

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

CP (IB) No.508/KB/2017

In the matter of:

Small Industries Development Bank of IndiaFinancial Creditor

-Versus-

Tirupati Jute Industries Ltd.Corporate Debtor

Order Delivered on 12th January 2018

Coram:

V. P. Singh, Member (J)

Jinan K.R., Member (J)

For the Financial Creditor : 1. Mr Siddhartha Chatterjee, Advocate
2. Mr A. K. Seal, Advocate

For the Corporate Debtor : 1. Mr D. Basu Roy, Advocate
2. Ms Ruby Adak, Advocate

ORDER

Per V.P. Singh, Member (J)

Petitioner, Small Industries Development Bank of India (hereafter called and referred to as SIDBI) has filed this application under Sec.7 of the Insolvency and Bankruptcy Code, 2016 (from now on referred to I & B Code, 2016) for initiating corporate insolvency process read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against the corporate debtor Tirupati Jute Industries Ltd. Petitioner has stated that corporate debtor has committed default in making payment of Rs.7,18,21,128/- (Rupees Seven crore eighteen lakh twenty one thousand one hundred twenty-eight).

2. The brief facts of the case, as stated in the application, are that SIDBI is a corporate body having its Registered Office at SIDBI Tower, 15, Ashok Marg, Lucknow - 226001 and having its branch office at 8th Floor, A Wing, Constantia Building, 11, Dr U N Brahmachari Street, P.S. Shakespeare Sarani, Kolkata - 700 017. The Identification No. of SIDBI is PAN-AABCS3480N. Ms R. Prabhavathi, AGM BO In-Charge of the Applicant Bank has filed this application on behalf of SIDBI who has been authorised to submit this application on behalf of the applicant bank vide Notification dated 13/11/2000 annexed with the petition and marked as Exhibit 1.

3. The Corporate Debtor Tirupati Jute Industries Ltd., Identification No. is U17119WB1988PLC044622. The name and registration number of the proposed interim resolution professional are Mr Pinaki Sircar, 31/7, N.C. Chowdhury Road, Kolkata - 700 042, Registration No. is IBBI/IPA-002/IP-N00063/2016-2017/10141, the email address is cs.p.sircar@gmail.com pinaki_sircar@hotmail.com.

4. Applicant has stated that the total debt granted by SIDBI to the corporate debtor under Secured Business Loan Scheme of Rs.6,40,00,000. As per terms of sanction, 90% of the sanctioned amount was disbursed on 13/1/2015, copy enclosed along with the petition and marked as Exhibit 3.

5. Applicant bank submits that the total amount of default under the Secured Business Loan Scheme as on 31/7/2017 is Rs.7,18,21,128/-.

6. As the corporate debtor failed to repay the loan, the account became NPA and the applicant financial creditor issued recall notice on 24/2/2016. Copy of the recall notice is annexed with the application and marked as Exhibit 4.

7. It appears from the record that in consideration of the sanction of the said Term Loan the corporate debtor executed various documents in favour of the applicant/financial creditor as follows:-

a) Loan Agreement dated 5/1/2015.

- b) General conditions rupee loan - GC-2014 dated 5/1/2015.
- c) Deed of hypothecation dated 5/1/2015.
- d) Deed of corporate guarantee dated 5/1/2015.
- e) Deed of guarantee dated 9/1/2015.
- f) Declaration of undertakings dated 5/1/2015.

8. For securing repayment of the credit facility sanctioned by the applicant bank the corporate guarantor mortgaged immovable properties in favour of the Applicant and the borrower also created the first charge in favour of the applicant bank.

9. Applicant further submits that in spite of repeated demands the corporate debtor was not making payment of monthly instalments though acknowledged that they are enjoying the credit facility by issuing letters on various dates. The corporate did not repay the loan amount, and on account of continuous and persistent default, the loan of the company was classified as NPA on 8/10/2015.

10. Applicant further submits that as no payment was forthcoming, the applicant issued the demand notice on the borrower under Sec.13(2) of the SARFAESI Act, 2002. The notice for seeking possession under Sec.13(4) of the SARFAESI Act was also issued. Applicant further submits that the applicant filed OA No.56/2017 against the corporate debtor before the Debts Recovery Tribunal and the matter is still pending.

11. Respondent/corporate debtor filed written statement denying the allegation of the applicant and submitted the application filed by the financial creditor is not maintainable as non-joinder and misjoinder of parties.

12. It is the case of the corporate debtor that the respondent company approached the applicant/financial creditor for financial assistance and after examining the documents the applicant sanctioned a loan of Rs.640 lakh under the Secured Business Loan Scheme.

13. The corporate debtor also availed financial accommodation from Federal Bank against mortgage of the land and hypothecation of plant and machinery financed by the said bank.

