

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P..(IB) No. 294/2021

In the matter of:

An application under Section 227 read with clause (zk) of sub-section (2) of Section 239 of the Insolvency and Bankruptcy Code, 2016 read with Rules 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019.

In the matter of:

Reserve Bank of India	...	Petitioner/ Appropriate Regulator
	Versus	

Srei Equipment Finance Limited		Respondent/ Financial Service Provider
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Date of hearing: 08.10.2021

Date of pronouncement:08.10.2021

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Harish Chander Suri	:	Member (Technical)

Counsel appearing through video conferencing:

Mr.Sudipto Sarkar, Sr. Advocate	] For the Petitioner
Mr. Sanjay Ginodia, Advocate	]
Mr. Nilang Desai, Advocate	]
Mr. Suharsh Sinha, Advocate	]
Mr. Vivek Shetty, Advocate	]
Ms. Neeraja Balakrishnan, Advocate	]
Mr. Nishant Upadhyay, Advocate	]

Mr. Dhavan Bora, Advocate	]
Mr. Umang Trivedi, Advocate	]
Ms. Komal Khar, Advocate	]
Mr. Sushovit Dutt Majumder, Advocate	]
Ms. Pubali Sinha Choudhury, Advocate	]
Mr. Shwetank Ginodia, Advocate	]
Ms. Mini Agarwal, Advocate	]
Ms. Saloni Thakkar, Advocate	]

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. The court convened *via* video conferencing.
2. This is an application filed by Reserve Bank of India (Appropriate Regulator) under section 227 read with section 239 (2) (zk) of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process (CIRP) against Srei Equipment Finance Limited, the Financial Service Provider.
3. The Respondent/Financial Service Provider is a Company registered under the Companies Act, 1956 having Corporate Identity No.U70101WB2006PLC-109898 and registered with the Registrar of Companies, West Bengal, Kolkata. Therefore, this Bench has jurisdiction to deal with the present petition.
4. Mr. Sudipto Sarkar, Ld. Sr. Counsel appearing on behalf of the Petitioner/ Appropriate Regulator submits as follows:-
 - (a) On the basis of credit information available to it, the Reserve Bank of India (RBI) came to the conclusion that SREI Equipment Finance Limited (SEFL) has committed defaults of significant amounts in relation to the financial debt availed by it from various financial creditors.
 - (b) In particular, UCO Bank has intimated RBI *vide* its letter dated 7.10.2021 that the amount claimed to be in default in relation to working capital facility is ₹737,76,00,000/- (Rupees seven hundred thirty seven crore

seventy six lakh only). Of this, the principal amount due is to the tune of ₹700,00,000/- (Rupees seven hundred crore only).

- (c) The date of default with reference to repayment of the principal sum is stated to be 09.01.2021. The date of default with reference to the interest amount is stated to be 01.02.2021. During the course of hearing, Mr. Sudipto Sarkar, Ld. Sr. Counsel submitted that this was the earliest date of default, and that there are continuing defaults since then.

5. The supporting documents submitted by UCO Bank to RBI has been made part of the record as Annexure “B” to the application at pages 21-103. The communication dated 07.10.2021 from UCO Bank *inter alia* contains:

- (a) The various sanction letters starting from 07.02.2019 and 04.04.2020;
- (b) Request letter from SEFL dated 09.07.2020;
- (c) Working Capital Consortium Loan Agreement dated 07.03.2019;
- (d) UCO Bank Account Classification Ledger Statement as of 05.10.2021;
- (e) Central Repository of Information on Large Credit (CRILC) Report as on 06.10.2021, to demonstrate that the account is in default with the status of ‘SMA-2’ which means that the interest and principal has been overdue and remains unpaid for a period in excess of 60 days calculated in accordance with the RBI Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances;
- (f) Email communication evidencing classification of SEFL as a Red Flag Account (RFA) by UCO Bank.
- (g) Certificate under the Bankers’ Books Evidence Act, 1891.

6. The RBI *vide* its notification dated 04/10/2021, in exercise of its powers under section 45-IE of the Reserve Bank of India Act, 1934 has superseded the Board of Directors of SIFL and appointed Mr. Rajneesh Sharma as the Administrator. It has also constituted a three-member Advisory Committee to assist the Administrator of SIFL in the discharge of its duties. The RBI

has proposed the same person to be appointed as the Administrator of the Corporate Debtor.

