

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

**CP(IB)-1280(MB)/2022**

Under Section 7 of the IBC, 2016

*In the matter of*

**State Bank of India**

...Financial Creditor  
v/s.

**Shaliwahan Farms Private Limited**

...Corporate Guarantor/  
Corporate Debtor

Order Pronounced on: **03.03.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner : Mr. Dheeraj Patil, Advocate.

For the Respondent : Mr. G. Aniruth Purusothaman, Advocate.

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

1. This is a Company Petition filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **State Bank of India** (hereinafter called "the Financial Creditor") on 22.11.2022 seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Shaliwahan Farms Private Limited** (hereinafter called "Corporate Debtor/Guarantor") on the ground that as on

31.07.2022, the Corporate Guarantor is liable to pay ₹26,44,96,625/- to the Financial Creditor as the Principal Borrower defaulted in making repayment of the Loan amount of ₹26,44,96,625/- indebted to this Financial Creditor in relation to the loan facilities availed. The date of default is 10.04.2019.

- 1.1. The Corporate Debtor/Corporate Guarantor is a Company incorporated on 24.12.1998 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number is [CIN: U01210MH1998PTC117614]. Its registered office is at Siddharth Arcade, Station Road, Aurangabad, Maharashtra – 431 005. Therefore, this Bench has jurisdiction to deal with the present petition.
2. The Financial Creditor submits that **Deogiri Infrastructure Pvt. Ltd.** (Principal Borrower) approached the State Bank of Hyderabad (Financial Creditor) {now known as State Bank of India (SBI) consequent to its merger} and requested for grant of loan facility for its Working Capital, the Financial Creditor provided loan facility to the Principal Borrower/Corporate Debtor for a total amount of ₹80 lakhs vide Sanction Letter dated 06.11.2007. For the sanctioning of above facility, the Corporate Debtor executed the following documents on 01.12.2007:
  - (i) Letter regarding the grant of individual limits within overall limits.
  - (ii) Agreement of loan for an overall limit.
  - (iii) Agreement of hypothecation of goods and assets.
  - (iv) Deed of Guarantee for an overall limit.

Furthermore, a charge on the proposed fixed assets (Plot No. 24, CTS No. 18170, Friends Colony, Konkanwadi, Near hotel Rajdhani, Railway Station

Road, Aurangabad, standing in the name of Mr. Kumar Anjayya Peddi) of the Principal Borrower was created in favour of Financial Creditor.

- 2.1. Thereafter, at the request of the Principal Borrower, the credit facilities were renewed with enhancement in Working Capital and Bank Guarantee by the Financial Creditor on various occasions and as on 19.01.2018 the total credit facility availed by the Principal Borrower amounted to ₹4100 lakhs (Cash Credit amounting to ₹2800 lakhs and balance Bank Guarantee facility).
- 2.2. The Corporate Debtor i.e. Shalivahan Farms Pvt. Ltd. executed a Guarantee Agreement on 23.09.2009 securing the debt to the Principal Borrower. The Corporate Debtor also executed a Memorandum for recording creation of mortgage by deposit of Title Deeds, in relation to Agricultural Land and Building constructed thereon at G No.18 & 17, Mouje Chinchol Tq. Paithan dist. Aurangabad adm. 2H 26R owned by it, in favour of the Applicant on 30.11.2009 to further secure the debt. The Corporate Debtor also executed a supplementary guarantee agreement and a memorandum for recording creation of mortgage by deposit of Title Deeds subsequently on various occasions securing the enhanced facility thereafter.
- 2.2.1. Clause 1 of Guarantee Agreement dated 11.01.2013 provides that *“at any time default shall be made by the Borrower(s) in payment of the principal sum and / or other monies for the time being due to the Bank in respect of or under the said facilities, the guarantors shall forthwith pay unconditionally to the Bank merely on demand by the Bank, the whole of such principal sum together with interests, costs, charges, expenses, fees, commission and or any other monies as may be then due to the Bank without any demur or protest or contestation and without reference to the Borrower(s) irrespective of any dispute or difference with the*

