

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/48(CHE)/2023

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 4 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

In the matter of RELIABLE CASHEW COMPANY PRIVATE LTD

**STATE BANK OF INDIA,
Stressed Assets Management Branch,
2nd Floor, Office Complex Building,
LHO Campus, 65, St. Mark's Road,
Bangalore – 560 001.**

... Financial Creditor

-Vs-

**RELIABLE CASHEW COMPANY PRIVATE LTD,
44, C.P.Ramasamy Road,
Alwarpet, Chennai – 600 018.**

...Corporate Debtor

Order Pronounced on 22nd June 2023

CORAM:

**SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
SHRI. SAMEER KAKAR, MEMBER (TECHNICAL)**

Present:-

For Financial Creditor : Mr. M.L.Ganesh, Advocate

For Corporate Debtor : Ex parte.

ORDER

(Hearing Conducted Through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This Application under Section 7 of IBC, 2016 has been filed by **State Bank of India**, Applicant / Financial Creditor herein against **Reliable Cashew Company Pvt. Ltd**, the Respondent / Corporate Debtor herein for initiating CIRP against the Corporate Debtor.

2. Briefly stated, the case of the Applicant / Financial Creditor is that it had granted various credit facilities by way of financial assistance to the



Corporate Debtor from time to time against various assets creating a security interest in favour of the Applicant / Financial Creditor. The Corporate Debtor executed the agreements / documents and also gave an undertaking to repay the said financial assistance in terms of the Agreements. It also created an equitable mortgage by way of deposit of title deeds creating a security interest in favour of the Applicant / Financial Creditor. During the subsistence of the loan facilities, the Corporate Debtor acknowledged its liability in respect of the credit facilities by executing confirmation of the balance sheet, revival letters and other documents from time to time.

3. It is alleged that the operation and conduct of the financial assistance / credit facilities became irregular and the account was classified as NPA on 07.10.2021. Despite requests, the Corporate Debtor failed and neglected to repay dues and outstanding liabilities. The Financial Creditor then issued a notice under Section 13(2) of the SARFAESI Act, calling upon the Corporate Debtor to discharge in full its liabilities and pay the outstanding dues to the sum of Rs.73,19,22,503/- as on 06.04.2022 within a period of 60 days. The Corporate Debtor failed to pay the dues which made the Applicant file this Application.

4. In the Application in Part-I, the Applicant has given its particulars. In Part-II, it has given the particulars of the Corporate Debtor as per which the Corporate Debtor was incorporated on 15.11.1995 having its office at 44, C.P.Ramasamy Road, Alwarpet, Chennai 600 018 within the jurisdiction of this Tribunal. As per the balance sheet of the Corporate Debtor, as on



31.03.2021, the assets of the Corporate Debtor are of a sum of Rs.172.47 crore. Part-IV of the Application contains the particulars of the financial debt and the details of the amount claimed as Rs.73,72,45,481/- as on 26.12.2022. Part-V contains, 1) The Certificate of Charge dated 31.03.2021 for the total limit of Rs.77.05 Crore, 2) Collateral Security of immovable Property on pari pasu charge with Indusind bank Limited etc., as the particulars of the financial debt.

5. Notice of the Application was directed to be served upon the Corporate Debtor / Respondent. It could not be served at its registered address by ordinary mode of service. It was directed to be served through publication in the newspapers vide order dated 03.03.2023, the same was published in newspapers on 14.03.2023 in Bangalore (Kannada and English editions) and in Chennai (Tamil and English editions). An affidavit of Service was filed before the Bench on 27.03.2023. Despite the publication effected on 14.03.2023 for 27.03.2023, it did not appear nor filed any reply and it was set ex-parte vide an order dated 27.03.2023.

6. We have heard Ld. Counsel Mr. M.L.Ganesh for the Applicant / Financial Creditor and perused the records.

7. On a perusal of the Application and documents, we find that the Corporate Debtor had availed the various financial facilities from the Applicant / Financial Creditor in relation to its business, but it failed to repay the financial facilities / debt in time. The account of the Corporate Debtor was declared as NPA on 07.10.2021. This made the Applicant /



Financial Creditor sent a notice under Section 13(2) of the SARFAESI Act, recalling the loan calling upon the Corporate Debtor to make the payment within 90 days from the date of the notice. But despite that the Corporate Debtor did not make the payment. The Applicant / Financial Creditor has placed a record of default issued by NESL duly authenticated as per which the outstanding and default amount is Rs.77,05,00,000/-. The date of default has been recorded as 09.07.2021. The authentication was completed by NESL on 25.01.2023. The scan copy of the same is reproduced below.

FORM D
RECORD OF DEFAULT(RoD)

(Issued By information utility under sub-regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Financial Creditor M/s STATE BANK OF INDIA in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s STATE BANK OF INDIA
(b) Schedule-2 Bank (Y/N):	Y
(c) Name of Corporate Debtor:	M/s RELIABLE CASHEW COMPANY PVT LTD
(d) Unique Debt Identifier Number:	AAACS8577K_39450667879
(e) Registered Address:	SBI CORPORATE CENTRE, MADAM CAMA ROAD, NARIMAN POINT, MUMBAI
(f) Total Outstanding Amount:	770500000.00
(g) Default Amount:	770500000.00
(h) Date of Default:	09-07-2021
(i) Status of Authentication of Default:	AUTHENTICATED

Filing of Default (Submission ID No.)	Submitted on	Status of Authentication (Authenticated/Disputed/Deemed to be authenticated)	Authentication completed on
(1)	06-01-2023 18:19:40	AUTHENTICATED Colour Code :GREEN	25-01-2023 09:16:38

In the Application, the date of disbursement of the last sanction working capital has been stated as 31.03.2021. The amount claimed as on 26.12.2022 is Rs.73,72,45,481/-. The statement of accounts have been filed by the Applicant / Financial Creditor in respect of each facility showing the amount due against the Corporate Debtor.



8. The amount in default is Rs.73,72,45,481/-. The date of default is 26.12.2022. This Application has been filed on 13.01.2023. Therefore, this Application is within limitation. The amount in default is above the threshold amount of Rupees one crore.

9. It is well-settled law that for a company to be admitted into CIRP under IBC, there must be a debt, there must be a default within the period of limitation and the amount of default should be above the threshold limit as set out under Section 4 of IBC.

10. On considering the averments made in the pleadings and the documents, we are of the view that the Corporate Debtor has committed the default in respect of the debt which is more than Rupees one crore. It is a fit case to initiate CIRP against the Corporate Debtor.

11. The Hon'ble Supreme Court *in Innoventive Industries Ltd Vs. ICICI Bank & Anr. (2017 SCC Online SC 1025)*, held as follows,

"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise".

12. In view of the facts stated *supra*, it is clear that the 'financial debt' is proved by the Financial Creditor and the 'default' having been committed by the Corporate Debtor. This Tribunal therefore admits the application and



order to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

13. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- 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;
- 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or



continuation of the license or a similar grant or right during moratorium period;

14. However, during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

15. The duration of a period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:



Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

16. The Financial Creditor has proposed the name of **Mr. Ravindra Beleyur**, having *Reg. No. IBBI/PA-001/IP-00189/2017-18/10368*; *Email ID: ravi@beleyur.com* as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 20.10.2023.

17. **Mr. Ravindra Beleyur**, is appointed as the IRP. He is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of a claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15, 17, and 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation



of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

20. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with a copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

21. Accordingly, the present petition stands **admitted**.



- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)



- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)