

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP (IB) No. 8/Chd/Pb/2019

**Under Section 7 of Insolvency and
Bankruptcy Code, 2016**

In the matter of:

State Bank of India,

having one of its branch at

Ludhiana, Stressed Assets Management Branch (SAMB), Ludhiana

and Local Head Office at Sector 17, Chandigarh

...Petitioner-Financial Creditor

Versus

M/s Gurdaspur Overseas Ltd.,

having its registered office at

B.S.F Road Gurdaspur

Through its Managing Director

2nd Address:

#7 Adarsh Nagar, Mandi Gurdaspur, District Gurdaspur

...Respondent-Corporate Debtor

Judgment delivered on 05.09.2019.

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : 1) Mr. Rakesh Gupta, Advocate
2) Mr. Puneet Jain, Advocate

For the Respondent : 1) Mr. A.P.S. Madaan, Advocate
2) Mr. Aalok Jagga, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial):

JUDGMENT

This petition has been filed by State bank of India, a financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') to initiate insolvency resolution process against the respondent-corporate debtor for the default committed in

repayment of the financial debt. State Bank of India is a Public Sector Bank, having head office at Nariman Point, Mumbai and the petition is being filed through Mr. S.K. Garg, Assistant General Manager, State Bank of India (SAMB), Ludhiana.

2. The Chairman of State Bank of India in exercise of power under Section 27 of the State Bank of India Act, 1955 has authorized all the Stressed Assets Management Branch officers on whom the signing powers have been conferred by notification dated 27.03.1987 to sign applications, reply, affidavit, counter affidavit, sur rejoinder and generally all pleadings and file applications for initiation of corporate insolvency resolution process before the National Company Law Tribunal, under provisions of the Code on behalf of the bank or in connection with any proceedings before the National Company Law Tribunal for or against the Bank under the Code. This authorization letter (Annexure-I/1) is dated 16.06.2017. Along with this authority letter, the notifications under which various officers of the Bank have been authorized to sign, verify the pleadings etc., have also been annexed and it is not disputed that the Assistant General Managers of the State Bank of India are among those authorized signatories. Regulation 76 of the State Bank of India General Regulations, 1955, elaborates the authority given to various officers to sign the pleadings and Regulation 77 thereof empowers all these officers to sign documents for and on behalf of the State Bank of India.

3. Respondent, Gurdaspur Overseas Ltd., the corporate debtor is a company registered under the Companies Act, 1956, on 18.09.2009 with authorized share capital of ₹31,00,00,000/- and paid up capital of

₹29,68,73,500/- as per master data at Annexure-I/3. As per the master data, the corporate debtor has filed the balance sheets with the Registrar of Companies upto 31.03.2016. With this master data, the details of the properties of the corporate debtor mortgaged with the Bank have also been mentioned. The certificate of incorporation of the respondent-corporate debtor is at Page 39. Annexure-I/4 (Colly) is the copy of the Memorandum and Articles of Association of the respondent-corporate debtor.

4. The petition has been filed by moving an application in Form-1 as prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (for brevity the 'Rules'). The facts of the case briefly stated are that the Corporate Debtor have been sanctioned loan facilities by the State Bank of India and other consortium members on 31.01.2014 for a sum of ₹85 crores out of which the share of the petitioner-financial creditor is ₹25 crores in the form of Cash Credit Hypothecation.

Account type	Amount in Crore
CC (Hypothecation)	25
Total	25

5. In Part-V of Form No.1, the particulars of security held are given. It is stated that the credit facilities are primarily secured by way of hypothecation and there is also collateral security by way of mortgage of lands. The statement of loan account duly certified under the Bankers Books Evidence Act, 1891 are stated to be attached as Annexures I/5 of the petition. It is stated that the debt stand acknowledged by resolution dated

29.01.2014 by Board of Directors of the respondent corporate debtor. Copy of the resolution is attached as Annexure I/11 of the petition.

6. It is also stated in Part-V of Form No. I, that original application OA No. 823 of 2018 was filed against Gurdaspur Overseas Ltd. and other obligants with the Debt Recovery Tribunal (DRT-III), Chandigarh and the same is pending adjudication.

7. The Enhancement of loan for the sum of ₹130 crores was provided by the consortium members including the financial creditor to the respondent corporate debtor. The individual and consortium documents to provide loan facilities executed are consortium agreement, Joint Deed of Hypothecation, Inter-se Agreement, all dated 31.01.2014.

8. The documents in proof of the aforesaid sanction and grant of The facility are sanction letter dated 31.01.2014 (Annexure-I/10); sanction letter dated 28.02.2015 (Annexure-I/17); copy of consortium affidavit dated 31.01.2014 (Annexure-I/12); copy of consortium agreement dated 07.05.2015 (Annexure-I/20); copy of Joint Deed of Hypothecation (Annexure-I/21); copy of agreement of guarantee (Annexure-I/14); copy of inter se agreement dated 31.01.2014 (Annexure-I/15); and copy of inter se agreement dated 07.05.2018 (Annexure-I/21).

