

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II

CP(IB)/380(MB)/2023

Under section 7 of the Insolvency and
Bankruptcy Code, 2016 the
Insolvency and Bankruptcy
(Application to Adjudicating Authority)
Rules, 2016)

IN THE MATTER OF

Indian Overseas Bank

Maker Tower "E", 5th Floor, Cuffe
Parade, Mumbai, Maharashtra-
400005.

... Financial Creditor

V/s.

**Shrivallabh Pittie South West
Industries Limited**

Having registered address at 97 and
99, Maker Tower 'F' Cuffe Parade,
Mumbai, Maharashtra – 400005.

... Corporate Debtor

Order delivered on: - 10.10.2023

Coram:

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

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Financial Creditor : Adv. Nausher Kohli i/b
Adv. Ajiz M.K.
For the Corporate Debtor : Adv. Avinash R Khanolkar

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by Indian Overseas Bank (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Shrivallabh Pittie South West Industries Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 7 Insolvency and bankruptcy code, 2016 (hereinafter called "**Code**") on the ground that the Corporate Debtor had failed to make payment of a sum of Rs. 73,92,25,121/- (Rupees Seventy-Three Crores Ninety-Two Lakhs Twenty-Five Thousand One Hundred and Twenty-One).

The submissions by the Financial Creditor: -

2. It is submitted that the Corporate Debtor was granted under a consortium an amount of INR 232,01,00,000/- towards Working Capital Facility more specifically mentioned therein.
3. Further, the Petitioner is concerned with the IOB Facility of

INR 63,00,00,000/- granted by the Petitioner to the Corporate Debtor against the stock and receivables not exceeding 180 days.

4. The Petitioner had sanctioned credit facilities to the Corporate Debtor starting 03.11.2011 and thereafter from time to time, the same was revised last vide amended Sanction Letter dated 14.08.2020.
5. For the purpose of granting the Working Capital Facility, the IOB Consortium including the Petitioner and the Corporate Debtor executed Working Capital Consortium agreement dated 30.03.2012 (supplemented from time to time, last being amended and supplemented by fifth supplemental working capital consortium agreement dated 30.03.2022).
6. Further, the creditors entered into inter se agreement starting 30.03.2012 lastly being fifth supplemental inter se agreement dated 30.03.2022.
7. The loan account of the Corporate Debtor has been classified as Non-Performing Asset ("NPA") on 02.05.2022 with effect from 31.03.2022 on account of persistent default by the Corporate Debtor in repaying the amount due and payable under the Working Capital Facility.
8. Vide recall notice dated 29.07.2022, the Petitioner recalled the Facility and demanded to pay within 10 days the full outstanding payment as on 30.06.2022 to the tune of INR

67,12,33,943.83/-

9. The Corporate Debtor did not respond to the recall notice nor paid the amount, the Petitioner vide Demand Notice dated 24.11.2022 issued under Section 13(2) of the SARFAESI Act further called upon the Corporate Debtor to pay the outstanding amount as on 31.10.2022 of INR 69,38,78,239/- within 60 days.
10. The Corporate Debtor vide Reply dated 06.12.2022 raised frivolous reasons/grounds for non-payment of the outstanding amount but never denied the obligation to pay.
11. The Corporate Debtor has till date failed to service the total Working Capital Facility as on 31.03.2023 to the tune of INR 73,92,25,121/- (Rupees Seventy-Three Crores Ninety-Two Lakhs Twenty-Five Thousand One Hundred and Twenty-One). Hence this Petition.

Findings:

12. No reply was filed by the Corporate Debtor though sufficient opportunity was afforded for the purpose. Vide order dated 20.07.2023, last opportunity was granted to the Corporate Debtor to file reply with this stipulation that if the reply was not filed by 25.08.2023, the right to file reply would stand forfeited. The reply was not filed within the given time. Thereafter, vide order dated 25.08.2023 another opportunity was given to the Corporate Debtor to file reply within a period of 10 days but despite that no reply was filed. Eventually, right to file reply was forfeited vide order

dated 06.10.2023.

