

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 73/Chd/Hry/2020
Under Section 7 of the
Insolvency & Bankruptcy
Code, 2016**

In the matter of:

**State Bank of India
through its Assistant General Manager,
Shri V.K.Karwal**

having its Head office at:
Madam Cama Road, Nariman Point, Mumbai
and one of its Branch at
Stressed Assets Management Branch (SAMB)
SCO No. 99-107, Sector 8-C,
Chandigarh

....Petitioner-Financial Creditor

Vs.

M/s Kissan Riceland Private Limited

having its Registered Office at
Jind road, Kaital, Haryana- 136027

...Respondent-Corporate Debtor

Judgment delivered on: 09.06.2023

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

Present:

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

For the Respondent-Corporate Debtor : Mr. Aalok Jagga, Advocate
Mr. A.P.S. Madaan, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by the **State Bank of India** (hereinafter referred to as 'Petitioner/Financial Creditor') through its Assistant General Manager, Shri V.K.Karwal, 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 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/s Kissan Riceland Private Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Assistant General Manager, Shri V.K. Karwal, with the affidavit verifying the contents of the application, appended thereto.

2. The Corporate Debtor is stated to be incorporated on 08.05.2013. The company has its registered address at Jind Road, Kaital, Haryana- 136027. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure I/2 of the petition.

3. The brief facts of the case are that the corporate debtor was engaged in the billing of paddy including the sale, purchase/selling of rice and availed various financial facilities from Financial Creditor. The Corporate Debtor was initially a partnership firm by name M/s Kissan Rice Mills duly registered under the Partnership Act and on 08.05.2013 was converted into a private limited company which took over the assets and liabilities of the partnership firm and was renamed as M/s Kissan Riceland Private Limited. The financial facility of Rs. 7 crores was sanctioned to Corporate Debtor on the execution of necessary documents on 14.10.2009. The overall facilities were enhanced from time to time and the last enhancement was done on 21.11.2016 to the sum of Rs. 28.23 crores which included CC limit of Rs. 25 crores, SLC limit of Rs. 2 crore and outstanding term loan of Rs. 1.23 crores. The terms and conditions were conveyed to Corporate Debtor vide letter of arrangement dated 21.11.2016 and a link letter was executed by Corporate Debtor that security documents executed by the company were in continuation of security documents earlier executed by partnership firm M/s Kissan Rice Mills. The Corporate Debtor executed balance confirmation letter

with respect to outstanding dues w.e.f. 31.03.2017. The account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 31.03.2018 and notice under Section 13(2) of the SARFAESI Act was served on 08.06.2018. The Financial Creditor filed an original application before Debt Recovery Tribunal II, Chandigarh claiming an amount of Rs. 29,97,71,544/- (Twenty-Nine Crores Ninety-Seven Lakhs Seventy-One Thousand Five Hundred Forty-Four only) as on 31.10.2018.

4. It is stated in Part-IV of Form No.1, the total amount claimed to be in default is Rs. 33,87,87,708/- (Rupees Thirty Three Crores Eighty-Seven Lakh Eighty-Seven Thousand Seven Hundred and Eight Only) including interest as on 20.12.2019 with pendent lite and future interest @ 10.30% p.a. and date of default is 31.03.2018 i.e. when the account of Corporate Debtor was classified as NPA. Copy of Authority Letter (Annexure-I/1), Bank Account Statement (Annexure-I/4), CERSAI (Annexure-I/5), Registration on Charge (Annexure-I/6), original application (Annexure-I/7), Cibil Report (Annexure-I/8), Partnership Deed (Annexure-I/9), Arrangement Letters (Annexure-I/10 to I/16), Resolution (Annexure-I/17), Agreement of loan cum hypothecation(Annexure-I/18), link letter (Annexure-I/19), declaration cum undertaking (Annexure-I/20), letter of confirmation (Annexure-I/21), and Balance confirmation letter (Annexure-I/23) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. An affidavit of service was filed vide Diary Nos. 2160 dated 19.03.2020 and 00081/1 dated 21.02.2022. The reply was filed vide Diary No.00081/3 dated 24.04.2022, wherein it is stated that there was no debt owed to the petitioner. There was no default in the account at all. On 31.03.2018 all interest and installment stand completely paid off to the

bank without any default. The bank came out with OTS Scheme in the month of January but the bank did not provide the offer letter. The bank informed that the account was not considered because of the willful defaulter. The respondent-corporate debtor was willing to pay off the dues of the bank. There exists no dispute on part of the respondent. The entire over dues had been cleared off and there was no default on 31.03.2018. The loan account was wrongly declared as NPA. No objections were raised by SBI while operating the current account which was opened by its own consent. The monthly stock installments and inventory were supplied to the bank and the entire account was regular as on 31.03.2018. The petitioner has failed to substantiate the amount claimed in default.

6. The Short written submissions were filed by the petitioner vide Diary No. 00081/4 dated 16.12.2022 and by the respondent vide Diary No.00081/5 dated 14.02.2023.

7. We have heard the learned counsel for the petitioner as well as the respondent and have also perused the record carefully.

8. Section 7(5)(a) of the Code is as follows:-

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

9. The first 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 mentioned as 31.03.2018 i.e. when the account of Corporate Debtor was classified as NPA. The present petition is filed vide Diary No. 584 dated 21.01.2020. Thus, it can be safely said that the present petition is well within the period of limitation of three years.

10. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the debt is evidenced by Authority Letter (Annexure-I/1), Bank Account Statement (Annexure-I/4), CERSAI (Annexure-I/5), Registration on Charge (Annexure-I/6), original application (Annexure-I/7), Cibil Report (Annexure-I/8), Partnership Deed (Annexure-I/9), Arrangement Letters (Annexure-I/10 to I/16), Resolution (Annexure-I/17), Agreement of loan cum hypothecation(Annexure-I/18), link letter (Annexure-I/19), declaration cum undertaking (Annexure-I/20), letter of confirmation (Annexure-I/21), and Balance confirmation letter (Annexure-I/23) attached with the main petition. As per the financial records, it is evident that an amount of Rs. 33,87,87,708/- (Rupees Thirty-Three Crores Eighty-Seven Lakh Eighty-Seven Thousand Seven Hundred and Eight Only) including interest as on 20.12.2019 with pendent lite and future interest @ 10.30% p.a. is still pending which amounts to default when the corporate debtor avoided the payment of outstanding amount despite repeated requests by the petitioner-financial creditor. Although, it is pleaded on behalf of the respondent/ corporate debtor that entire amount already stood paid and there is no default but in absence of any cogent and convincing evidence in support of this plea its bereft of merits. Thus, it can be safely concluded that there is default in payment.

11. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Sh. Sanjay Kumar Aggarwal, has been proposed as Interim Resolution Professional (IRP). Form-B has been submitted. The Law Research Associate of this Adjudicating Authority has checked the credentials of Sh. Sanjay Kumar Aggarwal, his AFA Certification is valid up to 13.09.2023 and there is nothing

adverse against him. In view of the above, we appoint Sh. Sanjay Kumar Aggarwal, Registration No. IBBI/IPA-002/IP-N00126/2017-18/10295, Email: sanjayaggarwal.fcs@gmail.com, Mobile No. 9876105414, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Sh. Sanjay Kumar Aggarwal 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.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the

corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. 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.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with

request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- viii.) 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
- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

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. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakhs 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.

14. 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.

15. The petition is admitted accordingly.

-sd-
(Subrata Kumar Dash)
Member (Technical)

-sd-
(Harnam Singh Thakur)
Member (Judicial)

June 09, 2023

SM/TB