

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P (IB) No. 236/KB/2021

In the matter of

An application 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

SREI EQUIPMENT FINANCE LIMITED, an existing company within the meaning of the Companies Act, 2013, having CIN: **U70101WB2006PLC109898** and its registered office at 'Vishwakarma', 86C, Topsia Road, Kolkata, West Bengal – 700046.

...Financial Creditor / Petitioner

-Versus-

In the matter of:

PREDICATE CONSULTANTS PRIVATE LIMITED, an existing company within the meaning of the term in the Companies Act, 2013, having CIN: **U93000WB2014PTC202244** and its registered office at 12A Netaji Subhas Road, Mezanine Floor, Kolkata, West Bengal – 700001.

...Corporate Debtor / Respondent

Date of hearing: 8/03/2022

Order Pronounced on : 26/04/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

Mr. Sankarsan Sarkar, Adv.] For Financial Creditor
Mr. Tanmoy Sett, Adv.]
Mr. Ritoban Sarkar, Adv.] For Corporate Debtor
Mr. Aishwarya Kumar Awasthi, Adv.]

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The court convened by video conference today.
2. This 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 has been filed by **SREI EQUIPMENT FINANCE LIMITED**, (hereinafter referred to as the Financial Creditor) through **Mr. Anup Kedia**. The financial creditor seeks initiation of Corporate Insolvency Resolution Process in respect of **PREDICATE CONSULTANTS PRIVATE LIMITED / Corporate Debtor**.
3. SREI Infrastructure Finance Limited (hereinafter referred to as “SIFL”) sanctioned a loan of Rs. 175,00,00,000/- in favour of the Corporate Debtor vide letter dated October 15, 2018. [Page – 191 (Part I)]
4. Thereafter, a Rupee Loan Agreement, bearing No. SRE 796 dated December 28, 2018 [Page 108 (Part I)] was entered into by and between SIFL and the Corporate Debtor, pursuant to which, the Corporate Debtor has received a loan amounting to Rs. 170,13,20,000/- from SIFL.

5. SIFL pursuant to and in compliance of the terms of the said loan agreement has disbursed the said loan of Rs. 170,13,20,000/- to the Corporate Debtor in four tranches, details whereof are given herein below:

SL No.	Amount Disbursed	Date of Disbursement
1.	97,00,00,000 /- (Against drawdown request dated January 27, 2019)	January 31, 2019 (The same was disbursed in two tranches)
2.	46,63,20,000 /- (Against drawdown request dated January 27, 2019)	January 31, 2019
3.	1,50,00,000 /- (Against drawdown request dated December 29, 2019)	December 31, 2019
4.	25,00,00,000/- (Against drawdown request dated September 4, 2020)	September 8, 2020 (in three tranches on the same day)

The relevant bank statements evince such disbursement by SIFL to the Corporate Debtor. [Page 280(Part II)].

6. In terms of the said agreement, the interests and/or Charges are applicable from the date of the said agreement @ 1% p.a. as fixed interest rate payable quarterly in arrears. [Page 185 (Part I)]. In terms of clause 2.7.2 of the said agreement, the Penal interest/default interest was fixed @ 18% per annum, payable by the Corporate Debtor to SIFL. Thus, the total interest computed is @ 18% per annum + 1% per annum. [Page 129 (Part I)].
7. As per the said loan agreement, the principal amount of the said loan amount was to be repaid within 6 half-yearly equal instalments commencing after 10 years from Initial Disbursement Date. [Page 186 (Part I)].

8. Thereafter, a Business Transfer Agreement or assignment agreement dated August 16, 2019, was entered into by and between SIFL and the Financial Creditor herein, whereby SIFL exchanged and/or transferred to the financial creditor all assets, liabilities and loans with effect from October 1, 2019. [Page – 201 (Part II)].
9. The Financial Creditor by a letter dated October 1, 2019 [Page 278 (Part II)] informed the Corporate Debtor about the transfer or assignment agreement by and between SIFL and the Financial Creditor. The Corporate Debtor by letter dated October 4, 2019 [Page – 279 (Part II)] had unequivocally accepted and acknowledged the transfer of the said loan.
10. The Corporate Debtor made some initial payment of interest but thereafter failed and / or neglected to honour its payment obligations under the said loan agreement.
11. Under such circumstances, the Financial Creditor issued demand notices dated February 5, 2021 [Page 298 (Part II)] and March 8, 2021 [Page 299 (Part II)] to the Corporate Debtor demanding Rs. 38,47,034 /- under the said loan agreement.
12. By a letter dated April 5, 2021, the Corporate Debtor replied to the aforesaid letters of the Financial Creditor by equivocally and unconditionally admitting that an amount of Rs. 38,47,034 /- is due and payable to the Financial Creditor and further requested to grant time till end of April, 2021 to repay the same. [Page 300 (Part II)].
13. The Financial Creditor by another letter dated May 12, 2021 demanded a sum of Rs. 41,48,424 /- on account of interest from the Corporate debtor. It was further informed that the total interest amount due to be paid by Corporate Debtor is Rs. 79,95,458 /- as on April 30, 2021 [Page 301 (Part II)]. Despite the same, the Corporate Debtor failed and/or neglected to pay interest to the Financial Creditor.
14. Under such aforementioned facts and circumstances, the Financial Creditor by a final demand notice dated June 10 2021 recalled the entire loan amount together with interest amounting to Rs. 229,96,00724/- [Page 302 (Part II)].

