

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH (Court-I)
KOLKATA**

C.P (IB) No.115/KB/2022

*A Petition 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:

State Bank of India, having registered office at 16th Floor, Madam Cama Road,
Mumbai-400021.

... Financial Creditor

Versus

In the matter of:

Deccan Tradcom Private Limited, CIN : U74999WB2011PTC162128, having its
registered office at P- 245, C.I.T. Road Scheme- VI M, Kolkata 700054, West Bengal.

...Corporate Debtor

Date of hearing:05/07/2023

Date of pronouncement: 19/07/2023

Coram:

Rohit Kapoor, Member (Judicial)

Balraj Joshi, Member (Technical)

Appearances via Hybrid Mode

For the Financial Creditor : Mr. Dhiraj Trivedi, Advocate
: Ms.Vedika Sureka, Advocate

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. This instant petition has been filed 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 by State Bank of India through its Assistant General Manager namely Kaushik Das (hereinafter referred as the Financial Creditor), seeking initiation of corporate insolvency resolution process in respect of **Deccan Tradcom Private Limited** hereinafter referred as the Corporate Debtor).
2. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II of this petition contains particulars of the Corporate Debtor. Part –III contains particulars of the proposed Interim Resolution Professional.
3. Part –IV of the Petition contains detailed particulars of the Financial Debt. The total amount is claimed to be in default of Rs.47,38,93,742.68/- (Rupees Forty Seven Crore Thirty Eight Lakh Ninety Three Thousand Seven Hundred Forty-Two & Paise Sixty Eight only) as on 31st August, 2021.
4. While seeking the reliefs as for, Financial Creditor relied upon on various documents which includes:-
 - i. Copy of the Letter of Sanction of Credit facilities dated 24th May, 2013 issued by State Bank of India in favour of Deccan Tradcom Private Limited is annexed as Annexure Exhibit-H.
 - ii. Copy of Agreement of Hypothecation of Goods and Assets for increase in the Overall Limit, dated 28th May, 2013 executed by Deccan Tradcom Private Limited in favour of State Bank of India is annexed as Exhibit-J.
 - iii. Copy of letter regarding the grant of Individual Limits within the Overall Limit dated 28th May,2013 executed between Deccan

- Tradcom Private Limited and State Bank of India is annexed as Exhibit K.
- iv. Copy of Guarantee Agreement dated 28th May, 2013 executed by Alok Kumar Poddar and Anuj Kumar Rungta in favour of State Bank of India is annexed as Exhibit – L.
 - v. Copy of Guarantee Agreement dated 28th May,20213 executed by Panchdhan Properties Private Limited in favour of State Bank of India is annexed as Annexure-M.
 - vi. Copy of Guarantee Agreement dated 4th July, 2013 executed by Shivjata Commodtrade Private Limited in favour of State Bank of India is annexed as Exhibit –N.
 - vii. Copy of Balance sheet for the financial years ended 31st March,2012 to 31st March 2013 along with CIBIL report is annexed as Exhibit O(Colly)
 - viii. Copy of Statement of Account of State Bank of India as on 30.11.2013 to 01.05.2020 including AUCA statement under the information Technology Act is annexed as Exhibit. P.
 - ix. Copy of loan recall notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 dated 11th March, 2015 is annexed as Exhibit .V.
 - x. Copy of the demand notice dated 5th May, 2014 is annexed as Exhibit W.
5. The Corporate Debtor was served through publication in two Newspapers as despite usual service, there was no representation on behalf of the Corporate Debtor and on 15th July 2022 the Corporate Debtor was set ex parte. The matter was listed for final hearing on 31st August, 2022. Thereafter, on 31st August, 2022 an adjournment was sought for by the Financial Creditor as arguing Counsel was not available and the matter was posted for hearing on 15th November, 2022. Again on 15th November 2022, the Counsel for Financial Creditor was not

available and the matter was adjourned to 1st December,2022. Thereafter, it was found that some of the documents were not legible. Thereafter, the matter was posted for hearing and Ld.Counsel for State Bank of India sought time by way of an IA being I.A.(I.B.C.) No. 1023/KB/2023 to place on record an order dated 11th April, 2023 passed by Debts Recovery Tribunal-I(DRT-I). The order passed by DRT-I dated 11th April, 2023 was taken on record and accordingly an amendment was carried out with respect to date of default in the main petition before the Deputy Registrar, NCLT, Kolkata Bench on 4th July, 2023 on behalf of the Financial Creditor.

6. The matter once again came up for arguments on 5th July 2023 and after hearing the Ld. Counsel appearing for the Financial Creditor, the matter was Reserved for orders.
7. As mentioned above, the Corporate Debtor despite service did not appear and hence was set *ex parte*.
8. After hearing Ld. Counsel appearing for the Financial Creditor, who while making submissions with respect to limitation period referred to an order passed by DRT-I on 11th April,2023 as referred above, whereby claim of applicant bank was allowed against the Corporate Debtor herein for an amount of Rs.27,02,45,027.00 with interest calculated as on 10.05.2015.
9. Ld. Counsel appearing for the Financial Creditor submitted that the petition thus has been filed within limitation and has relied upon a judgment of the Supreme Court of India in the matter of **Dena Bank (now Bank of Baroda) vs. C.Shivakumar Reddy and Another**¹, para 141 of which reads as under:-

“ 141. Moreover, a judgment and/or decree for money in favour of the financial creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a certificate of recovery in favour of the financial

¹ (2021) 10 SCC 330

creditor, would give rise to a fresh cause of action for the financial creditor, to initiate proceedings under Section 7 IBC for initiation of the corporate insolvency resolution process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial creditor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid”.

Analysis & findings

10. Heard the Ld. Counsel appearing for the Financial Creditor and persused the records.
11. From the above facts and position of law as quoted above, we find that there was a debt payable by the Corporate Debtor and the Corporate Debtor defaulted in payment of debts and therefore a judgment was passed by DRT-I, Kolkata in favour of the Financial Creditor. This order of the DRT-I passed on 11th April,2023, gives rise to a fresh cause of action for filing Section-7 petition in view of Shiv Kumar Reddy(Supra), as such we find that the application is filed within the prescribed period of limitation.
12. In the light of the above facts and circumstances, it is hereby ordered as follows:
 - i) The application bearing C.P.(I.B.) No. 115/KB/2022 filed by State Bank of India, under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against Deccan Tradcom Private Limited, the Corporate Debtor, is hereby **admitted**.
 - ii) There shall be a moratorium under section 14 of the IBC.
 - iii) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the

resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- iv) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- v) **Mr. Arun Kumar Gupta**, IRP, having Registration No. **IBBI/IPA-001/IP-P00013/2016-2017/10037** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- vi) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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. There shall be no future opportunities in this regard.
- vii) The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.

- viii) The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix) The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- x) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- xi) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, 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 Court within seven days from the date of receipt of a copy of this order.
13. **CP (IB) No. 115/KB/2022** to come up on **08.08.2023** for filing the periodical report.
14. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

This order is pronounced on the 19th day of July, 2023

FA_LRA
