

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No.50/Chd/Pb/2020

Under Section 7 of the IBC 2016

In the matter of:

State Bank of India, SAMB, Ludhiana
having its Regd. address at
Fountain Chowk, Civil Lines,
Zonal Business Office Building,
Ludhiana-141001

....Petitioner-Financial Creditor

Vs.

1.Sahil Spintex Limited

having its Regd. Office at
Ratia Road, Village Boha,
Tehsil Budhlada-151503
District Mansa

....Respondent-Corporate Debtor

2.Union of India, Ministry of Corporate Affairs

having its Regd. Office at
A-Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi-110001

....Proforma Respondent

Judgment delivered on: 01.11.2022

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Petitioner/Financial Creditor : Mr. Rakshit Gupta, Advocate

For the Respondent/Corporate Debtor : Ex-parte vide order dated 16.08.2022

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by State Bank of India, SAMB, Ludhiana (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP') against Sahil Spintex Limited & Ors. (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Kailash Chander, Assistant General Manager, the Financial Creditor and the affidavit verifying the contents of the application is on pages 26 to 27 of the petition. A copy of the Authority Letter along with notification is attached as Annexure I/1 of the petition.

2. The master data of the corporate debtor is stated to be filed as Annexure-I/2 of the petition. The Corporate Debtor is stated to be incorporated on 17.08.2012. The company has its registered address at Ratia Road, Village Boha, Teh Budhlada, Budhlada PB 151503 IN. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. Brief facts raising to the present Company Petition which are necessary for the disposal of the same are narrated hereunder:

3.1 The corporate debtor is in the business of manufacturing, Processing, trading, importing, exporting exporter or otherwise dealing with all types of cloth, fabric or any textile material has availed financial facilities from various banks forming a consortium.

3.2 The corporate debtor in the year 2012 requested the Boha branch of the financial creditor for a grant of financial facilities because of the growing financial needs. On the request of the Corporate debtor, the overall financial facilities to the tune Rs.33.08 crores were granted to the Corporate debtor by the consortium of banks including the State Bank of India (the present financial creditor) and Punjab National Bank on 17.01.2014 out of which the share of the Financial creditor was Rs. 18.27 crores. The overall financial facilities of Rs. 18.27 crores granted by the financial creditor included a Term Loan of Rs. 18.10 crores and bank Guarantees of Rs. 17.00 lakhs.

3.3 Since the term loan facilities were granted by way of the consortium, the Board of Directors of the corporate debtor vide resolution dated 27.08.2012 unanimously resolved and authorized its directors to execute the security documents of the consortium by using the company seal.

3.4 The terms and conditions of the financial facilities of Rs.18.27 crores were conveyed to the corporate debtor vide arrangement letter dated 17.01.2014 which was accepted by the corporate debtor.

3.5 In consideration of the financial creditor along with other members of the consortium sanctioned the overall financial facilities to the tune of Rs.33.08 crores, out of which the share of the financial creditor was Rs.18.27 crores; the Corporate debtor through its directors executed the following documents apart from security documents:

Sr. No.	Documents Executed	Amount (in crores.)	Date
1.	Consortium term loan agreement	Rs. 33.08	17.01.2014
2.	Joint deed of hypothecation	Rs. 33.08	17.01.2014
3.	Trust and Retention account agreement	—	17.01.2014

3.6 It is stated that an inter-se agreement was executed between the financial creditor and the other member of the consortium for the overall financial facilities granted by way of consortium finance to settle inter-se rights and liabilities.

3.7 The Punjab National Bank executed the letter of authority in favour of the financial creditor on 17.01.2014 acknowledging the financial creditor as a lead bank for the financial facilities granted to the corporate debtor.

3.8 The above-mentioned facilities were also secured through the creation of equitable mortgage of properties of the corporate debtor, their directors, and the guarantors.

3.9 The corporate debtor could not prove to be a good borrower and failed to regularize their account in spite of repeated requests and the account of the corporate debtor was classified as nonperforming assets as per RBI guidelines on 06.11.2015.

3.10 The notice under section 13(2) of SARFAESI was served on the corporate debtor on 14.12.2015 calling upon the corporate debtor and its directors/guarantors to clear the outstanding dues of the financial creditor within a period of 60 days.

3.11 Since the corporate debtor failed to repay the amount as claimed by the financial creditor after the statutory period of 60 days symbolic possession of the secured assets under section 13(4) of the SARFAESI Act and issued possession notice dated 01.07.2016 under Rule 8(1) of the Security Interest Rules, 2002.

3.12 It is stated that despite various measures taken by the financial creditor, the corporate debtor failed to repay any of the amounts of the financial creditor.

3.13 The financial creditor had filed an Original application bearing no 4025 of 2017 u/s 19 of the Recovery of Debts due to the Banks and Financial Institutions Act (Now Recovery of Debts and Bankruptcy Act) Act before the Debt Recovery Tribunal, Chandigarh which has been decreed in favour of the financial creditor and execution of the same is pending before the Recovery Officer, DRT-II, Chandigarh.

4. In Part-III of Form No.1, Mr. Mohit Chawla, Registration No.IBBI/IPA-001/IP-P00524/2017-2018/10949 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 13.11.2019 is attached at Annexure-11 of the petition.

