



**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

C.P. 518 OF 2022

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

In the matter of

Saraswat Co-operative Bank Limited.

Ek Nath Thakur Bhawan, 953, Appasaheb Marathe Marg, Prabhadevi, Mumbai – 400 025

..... Financial Creditor

V/s

M/s. Sristi Hospitality Private Limited

[U55101MH2003PTC141672]

Liberty Lodge, at the corner of Dashrathlal Joshi road and Sarojini Road, Final Plot No. 80-B, CTS No. 1217 TPS III, Vile Parle (W), Mumbai - 400 056

.....Corporate Debtor

Order reserved on: 02.01.2023

Order Pronounced on: 27.02.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconference)

For the Petitioner: Mr. Charles De Souza a/w Mr. Nikhil Rajani i/b. M/s. V.

Deshpande & Co, Advocates

For the Corporate Debtor/ Respondent: Ms. Tanushree Sogani (Advocate)



Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. The above Company Petition is filed by Saraswat Co-operative Bank Limited, hereinafter called as “**Petitioner**” seeking to initiate of Corporate Insolvency Resolution Process (“**CIRP**”) M/s. Sristi Hospitality Private Limited hereinafter called as “**Corporate Debtor**” by invoking the provisions of Section 7 Insolvency and Bankruptcy code (hereinafter called “**Code**”) read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Financial Debt of Rs. 28,30,42,444.42/-

Facts of the case

2. The Petitioner submits that the Respondent approached it with a view to avail financial assistance. The Petitioner upon request of the Respondent had sanctioned, granted and disbursed financial facilities in the form of “Term Loan against the Property” for an amount of Rs. 21,00,00,000/- and “Overdraft against Property” for an amount of Rs. 50,00,000/- aggregating to Rs. 21,50,00,000/-. The said facility was sanctioned vide Sanction Letter dated 31.10.2017 (Exhibit- G to the Company Petition 518/2022). The Petitioner submits that the Respondent in its Board of Director’s meeting dated 01.11.2017, it was resolved by the Respondent to secure the credit facilities as per the terms of Sanction Letter dated 31.10.2017. Resultantly, the Respondent in view of securing the said financial facility had executed a Loan Agreement dated 31.12.2017. Upon execution of the said Loan Agreement, a charge dated 16.01.2018, was duly registered, in favour of the Petitioner on Central Registry of Securitization Asset Reconstruction and Security Interest of India (CERSAI) Portal. Apart from that a letter of guarantee dated 30.12.2017 was also issued by the guarantors of the Corporate Debtor.



3. The Petitioner submits that the Respondent was unable to repay the outstanding amount the Petitioner classified the account of the Respondent as a Non-Performing Asset (“**NPA**”) on 30.03.2019. Thereafter, the Petitioner issued a notice dated 11.04.2019, under Section 13(2) of the SARFAESI Act, 2002 wherein it was mentioned that an amount of Rs. 22,02,62,727/- was due and payable by the Respondent as on 05.04.2019. Thus, the Respondent and its guarantors were called upon to make payment of Rs. 22,02,62,727.00/-. Thereafter the Petitioner took symbolic possession of secured assets of the Respondent. The same was intimated to the Respondent by way of Intimation of Possession notice dated 17.06.2019. The Respondent issued a letter dated 26.06.2019, disputing the Symbolic or Physical Possession and the Recovery of dues claimed by the Petitioner on the ground that there is no order from appropriate court under Section 14 of the SARFAESI, Act.
4. The Petitioner submits that the Respondent is unable to repay the contractual dues of the Petitioner, Hence this Petition.
5. The Respondent has not replied to the Petition although the Counsel for the Respondent was directed to file its reply within 2 weeks from 16.11.2022. They were directed, by this Bench, to serve the copy of its reply to the Petitioner. If no reply was filed by the Counsel of the Respondent, within 2 weeks, the Respondent’s right to file reply stood forfeited. When the matter was listed, for final hearing, on 02.01.2023, this Bench was informed that no written reply was received in the Registry/Court Officer of Court-V, Mumbai, NCLT. Neither was any reply served on the Petitioner.

Findings

6. We have heard the counsel appearing for the Petitioner and perused the records.



7. The instant Petition is filed for resolution of debt of Rs. 28,30,42,444.42/-.
8. The Petition reveals that Form 1, Part IV of the Petition wherein amount in default is mentioned as Rs. 28,30,42,444.42/- and the date of default is mentioned as 30.03.2019. Apart from that the Sanction Letter dated 31.10.2017, whereby the Respondent had availed two facilities namely, term loan against property and overdraft against property for Rs. 21,00,00,000/- and 50,00,000/- respectively. Along with this the Parties had executed a loan agreement dated 30.12.2017. Thus, the Respondent was under a contractual obligation to repay the amount advanced by the Petitioner. Apart from that, the Petitioner has annexed a NeSL certificate dated 28.03.2022 (Exhibit-F to the Company Petition 518/2022), whereunder the “debt and default” are clearly mentioned.
9. After hearing the submissions and upon perusing the material available on record, we find that the claim of Financial Creditor remains unchallenged. Hence, this Bench feels that the Petitioner has successfully demonstrated the existence of “**debt**” and “**default**” committed by the Corporate Debtor in this case.
10. Accordingly, the above Company Petition is ‘**admitted**’ by passing the following:

ORDER

- a. The above Company Petition No. 518 OF 2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s. Sristi Hospitality Private Limited.**
- b. The Petitioner has proposed the name of Insolvency Professional. The IRP proposed by the Petitioner, **Mr. Rajan Dashraj Agarwal**, having Address –Office No. 404, Laxmi Mall, Laxmi Industrial Estate, New Link Road, Andheri (West), Mumbai 400 053 and having registration



No. IBBI/IPA-001/IP-P01069/2017-2018/11760, and having email id- iprajanagarwal@gmail.com and contact number: 9821122607 is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is decided by CoC.
- 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, C.P (IB) NO. 518 OF 2022 is **admitted**.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)