13. We have heard the counsel for the parties and gone through the records.
14. It has been pointed out by the counsel for the Petitioner that vide sanction letter dated 03.11.2011 credit facilities were granted to the Corporate Debtor subject to terms and condition mentioned therein. In pursuance of the sanction letter, Working Capital Consortium Agreement dated 30.03.2012 was executed between the parties. The Counsel for the Financial Creditor has further pointed out that the credit facilities were renewed from time to time. However, the Corporate Debtor committed default in repayment with the result that recall notice dated 29.07.2022 was issued to the Corporate Debtor. In addition to this, another notice dated 24.11.2022 under the SARFEASI Act was issued to the Corporate Debtor but despite that the latter has failed to repay the outstanding dues.
15. The counsel for the Financial Creditor has further pointed out that the Corporate Debtor in its reply dated 06.12.2022 to the SARFEASI Notice has not disputed the outstanding dues but has only stated that due to Covid-19 Pandemic the textile industry has been badly impacted due to which revenues could not be generated. The Corporate Debtor has further mentioned in the reply that it was trying to infuse a sum of Rs. 28 Crores by way of equity and optionally convertible debentures to meet the working

capital requirements. The Counsel for the Financial Creditor has further contended that since no substantial defence has been raised by the Corporate Debtor, it is a fit case for admission under Section 7 of the Code.

16. No arguments were raised by the counsel for the Corporate Debtor who only sought more time to reply which was declined as sufficient opportunities had already been afforded.
17. Having considered the contentions raised by the counsel for the parties after going through the records, we are of the considered view that the Corporate Debtor was granted working capital facilities by the Financial Creditor in respect of which default has been committed by the Corporate Debtor with the result that the account of the Corporate Debtor was classified as non-performing assets (NPA) on 02.05.2022. Thereafter, a recall notice dated 29.07.2022 was also given to the Corporate Debtor calling upon to repay the outstanding amount of Rs.67,12,33,943.83/- within a period of 10 days from the date of notice but no payment was made.
18. It is further pertinent to mention that though originally the credit facilities were granted on 03.11.2011 but the same was renewed from time to time. In this regard, reference can be made to the credit sanction advice dated 03.12.2012, modification in sanction terms letter dated 14.03.2013, another sanction letter dated 09.07.2014 along

with credit sanction advice dated 11.07.2014. The Financial Creditor further placed on record sanction letter dated 26.05.2016 as well as sanction letter dated 07.03.2018 which also contained in all the details of the credit facilities as well as the guarantees. The Financial Creditor further placed on record credit sanction advice dated 14.08.2020 whereby the cash credit against stocks and receivable was revised from 70 Crores to 63 Crores. In view of the fact that the credit facilities were revised from time to time and the last sanctioned advice issued on 14.08.2020, it has to be held that the instant petition has been filed within the period of limitation.

19. No points were raised on behalf of the Corporate Debtor. Even otherwise in the absence of any reply having been filed on behalf of the Corporate Debtor, no substantive defence has been raised. Besides, the averments made in the petition are deemed to have been admitted as correct as the same have not been controverted at all by way of reply.
20. As a result of above discussion, we are of the considered view that the Petitioner in this case has been able to establish the factum of existence of financial debt and its default having been committed by the Corporate Debtor and further that the petition has been filed well within the period of limitation. Therefore, we find the present petition to be a fit one for admission under Section 7 of the Code. Accordingly, the Petition is admitted in the following terms.

ORDER

- a. The above **Company Petition No. (IB) 380(MB)/2023** is hereby admitted and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Shrivallabh Pittie South west Industries Limited, the Corporate Debtor.**
- b. This Bench hereby appoints Mr. Avil Jerome Menezes, Registration No: IBBI/IPA-001/IP-P00017/2016-17/10041 as the Interim Resolution Professional having address at 106, 1st Floor, Kanakia Atrium 2, Cross Road A, Behind Courtyard Marriott, Chakala, Andheri East, Mumbai City, Maharashtra – 400093 email :- avil@caavil.com, to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- 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 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 concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

ANIL RAJ CHELLAN
Member (Technical)

Sd/-

KULDIP KUMAR KAREER
Member (Judicial)