

Sd/-

(M.M. KUMAR)
PRESIDENT

- Sd -

(S.K. MOHAPATRA)
MEMBER (T)

10.10.2019
VINEET

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member (T), Shri S.K. Mohapatra is not holding Court today.

Sd/-

(NIRMALA VINCENT)
COURT OFFICER