IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-1894/(ND)/2019

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

In the matter of:

Small Industries Development Bank of India
1st Floor, Atma Ram House,
1, Tolstoy Marg,
New Delhi – 110001.

...Applicant

Versus

Surya Design Line Private Limited
D-33, Basement,
Defence Colony,
New Delhi – 110024.

...Respondent

Coram:

DR. P. S. N. PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Applicant: M. M. Abbasi, Advocate
Counsel for Respondent: Ashish Jain, Adarsh Kumar Gupta, Advocate

ORDER

Per Dr. V. K. Subburaj (Member Technical)

Date:20.02.2020

1. This is an application filed by the Applicant Small Industries Development Bank of India seeking to initiate corporate insolvency resolution process ("CIRP") of the Respondent Surya Design Line Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code') for the alleged default on the part of the Respondent in clearing the debt of Rs. 2,78,18,830/- including interest owed to the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

   i. On 11.08.2015 the Applicant sanctioned a term loan of Rs.310 lakhs to the Respondent under secured business loan scheme for MSME service sector.

   ii. Letter of sanction dated 17.08.2015 after sanctioning the aforesaid loan amount was issued by the Applicant to the Respondent.

   iii. On 20.08.2015 the general conditions for rupee term loan were accepted by the Respondent and the Respondent entered into loan agreement for above term loan.

iv. On 20.08.2015 the director of the Respondent, Arjun Kapoor, submitted declarations and undertakings with respect to offering mortgage security for availing the term loan and also entry was recorded for submitting title deeds of property mortgaged to the Respondent. The certificate of registration of mortgage was issued and charge was created with respect to immovable property of the Respondent.

v. On 09.07.2018 the loan granted to the Respondent turned non-performing asset as it did not timely repay the term loan as per schedule provided in loan documents.

vi. In view of the defaults committed by the Respondent, the Applicant issued statutory demand notice under Section 13(2) of the SARFAESI Act 2002 to the respondent thereby demanding payment of Rs.2,61,29,830/- due as on 28.12.2018.

vii. When the Respondent failed to honor the above demand notice the Applicant issued notice dated 22.04.2019 for taking over of possession of secured asset.

viii. Since the Respondent still failed to repay the debt the present application was filed.

2. The Respondent has stated the following in its reply:

i. The present financial assistance was sanctioned by the Applicant for which property situated at plot no. B-09, Sector – 8, NOIDA was given as security.

ii. As per the valuation report dated 02.07.2015 the valuation of the said property was Rs.554.63 lakhs which is more than the loan amount claimed by the Applicant as default.

iii. On 22.04.2019 the Applicant issued notice under Section 13(4) of the SARFAESI Act. Even after taking the symbolic possession of the said property the Applicant has failed to get his claim recovered by disposing the said secured asset under the rules provided under SARFAESI for the reason best known to financial creditor. Respondent has also made many requests to the Applicant to allow them to sell the said property in order to assist the Applicant in recovering the dues. In order to harass the Respondent instead of selling the said property through auction in order to recover the debt is now initiating the insolvency proceedings with the intention to dissolve the Respondent.

iv. The terms and conditions of the General Conditions Rupee Loan and Letter of Intent form a part of the Loan Agreement between the parties. Article IX of the GC states as follows:

"Events of Default

(p) DEFAULT IN REPAYMENT OF PRINCIPAL, PAYMENT OF INTEREST AND PERFORMANCE OF COVENANTS AND CONDITIONS OF FINANCIAL ASSISTANCE Default has occurred in the repayment of any installment of the principal sum or payment of interest of financial assistance, if any, granted by SDIBI, or default has occurred in the performance of any other covenant condition or agreement on the part of the borrower, under any Agreement(s) in respect of such financial assistance and such default has continued for a period of thirty days after notice in writing thereof has been given to the borrower by SIDBI therein."

v. Thus it is clear that whenever the Applicant considers that an event of default has occurred, the Applicant is mandatorily required to issue a notice to the Respondent declaring that the principal of and all accrued interest on the loan to be due and payable forthwith and that the security created in terms of the Loan Agreement would become enforceable only thereafter, the Applicant would have the right to "enter upon and take possession of the assets of the Respondent and to transfer the assets of the Respondent by way of lease or leave and license or sale."

vi. No such mandatory notice has been issued by the Applicant till date. As such no default can be said to have taken place under the terms agreed to between the parties.

3. We have heard the arguments of the parties and perused the documents. It is evident from the submissions of the parties that the Respondent has failed to repay the loan according to the repayment schedule. The Respondent has contended that the Applicant failed to issue the mandatory notice under Article 9 of the GC and thus the 'event of default' described in the GC has not really occurred. The Respondent has also contended that the Applicant already has a an immovable property under its symbolic possession as security which can be realized for repayment of the loan and this application filed for initiating insolvency of the Respondent is only a way to harass the Respondent.

4. A complete reading of Article 9 of the GC shows that it separately lists the default in payment of principal sums of the loan on the due dates as an "event of default". Such an event of default has occurred in the present case and thus, the contention of the Respondent that no default according to the agreement has occurred does not stand.

5. Although the Applicant has the immovable property in its symbolic possession it has chosen to initiate the CIRP of the Respondent. According to the Code the only essential requirements for initiating a CIRP is the existence of a financial debt and default in payment of the same. It is not required by the Code that the creditor has to exhaust other remedies such as auction of the security etc before filing an application for initiation of CIRP of the debtor. Thus, this Tribunal is bound to initiate the CIRP if default of financial debt is established by the creditor.

6. Since the default under Section 7 has been established this case is fit to be admitted for initiation of CIRP. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

> "(a) the institution of suits or continuation of pending suits or proceedings against the Respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
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> (b) transferring, encumbering, alienating or disposing of by the Respondent 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 Respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."

7. The interim resolution professional ("IRP") proposed by the Applicant is Mr. Mahavir Parshad Jain (email id: jain.mp54@gmail.com) and is

being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

-Sd-

(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

-Sd-

(Dr. P.S.N. PRASAD)
MEMBER (JUDICIAL)

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