



**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

CP (IB) No. 27/CB/2021

In the Matter of:

An application under section 7 of Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

In the Matter of:

STATE BANK OF INDIA, having registered office at- State Bank Bhavan, 16th Floor, Madam Cama Road, Mumbai- 400 021

...Applicant/Financial Creditor

SAV INDUSTRIES PRIVATE LIMITED, having registered office at- Room No. 02, 1st Floor, Khalsa Niwas ITI Chowk, Near Tarini Temple Rourkela, Orissa- 769 004

...Respondent/Corporate Debtor

Appearances (through video conferencing)

For the Petitioner : Mr. Ajay Gaggar, Adv.

For the Respondent : Set *ex-parte*

Order reserved on: 26.09.2022

Order Pronounced on: 25.10.2022

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)



ORDER

Per: P. Mohan Raj, Member (Judicial)

1. This application under section 7 of Insolvency and Bankruptcy Code 2016 with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, has been filed by the **State Bank of India** through its authorised person Mr. Kaushik Das, Assistant General Manager of State Bank of India, having office at State Bank of India , Stressed Asset Management Branch-II, Jeevandeep Building, (1st Floor, 1, Middleton Street , Kolkata – 700 071 thereby seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **Sav Industries Private Limited** a company incorporated under the provisions of Companies Act 1956, and a company within the meaning of the Companies Act, 2013 having its Registered Office at – Room No. 02, 1st Floor, Khalsa Niwas ITI Chowk, Near Tarini Temple Rourkela, Orissa – 769 004 (Herein and after referred as the Corporate debtor).

2. Notices sent to the Respondent/Corporate debtor was served in spite of service of notices Respondent/corporate debtor not turned up hence Respondent was Set ex-parte.

3. It is stated in the petition that the corporate debtor has been banking with Petitioner. The corporate debtor is engaged in the business of trading and /or manufacture of binding wires, other allied products of wires, iron and steel making etc. On 17.09.2009, the corporate debtor approached the Financial Creditor for availing credit facilities amounting to Rs. 44,50 Crores. The financial creditor



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sanctioned the credit facilities in respect of Cash Credit for Rs. 34.50 Crores and Letter of Credit & Bank Guarantee for Rs. 10 Crores vide a Letter of Arrangement dated 22.09.2010.

4. The credit facilities were enhanced from time to time and the limits had been last sanctioned on 25.03.2013 by the financial creditor at the request of the corporate debtor. The corporate debtor deposited the title deeds with petitioner and created equitable mortgage of immovable properties as security. The directors of corporate debtor executed several deeds of guarantees and stood as personal guarantors for payment of the outstanding amount in respect of the loan account of the corporate debtor.

5. The financial creditor enhanced the overall limit of several credit facilities from Rs. 49.50 Crores to Rs. 70 Crores, and Rs. 70 Crores to Rs. 97 Crores, vide a sanction letter dated 27.08.2011, 19.09.2012. Pursuant to the sanction of letter dated 31.01.2011, 19.09.2012, a supplemental agreement of Loan cum Hypothecation dated 29.08.2011, 19.09.2012 was executed by and between the corporate debtor and the financial creditor. Consent clause was once again executed by the corporate debtor in favour of the financial creditor. The directors of corporate debtor Mr. Anand Agarwal and Mr. Ayush Agarwal stood as the guarantors in their personal capacity and thereby guaranteed to the financial creditor for payment of the outstanding amount in respect of the said loan with interests, costs and charges. A deed of Guarantee dated 19.09.2012 was thereafter by and between the corporate Guarantor and the financial creditor.



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6. The financial creditor again enhanced the credit facilities from Rs. 97 Crores to Rs. 99.46/- Crores vide a sanction letter dated 25.03.2013. The corporate debtor failed and/ or neglected to clear its outstanding dues to the financial creditors. The term loan account became irregular and accordingly, the account was declared as Non-Performing Asset on 27th June, 2013 as per RBI guidelines.

7. A demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued by the financial creditor on 15.12.2014 demanding repayment of the defaulted amount along with interest.

