



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -I**

CP(IB)No. 239/MB/2023

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4 of the
Insolvency and Bankruptcy (Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of

STATE BANK OF INDIA

Having its registered office at
State Bank Bhavan, Madam Cama Road
, Nariman Point, Mumbai -400021.

**.....Applicant/
Financial Creditor**

Versus

Ramila Diam Private Limited

[CIN: U36911MH2010PTC203571]

4, Floor -1, Plot -80,3, Dariya Mahal, Laxmibai
Jagmohandas Marg, Nepean Sea Road, Malabar
Hill Mumbai-400006.

**.....Corporate Debtor/
Respondent**

Order Delivered on : 21.06.2024

Coram:

Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).
Hon'ble Member (Judicial)

Appearances:

- For the Financial Creditor : Ms.Siddha Pamecha a/w Mr.Ranveer
Chapekar, Advocate.
- For the Corporate Debtor : Nausher Kohli a/w Somya,Advocate

ORDER***Per:***


1. This Company Petition has been filed by **State Bank of India** ("**Financial Creditor**"), a scheduled banking company seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **Ramila Diam Private Limited**. ("**Corporate Debtor**") by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 upon commission of a default in repayment of **outstanding principal debt** of INR **14,72,73,408/-** (Rupees Fourteen Crore Seventy Two Lakhs Seventy Three Thousand Four Hundred and Eight Only), the financial debt is outstanding as on 06.09.2021. Thereafter the interest was accrued in respect of the consolidated financial debt in aforementioned loan facilities and the total outstanding amount as on 29.11.2022 which is inclusive of interest is of Rs. **18,92,65,930/-**.
2. The date of default was initially stated as 31.03.2020, which is the date of classification of Corporate Debtor's Account as NPA.However, thereafter the Financial Creditor was allowed to carry out necessary amendments in Part IV whereby the date of default was stated as Rs. **18,92,65,930/-**.

Submissions made by the Financial Creditor:

3. The Corporate debtor approached the Financial Creditor and requested to sanction cash credit with total fund-based limit of Rs.6.5 Crore which was sanctioned by a letter of Arrangement dated 20.12.2010.




4. The loan facility was subsequently renewed from time to time along with security documents and the limit enhanced to Rs.11 Crore vide following letters of Arrangements/sanction letters:
- I. Letter of Arrangement for sanction /Renewal of existing credit facility letter dated 17.05.2012.
 - II. Letter of Renewal and enhancement letter dated 23.03.2013
 - III. Letter of Arrangement towards Advances and segment sanction of Credit facilities dated 13.04.2013.
 - IV. The last letter of arrangement which is in on the record and the date of the arrangement is 08.03.2021.
5. The aforementioned credit facility was duly availed by the Corporate Debtor and the said credit facility is recorded in the statement of accounts from 01.01.2020 to 31.08.2020 annexed to the present petition. Moreover, the loan facility is also acknowledged by Corporate Debtor as a short term borrowing in its Audited Financial Statement for the Financial year ended on 31.3.2021 filed with the RoC Mumbai.
6. The Financial Creditor submits that in view of the fact Corporate Debtor failed to make the payment, the Financial Creditor was constrained to classify Corporate Debtor's loan Facility as NPA on 31.03.2020.
7. The Financial Creditor submits that on 02.02.2021 the Corporate Debtor requested the Financial Creditor to reduce the interest rate and restructure the loan facility of Rs.11 Crores.
8. The Financial Creditor on the request of the Corporate Debtor issued Letter of Arrangement dated 08.03.2021 in respect of loan facility which was acknowledged and accepted by the Corporate Debtor along with its representatives pursuant to which the subject loan facility was restructured.

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9. The Financial Creditor submits that on account of inability of Corporate Debtor to make the repayment towards working capital component of restructured loan facility which was payable on demand, the said loan facility continued to remain classified as NPA and the Financial Creditor was constrained to issue Notice under SARFAESI Act on 06.09.2021 and called upon the Corporate Debtor to make payment of entire loan facility within 60 days.
 10. The Financial Creditor submits that the Corporate Debtor failed to make the payment towards loan facility within a period of 60 days and accordingly Corporate Debtor has defaulted the payment towards the loan facility on **05.11.2021** which is to be reckoned as fresh date of default post restructuring of loan facility.
 11. The Financial Creditor submits that in addition to the demand notice under the SARFAESI Act, the Financial Creditor has also issued a letter on 05.04.2022 calling upon the Corporate Debtor to make repayment of the financial debt.

Submissions made by the Corporate Debtor:

12. The Corporate Debtor submitted that this petition where the default took place on 31.03.2020 was barred by the proviso to section 10A of this code.
13. The amended Petition intends to mislead this Tribunal. The Corporate Debtor submits that the Financial Creditor has given multiple dates of default, i.e.- 01.01.2020; 31.03.2020 and 05.11. 2021. This Petition was filed based on the alleged date of default of 31.03. 2020. The Applicant has attempted to shift the date of default from 31.03.2020 (being the date of NPA). After having specified the date of default as 31.03.2020 in the statutory form-I at Part-IV, the Applicant has attempted to set out contradictory case to somehow circumvent embargo imposed by section 10A of the code. The Applicant has categorically stated in part-IV of this



Application that the date of default and cause of action arose on 31.03.2020 which is also the date of NPA. The Demand Notice under 13(2) of SARFAESI Act is incoherent and inconsistent with the case set up by the Applicant.

