



**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**CP (IB) No. 153/Chd/Hry/2020**

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

**In the matter of:**

**State Bank of India  
through Assistant General Manager.**

having its Corporate Office at  
Madame Cama Road, Nariman Point, Mumbai,  
and its Branch office at:  
SAMB, Branch, SCO 99-107,  
Sector-8-C, Chandigarh

....Petitioner-Financial Creditor

Vs.

**1. M/s Richi Richi Agro Foods Pvt. Ltd.**

having its Registered Office at:  
Village, Tolanwali, Barara Road, Teshil Barara  
District, Amabal,  
CIN No.U15494HR2009PTC039133

...Respondent-Financial Creditor

**2. Union of India, Ministry of Corporate Affairs,  
Through its Secretary,**

Having its Registered Office at:  
5th Floor, A Wing, Shastri Bhawan, Dr. Rajender Prasad Road,  
New Delhi.

...Performa Respondent

**Judgment delivered on: 01.08.2023**



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

**Present through Video Conferencing:**

For the Petitioner-Financial Creditor : Mr. Pulkit Goyal, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide  
order dated 13.01.2023

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**JUDGMENT**

The present petition is filed, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **State Bank of India through its Assistant General Manager, (for brevity 'Operational Creditor' / 'Petitioner')**, with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **M/s Richi Richi Agro Foods Pvt. Ltd. (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor is stated to be incorporated on 25.05.2009. The company having its registered address at Village, Tolanwali, Barara Road, Teshil Barara District, Amabal, with CIN No.U15494HR2009PTC039133. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is stated to be filed as Annexure-1/1 of the petition.

3. Brief facts of the case stated in the petition are that the corporate debtor is engaged in the business as an importer, exporter whole seller, retailer, agent, distributors, stockiest, buyer, and seller in the field of food grains, agro products, food products and also to carry out the business of food processing. The



corporate debtor has availed financial facilities by the petitioner financial creditor starting from the year 2009 and lastly on 28.04.2016. The following facilities were granted to the corporate debtor:

(i) Cash credit hypothecation limit of Rs.46.50 crores, which includes CC(Book Debts) of Rs 7.50, Export Packing Credit (EPC) Limit of Rs.18.00 crores, and Foreign Bill Purchase (Non-L.C.) of Rs.10.00 crores within EPC limit.

(ii) Credit Exposure Limit (Forward Contract) Limit of Rs.1.00 crores. **Total credit limit of Rs.47.50 crores** as per arrangement letter dated 28.04.2016.

In order to avail the facilities, the Board of Directors of the corporate debtor in its meeting dated 28.04.2016 has authorized Sh Neeraj Goel and Sh Atul Goel (both directors of the company) to sign and execute the necessary documents with the petitioner Bank, the corporate debtor had executed various agreement, security documents and interalia agreed to various terms and conditions of the financial creditor for getting financial facilities sanctioned to the corporate debtor. The Corporate Debtor defaulted in the payment of interest and the principal amount which resulted in classifying the account of the corporate debtor as NPA the financial creditor on 30.06.2016. Despite various measures taken by the financial creditor, the corporate debtor failed to repay any of the amounts of the financial creditor.

4. It is stated in Part-IV of Form No.1 the total amount claimed to be in default is Rs.74,77,71,662/- (Rupees Seventy-Four Crores Seventy-Seven Lakhs Seventy-One Thousands Six Hundred Sixty-Two Only as on 30.11.2019) and date of default is 28.12.2015. Copies of the Statement of Account (Annexure-I/1, Copy of Title Deeds (Annexure-I/4), Valuation (Annexure-I/6), Agreements



(Annexure-I/10, I/1, I/12, & I/17), Balance Confirmation Letter (Annexure-I/20) 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. Affidavit of Service has been filed vide Diary No.00288/2 dated 29.11.2022. As per the affidavit, the respondent-corporate debtor could not serve through the registered post, and the same was returned with the endorsement “insufficient address” and therefore, the substituted service was effected through publication in two daily newspapers (“Times of India’ (English” & “Amar Ujala” (Hindi)), both dated 26.11.2022 having wide circulation in the area. Vide order dated 13.01.2023, as a matter of indulgence, one last opportunity was granted to the respondent for filing reply but none appeared on behalf of the respondent-corporate debtor despite service through substitute mode of service. Therefore, vide order dated 13.01.2023, the respondent-corporate debtor proceeded *ex parte*. The short written arguments are filed by petitioner-financial creditor vide Dairy No. 00288/3 dated 19.07.2023.

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. In Part IV of Form 1 the date of default is stated to be 28.12.2015. It is submitted by learned counsel for the petitioner that present petition falls within limitation, in view of the fact that respondent/corporate debtor had lastly



acknowledged its debt towards the petitioner/financial creditor by way of balance security confirmation letter dated 08.04.2016. Thereafter, the petitioner financial creditor had issued demand notice under Section 13(2) of SARFAESI Act on 22.09.2016. Moreover, the corporate debtor has also credited an amount of Rs.7,84,027.00 on 31.07.2018 in the accounts of the corporate debtor maintained with the petitioner financial creditor towards the credit facilities.

9. From the perusal of bank account statements attached as Annexure-I/2 at Page No.83, there is entry of Rs.7,84,027.00 in column of credit received by transfer from the respondent corporate debtor. Thus, in view of Section 19 of the Limitation Act, 1963, the present petition falls within limitation. Relevant part of Section 19 is reproduced as under :-

*“Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made”.*

10. Moreover, the record file maintained by NeSL is attached as Annexure-I/25 with the written statement by the petitioner. There is no rebuttal to the accounts produced on behalf of the petitioner. It can be seen from the records that the present petition is filed vide diary No.7273 dated 18.12.2019. Hence, the present petition is well within the period of limitation of three years.


11. 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 Statement of Account (Annexure-I/1, Copy of Title Deeds (Annexure-I/4), Valuation (Annexure-I/6), Agreements (Annexure-I/10, I/1, I/12, & I/17), Balance Confirmation Letter (Annexure-I/20) which are attached with the main petition. As per the financial records read with financial statements, it is



evident that an amount of Rs.74,77,71,662/- (Rupees Seventy-Four Crores Seventy-Seven Lakhs Seventy-One Thousands Six Hundred Sixty-Two Only as on 30.11.2019) is still pending which amounts to default when corporate debtor avoided the payment of outstanding amount despite repeated requests by the petitioner-financial creditor.

12. In Part-III of Form No. 1, Mr. Sumat Kumar Gupta, 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. Sumat Kumar Gupta, there is nothing adverse against him. In view of the above, we appoint Mr. Sumat Kumar Gupta, Registration No.IBBI/IPA-001/IP-P00167/2017-18/10336, Email: sumatguptaca@gmail.com, Mobile No. 9814861455, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Sumat Kumar Gupta 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.

13. 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.



14. We direct the Financial Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh 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.

15. 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.

16. The petition is admitted accordingly.

sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

August 01 , 2023

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