BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

C.P. (I.B) No.554/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 29.06.2020

Name of the Company: Central Bank of India.
V/s.
Silver Protiens Pvt. Ltd.

Section : Section 7 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(Through Video Conferencing)

None present.

The order is pronounced in the open court, vide separate sheet.

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)

MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 29th day of June, 2020

BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

C.P.(IB) No. 554/7/NCLT/AHM/2018

In the matter of:

Central Bank of India
Corporate Office at:
Chandermukhi,
Nariman Point,
Mumbai-400021

And Branch Office at:

ARM Branch,
Mandvi Tower Road,
Central Bank Building,
Jamnagar-361001
Known as Jamnagar Main Branch ....Petitioner
(Financial Creditor)

Versus

Silver Proteins Private Limited
Opp. Wind Mill Godown,
Bedi Bander Road,
Bedeshwar Road,
Jamnagar - 361002

.... Respondent
Corporate Debtor

Order delivered on 29.06.2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Mr. Abhijit Joshi, Learned Lawyer for the Petitioner.
Ms. Khyati Punjabi, Learned Lawyer for the Respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member (T)

1. Shri Shashi Bhushan Prasad Singh, Assistant General Manager of Central Bank of India, on behalf of the Petitioner/Financial Creditor Central Bank of India has filed this Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016

[hereinafter referred to as "the IB Code"] read with Rule 4 of the insolvency and Bankruptcy Application to Adjudicating Authority Rules, 2016 (hereinafter referred to as "the Rules") for the purpose of initiating corporate insolvency resolution process [hereinafter referred to as "CIRP") against Silver Proteins Private Limited, the Respondent company, the Corporate Debtor.

2. Silver Proteins Private Limited, the Respondent, a company was incorporated under the provisions of the Companies Act, 1956 under the name and style of Silver Proteins Private Limited having its Registered Office at Opp: Wind Mill Godown, Bedi Bander Road, Bedeshwar Road, Jamnagar-361002. The Company is engaged in the business activity of production of edible oil, de-oiled cake, processing of oil etc.

3. The Authorised Share Capital of the Respondent Company, the Corporate Debtor is Rs.3,10,00,000/-. (Rupees Three Crores Ten Lakhs only). The Paid-Up Share Capital of the Respondent Company, the Corporate Debtor is Rs.3,10,00,000/- (Rupees Three Crores Ten Lakhs only).

4. As per Part IV of the application, the total amount of debt sanctioned by Central Bank of India, the Financial Creditor amounted to Rs. 19,12,50,000/- . It is further stated that aggregate amount of default as on 01.07.2015 amounted to Rs. 33,97,30,993/-.The date of NPA is 01.07.2015. The date of default is 01.07.2015.

5. The Applicant Bank classified the account of the Respondent Company as NPA on 01.07.2015 and issued a notice under Section 13(2) of the SARFAESI Act on 15.07.2015 to the Borrower/Respondent is a private company and their Directors stood as Guarantors in their personal capacity for the Respondent Company. Whereas one of the private company

namely Mahendra Oil Cake Industries Ltd. also stood as corporate guarantor in favour of the Respondent Company.

6. It is further submitted that Applicant Bank filed O.A. No. 211 of 2017 on 28.02.2017 for a claim of Rs. 27,06,66,893.59/- with further interest before the Hon'ble Debts Recovery Tribunal-II at Ahmadabad and the said matter is pending.

7. It is stated by the Applicant Bank that aforesaid Credit Facilities were secured by Equitable mortgage of immovable property by deposit of title deeds and hypothecation of Movable Assets (Plant and Machinery, Raw Material and Goods lying at Godown /Factory premises) of the Corporate Debtor.