*Borrower(s) in any proceedings and shall indemnify and keep indemnified the Bank against all losses of the said principal sum, interest or other monies due and all costs, charges and expenses whatsoever which the Bank may incur by reason of any default on the part of the Borrower(s)".*

- 2.3. Both Loan Accounts of the Principal Borrower was classified as Non-Performing Asset (NPA) by the Financial Creditor on 30.10.2018.
- 2.4. The Applicant had issued a Demand Notice on 10.04.2019 under Section 13(2) of the SARFAESI Act, 2002 and called the Principal Borrower to clear the dues within 60 days. It is submitted by the Financial Creditor that the copy of this notice was also sent to the Guarantor vide registered post A.D. on 10.04.2019 and the Financial Creditor has also published a notice in the newspaper informing the principal borrower and the corporate guarantor about initiation of proceedings u/s 13(2) of SARFAESI Act, 2002. Thereafter, the Applicant initiated proceedings before the Debts Recovery Tribunal, Aurangabad under the SARFAESI Act on 26.06.2019. The same is pending.
- 2.5. The Financial Creditor filed a Company Petition bearing No. CP(IB)-492(MB)/2022 against the Principal Borrower viz. Deogiri Infrastructure Pvt. Ltd. under Section 7 of the Code with this Tribunal. The said Petition is still pending for adjudication.
- 2.6. As the Principal Borrower defaulted in repayment of ₹26,44,96,625/-, based on the Guarantee Agreement dated 11.01.2013, the Financial Creditor filed this Petition to initiate the CIRP against the Corporate Guarantor.

3. The Corporate Debtor/Guarantor was represented by its Counsel on 30.01.2023 and 31.01.2023, however, no reply has been filed.
4. We heard both Counsel and perused the material available on records.
  - 4.1. It is observed from the notice dated 10.4.2019 issued u/s 13(2) of SARFAESI was addressed to principal borrower only calling upon to repay the liability arising under the outstanding bill discounted, bank guarantees and letter of credit. A copy of this notice was sent to the Guarantor vide registered ad , however, this was not addressed to the guarantor. This Bench sought specific clarification from the Counsel of the Financial Creditor whether any notice has been issued to the Guarantor invoking its guarantee under Deed of Guarantee in view of clause 1 of the deed of guarantee providing that "*the guarantors shall forthwith pay unconditionally to the Bank merely on demand by the Bank*". The Counsel confirmed that no notice, other than the notice dated 10.04.2019 addressed to the principal borrower, has been sent to the guarantor/Corporate Debtor.
  - 4.2. We find the Financial Creditor has not made any demand upon the Guarantor. Mere despatch of notice addressed to the Corporate Debtor recalling the facility cannot tantamount to a demand upon the Guarantor made by the Bank. Since the Guarantor has not been asked to pay the amount in default of the Principal Borrower, it cannot be said that guarantor is also in default in payment of debt owed to the Financial Creditor by the principal borrower. Since no default has taken place at the end of the guarantor/Corporate Debtor, the basic condition of default contemplated un/s 7 is not satisfied. We find support from the decision of Hon'ble NCLAT

in the case of *Edelweiss Asset Reconstruction Company Limited vs. Orissa Manganese and Minerals Limited and Others* [2019 SCC OnLine NCLAT 764]  
wherein it has held that -

*“26. It is also not the case of the Appellant – ‘Edelweiss Asset Reconstruction Limited’ that it has not received the amount from the ‘Principal Borrower’ on default and, therefore, it was liable to invoke the Bank Guarantee which it invokes. In this background, their claim having not matured in absence of alleged default on the part of the ‘Principal Borrower’ and for non-invocation of the Bank Guarantee, the Appellant – ‘Edelweiss Asset Reconstruction Limited’ claim cannot be accepted the debt payable by the ‘Corporate Debtor’ as on the date of the admission (initiation of ‘Corporate Insolvency Resolution Process’)”.*

4.3. In view of foregoing, we order that the present petition is not maintainable and **dismissed** accordingly.

Sd/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**

03.03.2023/pvs

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**