

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 568/NCLT/AHM/2019

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

Small Industries Development Bank of India

**Applicant/
Financial Creditor**

Versus

Champion Agro Limited

**Respondent/
Corporate Debtor**

Order Pronounced on: 23/06/2022

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER(JUDICIAL)

AJAI DAS MEHROTRA

HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

Small Industries Development Bank of India

Navjeevan Amrit Jayanti Bhavan

1st Floor, Behind Gujarat Vidyapeeth

Navjeevan P.O.

Ahmedabad 380 014

...

Applicant/Financial Creditor

Versus

Champion Agro Limited

S. No. 217, Paiki Plot No. 2

National Highway

Veraval Shapar, Kotdasangani

Rajkot

Gujarat State

...

Respondent/Corporate Debtor

Appearance:

For the Applicant : Mr. Vishal Dave, Advocate

For the Respondent : None

ORDER

1. The Present Application is filed on 01.08.2019 under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Smt. Sudha Padmanabhan, Deputy General Manager, **Small Industries Development Bank of India** (for brevity 'Applicant'), duly authorised vide letter dated 24.07.2019, with a prayer to initiate the

Corporate Insolvency process against **Champion Agro Limited** (for brevity 'Corporate Debtor').

2. The applicant is a Corporation established on 02.04.1990 under the Small Industries Development Bank of India Act, 1989, having PAN AABCS3480N, having its registered office at SIDBI Tower, 15, Ashok Marg, Lucknow, Uttar Pradesh and branch at Navjeevan Amrit Jayanti Bhavan, Navjeevan P.O., Ahmedabad. The applicant is in the Banking business providing various types of financial facilities including business loans, personal loans, consumer loans, loan against property, home equity loans, term loan etc.
3. The corporate debtor is a Private limited company, incorporated under the provisions of The Companies Act, 1956 on 26.07.1994, duly registered with Registrar of Companies, Ahmedabad with CIN: U31909GJ1994PL022605 and having registered office at Veraval Shapar, Kotdasangani, Rajkot, Gujarat State. The Authorized share capital of the Respondent is Rs. 12,50,00,000/- and paid up share capital of the company is Rs. 8,71,40,040/-.
4. It is submitted by the applicant that pursuant to request made by the corporate debtor, the applicant vide its letter of intent dated

07.12.2011 disbursed financial assistance of Rs. 10.00 crore (Rupees ten crore only) to support the requirement of money for working capital under SFRC/DRCS, Sub-Debt Scheme. The corporate debtor had entered into a Sub Ordinated Debt Agreement dated 13.12.2011 with the applicant. With reference to the aforesaid financial assistance, personal guarantees were executed in favour of the applicant by the directors of the corporate debtor by way of Deed of Guarantee dated 13.12.2011.

5. It is further submitted by the applicant that the corporate debtor being eligible and falls under the parameter of the MSME Receivable Finance Scheme (hereinafter referred to as "RFS"), approached the applicant and availed loan of Rs. 10.00 crore over and above Rs. 10.00 crore sanctioned in the year 2011 under RFS vide letter of intent dated 08.02.2013 for covering purchase of components/parts etc. The said sanction letter was later modified vide letter of intent dated 13.03.2013 whereby clauses relating to rate of discounting security details including guarantee clause was modified.
6. It is further submitted by the applicant that to utilise the benefits of RFS, the corporate debtor approached the applicant for an ad hoc limit over and above the sanctioned limit of Rs. 10.00 crore. Vide letter of

intent dated 30.05.2013, the applicant sanctioned ad hoc limit of Rs. 2.00 crores to the corporate debtor under RFS. The corporate debtor raised demand promissory note dated 30.05.2013 in favour of the applicant and the ad hoc limit was also availed by the corporate debtor.

7. It is further submitted by the applicant that though the corporate debtor initially honoured the repayments, later, committed serious breach and default in honouring its payment obligations. As the corporate debtor failed to pay the debt of the applicant, the account of the corporate debtor was classified as NPA on 20.01.2014. The applicant issued notice dated 05.08.2016 under Section 13 (2) of SARFAESI Act, 2002 and took symbolic possession of all the five mortgaged properties of corporate debtor. As per SARFAESI notice the following amounts were due and have not been paid till the date of filing of the application.

Nature of transaction	Principal amount	Interest	Cost/expenses
Sub Debt agreement	10,00,00,000/-	5,70,87,487/-	7,60,170/-
RFS limit	9,46,47,264/-	4,09,33,957/-	6,21,956/-

8. The applicant has filed Original Application No. 582 of 2015 before DRT, Ahmedabad against the corporate debtor and its Directors dated

28.08.2015 for breaching the contractual obligations agreed between the parties, which is still pending.