14. Respondent further submits that since March 2015 the respondent jute mill was under lockout and the generation of the fund out of the production was not possible. Respondent asserted that there is the possibility of getting liquidity of about Rs.2 crore from the said project which can be infused in the business of the corporate debtor and by the said process, expected to regularise the account within 11/1/2016. Then, the applicant/financial creditor issued demand notice under Sec.13(2) of the SARFAESI Act, 2002 for the alleged outstanding dues of Rs.5,98,22,343/-.

15. Respondent further submitted that to resolve the dispute the respondent approached the applicant/financial creditor to settlement on 25/8/2017 by proposing to pay Rs.6 crore in full and final settlement of the outstanding amount. Out of which proposed to pay Rs.1.50 crore within a week of hearing of acceptance of the offer and the balance amount of Rs.4.50 crore by way of six equal monthly instalments of Rs.75 lakh each. But the said proposal was not accepted by the applicant/financial creditor and by a letter dated 4/9/2017 rejected the settlement proposal of the corporate debtor. Under the circumstances above the corporate debtor states that the application of the applicant/financial creditor is liable to be dismissed with cost.

16. In its affidavit, in reply, the applicant/financial creditor has reiterated the facts what has been stated in its application.

17. Heard the argument of Ld. Advocates of both sides and perused the case record. To prove its case the applicant/financial creditor has filed the following documents along with the application for initiation corporate insolvency process :
Authorisation (SIDBI General Regulations 2000) Exhibit 1; Business Loan

Scheme, Exhibit 2.; Disbursement of Term Loan assistance under Secured Business Loan, Exhibit 3; Recall Notice, Exhibit 4; Mortgage Deed, Exhibit 5; Classification report of the company issued by CIBIL, Exhibit 12.

18. To prove its case the applicant/financial creditor has filed a copy of the statement of accounts certified under Bankers' Book of Evidence Act annexed with the application as Exhibit 13.

19. The applicant has also filed a report from the CIBIL dated 11/5/2017 added with the application as Exhibit 12.

20. The applicant has also filed Balance Confirmation Letter dated 28/2/2015 where under the default in payment by the corporate debtor has been acknowledged which is marked as Exhibit 14. The applicant financial creditor has also annexed the statutory notice dated 25/2/2016 under Sec.13(2) of the SARFAESI Act, 2002 of the financial creditor added with the application.

21. By the admission of the corporate debtor, it is undisputed that corporate debtor has taken various financial credit facilities from the applicant/financial creditor and has withdrawn money from the financial creditor. By certified copy of the statement of account, Exhibit 13, clearly shows that up to 31/7/2017 total amount of Rs.7,18,21,128/- was due from the corporate debtor. Applicant/financial creditor has also filed letter dated 24/2/2016 annexed with the application as Exhibit 4. By the said letter the applicant recalled its entire principal amount of the loan, interest and other monies due in respect of the loan granted.

22. Petitioner has also annexed a copy of the Credit Rating Agency wherein the record of default is available and status classification report of the corporate debtor issued by CIBIL dated 11/5/2017, stated in Exhibit 12, shows the account status of the corporate debtor as Substandard and Doubtful.

23. By documents filed by the Financial Creditor, it is clear that the corporate debtor has committed default in making payment of Rs.7,18,21,128.

24. The financial creditor has proposed the name of Mr. Pinaki Sircar as IRP. Declaration in Form No. 2 is also filed by the proposed IRP. By the declaration of IRP, it is clear that no disciplinary proceeding is pending against the proposed IRP. The application submitted by the Financial creditor is in prescribed Form and is complete. Thus it is clear that petition filed by financial creditor U/S 7 of the Insolvency & Bankruptcy Code for initiation of corporate insolvency process against the corporate debtor deserves to be admitted.

ORDER

The petition filed by the financial creditor under Sec.7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Resolution Process and declare a moratorium and public announcement as stated in Sec.13 of the IBC, 2016.

The moratorium is declared for the purposes referred to in Sec.14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

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

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.

The order of moratorium shall affect 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

Necessary public announcement as per Sec.15 of the IBC, 2016 may be made.

Mr Pinaki Sircar, 31/7, N.C. Chowdhury Road, Kolkata - 700 042; Registration No. is IBBI/IPA-002/IP-N00063/2016-2017/10141, the email address is cs.p.sircar@gmail.com pinaki_sircar@hotmail.com. is appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.

Let the certified copy of the order be issued upon compliance with requisite formalities and a copy of the order may also be sent to the Applicant/Financial Creditor as well as Corporate Debtor and IRP through email.

List the matter on 30th January 2018 for filing of the progress report.

Sd

**Jinan K.R.
Member (J)**

Sd

**V. P. Singh,
Member (J)**

Signed on 12th  January 2018