

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
CP (IB) NO. 4227 OF 2019**

**APPLICATION BY FINANCIAL CREDITOR TO INITIATE
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER
THE INSOLVENCY AND BANKRUPTCY CODE, 2016.**

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read
with Rule 4 of the Insolvency and Bankruptcy (Application to
adjudicating Authority) Rules, 2016)*

In the matter of

Syndicate Bank

Syndicate Bank,

Head Office, Manipal, District:

UDUPI, Karnataka 576104

.....Financial Creditor

Vs

Rahi Shipping (I) Pvt. Ltd.

G 37, Ground Floor, Sapana Terrace,

Swatantra Path, Vasco Da Gama,

Goa 403802

.....Corporate Debtor

Order delivered on: 16.09.2021

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. U.C. Nayak i/b M.V. Kini Law Firm

For the Respondent: None present

Per: Shri H.V. Subba Rao, Member (Judicial)

ORDER

1. This Company Petition is filed by *Syndicate Bank* (hereinafter called "Financial Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against *Rahi Shipping (I) Pvt.*

Ltd. (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 7 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of a Financial Debt of Rs. 11,65,41,666.41/-.

2. The Corporate Debtor M/s Rahi Shipping (India) Pvt. Ltd. being a Transport Operator operating Barges in Vaso Da Gama had availed a Term Loan of Rs. 490 Lacs on 09.08.2011 from the Financial Creditor to purchase a new Barge costing Rs. 620 lacs.
3. The said loan has to be repaid in 59 monthly instalments of Rs. 8.31 lacs each payable between October and June and repayment holiday between July and September every year with an initial repayment holiday of two months. According to that the first and last instalments were fixed at February 2012 and June 2018 respectively. Further, interest debited to the account to be paid every month as and when debited to the account.
4. The said loan was secured by Hypothecation of New Barge purchased out of the Loan proceeds in addition to mortgage of some immovable properties held in the name of the Directors of the Company and Guarantor to the loan.
5. Though the Corporate Debtor purchased the said new Barge out of loan proceeds and putting their own contribution by way of margin money, they were not successful in their venture. They failed in payment of interest on due dates and also not paid single instalment fixed therein even though the said loan was restricted/rephrased/rescheduled in December 2012. The Corporate Debtor committed default in payment of both interest and instalment towards the Term Loan sanctioned to them despite umpteen requests and reminders.

6. On 31.03.2013, the Financial Creditor has classified the said loan as Non-Performing Asset in terms of RBI guidelines and started recovery proceedings. Recovery Proceedings include issue of recall notice on 06.02.2017, issue of notice under Section 13(2) under SARFAESI Act 23.02.2017 and filing OA in Debt Recovery Tribunal in Mumbai on 29.03.2018.
7. Meanwhile, the Financial Creditor had also favourably considered the OTS proposal submitted by the Corporate Debtor on 01.07.2016. As per that the Corporate Debtor has agreed to pay Rs. 368.39 lacs as against the outstanding liability of Rs. 689.50 lacs in full and final settlement. Here also, Corporate Debtor has failed to keep up their commitment.

FINDINGS

1. The Corporate Debtor did not choose to appear before this Bench despite service of notice and accordingly the Corporate Debtor was set ex parte vide an order dated 08.09.2021 of this Bench.
2. Heard the argument of learned counsel appearing for the Financial Creditor and perused the record. Learned counsel appearing for the financial Creditor submits that the loan account of the Corporate Debtor was declared as NPA on 31.03.2013 and the Corporate Debtor submitted OTS offer vide letter dated 30.03.2016 annexed page 154 of the company petition offering to pay an amount of Rs. 3,33,39,801/- towards full and final settlement within 3 years from the date of declaring the account as NPA. He has further submitted that the Corporate Debtor also addressed another letter dated 17.08.2016 annexed at page 158 of the Company Petition once again offering an amount of Rs. 368.39 lakhs towards full and final settlement agreeing to clear the amount before November 2016.

3. The Counsel appearing for the Financial Creditor also invited the attention of this Tribunal to the letter dated 13.04.2017 in response to the demand notice issued under Section 13(2) of SARFAESI act annexed at page 159 of the petition sent by the Corporate Debtor to the authorized officer of the Financial Creditor admitting their liability and requesting the Financial Creditor to drop the further proceedings. In this connection it is important to mention here that as per the law laid down by the Hon'ble Supreme Court in *Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy & another*; an OTS letter addressed by borrowers also amounts to an admission of liability/acknowledgment of debt.
4. Thus, the above Company Petition being filed on 26.06.2019 is well within limitation. After hearing the submissions and upon perusing the material available on record, this Bench feels that the Financial Creditor has successfully proved the existence of debt and default and the debt is also within limitation. To add this, the claim of the Financial Creditor remained unchallenged. The Financial Creditor has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Thus, the present Company Petition satisfies all the necessary legal requirements for admission.
5. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- (a) The above Company Petition No. (IB) -4227(MB)/2019 is hereby allowed and initiation of Corporate Insolvency

Resolution Process (CIRP) is ordered against Rahi Shipping (I) Pvt. Ltd.

- (b) This Bench hereby appoints **Mr. Ajay Ganesh Marathe** Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01262/2018-19/12170 having office at 205 Sudama Yash Apartment, Chittaranjan Das Road Dombivli (East) 421201 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.
- (c) The Financial Creditor shall deposit an amount of Rs.5 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- (d) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- (e) 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.
- (f) 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.
- (g) That the order of moratorium shall have effect from the date of pronouncement of this order 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.
- (h) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (i) During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- (j) Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- (k) Accordingly, this Petition is allowed.
- (l) The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

CHANDRA BHAN SINGH
MEMBER (TECHNICAL)

Sd/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)