IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.143

C.P.(IB)/139(AHM)2021

Proceedings under Section 7 IBC

IN THE MATTER OF:

State Bank of India ....**Applicant**
V/s
Yogiraj Spinning Ltd. ....**Respondent**

Order delivered on: 13/12/2022

Coram:

Dr. Madan B. Gosavi, Hon’ble Member(J)
Mr.Kaushalendra Kumar Singh, Hon’ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-	**-SD-**
KAUSHALENDRA KUMAR SINGH	**DR. MADAN B. GOSAVI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIA**

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I

CP (IB) No.139 of 2021

[An application for initiation of Corporate Insolvency Resolution Process under section 7 of the Insolvency and Bankruptcy Code, 2016]

<u>In the matter of:</u>

State Bank of India
PAN: AAACS8577K
Having address at:
SAMB (Stressed Assets Management Branch),
2nd floor, Paramsiddhi Complex,
Ellisbridge, Ahmedabad, 380006

....Financial Creditor

Versus

Yogiraj Spinning Limited
CIN: U1712GJ2012PLC072083
Having address at:
14-AC, Shopping Centre,
New Sardar Marketing Yard Gondal,
Rajkot, Gujarat, 360311

....Corporate Debtor

Order reserved on 15.11.2022
Order pronounced on 13.12.2022

Coram: Dr. Madan B. Gosavi (Member Judicial)
Kaushalendra Kumar Singh (Member Technical)

Appearance:

For the Applicant : Ld. Counsel Mr. Rituraj Meena along with Ld. Counsel Mr. Mandeep Singh

For the Respondent : Ld. Counsel Mr. Arjun Sheth

ORDER

1. The instant Application is filed by State Bank of India ('**Applicant**') through its Assistant General Manager, Mr. Pankaj Srivastava, under section 7 of the Insolvency and Bankruptcy Code, 2016 (**'IBC, 2016'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (**CIRP**) against M/s Yogiraj Spinning Ltd. (**Corporate Debtor**) for the default amount of Rs. 42,94,10,736.04/- along with interest at 4.60% above 1 year on Marginal Cost of Funds based Lending Rate **(MCLR)** till 10.08.2021.

2. The averments made by the Applicant/Financial Creditor are summarized hereunder:

(i) The Financial Creditor granted cash credit and term loan facilities of Rs. 42,94,10,736.04/- to the Corporate Debtor at 4.60% interest above 1 year MCLR till 10.08.2021. The copy of sanction letters dated 26.07.2013 along with board resolution passed by the Corporate Debtor are attached with the application.

(ii) The Financial Creditor granted cash credit facility of Rs. 9,99,74,138.43/-, term loan of Rs. 3,71,27,289/- , another term loan of Rs. 15,03,98,646/- and car loan of Rs. 2,35,289/- with interest of Rs. 4,61,55,056.86/-, Rs. 1,76,03,719.42/-, Rs. 7,78,48,742.90/- and Rs. 67,854.43/- respectively till 10.08.2021 amounting to total debt of Rs. 42,94,10,736.04/-.

(iii) The account statement of the Financial Creditor reflects the payment of cash credit facility of Rs. 9,99,74,138.43/- in account no. 33364002737, term loan of Rs. 3,71,27,289/- in account no. 33168973281, another term loan of Rs. 15,03,98,646/- in account no. 33169239714 and car loan of Rs. 2,35,289/- in account. 33506083897.

(iv) The account of the Corporate Debtor became non-performing asset on 28.12.2018. The last letter of arrangement was signed by the Corporate Debtor on 06.06.2018. The last credit entry in the account of the Corporate Debtor was made on 30.11.2018.

(v) The Financial Creditor, thereafter sent a legal notice dated 06.04.2019 to the Corporate Debtor for an outstanding amount of Rs. 31,13,63,062.49/- as on 06.04.2019.

(vi) Since, the Corporate Debtor failed to make the payment of outstanding amount along with interest and did not even disputed the claim of the Financial Creditor, the Financial Creditor filed a petition on 17.08.2021 , under section 7 of IBC, 2016.

(vii) The name of the Interim Resolution Professional **('IRP')** Mr. Sunil Kumar Agarwal having registration No. IBBI/IPA-001/IP-P01390/2018-2019/12178 is proposed and the consent of the IRP is also placed on record.

3. The objections raised by the Respondent/Corporate Debtor are summarized hereunder:

(i) The present petition is not maintainable as its lacks authority under Regulation 76 of the State Bank of India General Regulations, 1995. Regulation 76 of the State Bank of India General Regulations, 1995 does not give authority to Assistant General Manager to sign Insolvency application.

(ii) The Applicant has not stated about the recovery proceeding filed before Hon'ble DRT and has chosen to file the present insolvency petition. Thus, this present application becomes infructuous.

(iii) The present petition is barred by limitation as the initial term loan granted on 26.07.2013 is placed on the record.