9. It is further submitted by the applicant that notice dated 20.06.2019 was served upon the corporate debtor intimating that proceedings under IBC shall be initiated against the corporate debtor if the due amount is not paid. The said notice was not replied by the corporate debtor.
10. As per Form 1, part IV, as on 10.07.2019, the corporate debtor is in default of total amount of Rs. 53,05,73,076/- (Rupees fifty-three crore five lacs seventy-three thousand seventy-six only).
11. Despite giving sufficient time the corporate debtor failed to file reply, hence, the right to file reply was closed vide order dated 06.12.2019.
12. The corporate debtor filed written submissions dated 01.02.2021 raising the following objections:
 - There is lack of proper authorisation letter for filing the application under Section 7 of the Code;

- Debt has become time barred. No payment has been made nor any acknowledgement of outstanding debt has been made by the corporate debtor after 2014;
 - The amount shown in the balance sheet cannot be treated as acknowledgement of debt
13. In compliance of order dated 02.09.2020, the applicant filed documents wherein mail dated 06.10.2020 shows the relevant provisions under the SIDBI Act, under which applicant bank has right to authorise someone, to act on its behalf and the authority letter dated 24.07.2019 issued as per the SIDBI Act are mentioned.
14. The applicant filed affidavit inter alia producing the following documents:
- letter from corporate debtor dated 26.12.2017 evidencing offer of settlement to the applicant;
 - letter from corporate debtor dated 03.12.2016 seeking one-time settlement with the applicant;
 - account statement details dated 21.02.2019
 - account statement details dated 12.07.2019

- Hon'ble High Court's order dated 29.06.2017, 20.11.2018 and 18.02.2019 passed in complaint filed under section 138 of the Negotiable Instrument Act, 1882 recording/reflecting various payments received by the applicant.

15. The applicant filed written submission stating that:

- Accounts of the corporate debtor was classified as NPA on 20.01.2014. The applicant issued notice u/s 13 (2) of SARFAESI Act, 2002 on 05.08.2016 and took symbolic possession of all five mortgaged properties;
- The applicant has filed Original Application No. 582 of 2015 against the corporate debtor and its directors which is pending for adjudication;
- The corporate debtor had sent two one-time settlement proposals dated 03.12.2016 and 26.12.2017 whereby the corporate debtor has acknowledged the debt;
- Pursuant to orders dated 29.06.2017, 20.11.2018 and 18.02.2019 passed by Hon'ble Gujarat High Court, the applicant received some amount on 21.02.2019 and on 12.07.2019;

- In the audit report for the year ended on 31.03.2016 and 31.03.2017, the corporate debtor has acknowledged the debt under the head “short term borrowings”;
- Authority letter attached by applicant is proper and as per law;

16. Heard the submissions and perused the documents on record. The Corporate debtor has claimed that the debt has become time barred as the account of corporate debtor was declared as NPA on 20.01.2014. On perusal of the record it is found that the applicant has brought on record copies of letters dated 3.12.2016 and 26.12.2017 whereby the corporate debtor proposed one-time settlement of the loan account. Relevant para of letter dated 26.12.2017 reads as under:

“In terms of our discussion and as per the last valuation of the mortgaged properties, we herewith agree to pay settlement amount of Rs. 10.00 crores within nine to twelve months from the date of sanction of our settlement proposal”

It is also found that pursuant to orders dated 29.06.2017, 20.11.2018 and 18.02.2019 in criminal petitions related to Section 138 of Negotiable Instrument Act, 1882 passed by Hon’ble Gujarat High Court, the applicant had received some amount on 21.02.2019 and on 12.07.2019. Moreover, there is an acknowledgement of the financial assistance by the applicant in the audit report of corporate debtor for

the years 31.03.2016 and 31.03.2017, under the head “short term borrowings”.

17. As per Part IV, Form I, the date of default as per IB Code is on different dates prior to the accounts becoming NPA on 20.01.2014. Acknowledgement in the balance sheet satisfies the requirement of Section 18 of the Limitation Act, 1963 and leads to fresh period of Limitation. Therefore, the application filed on 01.08.2019 is within the period of limitation and not barred by law.

18. For the objections of corporate debtor against the authority of the applicant, the applicant has placed on record email dated 06.10.2020 clarifying the relevant provisions of the SIDBI Act, 1989 under which such authority letter dated 24.07.2019 was issued which are in compliance of requirement for authorisation to file present application. Relevant provisions of Section 34 of SIDBI Act are reproduced as under:

“34. Delegation of powers: - The Board may, by general or special order, delegate to any Director or committee constituted under Section 12 or to any officer or other employee of Small Industries Bank, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and duties under this Act as it may deem necessary.”

19. The registered office of the corporate debtor is situated in Rajkot District, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.
20. It is also noticed that the applicant bank has annexed all the documents executed by the corporate debtor and the corporate debtor failed to repay the debt.
21. The present application is complete in terms of Section 7 (5) of the Code. The applicant is entitled to claim its dues, establishing the default in payment of the financial debt beyond doubt. In light of the above facts and records the present application is admitted and CIRP is ordered to be initiated against corporate debtor.
22. The applicant has proposed the name of Mr. Vinodkumar S. Shah as Insolvency Resolution Professional, who is hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-002/IP-N-00610/2018-19/11857 having office at 206/1, Pramukh Cyprus, Opp. Aashka Hospital, Sahpur Sargasan Road, Gandhinagar 382 421, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with

disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed which is on record.

23. We direct the Financial Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Vinodkumar S. Shah to meet the expenses for performing functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Financial Creditor.

24. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

25. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

Sd/-

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**

Nair/Rahul LRA