

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court– I)  
KOLKATA**

**C.P. (IB) No. 223/KB/2021**

*A Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

*In the matter of:*

***State Bank of India***

*...Financial Creditor*

*Versus*

**In the matter of:**

SAV Wires Private Limited (CIN U27100WB2011PTC166784)

*...Corporate Debtor*

**Date of Hearing: 13.10.2022**

**Date of pronouncing the order: 16.12.2022**

***Coram:***

***Shri Rohit Kapoor***

***: Member (Judicial)***

***Shri Balraj Joshi***

***: Member (Technical)***

**Appearances (through Video Conferencing/Physical hearing)**

***For the Financial Creditor:***

Mr. Uttiyo Mallick, Adv.

Mr. H. Gangopadhyay, Adv.

Mr. Ajay Gaggar, Adv.

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**ORDER**

***Per Rohit Kapoor, Member (Judicial)***

1. The Court is convened *via* hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by State Bank of India (*'SBI'*) (*'Financial Creditor'*), represented by Mr. Kaushik Das, Chief Manager, duly authorized by virtue of State Bank of India General Regulations, 1955<sup>1</sup> for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against SAV Wires Private Limited (*'Corporate Debtor'*).
3. The present Petition was filed on **19 July, 2021** before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in a sum of Rs.151,22,34,160.71/- (Rupees One Hundred Fifty One Crore Twenty Two Lakh Thirty Four Thousand One Hundred Sixty and Seventy One Paise only) as on 30 June, 2021. The date of NPA is 29 June, 2013.
4. It is submitted in the Petition, Part – II that the authorized share capital of the Corporate Debtor is Rs.5,00,00,000/- (Rupees Five Crore only) with paid up Capital as Rs. 3,45,00,000/- (Rupees Three Crore Forty Five Lakh only).
5. ***Submissions by the Ld. Advocate on behalf of the Financial Creditor:***
  - 5.1 The Corporate Debtor had approached the Financial Creditor for certain credit facilities. Subsequently, the Financial Creditor agreed to sanction an aggregate sum of Rs.32,50,00,000.00/- to the Corporate Debtor. Mr. Anand Kumar Agarwal and one Mr. Vijay Agarwal stood as the guarantors on their personal capacity and thereby guaranteed to the Financial Creditor bank for payment of the outstanding amount in respect of the said Loan account.

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<sup>1</sup>Annexure – A of the Petition.

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- 5.2** On or about 28th November, 2010, the Corporate Debtor deposited their Leasehold title deeds with the Financial Creditor bank at Chowringhee Branch, 38B, Chowringhee Road, Kolkata-700071 with intent to create an equitable mortgage over certain immovable properties.
- 5.3** Further, on 06 March, 2012, at the request of Corporate Debtor, the Financial Creditor renewed the various credit facilities of an aggregate a sum of Rs.32,50,00,000.00/- (Rupees Thirty Two Crore Fifty Lakh Only) on the terms and conditions substantially similar to or same as before credit facilities to an aggregate a sum of Rs. 53,00,00,000.00/- (Rupees Fifty Three Ocre Only).
- 5.4** Thereafter, the Corporate Debtor through its directors had deposited with the Financial Creditor an audited balance sheet of the company as on 31st March 2014, duly signed by the directors of the Corporate Debtor, wherein the Corporate Debtor had admitted the availability of credit facilities for Financial Creditor in the said balance sheet the Corporate Debtor had acknowledged and admitted, that the Corporate Debtor have failed and neglected to serve the interest of the aforesaid credit facilities taken from the Financial Creditor.
- 5.5** The Financial Creditor sent various letters/reminders to the Corporate Debtor demanding payment of the dues payable by the Corporate Debtor, but the Corporate Debtor did not comply with such demand.
- 5.6** The Financial Creditor in order to realize its dues preferred an application before the Hon'ble Debt Recovery Tribunal at Kolkata on 09 March, 2015 under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 being O.A. No. 109 of 2015 within the prescribed time as stipulated under the Limitation Act, 1936.
- 5.7** The Original Application was heard on various dates by the Hon'ble Presiding Officer of the Hon'ble Debt Recovery Tribunal at Kolkata, and on 23 February, 2021, the Hon'ble Presiding Officer was pleased to pass final judgment and order

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directing the Learned Registrar of the Hon'ble Tribunal to draw up a certificate of Rs.70,00,02,406.00/- (Rupees Seventy Crores Two Thousand Four Hundred Six Only) so that the Learned Recovery Officer may realize the due amount from the Corporate Debtor in favour of the Financial Creditor.

- 5.8 It is pertinent to mention here that on or about 26 August, 2015 a Company Petition was filed before the Hon'ble High Court at Calcutta being C.P. No. 601 of 2015 by Indian Oil Petronas Private Limited against the Corporate Debtor herein, where the Hon'ble High Court was pleased to pass an order dated 10 January, 2018 directing the winding up proceedings to commence against the Corporate Debtor, and the Officialmanagement and affairs of the Corporate Debtor Company.

