

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

IB-1071(ND)/2018

In the matter of

State Bank of India.

.....Operational Creditor

V/s

**M/s. Shri Shyam Ji Ahrico Exports
Pvt. Ltd.**

.....Corporate Debtor

SECTION: 7 of IBC, 2016

Order delivered on 02.01.2019

Present:

**SMT. INA MALHOTRA, HON'BLE MEMBER (J)
SMT. DEEPA KRISHAN, HON'BLE MEMBER (T)**

Present:

Mr. Srikaanth S. Iyyer, Mr. Gaurav Goel,
Advocates for the Petitioner.

Ms. Medha Mukherjee, Mr. Bharat Grotra,
Advocates for the Respondent.

ORDER
PER SMT. INA MALHOTRA, MEMBER (J)

The State Bank of India, as a Financial Creditor, has invoked the provisions of Section 7 of the Insolvency and Bankruptcy Code 2016, (hereinafter referred to as the "Code") praying for initiation of the

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Corporate Resolution Process of the Corporate Debtor for its inability to liquidate its dues.

2. As per the averments, the Corporate Debtor through its Directors, availed various credit facilities for and in the name of the Respondent Company to meet its urgent business requirements. To enable them get the financial assistance, apart from execution of various documents, personal guarantees including creation of equitable mortgage of immovable property was offered by the Directors. The Financial Creditor sanctioned limits under various heads to the tune of Rs. 28.29 Crores, which were fully availed. The credit facilities were last renewed on execution of fresh documents on 03.06.2016. The outstanding balance of Rs. 20,78,00,000/- was also acknowledged and confirmed as being correct.

3. The financial Creditor has submitted that the Corporate Debtor has defaulted in adhering to the repayment schedule or regularizing their accounts. As on 28.06.2016, the account was classified as an NPA. The present outstanding liability has accrued to Rs. 28,20,11,276/73. Though the request of the Corporate Debtor for a one-time settlement was considered and approved, but was recalled on account of non-adherence to its terms and conditions. Despite further opportunity no steps were taken to reduce this liability. Failure to adhere to the repayment plan or the one-time settlement has

constrained the Financial Creditor to file the present proceedings for initiating the Corporate Resolution Process of the Corporate Debtor's business.

4. No reply has been filed by the Corporate Debtor. In circumstances as above, there is hardly any dispute or defence available to the Corporate Debtor as the financial debt is clear and apparent. The outstanding liability on account of availing various financial limits is corroborated by the statement of account as maintained by the Financial Creditor in the normal course of its business, duly supported by the banker's certificate as required under Section 65B of the Indian Evidence Act. As the Corporate Debtor is clearly not in any position to liquidate its liability, the Financial Creditor is entitled to the prayer made herein.

Accordingly, this petition is admitted moratorium in terms of Section 14 of the Code comes into effect forthwith, staying:

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 Securitization 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.

Further,

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) Further, the order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

“Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall

cease to have effect from the date of such approval or liquidation order, as the case may be.”

5. The Financial Creditor has proposed the name of the IRP whose details are as follows:

C.A. Sanjay Aggarwal, Registration No. IBBI/IPA-002/IP-N00126/-2017-18/10295, R/o 14, New Punjab Mata Nagar Main Street Pakhowal Road Ludhiana – 141013 (Punjab), E-mail: - sanjavaggarwal.fcs@gmail.com.

His consent and certificate of registration are on record. We therefore, confirm his appointment. The RP is directed to take steps as required under the statute, more specifically under Section 15, 17, 18, 20 & 21 of the Code and file his interim report by 8th February, 2019.

6. Copy of the order be communicated to the parties and to the IRP.



(Deepa Krishan)
Member (T)



(Ina Malhotra)
Member (J)