

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.149 /Chd/Pb/2022

**Under Section 7 of the
Insolvency & Bankruptcy Code,
2016**

In the matter of:

Central Bank of India,

Having Corporate Office at:
Chandermukhi, Nariman Point,
Mumbai-400021, Maharashtra

Branch Office at:

Stress Asset Management,
Bank Square, Sector-17,
Chandigarh

....Petitioner-Financial Creditor

Vs.

M/s SEL Textiles Limited

(through its Director)

Having registered office at
274 GT Road, Dhandari Khurd,
G.T. Road, Ludhiana, Punjab-141014
CIN No.U17299PB2008PLC032050

2nd address:

M/S SEL Textiles Limited
15B, RIICO, Industrial Area Neemrana, Rajasthan.

3rd Address:

M/S SEL Textiles Limited
23rd KM Stone, Delhi-Hisar highway, Hansi (Haryana).

4th address:

M/S SEL Textiles Limited
Village Panjawa, Tehsil Malaut, Dist. Muktsar (Punjab).

5th address:

M/S SEL Textiles Limited.
GT road, NH-1, opposite Mc Donald Restaurant Doraha
Tehsil Payal, District, Ludhiana.



...Respondent-Corporate Debtor

Judgment delivered on: 10 .08.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Petitioner-Financial Creditor : Mr. Amit Rishi, Advocate

For the Respondent-Corporate Debtor : Mr. Anand Chibbar, Senior Advocate
: Mr. Vaibhav Sahni, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by the **Central Bank of India**, (hereinafter referred to as '**Petitioner/Financial Creditor**') through its Assistant General Manager, Mr. Vikas Khare, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/s SEL Textiles Limited** (hereinafter referred to as '**Respondent/Corporate Debtor**'). The petition is signed by Mr. Vikas Khare, with the affidavit verifying the contents of the application, which is attached at Page No.58A of the petition.

2. The Corporate Debtor is stated to be incorporated on 01.07.2008 incorporated under the Companies Act. The company is having its Registered Office at: Having registered office at 274 GT Road, Dhandari Khurd, G.T. Road, Ludhiana, Punjab-141014, CIN No.U17299PB2008PLC032050. Therefore, the jurisdiction lies with this Bench of the Tribunal.



3. The brief facts of the case, as stated in the petition, are the petitioner-financial creditor is engaged in the business of banking and finance, among other operational functions/portfolios. The corporate debtor/company is engaged in the business of manufacturing and sales of yarn and terry towels and has availed financial assistance from the petitioner/financial creditor bank. The corporate debtor had started creating default in repayment, and accordingly, the accounts were classified as NPA on 31.03.2014. The company made a request for restructuring of the loan accounts under the CDR package. The proposal was approved by the CDR cell on 23.09.2014. The bank has sanctioned the overall facility to the tune of Rs.473.31 crores vide sanction dated 20.09.2014. The proposal was approved on 23.09.2014, and the necessary documents were executed by the corporate debtor till 30.09.2014. Further, the corporate debtor executed an agreement for restructuring on 04.02.2015. Therefore, the corporate debtor failed to fulfil the commitments and did not adhere to financial discipline. However, the account was again classified as NPA on 28.02.2016. A recall notice was issued to the corporate debtor on 20.12.2017. Original application No.462 of 2018 under Section 19 of Recovery of Debt Due to Banks and Financial Institutions Act, 1993 for Rs.553,27,42,829.64p as on 01.04.2019. Notice under Section 13(2) of the SARFAESI Act was issued on 06.07.2019, and possession notices were issued on 30.12.2019 and 01.01.2020.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs.815,63,91,206.45/- (Rupees Eight Hundred Fifteen Crores Sixty Three Lakhs Ninty One Thousand Two Hundred Six and Paisa Fourty Five Only) as on 31.12.2021 with pendent lite and future interest @12.50% per annum in CC and @10.50% per annum in Term Loans (TL-1 to TL-4) with monthly rest along