5. It is stated in Part-IV of Form No.1 that the Corporate Debtor was sanctioned the overall financial facilities of Rs. 33.08 crores by the consortium on 17.01.2014 wherein the share of the financial creditor is Rs. 18.27 crores. As of 20.11.2019, the total outstanding dues of the corporate debtor towards the financial creditor amounting to Rs. 33,39,28,219.51/-. Copy of Bank Account statement along with accrued interest sheet (Annexure A-I/4). Copies of the sale deed along with confirmation letters (Annexure -I/5). Copy of Order/decre

(Annexure -I/7). Copy of Consortium Term Loan Agreement (Annexure -I/11). Copy of Demand Notice (Annexure -I/16). Copy of OTS letter and cheque (Annexure -I/19)

6. The notice of this petition was issued to the respondent-corporate debtor on 03.03.2020 as to why this petition be not admitted. A compliance affidavit has been filed regarding intimation of the next date of hearing through email and earlier substituted mode of service has also been adopted by the publication of notice in two daily newspapers, however, none has appeared for the respondent. Therefore, the respondent proceeded against ex-parte vide order dated 16.08.2022.

7. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the written submissions and records available carefully.

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 06.11.2015 i.e., the date on which the account of the corporate debtor was classified as Non-Performing Asset. Further, the CD gave OTS of Rs. 12.25 crore on 12.03.2018 along with an upfront payment of Rs. 61,25,000/- through cheque no. 829701 dated 12.03.2018. Therefore, OTS offer will amount to acknowledgment under section 18 of the Limitation act, 1963, and the present petition is re-filed vide Diary No.82 dated 06.01.2020. Therefore, the present petition is filed within limitation.

9. Another issue for consideration is whether there is a default in payment or not. As per Section 7 of IBC which is reproduced below:-

“Section 7 Initiation of corporate insolvency resolution process by financial creditor.

- (3) The financial creditor shall, along with the application furnish—*
- (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*
 - (b) the name of the resolution professional proposed to act as an interim resolution professional; and*
 - (c) any other information as may be specified by the Board.*

- (5) Where the Adjudicating Authority is satisfied that—*
- (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or*

10. It is observed from the record that in the present case, the occurrence of default is evidenced by the fact that the CD in need of financial assistance requested the Boha Branch of the petitioner/financial creditor for the grant of financial facilities. Subsequently, on the request of the CD, an overall financial facility to the tune of Rs.33.08 crores were sanctioned by the consortium of the bank including the present petitioner i.e. State bank of India and Punjab National Bank on 17.01.2014 out of which share of the petitioner/SBI was Rs.18.27 crores. The overall financial facility sanctioned by the present petitioner/SBI included a Term Loan of Rs.18.10 crores and Bank guarantees of Rs.17.00 lacs. The terms and conditions of the said financial facility to the tune of Rs.18.27 crores were conveyed to the CD vide arrangement letter dated 17.01.2014 (Annexure-I/10), and the same was accepted by the CD. The CD through its directors executed the following documents apart from the security documents;

Sr. No.	Documents Executed	Amount (in cores)	Date
1.	Consortium term loan (Annexure-I/11, page No.176-195)	Rs.33.08	17.01.2014

2.	Joint deed of hypothecation Annexure-I/12, Page No.196-201	Rs. 33.08	17.01.2014
3.	Trust and Retention account agreement	-----	17.01.2014

11. Consequently, an inter-se agreement was executed between the financial creditor and the other member of the consortium for the overall financial facilities granted by way of consortium finance to settle inter-se rights and liabilities. A copy of the same is attached as the consortium executed the letter of authority in favour of the Financial Creditor on 17.01.2014 (Annexure-1/15). The CD failed to maintain financial discipline and in spite of repeated requests, the CD did not regularize their account, and as such the accounts of the CD were classified as Non-Performing Assets as per RBI guidelines on 6.11.2015. Consequently, a demand notice under Section 13(2) of the SARFAESI Act dated 14.12.2015 (Annexure-I/16, Page No.231-243) was served on the FC within a period of 60 days. Since the CD failed to repay the amount as claimed by the petitioner, after a statutory period of 60 days, issued symbolic possession notice Section 13(4) of the SARFAESI Act read with Rule 8(1) of the Security Interest (Enforcement) Rules, 2002. A copy of the same is attached as Annexure-I/17. The CD through its directors has further given a One-Time Settlement offer of Rs.12.25 crores on 12.3.2018 along with a cheque bearing No.829701 dated 12.3.2016 of Rs.61,25,000/-. A copy of the same is attached as Annexure-I/19.

12. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section

7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.
- e) It is further directed that 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 Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

13. The Law Research Associate of this Tribunal has checked the credentials of Mr. Mohit Chawla, and there is nothing adverse against him. In view of the above, we appoint Mr. Mohit Chawla, Registration No.IBBI/IPA-001/IP-P00524/2017-2018/10949, Email: camohitchawla@gmail.com, Mobile No.09888003303, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Mohit Chawla shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;

- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution

Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to IRP after the initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the Resolution Process in a time-bound manner. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.

- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
- viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

14. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakh Only) with the Interim Resolution Professional, to meet out the expense 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

15. The petition is admitted accordingly.

16. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/- 1.11.22
(Subrata Kumar Dash)
Member (Technical)

Sd/- 1.11.22
(Harnam Singh Thakur)
Member (Judicial)

November 01,2022
YP/ASH