

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

ITEM No. 6
(IB)-194(PB)/2023

IN THE MATTER OF:

State Bank Of India

.... Petitioner/Applicant

v.

Sharp Mint Limited

.... Respondent

Order Under Section 7 of Insolvency & Bankruptcy Code (IBC), 2016

Order delivered on 15.05.2023

CORAM:

JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. ATUL CHATURVEDI
HON'BLE MEMBER (TECHNICAL)

(HEARING THROUGH PHYSICAL MODE AND VC)

PRESENT:


For the Petitioner : Adv. Siddharth Sangal, Adv. Chirag Sharma


For the Respondent :

ORDER

Per Oral: Chief Justice (Retd). Ramalingam Sudhakar (President)


1. This petition has been filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC**" / "**Code**") by State Bank of India ("**SBI**" / "**Petitioner**") against M/s. Sharp Mint Limited ("**Corporate Debtor**") seeking to initiate CIRP proceedings against the Corporate Debtor under the Code. The petition in this case was filed on 29.01.2023.
2. Prior to filing of this Section 7 petition, an advance notice has been served to the Corporate Debtor by the Petitioner vide e-mail dated 29.01.2023 (Page 1346 of the Petition) alongwith proof of service.

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3. Thereafter, the matter was listed before this Bench and on 31.03.2023, notice was issued by this Tribunal returnable by 12.04.2023. However, on 12.04.2023 none appeared for the Corporate Debtor, whereas Ld. Counsel for the Petitioner appeared and sought some more time to complete the service and also file a hard copy of the pleadings. The matter was listed for hearing today i.e. 15.05.2023.
 4. Pursuant to the order dated 12.04.2023, service was affected by the Petitioner once again by Email and Speed Post and proof of the same is at page nos. 5 & 6 of the affidavit of service. It is therefore deemed to be a proper service as the service has been affected on the address shown at the MCA Portal. Effectively the Corporate Debtor has been served with the Section 7 petition and there is no appearance today either physically or through VC and no Vakalatnama has been filed on behalf of the Corporate Debtor.
 5. According to the Petitioner, the Corporate Debtor is in the business of Investment Consultancy and the Corporate Debtor approached the Petitioner for various loan facilities. The facts of the case are as follows:-
 - I. The present petition is being filed by the State Bank of India, the Financial Creditor/ Petitioner in the case. The Petitioner, is a Public Sector Bank of the Government of India formed and constituted under the State Bank of India Act, 1955. The Corporate Debtor is having loan account bearing Account Nos. 37686883785 (CC Standby Line of Credit), 37686958775 (CC Standby Line of Credit), 36181181356 (Cash Credit), 37686765830 (CC Standby




Line of Credit) and 64168558333 (Term Loan) in the Petitioner -Bank.


- II. The Corporate Debtor approached the Petitioner, as part of the Consortium, in December 2011 requesting for sanction of various credit facilities. The Petitioner, after following the due procedure, vide the Loan Documents dated 15.12.2011, executed between the Petitioner and Corporate Debtor, granted various credit facilities to the Corporate Debtor with credit limit of Rs. 1012 Crores against primary and collateral security as well as personal guarantees.
- III. Subsequently, the Corporate Debtor, in October 2012, approached the Petitioner, including Consortium of Banks, for enhancement of sanctioned credit facilities, which after following the due procedure, were granted to the Corporate Debtor vide Loan Documents dated 19.12.2012, executed between the Petitioner and Corporate Debtor, whereby the existing credit limits of Rs. 1012 crores were enhanced to Rs. 1382 crores against primary and collateral security and personal guarantees. The Corporate Debtor was also granted, one time, line of credit (LC & BG) to the extent of Rs. 25 Crores.
- IV. The Corporate Debtor, thereafter, in March 2014, again approached the Petitioner, including Consortium of Banks, for enhancement of sanctioned credit facilities, which after following the due procedure, were granted to the Corporate Debtor vide Loan Documents dated 14.03.2014, executed between the Petitioner and Corporate Debtor, whereby the existing credit limits of Rs. 1382 crores were enhanced to



Rs. 1408 crores against primary and collateral security and personal guarantees. The Corporate Debtor was also granted, a 'one-time' line of credit (LC & BG) to the extent of Rs. 25 Crores.


- V. Later, the Corporate Debtor, in October 2015, approached the Petitioner, including Consortium of Banks, for enhancement of sanctioned credit facilities, which after following the due procedure, were granted to the Corporate Debtor vide Loan Documents dated 16.10.2015, executed between the Petitioner and Corporate Debtor, whereby the existing credit limits of Rs. 1408 crores were enhanced to Rs. 1469 crores against primary and collateral security and personal guarantees. The Corporate Debtor was also granted a further one-time, line of credit (LC & BG) to the extent of Rs. 10 Crores.
- VI. The Corporate Debtor, also approached the Petitioner and other Bank(s) for grant of Corporate Loan of Rs. 45 Crores, which after following the procedure and execution of the relevant Loan Documents dated 25.01.2016 were granted to the Corporate Debtor, against security and personal guarantees.
- VII. By Loan Documents executed in March 2017, the credit limits granted to the Corporate Debtor were, on its request, and after following the due procedure were renewed for a total amount of Rs. 1434 Crores, against primary and collateral security and personal guarantees. That, out of the total sanctioned working capital, the share of the Petitioner - State Bank of India is Rs. 737 Crores.