with costs, and date of default is 20.12.2017, i.e. when the recall notice issued. Copy of Sanctions Letter (Annexure A-4), Statement of Accounts (Annexure A-5), Recall Notice dated 20.12.2017 (Annexure A-8), Board Resolution (Annexures A-9), CIBIL Report (Annexure A-10), Loan Agreements (Annexure-11), Letter of Continuing Guarantee (Annexure-12), Demand Promissory Notes (Annexure-13), Sale Deed (Annexure-14), Working Capital Consortium Agreements (Annexure-16), Joint Deed of Hypothecation (Annexure-17), Personal Guarantees (Annexure-18), Inter Se agreement (Annexure-19), Master Restructuring Agreement and Its proposal (Annexure-20), Security Agent Agreement (Annexure-23) and Deed of Guarantee (Annexure-24) evidencing the default of debt are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. An affidavit of service was filed vide Diary No.00102/1 dated 23.09.2022. The respondent has filed an IA No.1651/2023 vide Diary No.02465 dated 28.07.2023, wherein it has been submitted that the corporate debtor had tried to keep the company running as a going concern and has been trying to get the company back on its feet ever since, without any kind of assistance from the consortium banks. It is also submitted that the position of the corporate debtor worsened during Covid-19, wherein orders and supplies completely dwindled, and the corporate debtor found it difficult to even pay its wages. The corporate debtor has been limping and struggling to keep itself as a going concern, it has faced a severe liquidity crunch, and moreover, now there are basic utilities, as electricity and water, wherein there is a delay in the payments of bills, and there is a constant threat of disconnection of the said utilities, which would result in a complete stoppage of the company and would



result in the corporate debtor seizing to be a going concern, which would erode its value. Therefore, the corporate debtor and its management have taken a conscious decision to plead before this Adjudicating Authority that the said petition under Section 7 of the Code, 2016 may be allowed without prejudice to its rights and claims against the consortium banks, including the petitioner financial creditor. The said decision of the corporate debtor is duly supported by a Board Resolution..

6. We have heard the learned counsel for the petitioner and have also perused the record carefully.

7. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

8. The issue for consideration is whether the present application is filed within limitation. The date of default is stated to be 20.12.2017, i.e., when the recall notice was issued. IA No.665/2022 under Rule 11 of NCLT Rules, 2016. It can be seen from the records that the present petition is filed vide diary No.2042 dated 16.03.2020 and was re-filed vide Dairy No. 00102 dated 09.02.2022. The delay of 723 days due to the outbreak of the global pandemic in re-filing the petition was condoned while disposing of IA No.665 of 2022 vide order dated 29.06.2022. Hence, the present petition is well within the period of limitation of three years.

9. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by the BSanctions Letter (Annexure A-4), Statement of Accounts



(Annexure A-5), Recall Notice dated 20.12.2017 (Annexure A-8), Board Resolution (Annexures A-9), CIBIL Report (Annexure A-10), Loan Agreements (Annexure-11), Letter of Continuing Guarantee (Annexure-12), Demand Promissory Notes (Annexure-13), Sale Deed (Annexure-14), Working Capital Consortium Agreements (Annexure-16), Joint Deed of Hypothecation (Annexure-17), Personal Guarantees (Annexure-18), Inter Se agreement (Annexure-19), Master Restructuring Agreement and Its proposal dated 23.09.2014 (Annexure-20), Security Agent Agreement (Annexure-23) and Deed of Guarantee (Annexure-24) which are attached with the main petition. As per the financial records read with financial statements, it is evident that an amount of Rs.815,63,91,206.45/- (Rupees Eight Hundred Fifteen Crores Sixty Three Lakhs Ninty One Thousand Two Hundred Six and Paisa Forty Five Only) as on 31.12.2021 with pendent lite and future interest @12.50% per annum in CC and @10.50% per annum in Term Loans (TL-1 to TL-4) with monthly rest along with costs is still pending which amounts to default when corporate debtor avoided the payment of outstanding amount despite repeated requests by the petitioner-financial creditor. Moreso, default is admitted by the corporate debtor in their application bearing No.1651/23 vide Diary No.02465 dated 28.07.2023.

10. In Part-III of Form No. 1, Mr. Rajeev Sharma, Interim Resolution Professional (IRP), has been proposed by the petitioner. The form-2, along with certification of registration issued by the Insolvency and Bankruptcy Board of India, is submitted with the main petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Rajeev Sharma, there is nothing adverse against him. In view of the above, we appoint Mr. Rajeev Sharma, Registration



No.IBBI/IPA-001/IP-P-02004/2020-2021/13142,Email:rsrajeevsharmaca@gmail.com, Mobile No. 9855618446, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Rajeev Sharma 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 the 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 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;
- 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 cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting



software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than 8 financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

“As per Rule 7 (f) of Companies (Registered Valuers and Valuation) Rules, 2017, Registered Valuer shall maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;”

As per the Standard of Auditor (SA-230)

“The retention period for audit engagements is ordinarily no shorter than seven years from the date of auditor's report, or, if later, the date of the group auditor's report.”


In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.

- vii.) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities



to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- viii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.
- ix.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of



the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

- x.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

11. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.



- e) 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 the 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) 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 passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

12. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional to meet out the expense to perform the 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 amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

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



14. The petition is admitted accordingly.

sd/-

(Subrata Kumar Dash)
Member (Technical)

August 10 , 2023

SD

sd/-

(Harnam Singh Thakur)
Member (Judicial)