8. The Petitioner submitted the following documents in support of his claim.

- Copy of master data of the respondent company dated 23.08.2018
- Copy of loan application dated 29.09.2003,10.06.2004
- Copy of sanction letter dated 17.12.2003,28.06.2004,13.12.2006,29.01.2008,19.03.2008, 13.01.2010
- Copy of demand promissory note dated 20.12.2008,15.10.2004,15.12.2006,31.01.2008,20.03.2008,15.01.2010
- Copy of letter of waiver dated 20.12.2003,15.10.2004,15.12.2006,31.01.2008,20.03.2008,15.01.2010
- Copy of letter of interest dated 20.12.2003,15.10.2004,15.12.2006,31.01.2008,20.03.2008, 15.01.2010
- Copy of hypo. agreement against goods dated 20.12.2003, 15.10.2004,15.12.2006,31.01.2008,15/01/2010

Bhattacharjee

Kumar

- Copy of agreement of hypo. for book debts dated31.01.2008,15/01/2010
- Copy of supplementary agreement dated 15.01.2010
- Copy of packing credit facility dated 20.12.2003,15.12.2006,31.01.2008
- Copyofguaranteeagreementdate20.12.2003,15.10.2004,15.10.2004,15.12.2006,15.12.2006,31.01.2008,31.01.2008, 20.302008, 20.03.2008,15.01.2010,15.01.2010
- Copy of board's resolution of respondent company dated 19.12.2003,09.10.2004,13.12.2006,30.01.2008,19.03.2008,13.01.2010
- Copy of board's resolution of another corporate guarantor company dated 14.12.2006,30.01.2008,19.03.2008,13.01.2010
- Copy of memorandum of entry dated 05.01.2004,15.12.2006,31.01.2008,20.01.2010
- Copy of form no.8 &13 of respondent company dated 04.02.2004,10.11.2004,15.12.2006,31.01.2008,09.02.2008,15.01.2010
- Copy of form no.8 of another corporate guarantor company dated 15.12.2006,31.01.2008,09.02.2008,15.01.2010
- Copy of request letter for enhancement dated 19.10.2006
- Copy of agreement for bills discounting facility dated 20.03.2008
- Copy of audited report dated 31.07.2008 of respondent company for the year ended 31.03.2008,audit report date15.06.2010 year ended 31.03.2010
- Copy of valuation report of the immovable property of respondent dated 17.02.2016
- Copy of valuation report of joint immovable property directors/guarantors dated 17.02.2016
- Copy of reply given by director/guarantor of respondent company to aforesaid notice dated14.09.2015
- Copy of counter reply given by the petitioner bank dated 23.09.2015

- Copy of reply sent by advocate of respondent company dated12.01.2017
- Copy of legal notice dated 26.12.2016

9. The Petitioner enclosed Statement of Accounts of cash credit facility, statement of account of unrealised interest of cash credit facility up to 28.02.2017 and statement of account of term loan facility, statement of account of unrealised interest of term loan facility up to 28.02.2017 and statement of account unrealised interest of both the facilities up to 15.09.2015 of the respondent company.

10. The Respondent Company has contended that the petitioner has in its application stated that the total amount due from the respondent company is Rs.33,97,30,993.96/-.The respondent vehemently denies such claim of the petitioner and no such amount is due and payable as stated by the petitioner.

11 The Respondent Company has also objected that the petition is filed by Shri Shashi Bhushan Prasad Singh is without any authority.

12 The Respondent Company has termed the entire claim of the Applicant Bank as vague, false, frivolous and without any evidence. The Respondent Company has stated that interest was applied in a wrong manner in breach of terms of sanction and therefore the account of the respondent company was allegedly classified by the Applicant Bank as NPA on 01.07.2015.

16. Heard the Learned Counsel for both sides.

17. The counsel for the Respondent submitted that the present petition is filed by the person based on Power of Attorney. It is submitted that the said application is filed by a person without authority.

18. In response to the same, Counsel for the Applicant has stated that application is filed by Assistant General Manager and Principal Officer of the bank. He is authorized through General Power of Attorney issued on 27.09.2011. The General Power of Attorney is valid and in force. It is also stated by the counsel for the Applicant that the officer of the bank has been authorized to grant loan, recovery of the loan, to initiate the proceedings of CIRP against the person who has defaulted. In such case, the Corporate Debtor cannot plead that officer has power to sanction loan but such officer has no power to recover the loan amount or initiate corporate insolvency resolution process inspite of default by the Corporate Debtor.