9. The financial facilities of ₹25 crores were granted to the corporate debtor in the form of cash credit facilities and these were revised and reconsidered by petitioner-financial creditor on 28.02.2015. The facilities were subsequently enhanced to ₹130 crore on 07.05.2015, and the share of

the petitioner-financial creditor remained ₹25 crore. Annexure I/18 is the arrangement letter for renewal of the credit facilities.

10. The petitioner has stated that the total amount of default is ₹33,32,77,615/- calculated up to 05.04.2018. The petitioner-bank has also filed the computation chart (Page 140) for determining the amount of default, as claimed in the application.

11. In order to establish the default, the petitioner-financial creditor has also relied upon the copies of the statements of accounts of the corporate debtor [Annexure-I/5] certified under the Bankers Books Evidence Act, 1891, and the copy of the CIBIL Report (Annexure-I/9).

12. Due to the default, the loan facility to the corporate debtor was recalled. The bank issued a notice dated 27.10.2016 (Annexure-I/26) under Section 13(2) of the SARFAESI Act, 2002. In this notice, it is informed to the corporate debtor that the operation and conduct of the financial assistance/credit facilities have become irregular and the debt has been classified as Non-Performing Asset (NPA) in accordance with the directives/guidelines of Reserve Bank of India. The amount outstanding as on 25.10.2016 was ₹26,31,54,594/- as per this notice.

13. The petitioner-bank being a financial creditor has also furnished the written communication in Form-2 given by Mahesh Bansal, Registered Resolution Professional with IBBI bearing No. IBBI/IPA-001/IP-P00785/2017-18/11341, proposing him as an Interim Resolution Professional in the event of the petition being admitted. Copy of the written communication is at Annexure II of the petition.

14. Notice to this petition was sent to respondent-corporate debtor to show cause as to why this petition be not admitted. Appearance was made by Mr. A.P.S. Madan and Mr. Aalok Jagga, Advocates for the respondent and reply has been filed. The allegation of facts with regard to the grant of loan and the default committed by the respondent are not in fact disputed. It was stated that the financial creditor has not impleaded the other two members of the consortium, including the lead bank i.e. Punjab National Bank.

15. It was further stated that the respondent company, which was dealing in rice industry, had faced great losses, which were covered up only through the manner of restructuring. A copy of Rehabilitation Policy of State Bank of India, for MSME Industry, showing such trend in the Rice Industry , incurring huge losses from the year 2014-15 onwards is stated to be attached as Annexure R-1 (Diary No. 2248 dated 03.05.2019).

16. It is also submitted that in order to restructure the loan account, two proposals were prepared by the respondent company; copy of the restructuring proposals are at Annexure R-2 and R-3 of Diary No. 2248. It is also stated that a TEV Study Report was required to be obtained, as advised by the lead bank i.e. Punjab National Bank. Copy of TEV Report is at Annexure R-4. Further, consortium meeting was held among the creditors on 03.04.2019, wherein it was stated that the financial creditor SBI Bank has already moved NCLT and DRT to initiate recovery measures against the respondent-corporate debtor. It was also discussed that SBI is not in favour of restructuring the loan account of the corporate debtor and vehemently denied deferring the next date of petition to any further date. Copy of the

minutes of such meeting are stated to be annexed as Annexure R-5 (Diary No. 2248).

17. Rejoinder was filed vide Diary No. 2249 dated 03.05.2019. It was submitted that the right of the financial creditor to file an application under Section 7 of the IBC is a statutory right and there is no requirement of either impleading the other financial creditor as party nor their consent is required. It is further stated that the corporate debtor has not been able to service the financial facilities of SBI for more than last two years and there is no proposal of rehabilitation or reconstruction pending with the petitioner-financial creditor. It has been also stated that the petitioner-financial creditor has initiated the proceedings before under the SARFAESI Act, 2002 as well as under the Insolvency and Bankruptcy Code, 2016.

18. It is contended that any restructuring proposal is the sole prerogative of the financial institution and there is no such law which makes it mandatory for any financial institution to restructure any account which is commercially unviable. Further, proposal dated 08.03.2018 was declined by the petitioner bank and copy of the same is attached as Annexure A-1 of Diary No. 2249 dated 03.05.2019. It was also mentioned that the petitioner-financial creditor was never a part of any TEV Study Report and any such report taken by Punjab National Bank has got no bearing on the rights of petitioner-financial creditor. It was also submitted that the proceedings under the SARFAESI as well as IBC have got no bearing as far as the present petition is being concerned.

