

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

C.P. (IB) No.197/BB/2022
Under Section 7 of the IBC, 2016
r/w Rule 4 of the I&B (AAA) Rules, 2016

IN THE MATTER OF:

Triveni Education Society

Sy No. 560*A, Ward No. 15,
RMG College Road,
Behind Old Govt. Hospital
Mudhol, Tq. Mudhol,
Bagalkot – 587 313.
Karnataka

... Applicant/Financial Creditor

VERSUS

Sovereign Industries Limited

Registered Office:
2nd Floor, Triveni Complex
Yadwad Road, Mudhol,
Bagalkot 587 313.
Karnataka

... Respondent/Corporate Debtor

Order delivered on: 28th March, 2023

Coram: 1. Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri. Saji P. John, Adv.
For the Respondent : Shri Abhijit Atur, Adv.

ORDER

Per: T. Krishnavalli, Member (Judicial)

The present Company Petition has been filed on 07.11.2022 by Triveni Education Society (for brevity 'Financial Creditor') under Section 7 of the

IBC, 2016, r/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) against Sovereign Industries Limited (hereinafter called as 'Corporate Debtor'), on the ground that it has committed default for total amount of Rs. 1,63,80,097 /-(Rupees One Crore Sixty Three Lakhs Eighty Thousand and Ninety Seven Only) as on 31.03.2022.

1. Brief facts of the case, as mentioned in the Petition, which are relevant to the issue in question, are as follows:

- I.** The Financial Creditor is a society registered under the Karnataka Societies Registration Act, 1960 on 23rd June 2006. It is submitted that the name of the society is "Triveni Education Society, registered under Karnataka Societies Registration Act, 1960 with the registration number 79/2006-07.
- II.** The Corporate Debtor is a company registered under the Companies Act, 1956 on 5th day of January 2009 with CIN No. U74900KA2009PLC069837. The Corporate Debtor is engaged in the business of manufacturing of Sugar amongst others.
- III.** It is submitted that in the Year 2016, the Corporate Debtor approached the Financial Creditor, seeking credit facility in the form of Loan and its request for facility was considered and approved by the executive Committee of Directors of Triveni Education Society. Accordingly, an amount of Rs. 1,77,00,000/- (Rupees One Crore Seventy-Seven Lakhs Only) came to be transferred in total to the bank account of the Corporate Debtor under two different instalments from two accounts of Financial Creditor.
- IV.** It is further submitted that the last two repayments of Corporate Debtor was in the year 2020 aggregating to Rs. 11,33,955/-. The total outstanding including principal and interest as on 31.03.2022 is Rs. 1,63,80,097/- which includes Principal Rs 99,32,748/- and interest at the rate of 24% p.a aggregating Rs. 75,81,301/-.
- V.** The Corporate Debtor made a transfer of Rs. 1,33,955/- on 1.04.2020. It is stated that after the said last transfer, the Corporate Debtor has

not paid any amount towards principal or interest till date. The financial creditor was continuously following up with the Corporate Debtor, to which the Corporate Debtor gave oral assurances of clearing the debt and accordingly it was agreed by the Parties to settle the entire outstanding on or before 31.03.2022. However, the Corporate Debtor failed to keep up with their assurance to make payments and accordingly the date of default is determined to be 31.03.2022.

VI. Further, the Corporate Debtor vide letter dated 25.03.2022, sought time to clear the said outstanding dues. The Corporate Debtor was hugely benefited by the borrowings from the Financial creditor and did not keep up their commitment of repayment and defaulted in making the payment, in spite of repeated requests and reminders.

- 2.** The Corporate debtor filed written submission dated 02.12.2022 vide diary No. 5214 submits that all the averments and claims made by the Applicant are true and accepted by the Respondent. It is submitted that in the year 2016 the Corporate Debtor approached the Financial Creditor seeking credit facility in the form of inter corporate loans. An amount of Rs. 1,77,00,000 was transferred to the bank account of the Corporate Debtor. The loan amount was granted at the rate of 15%.
- 3.** Further, an amount of Rs. 1,33,955/- was transferred to the financial creditor on 01.04.2020 and after that the Corporate Debtor has failed to pay any amount towards the principal or the interest.
- 4.** Moreover, corporate debtor in the present scenario is not in a position to repay the loan amount to the Applicant and also the Corporate Debtor has many statutory and non-statutory liabilities in existence, which the Corporate Debtor is not in a position to extinguish all the liabilities, by way of repayment.
- 5.** Further, as per the Annual Financial Statements for the financial year 2020-2021, the assets are not sufficient to pay off the existing liabilities, there are no liquid assets to pay off the debts of the Company. Due to absence of the liquid assets, the Corporate Debtor will not be able to honor any payments with respect to the existing debts in the near future. The Corporate Debtor

also is not in a position to ascertain the credit worthiness of the trade/account receivables and how the same can be converted into liquid assets for repayment of debts. Further, the respondent fails the test of Cash flow and is facing insolvent conditions owing to its cash flows and the corporate debtor is now facing cash-flow insolvency.

6. The corporate debtor further signifies its willingness to admit the instant application and direction as to initiation of Corporate Insolvency Resolution Process, as the Company is facing many difficulties due to financial stress it is under.
7. Heard both the counsels and perused the record available.
8. The present petition is filed by Triveni Education Society under section 7 of the IBC, 2016 to initiate Corporate Insolvency Resolution Process against Sovereign Industries Limited on the ground that the respondent has committed a default of Rs. 1,63,80,097/- (Rupees One Crore Sixty Three Lakhs Eighty Thousand and Ninety Seven only) as on 31.03.2022. The corporate debtor has availed credit facility in the form of loan from the financial creditor however apart from the repayment of Rs. 1,33,955/- on 1.04.2020 no amount was repaid by the Corporate Debtor.
9. It is observed that the amount in default as per Part IV of Form I is Rs. 1,63,80,097 which is well within the threshold limit prescribed. The date of default is 31.03.2022 and the Company Petition is filed on 07.11.2022 hence the petition is filed within the limitation.
10. This tribunal further takes on record the written submission filed by the Corporate Debtor acknowledging the debt, inability to repay the amount and its willingness to admit the instant Petition.
11. In the given facts and circumstances, the present petition CP (IB) 197/BB/2022 being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/- the petition is **admitted** in terms of Section 7 of the IBC, 2016 and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- (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
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (d) 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;
- (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) 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;
- (g) 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 financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;
- (h) 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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

12. The Learned Counsel for the Petitioner vide diary No. 5574 dated 20.12.2022 filed the consent of IRP Mr. Konduru Prasanth Raju, Registration No. IBBI/IPA-002/IP-N00708/2018-2019/12200 has been proposed as Interim Resolution Professional (IRP). Written Consent given by the IRP in Form 2 dated 15.12.2022 has been filed along with the Petition.

- 13.** The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. Konduru Prasanth Raju and there is nothing adverse against him. In view of the above, we appoint Mr. Konduru Prasanth Raju, bearing Registration No. IBBI/IPA-002/IP-N00708/2018-2019/12200, registered address at B- 804, Shiram Suhaana Apartments, Harohalli, Nagenahalli Gate, Yelahanka, Bengaluru- 560 064, as the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
- 14.** The Financial Creditor shall deposits a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
- 15.** The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
- 16.** A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioners 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.

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**