19. The petitioner has filed a copy of permission letter dated 11.06.2018, to initiate IBC proceedings against the corporate debtor company. The Petitioner also filed an authorization letter dated 20.02.2020, which states as:

> *"In reference to permission accorded by our Central Office vide letter No.CO/RECV/SNP/2018-19/943 dated 11.06.2018 to initiate IBC proceedings against the Company, Promoters, Directors and its Guarantors in the aforesaid account, Mr. Shashi Bhushan Singh being the Asst. General Manager and Branch Head was authorized to file application before NCLT in the a/c –M/s. Silver Protein Pvt. Ltd. The filing of application in NCLT by him on behaif of the Bank under IBC against the said borrower Company M/s. Silver Protein Pvt. Ltd., stands ratified.*

20. The Power of Attorney authorised Shri Shashi Bushan Prasad Singh Asst. General Manager to grant loan, recover loan and to apply for insolvency proceedings.

21. The Hon'ble NCLAT in Para 39 of Palogix Infrastructure Private Ltd. Vs. ICICI Bank Ltd. observed as:

"If a plea is taken by the authorised officer that he was authorised to sanction loan and had done so, the application under section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the 'Financial Creditor' in favour of such officer designate."

22. The Hon'ble NCLAT in Gouri Prasad Goenka Vs. Punjab National Bank in Company Appeal (AT) (Insolvency) No. 28 of 2019 held as:

> *"11. Learned Counsel for Appellant also tried to emphasise that the application was not filed by duly authorized person. Some more technical issues were raised. We have considered these aspects and it is noticed that the Adjudicating Authority has taken every relevant factor into consideration. It found that the Form 1 was signed by the Chief Manager of the Financial Creditor who was the duly authorized person to file the same. Contention raised by Appellant that the power of attorney was executed prior to enactment of I & B Code and could not extend the authority to file application under section 7 of the IB Code is bereft of merit both in technique as also in substance. Once the authority was given, inter alia, to file litigation pertaining to recovery of the outstanding debt of the Financial Creditor, it becomes irrelevant whether the law governing such recovery or providing for a mechanism like the resolution process contemplated under IB Code was or was not in force on the date when the authority was given. Any interpretation to the contrary would be absurd".*

23. In view of the above, the contention of the Respondent that the application was filed without authority is devoid of merits.

24. The second contention put forth by the Corporate Debtor is that the present petition is barred by limitation and not maintainable. The petition is filed on 22.10.2018 and the date of

Bhoorahrgey

Haw

default is 01.07.2015. In this regard, it is noted that the last entry (credit) in loan A/c. is on 30-12-2015(page no.922of the application).Hence, the present IB Petition filed on 22.10.2018 is well within the period of limitation.

25. The Petitioner has proposed the name of Mr. Shalabh Kumar Daga having Registration No. IBBI/IPA-001/IP-P00071/2017-18/10157 to act as IRP under Section 13(1)(b) of the IB Code and written communication in Form-2 of IBIBI has been submitted by the proposed IRP.

26. From the documents placed on record, this Adjudicating Authority is satisfied that default has been committed by the Corporate Debtor in repayment of loan amount to the Bank. The petition is complete. As a consequence, the instant petition is admitted in terms of Section 7 of the IB Code and the moratorium as envisaged under the provisions of Section 14(1) of IB Code and extracted hereunder shall follow in relation to the Respondent Corporate Debtor.

(1) Subject to provisions of sub-Section (2) and (3), on the Insolvency Commencement date, the Adjudicating Authority herein declares moratorium for prohibiting all of the following viz;-

(i) 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.

(ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor, any of its assets or any legal right or beneficial interest therein;

(iii) 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);

(iv) the recovery of any property by an owner as lessor where such property is occupied by or in the possession of the Corporate Debtor.

(2) The supply of goods and essential 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, however, not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of receipt of authenticated copy 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.

27. This Adjudicating Authority hereby appoints Mr. Shalabh Kumar Daga having Registration No. IBBI/IPA-001/IP-P00071/2017-18/10157 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(b) of the IB Code.

28. The petition stand disposed of accordingly with no order as to costs.

29. Communicate a copy of this order to the Petitioner, Respondent and to the Interim Insolvency Resolution Professional.

ChockalingamThirunavukkarasu	**ManoramaKumari**
Adjudicating Authority&	**Adjudicating Authority&**
Member (Technical)	**Member (Judicial)**

R.S.