IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 34/CTB/2020

In the Matter of:

An application under section 7 of Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

In the Matter of:
State Bank of India, Stressed Assets Management Branch, A/34, PT. Jawaharlal Nehru Marg. OSCARD Bank Building, 4th Floor Bhubaneswar- 751001,

...Applicant/Financial Creditor

M/s. Sabitri Industries Private Limited, Girima, Ward No.12, Karanjha, Mayurbhanj, Odisha, Pin-757037.

...Respondent/Corporate Debtor

Appearances (through video conferencing)

For the Applicant	:	Mr. Pradeep Kumar Rout, Adv.
For the Respondent	:	Mr. M.M .Swain, Adv.
		Mr. S. Biswal, Haripad Mohanty, Adv.
		Mr. K. Sattar, Adv.

Order reserved on: 28.04.2022
Order Pronounced on: 03.06.2022

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

ORDER

Per: P. Mohan Raj, Member (Judicial)

1.This application under section 7 of Insolvency and Bankruptcy Code 2016 with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules2016, has been filed by the State Bank of India through its authorised person Shri Amulya Kumar Giri , Assistant General Manager of State Bank of India, having office at A/34, Pt. Jawaharlal Nehru Marg, OSCARD Bank Building, 4th Floor Bhubeneswar-751001 thereby seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s. Sabitri Industries Private Limited a company incorporated under the provisions of Companies Act 1956, and a company within the meaning of the Companies Act,2013 having its Registered Office at Girima, Ward No. 12, Karanjia, Mayurbhanj, Odisha-490020. (Herein and after referred as the corporate debtor).

2. It is submitted in the petition that the corporate debtor has been banking with Petitioner. The State Bank of India had sanctioned term Loan on fund-based limit of three loans to the sum of Rs. 34.60 crores for setting of a 37 MT capacity of Modern Rice Plant along with 2.5 MW cogeneration power plant as well as a Rural Godown and accordingly the same was sanctioned vide sanction letter No. AMT/2012-13/21 dated 11.10.2012. The Board of Resolution dated 16.10.2012 of the Board of Directors of the Company accepted the terms and conditions of the arrangement letter AMT/2012-13/21 dated 11.10.2012. On 16.10.2012 agreement of loan for overall limit in Form-C-1 furnished by the Managing Director of the

Company confirming sanction letter dated 11.10.2012 and its term and conditions for grant of term loan and forwarded contract facilities aggregation to Rs. 34.60 crore agreed by the parties stating that the statement and particulars in proposal are correct and agreement of Hypothecation of goods and assets in Form-C-2 dated 16.10.2012.

3. The ISDA Master Agreement dated 16.10.2012 was executed by the Managing Director (Corporate Debtor) of the company agreeing all conditions to be bound by all its terms and conditions. On 16.10.2012 Deed of Guarantee for overall limit in Form-C-4 by Galaxy Tie Up Pvt. Ltd. dated 16.10.2012 and by Dilip Kumar Agrawal, Susama Agrawal and Banawarilal Agarwal. Letter was submitted by the Corporate Debtor regarding grant of individual limit within the overall limit in Form-C-5 was executed by the Corporate Debtor in favour of the Financial Creditor on dated 16.10.2012. On request of Corporate Debtor vide letter dated 18.10.2013 additional credit facilities, the financial creditor agreed the additional sum of Rs. 28.50 crores. Accordingly, the fund-based credit limit enhanced from Rs. 34.60 crore to Rs.63.00,00,000/- (Rupees Sixty-three crores only) and further sanction letter issued on 05.06.2014.

4. The Sanction letter dated 05.06.2012 was issued by the financial creditor along with terms and conditions was resolved and approved by the Board of Directors vide Resolution dated 03.08.2014 and 04.08.2012 respectively. On 07.08.2014 a supplemental agreement of loan for increase in overall limit in Form-C-2, agreeing the present agreement was increased to Rs. 63.00,00,000/- (Rupees Sixty-three crores only). Simultaneously agreeing for hypothecation of goods and

other assets for increase in overall Credit limit. Deed of guarantee for over-all limits in two forms i.e., Form No. C-4 dated 07.08.2014 executed by the Guarantors in favour of Financial Creditor agreeing the present agreement by enhancing Rs.34.60 crores to Rs.63.00,00,000/- (Rupees Sixty-three crores only).

5. Letter regarding grant of individual limit within overall limit in Form-C-5 was executed by corporate debtor dated 07.08.2014. The Corporate Debtor on 07.08.2014 mad request for sanction of working capital facilities with declaration and giving consent to disclose the name of the defaulters as and when required by the financial Creditor. The Corporate Debtor submitted letter admitting the Credit facilities availed by the company and admitted execution of all documents and also furnished credit information. The Corporate Debtor a revival letter in Form-C-6 on 07.08.2014 agreeing execution of documents of loan dated 16.10.2012 as well as earlier hypothecation dated 16.10.2012, Supplement agreement and Deed of Mortgage dated 07.08.2014.

