

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.1442/MB/2020

Under Section 7 of the I&B Code, 2016

In the matter of:

Vidya Sahakari Bank Limited

...Financial Creditor/Applicant

V/s

Supertharm Engineers Private Limited

[CIN: U28131PN2005PTC021526]

...Corporate Debtor/Respondent

Order Dated: 07.06.2022

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Omkar Deosthale , Advocate.

For the Respondent(s) : Mr. Shyam Kapadia, Advocate.

ORDER

Per: Kishore Vemulapalli Member, Judicial

1. This is an application being CP (IB) No.1442/MB/2020 filed by Vidya Sahakari Bank Limited, the Financial Creditor/Applicant, under Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) against Supertharm Engineers Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Financial Creditor is a bank and a body corporate constituted under the Maharashtra Co-operative Societies Act,1960. This application is filed by Mr. Subhash Deodhar, Chief Executive Officer of the Financial Creditor vide its Authority Letter dated 13.11.2020 marked as Annexure XII at Page 391 of the Petition, claiming a total default of Rs. 3,87,20,058.79/- (Rupees three crores eighty-seven lakh twenty thousand fifty-eight and seventy-nine paise only).
3. The Date of Default as mentioned in the Petition is 30.12.2017. The date of classification of the Corporate Debtor as a Non-Performing Asset (NPA) on 31.03.2018 in the Petition. The Petition has been filed on 24/12/2020.
4. The case of the Financial Creditor is as under:
 - a. The Financial Creditor submits that, the Corporate Debtor had availed the various Loan facilities for various purpose pertaining to the enhancement and conducting of its business activities and has sanctioned the following credit facilities to the Corporate Debtor Outstanding as on 30.11.2020 is as under:

Sr. No	Loan Facility	Amount Sanctioned in Rs.
1.	CC/GEN/44	55,00,000
2.	EML/202	1,00,00,000
3.	EML/213	1,00,00,000
4.	HPL/747	1,00,00,000
5.	HPL/748	40,00,000
6.	HPL/765	8,25,000
7.	HPL/777	30,00,000
8.	FORED LOS/1	30,00,000
	Total	4,63,25,000

- b. The Corporate Debtor has not paid any amount thereafter. Therefore, as on the date of 30.11.2020 the total amount outstanding from the Corporate Debtor was as follows:

Sr No	Loan Facility	Amount of Principal Outstanding (In Rs) 'A'	Amount of Interest (InRs) 'B'	Other Charges (In Rs) 'C'
1.	CC/GEN/44	54,94,588.79	30,70,273	-
2.	EML/202	54,23,468	31,37,797	1,76,494
3.	EML/213	27,29,884	14,65,523	32,848
4.	HPL/747	48,02,892	29,88,795	31,450
5.	HPL/748	9,27,559	4,53,138	23,796
6.	HPL/765	4,78,129	2,36,392	24,517
7.	HPL/777	27,32,758	10,84,609	45,872
8.	Forced Loan(Bank Guarantee Revoked)	29,79,625	3,79,651	-
	Amount(A+B+C)	2,55,68,903.79	1,28,16,178	3,34,977
Total Outstanding Amount as on 30.11.2020		Rs. 3,87,20,058.79 (Rupees three crore eighty-seven lakh twenty thousand and fifty-eight and seventy-nine paise only)		

- c. As far as Security is concerned, Cash Credit facilities were secured by executing various documents such as Mortgage Deed dated

25.03.2013, Supplementary Mortgage Deed dated 05.12.2013, Deed of Further Charge dated 14.02.2015 as well as Notice of Intimation of Mortgage by way of Deposit of Title Deed dated 22.12.2016 are marked as Annexure 'V' at Page No.25 of the petition respectively.

- d. As the Corporate Debtor continued to default in repayments of its debt to the Financial Creditor, its account was classified as an NPA on 30.12.2017 as per the directions issued by the Reserve Bank of India. Further, Financial Creditor had sent notice under sub-section (2) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI") dated 08.08.2018 to repay the total amount due aggregating to Rs2,44,87,964.47/- as on 31.07.2018 ('Annexure VIII' at page 378 of the Petition).
- e. In addition to the same a Notice dated 17/10/2018 for securing the physical possession of Secured Assets of the Corporate Debtor was issued by the Financial Creditor.
- f. Further, the Financial Creditor had sent Symbolic Possession Notice dated 26/10/2018 under sub-section (4) of Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI").
- g. The Financial Creditor submits that, letter dated 24.09.2020 was issued to Corporate Debtor calling upon the repayment of all amounts outstanding.

- d. The Corporate Debtor requested the Financial Creditor through its letter dated 28.12.2019 to provide the list of original documents but the Financial Creditor never replied.
 - e. The Corporate Debtor got 2nd sanction letter dated 14.02.2020 from Kotak Mahindra Bank for an amount of Rs.4,70,00,000/- and the same was replied and the documents were provided by the Financial Creditor to Kotak Mahindra Bank along with the outstanding amount as on 31.01.2020 through its letter dated 26.02.2020.
 - f. The Corporate Debtor submits that two request letters were sent for settlement of dues under OTS Scheme dated 05.10.2021 and 9.10.2021 for repayment of due. The same OTS proposal was not replied by the Financial Creditor.
 - g. The corporate Debtor has admitted his liability at para(e) in its reply.
 - h. The Corporate Debtor further submits that for the initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP"), there must be a specific meeting of the board of directors and post discussion, necessary resolution for initiation of CIRP by a conscious application of mind must be passed.
6. Both the Financial Creditor and Corporate Debtor have submitted their Written Submissions and the same have been duly considered.

Findings/Observations:

7. We have heard the submissions made by the counsel on both the sides and perused the records.

8. The letters which were issued by the Corporate Debtor to the Financial Creditor clearly highlight the existence of Debt due and Corporate Debtor's willingness to settle the same.
9. It is clear from the records that the Corporate Debtor has time and again acknowledged the debt which was due and payable to the Financial Creditor. The corporate Debtor has admitted his liability at para(e) in its reply.
10. On perusal of the documents submitted by the Applicant, it is clear that financial debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Applicant. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor, and that the petition is filed within the limitation period. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Financial Creditor and that there is a Debt due & payable by the Corporate Debtor. Therefore, the Application filed by the Financial Creditor is liable to be admitted.
11. The application is complete and has been filed under the proper form. The debt amount is more than Rupees One Crore and default of the Corporate Debtor has been established and the application deserves to be admitted.
12. The Applicant has proposed the name of Mr. Sunil Gajanan Nanal, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00194/2017-2018/10560] as Interim Resolution Professional, to carry out the functions as mentioned under

I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

13. This Application being CP(IB) No.1442/MB/2020 filed under Section 7 of I&B Code, 2016, presented by **Vidya Sahakari Bank Limited**, Financial Creditor/ Applicant against **Supertharm Engineers Private Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 Financial Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

- II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to
 - a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;
 - b. a surety in a contract of guarantee to a Corporate Debtor.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
- V. The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five Lakh 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 (CoC).
- VI. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VII. That this Bench appoints Mr. Sunil Gajanan Nanal, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00194/2017-2018/10560] as an Interim

Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

VIII. A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

IX. The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-
Kishore Vemulapalli
Member (Judicial)

07.06.2022

Sd/-
Rajesh Sharma
Member (Technical)