**Analysis & Findings**

6. We have heard the Ld. Counsel appearing for the Financial Creditor and perused the records. No reply has been filed on behalf of the Corporate Debtor, neither anyone appeared on their behalf.
7. Upon perusal of the record, it is noted that on 23 September, 2015, the Hon'ble High Court at Calcutta was pleased to admit the company SAV Wires Private Limited into liquidation *vide* Company Petition No. 601 of 2015. On 10th January, 2018 the Hon'ble High Court at Calcutta was pleased to direct winding up of the said company and the Official Liquidator to take possession of the assets of the said Company [*Annexure – I of the Supplementary Affidavit filed on 27 May, 2022 by the Financial Creditor*].
8. From time to time, the matter was heard by this Adjudicating Authority and was reserved for orders on 25 April, 2022. However, on 29 April, 2022 the matter appeared in the Cause List of this Adjudicating Authority '*For Clarification*', on that date, the Adjudicating Authority directed the Financial Creditor to inquire about the status of the Liquidation of SAV Wires Pvt. Ltd.

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9. Accordingly, the Financial Creditor issued a letter upon the office of the Official Liquidator of the Hon'ble High Court at Calcutta seeking the status of the liquidation proceedings of the Corporate Debtor. In pursuant to the said letter, the Office of the Official Liquidator was pleased to issue a reply attaching a status of the liquidation proceedings of the Corporate Debtor [*Annexure – III of the Supplementary Affidavit filed on 27 May, 2022 by the Financial Creditor*].
10. As per the report of the Official Liquidator the details of the Assets of the Corporate Debtor is as follows;

<b>Asset Identified</b>		
<b>(a)</b>	<b>Registered Office</b>	As per the document furnished in Form No. 18 by Registrar of Companies, W.B. and as per notification provided by the Hon'ble Court to the Official Liquidator of the winding up order, the Official Liquidator has taken possession of the Registered Office of the Co. (In Liquidation) situated at P-70, CIT Road, Scheme -VI, Kolkata – 700054-VI,29.03.2018.
<b>(b)</b>	<b>Factory</b>	Secured Creditor viz State Bank of India has taken physical possession of the secured assets of the Company (In Liquidation) situated at Industrial area Nandini Road, Bhilai, Dist. - Durg, Chattisgarh under SARFAESI Act 2002. The Secured Creditor viz SBI has stated that they have first and paramount charge over the secured assets and they want to stand outside the winding up proceedings in respect of secured assets of the Company (In Liquidation).

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- 11.** From the record above it is apparent that the Corporate Debtor is already under liquidation, however, the Official Liquidator has simply taken possession of the registered office, factory premises and the books of accounts of the Corporate Debtor. Therefore, in the present case, we would rely on the Order of the Hon'ble High Court, Delhi in the matter of *Action Ispat & Power Limited v. Shyam Metallicks* [2019 SCC Online Del 10424], where the Hon'ble High Court has held that;

*"The process under IBC is meant to find the best possible solution in a given case, which is beneficial to the company concerned as well as its creditors and other stakeholders. Therefore, in the interest of equity and justice and keeping in mind the special nature of the IBC, if the Learned Company Judge has found it fit to transfer the winding up petition to NCLT on the application of respondent No. SBI-who is a secured creditor, this Court would not ordinarily interfere with the judgment of the Learned Company Judge, and that too, on the asking of the erstwhile management. The Learned Company Judge rightly recalled the order of appointment of official Liquidator and admission of petition, since the liquidation was at its initial stage and the learned Company Judge was fully competent to do so. After the passing of the winding up order, the OL had not proceeded to take any effective or irreversible steps towards liquidation of the assets of the appellant company. All that he appears to have done is to take possession and control of the Registered office of the appellant company and its factory premises and its records and books..."*

**(Paragraph 41)**

- 12.** In light of the above facts and circumstances, the present petition filed by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and

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that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time.

**13.** Accordingly, it is, hereby ordered as follows:-

- (a) The application bearing **CP (IB) No. 223/KB/2021** filed by State Bank of India, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against SAV Wires Private Limited, the Corporate Debtor, is ***admitted***.
- (b) There shall be a moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016, and moratorium prohibits the following:
  - i. 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;
  - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - iii. 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 (54 of 2002);
  - iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (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 sub-section (1) of section 31 of the IBC or passes an

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order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (e) **Mr. Uday Narayan Mitra**, registration number **IBBI/IPA-001/IP-P00793/2017-2018/11360**, email: **udaynarayanmitra@yahoo.co.uk**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated in sections 15, 17, 18, 19, 20 and 21 of the Code.
- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- (g) The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

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- (h) The Financial Creditor shall deposit a sum of **Rs.5,00,000/- (Rupees Five Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. 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.
- 14. CP (IB) No. 223/KB/2021** to come up on **16.1.2023** for filing the periodical report
- 15.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Rohit Kapoor**  
**Member (Judicial)**

The order is pronounced on 16<sup>th</sup> day of December, 2022

*SA [LRA]*