6. The corporate debtor on 25.07.2015 requested for sanction of additional credit facility of Rs.10.00 crore a fourth term loan. Accordingly, the Financial Creditor vide letter dated 19.09.2015 sanction the credit facilities from existing Rs.63,00,00,000/- (Rupees Sixty-three crores only). to Rs. 69.70,00,000/- (Rupees Sixty-nine crores seventy lakhs only). The Corporate debtor accepted the terms and conditions and passed resolution of the Board of Directors held on 22.09.2015 admitting the sanction. The Corporate debtor executed balance confirmation letter dated 22.09.2015 stated therein the balance outstanding Rs. 22,65,69,270/- in respect of C.C. accounts and Rs. 29,26,50,305 in respect of TL accounts.

7. Supplemental agreement of loan for increase on overall limit in Form-C-1-A dated 22.09.2015 was executed by corporate debtor confirming and agreement Rs.69.70,00,000/- (Rupees Sixty-nine crores seventy lakhs only). The corporate debtor created equitable mortgage before the Financial Creditor by recording the mortgage register on 16.10.2012,07.08.2014 and 22.09.2015. The Financial Creditor issued Notice under Section 13(2) of SARFAESI Act. And under Section 13(4) of SARFAESI Act, 2002 was served on 17.10.2016 and 14.02.2017 Corporate Debtor failed to operate the account in agreed terms and conditions and simultaneously failed to pay the interest at the agreed rate. The account became NPA on dated 28.07.2016.

8. The Financial Debtor issued possession Notice under section 13(4) of SARFAESI Act. Served on Corporate Debtor dated on 14.02.2017. The Corporate Debtor submitted O.T.S proposal before the Financial Creditor on 02.05.2017 for settling the loan dues for Rs.45 crores which was not accepted by the financial creditor. Thereafter, the Financial Creditor issued legal notices dated 31.05.2017 annexure 41.

9. The Total outstanding amount against Corporate Debtor is now Rs.114.85 crore for which the Petition under Section-7 of the Insolvency and Bankruptcy Code,2016 is filed on 04.02.2020.

10. On the Respondent side counsel appeared and took time to file reply, latter time was taken on both sides for reporting settlement, but in spite of sufficient time granted, Respondent side not filed any reply hence right to file reply was forfeited on 28.04.2022 and heard oral submissions of both sides.

11. From the documents produced it is proved that the respondent availed loans from the Petitioner Bank and committed default. The account of the Respondent was declared as NPA on 28.07.2016. The OTS Proposal was submitted on 02.05.2017, The said request was rejected by the Bank and issued legal notice dated 31.05.2017, and filed this petition on 04.02.2020, Thus, the Petition is filed in time. On the Respondent side stated that in the OTS Proposal dated 02.05.2017, the Respondent only mentioned the offer amount of Rs.45 crores, but not mentioned. The due amount payable as on the date of OTS Proposal, hence the same cannot be taken as proper acknowledgment of debt. It is true in the OTS Proposal annexure 40, the total due amount is not mentioned but in the proposal letter all the loan accounts numbers are given, it is enough to understand that the respondent acknowledged the total due amount in respect of these accounts.

12. For the reasons stated above we therefore consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the corporate debtor.

13. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.

(a) The petition bearing CP (IB) No.34/CTB/2020 State Bank of India, the financial creditor, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules 2016 for initiating CIRP against M/s. Sabitri Industries Private Limited, (CIN: U63020OR2009PTC011303), the corporate debtor is **admitted.**

(b) There will be a moratorium under section 14 of the Code.

(c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, 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 and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.

(e) Mr. Sambulal Agrawal, registration No. IBBI/IPA-001/IP-P00387/2017-2018/10698 having office at Sambhu and associates, 2nd Floor , Bazar Kolkata Building, Nayapada, Sambalpur- 768001 is hereby appointed as an Interim Resolution Professional (IRP) of the corporate debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15,17,18,19,20 1and 21 of the Code.

(f) During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC.

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.

(g) The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

(h) The financial creditor shall deposit a sum of Rs.2,00,000/- (Two Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).

(i) In terms of section 7(5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post, e-mail or WhatsApp immediately, and in any case, not later than two days from the date of this order.

(j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Odisha, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.

14. CP (IB) No.34/CTB/2020 to come up on 07.07.2022 for progress report.

15. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

16. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD Date: 2022.06.03 14:31:38 +05'30'

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ Date: 2022.06.03 15:10:20 +05'30'

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj.
Member (Judicial)

Signed on this 3rd day of June, 2022.

Supriya p.s