15. The Corporate Debtor by letter dated June 15, 2021 to the Financial Creditor, unconditionally and unequivocally admitted that a sum in excess of Rs. 220,00,00,000 /- is due and payable by the Corporate Debtor to the Financial Creditor [Page 306 (Page II)]. The said admission is also evident from the balance sheet of the Corporate Debtor [Page 310 (Part II)].
16. The Date of Default is June 15, 2021 [Page 30 (Part I)].
17. As on June 10, 2021 the total default is Rs. 229, 96,00,724/- [Page 29 (Part I)].
18. It is thus prayed that the instant petition be admitted and the Corporate Debtor may be admitted in CIRP.
19. In the **reply-affidavit**, it is submitted that the Financial Creditor has failed to disclose in its application any record of default with any Information Utility registered with the IBBI.
20. It is stated that the purported Financial Creditor did not extend to the Corporate Debtor the benefits receivable by it in terms of the various RBI Frameworks for Covid- 19 related stress issued by it from time to time despite being intimated about the dire financial situation faced by the Corporate Debtor on account of the pandemic. The Financial Creditor is acting unreasonably by seeking to drag the Corporate Debtor into CIRP when it could have extended some accommodation.
21. It is submitted that Corporate Debtor is a solvent company at present and should not be admitted into a CIRP.
22. **It is further submitted that the business of the Corporate Debtor has suffered due to the Covid-19 pandemic disruption as is evidenced in detail by the letter dated June 15, 2021, a copy whereof is annexed by the Financial Creditor itself to the instant Application filed by the Financial Creditor and forming pages 306-308 thereof, issued by the Corporate Debtor in response to the demand notice dated 10th June, 2021, issued by the Financial Creditor upon the Corporate Debtor. The Corporate Debtor is engaged in investments in the**

infrastructure sector which underwent a downturn due to the onslaught of the pandemic and the attendant lockdowns and regulatory responses. This fact has already been admittedly notified to the Financial Creditor who unreasonably refused to offer any rescheduled payment plan to the Corporate Debtor.

23. It is submitted that the Corporate Debtor had issued the letter dated 15th June, 2021, not intending it to be an acknowledgment of debt for the purpose of any legal proceeding inimical to the Corporate Debtor.

24. It is submitted that no admission whatsoever has ever been made by the Corporate Debtor within the prescribed period of limitation in order to enable the Financial Creditor to file this instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016.

25. In the **rejoinder** filed by Ld. Counsel appearing on behalf of the Financial Creditor, it is stated that the Financial Creditor is a Non-Banking Financial Company authorised by the Reserve Bank of India.

26. It is further submitted that after the filing of the present proceedings, the Reserve Bank of India filed an application under Section 227 of the Insolvency and Bankruptcy Code, 2016 being CP (IB) No. 294/KB/2021 against the Financial Creditor before the Hon'ble National Company Law Tribunal, Kolkata Bench at Kolkata. By an order dated October 8, 2021, the National Company Law Tribunal, Kolkata Bench was pleased to admit the said application and was further pleased to admit the Financial Creditor in Corporate Insolvency Resolution Process. Thereafter, Mr. Rajneesh Sharma was appointed as Administrator of the Financial Creditor in terms of the order dated October 8, 2021. The administrator as on October 25, 2021 ratified the existing power of attorney executed and granted by the Financial Creditor to its employees and thus the authorisation in my favour continues.

27. It is denied that the Financial Creditor has or was obligated to reschedule any payments or has failed to extend any alleged benefits under any purported RBI

guidelines. It is specifically denied that the claim of the Financial Creditor is barred by limitation.

28. We have heard the Ld. Counsel for the parties and perused the record. It is emanating in unequivocal terms from the affidavit filed by the Corporate Debtor through its director namely Sri Sanjay Pada, that he was unable to pay the debt because in these circumstances attributable to Covid-19 Pandemic disruptions.
29. It is the stand taken by the Corporate Debtor that the Financial Creditor did not reschedule the payment plan of the Corporate Debtor.
30. The Financial Creditor proposed the name of **Arun Kumar Khandelia** to act as an IRP having Registration No. **IBBI/IPA-002/IP-N00514/2017-2018/11592**, who was consented vide his affidavit and Form-2, and submitted that he has agreed to accept the appointment as IRP if an order admitting the present application is passed by this Adjudicating Authority. He has further submitted that no disciplinary proceedings are pending against him with the Board or Institute of Insolvency Professionals of ICAI.
31. We also find the present application is within the limitation period. Upon the basis of the record furnished before us it is established that the Corporate Debtor is in default of the debt due and payable. The amount claimed is more than the threshold limit of Rs.1 crore. We find that the application is IBC compliant and deserves to be admitted.

ORDERS

- (i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating corporate Insolvency Resolution Process against the Corporate Debtor is hereby **admitted**.
- (ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.

- (iii) Moratorium is declared for the purpose referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under sub-Section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - a) The institution of suits of 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 (52 of 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.
- (v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- (vi) 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.

- (vii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.
- (viii) 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.
- (ix) **Arun Kumar Khandelia** registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-002/IP-N00514/2017-2018/11592** Email arun@cskarun.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production or written consent within one week from the date of receipt of this order.
- (x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the Insolvency commencement date.
- (xi) The Financial Creditor/Applicant is directed to deposit Rs. 5,00,000/- (Rupees Five Lac Only) with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- (xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

- (xiii) List the matter on **08/06/2022** for the filing of the **Progress Report**.
- (xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on **26th** of **April, 2022**.

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