8. In spite of the receipt of the said notice the corporate debtor failed and /or neglected to liquidate the outstanding dues as mentioned therein. Thereafter, the financial creditor issued a demand notice dated 18.12.2014 through its Advocate Mr. Ramesh Chandra Prusti to corporate debtor calling upon for repayment of dues along with up-to-date interest.

9. Subsequently, proceedings under the provisions of Recovery of Debt dues to Bank and Financial Act 1993, was initiated on 27.03.2015 being OA No. 175 of 2015 before the Learned Debts Recovery Tribunal -I, Kolkata. The same is pending adjudication and as such the acknowledgment of debt is subsisting and covered the Limitation. The Financial creditor filed this petition on 04.08.2021 for the default dated 27.06.2013 in respect of outstanding due amount of Rs. 224,00,82,788.83/- as on 31.05.2021.



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10. This petition is being filed by the financial creditor for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016. The petition is filed much after the expiry of three years from the date of default. When the petition is pending the petitioner filed on application I.A. No. 169/CB/2022 for an amendment of petition in respect of default date in pursuance of the order of DRT-Kolkata.

11. The petitioner filed the recovery proceeding before DRT- Kolkata in O.A No. 175 of 2015, when this petition was pending O.A No. 175 of 2015 was ordered on 04.02.2022 by DRT-Kolkata directing the corporate debtor and guarantors to pay Rs. 1,25,09,99,800/-granting 30 days' time for payment.

12. The petitioner than filed IA. No. 156 of 2022 to receive the order passed by the DRT, Kolkata as an additional document and IA. No.169 of 2022 to amend the default date as 06.03.2022. These two applications were allowed on 03.08.2022 in consequence necessary amendments were carried out in petition.

13. Now this petition is stands on the strength of the DRT-Order dated 04.02.2022. Even though originally petition is filed on the basis of loan outstanding amounts; now it culminated into decree of DRT- Kolkata, Presently the petition claim is based on the order of DRT-Kolkata, but nature of debt does not change, in this regard the Apex Court held in **Kotak Mahindra Bank Limited -Vs- A. Balakrishna and another (2021 SCC on line Sc 543)** para 84 and 85 as follows: -

84. To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a "Financia



debt” within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.

85. We further find that the view taken by the two-Judge Bench of this Court in the case of Dena Bank (supra) is correct in law and we affirm the same. We further find that in the facts of the present case, the application under Section 7 of the IBC was filed within a period of three years from the date on which the Recovery Certificate was issued. As such, the application under Section 7 of the IBC was within limitation and the learned NCLAT has erred in holding that it is barred by limitation.

14. For the reasons stated above we therefore consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the corporate debtor.

15. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.

(a) The petition bearing CP (IB) No.27/CB/2021 **State Bank of India**, the financial creditor, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating



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Authority) Rules 2016 for initiating CIRP against **Sav Industries Private Limited**, (CIN: U28112OR1999PTC005891), the corporate debtor is **admitted**.

(b) There will be a moratorium under section 14 of the Code.

(c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.

(d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.

(e) **Mr. Uday Narayan Mitra**, registration No. **IBBI/IPA-001/IP-P00793/2017-2018/11360** , Email Id: udaynarayanmitra@yahoo.co.uk, having registered office- **72/1 Dawnagazi Road Bally Howrah- 711201**, is hereby appointed as an Interim Resolution Professional (IRP) of the corporate debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.



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(f) During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.

(g) The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

(h) The financial creditor shall deposit a sum of Rs.2,00,000/- (Two Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).

(i) In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post, e-mail or WhatsApp immediately, and in any case, not later than two days from the date of this order.

(j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Odisha, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.

16. CP (IB) No.27/CB/2021 to come up on 28.11.2022 for progress report.



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17. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

18. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2022.10.25 11:18:33 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2022.10.25 11:26:40 +05'30'
RAJ

P. Mohan Raj.
Member (Judicial)

Signed on this 25th day of October, 2022.

Supriya p.s