4. The rejoinder filed by the Applicant/Financial Creditor is summarized hereunder:

(i) As per the Gazette notification dated 02.05.1987 in the State Bank of India Regulation, 1955, Part III –section 4 in pursuance of Regulation 76(1) of the State Bank of India Regulation, 1955 framed under section 50 of the State Bank of India Act, 1955, the executive committee of Central Board can authorize all the officers in the grades of SMGS IV and above to sign all the documents, instruments, accounts, receipts, letter and advices etc. connected with the current or authorized business of the bank in respect of all matters coming in discharge of functions of the post held for the time being. As per the Regulation, Assistant General Manager, Mr. Pankaj Srivastava falls in grade SMGS-V. Therefore, he has the authority to sign the present application on behalf of the State Bank of India.

(ii) The Original Application No. 979/2019 is pending before DRT-II Ahmedabad. However, no final order is passed in that matter. Therefore, the Applicant has not attached the order with the Application.

(iii) This Application is not under limitation period as the last arrangement was signed by the Corporate Debtor on 06.06.2018 and the account of the Corporate Debtor was declared as a non-performing asset on 28.12.2018.

5. We have heard the learned counsel for the Financial Creditor as well as the Corporate Debtor and perused the relevant documents available on record. The account statement of the Financial Creditor clearly reflects the balances as regards to cash credit facility of Rs. 9,99,74,138.43/- in account no. 33364002737 as on 12.01.2019, term loan of Rs. 3,71,27,289/- in account no. 33168973281 as on 31.12.2018, another term loan of Rs. 15,03,98,646/- in account no. 33169239714 as on 31.12.2018 and car loan of Rs. 2,35,289/- in account. 33506083897 as on 31.12.2018 amounting to Rs. 28,77,35,362.45/- which is the principal outstanding amount as on 10.08.2021. The total interest is of Rs. 14,16,75,373.61/- as on 10.08.2021. Therefore, the total debt outstanding is of Rs. 42,94,10,736.04/- as on 10.08.2021. It is an undisputed fact that Rs. 42,94,10,736.04/- is the total debt outstanding to be paid by the Corporate Debtor.

6. It is noted that as per the Gazette notification dated 02.05.1987 in the State Bank of India Regulation, 1955, Part III –section 4 in

pursuance of Regulation 76(1) of the State Bank of India Regulation, 1955 framed under section 50 of the State Bank of India Act, 1955, Assistant General Manager, Mr. Pankaj Srivastava falls in grade SMGS-V. Therefore, he has the authority to sign the present application on behalf of the State Bank of India.

7. It is further noted that the initial letter for sanction of working capital limits/term loan limits/other credit facilities was signed by the Corporate Debtor on 26.07.2013. Further, another letter of arrangement was signed by the Corporate Debtor on 01.06.2015 for renewal of working capital limits/term loan limits at exisiting levels. Further, third letter of arrangement was signed by the Corporate Debtor on 19.04.2016. The fourth letter of arrangement was signed by the Corporate Debtor on 22.05.2017. The last letter of arrangement was signed by the Corporate Debtor on 06.06.2018. Therefore, the present Application is not barred by limitation as the letters of arrangements for renewal of working capital limits/term loan limits were signed by the Corporate Debtor on 01.06.2015, 19.04.2016, 22.05.2017 and 28.12.2018 after the initial sanction letter was signed by the Corporate Debtor on 26.07.2013. The Corporate Debtor committed default of the financial debt of Rs. 42,94,10,736.04/- which is as per the threshold, since the application was filed on 17.06.2021. The Financial Creditor has established the existence of financial debt payable by the Corporate Debtor and its default by the Corporate Debtor. This Application is filed within limitation and is defect free.

8. In view of the above, we admit this application and pass the following order as under:

(i) The Corporate Debtor M/s Yogiraj Spinning Ltd. is admitted in CIRP under section 7 of the IBC, 2016.

(ii) The moratorium under section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the IBC, 2016.

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 Securitisation 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 corporate debtor.

(iii) The order of 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) or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016, as the case may be.

(iv) We hereby appoint Mr. Sunil Kumar Agarwal having registration No. IBBI/IPA-001/IP-P01390/2018-2019/12178 to act as an IRP under section 13(1)(c) of the IBC, 2016. He shall conduct the CIRP as per the provisions of the IBC, 2016 r.w. Regulations made thereunder.

(v) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnels connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 extending every assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(vi) This Adjudicating Authority directs the IRP to make a public announcement of initiation of CIRP and call for submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.

(vii) It is further directed that the supply of goods/service to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the IBC, 2016. The Financial Creditor is directed to pay an advance of **Rs.1,00,000/-** (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per Rules.

(ix) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

9. Accordingly, CP (IB) No. 139 of 2021 stands admitted.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

Shweta Desai – LRA