19. We have heard the learned counsel for the petitioner-financial creditor, the learned counsel for the respondent-corporate debtor and have perused the record quite carefully.

20. The learned counsel for the respondent in addition to the above referred pleadings, also contended that the bank has issued a latest scheme known as “SBI Scheme for One Time Settlement of NPAs & AUCAs (SBI OTS 2019)” and the applicant is eligible to apply under the said scheme and there is still time to do the same. If the CP is admitted, the applicant will become ineligible for availing the said scheme. Accordingly, he submits that once the bank itself formulated the scheme for OTS, now it cannot proceed with the CP for CIRP of the corporate debtor.

21. The consideration of the CP is completely under the scope and ambit of the Code and that any internal schemes of the bank will not come in the way of this Adjudicating Authority to admit the petition for CIRP, once the same satisfies the requirements of the Code.

22. The learned counsel for the respondent also contended that since the credit facilities granted by the petitioner to the corporate debtor were not independent and that the same were part of a consortium, the petitioner cannot maintain the CP individually.

23. It was already settled that a financial creditor though granted the credit facilities to the corporate debtor as part of a consortium, can maintain and file the CP independently.

24. The other contention of the respondent that the deponent of the petitioner is not authorized to file the petition is also satisfactorily rebutted by the petitioner with the support of the documents, already on record.

25. Under sub-section (1) of Section 7 of the Code, a financial creditor can file an application against the corporate debtor when the default has occurred. The application is to be filed in Form-1, as prescribed in Rule 4 of the Rules as per sub-section (2) of Section 7 of the Code.

26. Sub-section (3) of Section 7 of the Code, reads as under:-

“(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.”

27. The financial creditor has relied upon the evidence of default which is in abundance in the present case. The evidence comprises of the sanction letters, agreements of loans, deed of hypothecation, the documents of creation of the securities and all the documents for which reference has already been made, while narrating facts of the case. The statements of loan account are at Annexure I/5. Annexure I/5 at Pages 141-142 is the certificate which is duly certified under the Bankers Book Evidence Act, 1891. In proof of the default committed by the corporate debtor for which the computation chart has already been referred to, the Bank has also filed a CIBIL Report in

support of this contention. The report is at Annexure I/9. So the first requirement of sub-section (3) of Section 7 contained in Clause (a) is fulfilled.

28. As per clause (b) of sub-section (3) of Section 7 of the Code, the financial creditor is required to name the Resolution Professional, proposed to be appointed as the Interim Resolution Professional. The written communication by the Resolution Professional proposed to be appointed as Interim Resolution Professional is at Annexure II and on perusal thereof, it shows that the same contains the required declarations. He has also certified that there are no disciplinary proceedings pending against him with the Insolvency and Bankruptcy Board or Indian Institute of Insolvency Professionals of ICAI.

29. The aforesaid discussion also fulfils the requirement of sub-section (4) of Section 7 of the Code, which says that *the Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).*

30. No defect in the application or in the written consent furnished by the Registered Resolution Professional has been either found or has been pointed out on behalf of the corporate debtor. Since, the applicant proved to the satisfaction of this Adjudicating Authority that a default has occurred and the application under sub-section (2) of Section 7 is complete, the petition deserves to be admitted in terms of sub-section (5) of Section 7 of the Code.

31. In view of the above, the petition is admitted and the moratorium is declared in terms of sub-section (1) of Section 14 of the Code, which is as under:-

- (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 the possession of the corporate debtor.

32. 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 moratorium period. 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.

33. 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 pass an order for liquidation of corporate debtor under Section 33 as the case may be.

34. We appoint Mr. Mahesh Bansal, r/o Kesri Kunj, 498/17, New Upkar Nagar Civil Lines, Ludhiana-141001 and Mobile No. 9814117576, email: emmbee.consulting@gmail.com , as an Interim Resolution Profession with the following directions:

- (i) The term of appointment of Mr. Mahesh Bansal, shall be in accordance with the provisions of Section 16(5) of the Code.
- (ii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking control and custody of the assets over which the 'Corporate Debtor'

has ownership rights recorded in the balance sheet of the 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the 'Corporate Debtor';

- (iii) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the 'Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- (iv) The Interim Resolution Professional shall endeavour to constitute the Committee of Creditors after collation of all the claims received against the 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 and this Tribunal on or before the expiry of thirty days from the date of his appointment , and shall hold first meeting of the committee within seven days of filing the report of constitution of the committee.
- (v) It is hereby directed that the 'Corporate Debtor', its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim

Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all co-operation in accessing books and records as well as assets of the 'Corporate Debtor';

- (vi) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor'; and
- (vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this judgment to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this judgment to the Interim Resolution Professional at his email address forthwith.

Pronounced in open Court.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

September 05, 2019
Mohit Kumar