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- VIII. For the above-said loan facilities, even Corporate Guarantees were executed and equitable mortgage was created by deposit of the title deeds of the security documents/properties even in the year 2018. The Corporate Debtor also executed Facility Agreement etc. in 2018 in respect of the credit facilities advanced to it.
- IX. The Corporate Debtor, after some initial payments of servicing interest on loan amounts, did not adhere to the financial discipline, resultant, the loan accounts after running irregular were classified as NPA (Non-Performing Asset) on 31.03.2018. Despite the loan accounts turning NPA, the Corporate Debtor did not make payment of the outstanding amount, therefore the Financial Creditor issued Legal Demand Notice dated 07.06.2019 to the Corporate Debtor calling upon the Corporate Debtor to make payment of the outstanding amount, failing which the Financial Creditor would be forced to initiate legal action.
- X. Even after the above Notice, the Corporate Debtor did not make payment of the outstanding amount to the Financial Creditor, thus, the Petitioner preferred O.A. No. 1030 of 2019 before the DRT at New Delhi calling upon the defendants therein to make payment of Rs. 787,59,60,654.21/- along with interest. The said O.A. is pending adjudication.
- XI. The Petitioner has also already issued Demand Notice dated 31.08.2022 under Section 13(2) of the SARFAESI




Act, 2002 on the Corporate Debtor, but no payment was received.


- XII. Meanwhile, the Corporate Debtor, after the account turned NPA, approached the Petitioner for Restructure of its loan accounts/debts vide its Letter dated 13.03.2020 thereby acknowledging the outstanding amounts. The Restructure of loan accounts/debts, though, was approved/sanctioned by the Petitioner by its Sanction/Letter dated 11.08.2020, however, the said Restructure could not be implemented. Moreover, the Corporate Debtor also acknowledged the outstanding loan amounts in its Balance Sheet as on 31.03.2021.
- XIII. It is further averred that in view of the acknowledgment of debt by requesting for restructuring and acknowledgment in its Balance Sheet by the Corporate Debtor, the present Application under Section 7 of the IBC, 2016 is within the limitation period.
6. The details of the loan granted by the Petitioner from time to time are attached to the petition as 'Annexure A-1 to Annexure A-14'. Legal notice seeking payment of debt is attached to the petition as 'Annexure-15' dated 07.06.2019. In 2019, proceedings were initiated before the Debt Recovery Tribunal in O.A. 1030/2019 for calling upon the Corporate Debtor for payment of approximately Rs. 787 Crores.
7. In this case the NPA was declared on 31.03.2018. Even thereafter, the Corporate Debtor approached the Petitioner



with a letter dated 13.03.2020 for restructuring of loan which was granted vide a Sanction Letter dated 11.08.2020, attached to the petition as 'Annexure A-17'. The factum of acknowledgment of debt is evident from the balance sheet dated 31.03.2021 (Annexure A-18).

8. In view of the series of default committed by the Corporate Debtor, SARFAESI proceedings were also initiated on 31.08.2022 (Annexure A-19).
9. Since no payment was forthcoming from the Corporate Debtor, the Petitioner-Bank was forced to file this petition under Section 7 of IBC, 2016.
10. Based on all these documents, it is pleaded by the Ld. Counsel for the Petitioner that the amount of debt as stated in the petition is reflected in 'Annexure A-20 (Colly)' i.e. statements of account of the Corporate Debtor along with the Record of Default Certificate issued by the information utility - NESL (Page 1226 to 1316 of the Petition).
11. In view of the above, it is evident that on the basis of the above factual position and records, we find that the Petitioner-Bank has made out a clear case of admitted debt and default and the record of default certificate issued by the information utility also establishes the case of default. Hence we have no hesitation to admit the case under Section 7 of IBC, 2016.
12. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

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- a. The application bearing CP (IB) No. 194(PB)/2023 filed by State Bank Of India, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Sharp Mint Limited, the Corporate Debtor, is admitted.
 - b. There shall be a moratorium in terms of section 14 of the IBC.
 - c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
 - d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - e. Mr. Rajender Kumar Jain, registration number IBBI / IPA-001 / IP - P00543 / 2017 - 2018 / 10968, email: RKJAIN.IP@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation for Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations,



2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the Code. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no further opportunities in this regard.
- g. The IRP is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. The Financial Creditor shall deposit 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 (CoC).

- j. In terms of section 7(7) of the Code, the Registry of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, NCR, New Delhi, by all available means for updating the Master Data of the Corporate Debtor. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.

13. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-Sd/-
(RAMALINGAM SUDHAKAR)
PRESIDENT

-Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

15.05.2023
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