7. Mr. Sudipto Sarkar, Ld. Sr. Counsel appearing for the Petitioner/Appropriate Regulator submits that in view of the huge default submitted by the Respondent/Financial Service Provider, there is a need to initiate Corporate Insolvency Resolution Process against the respondent with speed. He, therefore, urged this Adjudicating Authority to pass appropriate orders expeditiously, keeping in view the public interest in the matter.
8. Mr. Sudipto Sarkar, Ld. Sr. Counsel further submitted that the challenge to the notification dated 04.10.2021 of the RBI, in Writ Petition (Lodging) No. 22872/2021, was dismissed by the Hon'ble Bombay High Court vide order dated 07.10.2021.
9. Rule 5(a)(i) of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019 mandates that no CIRP shall be initiated against a Financial Service Provider which has committed a default under section 4, except upon an application made by the Appropriate Regulator. Sub clause (ii) of Rule 5(a) stipulates that the application under sub clause (i) shall be dealt with in the same manner as an application by a Financial Creditor under Section 7 of the Code.
10. Therefore, the first requisite to be seen is whether the present petition satisfies the ingredients of Section 7 of the Code. For this the existence of debt and default are required to be proved to the satisfaction of the Adjudicating Authority. At page 22 against sl.no. 2 it has been claimed that the date of default of interest payment in respect of the working capital facility is 01.02.2021 and in respect of the principal sum it is 09.01.2021. The amount stated to be in default in respect of the principal sum is ₹700,00,00,000/- (Rupees seven hundred crore only) and Rs.37,76,00,000/- (Rupees thirty seven crore seventy-six lakh only) towards interest. Therefore the total amount in default is in excess

of the limit prescribed under Section 4 of the Code which is at present one crore rupees.. The present petition is also not hit by limitation.

11. We have heard Mr. Sudipto Sarkar, Ld. Sr. Counsel appearing for the Petitioner/Appropriate Regulator and perused the records.
12. The documents placed on record *prima facie* prove that there has been a default and that the sum involved in such default is in excess of the threshold limit of one crore rupees prescribed at present under Section 4(i) of the Code. Moreover, since the sanction letters are from the year 2019 onwards and the debt of default is from January 2021 onwards, the petition is not hit by limitation.
13. We are, therefore, satisfied that this is a fit case for initiation of proceedings under Section 227 read with Rule 5 of the Rules *ibid*, since the debt in question qualifies as a financial debt under section 5(8) read with Section 3(11) of the Code.
14. The RBI *vide* its notification dated 04/10/2021 has superseded the Board of SEFL and appointed Mr. Rajneesh Sharma, ex-Chief General Manager, Bank of Baroda as the Administrator. The RBI has proposed the name of Mr. Rajneesh Sharma as the Administrator of the Corporate Debtor. He has also filed his written consent in Form 2 to act as such Administrator, which has been placed on record at pages 10-11 of the petition. The Form-2 appears to have been amplified by the Administrator by including certain caveats. Therefore, we were constrained to ask the Administrator whether he was willing to give his consent to act the Administrator unconditionally. Mr Rajneesh Sharma confirmed that he would do so. He is, therefore, hereby directed to file a fresh Form 2 with his unconditional consent to act as Administrator.
15. The Petition made by the Reserve Bank of India is complete in all respects as required by law. It clearly shows that the Respondent/FSP is in default of a debt due and payable, and the default is more than the minimum amount as stipulated

under section 4(1) of the Code. Therefore, the default stands established and there is no reason to deny the admission of the Petition. Therefore, this Adjudicating Authority hereby admits this Petition and orders as follows:

- a. The Petition bearing CP (IB) No.294/KB/2021 filed by the Reserve Bank of India, the Appropriate Regulator, under section 227 of the Code read with rule 5 of the Insolvency & Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 for initiating Corporate Insolvency Resolution Process against Srei Equipment Finance Limited [CIN: U70101WB2006-PLC109898], the Financial Service Provider, is hereby admitted.
- b. There shall be moratorium in terms of section 14 of the Code in respect of Financial Service Provider.
- c. 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 section 31(1) of the IBC or passes an order for liquidation of the Financial Service Provider under section 33 of the Code, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code.
- e. In terms of rule 5(a)(iii) of the Rules *ibid*, Mr. Rajneesh Sharma, 17-B, Shanaz Apartments, 90 Napean Sea Road, Mumbai 400006, e-mail id: sreiaadministrator@srei.com; rajneesh_1961@yahoo.co.in, is hereby appointed as Administrator of the Financial Service Provider to carry out the functions as per the Code, subject to his filing his unconditional consent in Form 2 to act as such Administrator. The Administrator shall carry out his functions as contemplated by sections 15, 17, 18, 19 and 20 of the Code.
- f. During the CIRP period, the management of the Financial Service Provider shall vest in the Administrator. The officers and managers of the Financial Service Provider shall provide all documents in their possession and furnish every information in their knowledge to the Administrator within one week from the date of receipt of this Order, failing which coercive steps will follow.

- g. The Registry is hereby directed to communicate this Order to the Petitioner/ Reserve Bank of India and the Administrator by Speed Post, e-mail immediately.
 - h. Additionally, the Administrator shall serve a copy of this Order on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Financial Service Provider. 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.
16. CP (IB) No. 294/KB/2021 to come up on 22.12.2021 for filing the progress report.
17. Certified copy of this order be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)
08.10.2021

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