14. The Corporate Debtor contention of the date of default as 05.11.2021 is *ex-facie* illegal, incomprehensible, and the present petition based thereon is liable to be rejected. It is further submitted that vide letter dated 08.03.2023, the Applicant had agreed to restructure facility by converting cash credit limit of Rs.2.50 crores into Funded interest term Loan of Rs.2.50 crores repayable in 48 months including the moratorium of 12 months. However, the Bank failed and neglected to restructure the credit facilities and did not grant/disbursed funded interest term loan of Rs.2.50 crore which is very evident from the particulars of claim as well as 13(2) notice dated 06.09.2021.

15. The Corporate Debtor submits that there is no claim asserted under the funded interest term loan as it was not disbursed by the Applicant. The Corporate Debtor submits that the 13(2) Notice under the SARFAESI Act is issued on the basis of sanction dated 20.12.2020; 05.11.2015; 11.11.2017. There is no reference of sanction dated 08.03.2021 in the notice. The Corporate debtor admits that 13(2) notice itself is on default NPA date 31.03.2020 which was prior to the said notice and as such it would be incongruous to contend that default had occurred after 60 days of 13(2) notice dated 06.09.2021 and the outstanding was due and payable after 60 days from the notice. 05.11.2021.


16. The Corporate Debtor submits that 13(2) notice under SARFAESI Act, can be issued only after the account is classified as NPA.

Findings

17. Heard learned counsel for both the parties and have duly perused the documents on records.



18. We find that in the present case since the date of NPA classification is 31.03.2020, accordingly the corresponding default was committed by the Corporate Debtor 90 days prior to 31.03.2020 which is 01.01.2020 in accordance with Reserve Bank of India Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning norms.
19. It is pertinent to note that subsequent to default by Corporate Debtor on 01.01.2020 and the classification of subject loan facility as NPA on 31.03.2020 the Financial Creditor on the request of the Corporate Debtor, executed a letter of arrangement bearing no. SMR/BBR/2021-22 dated 08.03.2021 whereby the subject loan facility was restructured. However, despite the restructuring of subject loan facility, the Corporate Debtor failed to comply with terms and conditions of restructuring Letter of arrangement bearing no. SMR/BBR/2021-22 dated 8" March 2021, as a result of which the Financial Creditor was constrained to issue Demand Notice dated 06.09.2021 U/s 13(2) of SARFAESI Act. The Corporate Debtor was called upon to clear the outstanding financial debt within 60 days of the date of receipt of the said Demand Notice, but the Corporate Debtor failed to do as a result of which the Corporate Debtor committed subsequent default on 05.11.2021 consequent upon the restructuring of the loan facility. Accordingly, the "date of default" in respect of restructured loan facility is 05.11.2021. However, in terms of RBI guidelines in relation of classification of restructured advances, the restructured debt is said to be in default with reference to its original date.
20. We do not find any force in the submission of the Corporate Debtor that the restructured facilities were not disbursed, as the existing facilities were restructured by converting cash credit limit of Rs.2.50 crores into Funded interest term Loan of Rs.2.50 crores repayable in 48 months




including the moratorium of 12 months. Accordingly, the restructured facility did not require any fresh disbursement.

21. We find that the Corporate Debtor has defaulted on several terms as stipulated in the Loan Agreement and has also failed to repay the outstanding amount due. The Financial Creditor issued Final Recall Notice dated 05.11.2021 and recalled the entire loan amount being an aggregate sum of Rs. 18,92,65,930/-. Till date the Corporate Debtor has not made any repayment to the outstanding debt or approached the Financial Creditor for any settlement.
22. We find that this Petition was filed on 02.12.2022, accordingly, this petition is within period of limitation with reference to the date of default i.e. 1.1.2020.
23. We take a note from the records and submission made by the Financial Creditor that the Corporate Debtor failed to make the payment towards loan facility as on date. Corporate Debtor has defaulted the payment towards the loan facility.
24. From perusal of the record and the documents relied upon by the Applicant it stands proved that there has been a financial debt in respect of which default has been committed by the Corporate Debtor and further that the Application has been filed within the period of limitation. Therefore, the Application u/s 7 of the Code, deserves to be admitted. It is ordered accordingly in the following terms:


ORDER

- a. The petition bearing CP (IB) 239/MB/C-I/2023 filed by **State Bank of India**, the Financial Creditors, under Section 7 of the Code read with Rule 4(1) of the Insolvency and Bankruptcy (Application to



Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **Ramila Diam Private Limited**, the Corporate Debtor, is admitted.

- b. This Bench hereby **appoints Shailesh Balachandra Desai Reg No.IBBI/IPA-001/IP-P00183/2017-18/10362 as the Interim Resolution Professional** having email: **-shailesh@headwayip.com**, Mobile No.- 9821236897 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. There shall be a moratorium under section 14 of the IBC, in regard to 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 (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- d. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

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- ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- e. 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 Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- f. 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.
- g. The Financial Creditor shall deposit an amount of **Rs. Three Lakhs** towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- h. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section 17 of the Code. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- i. The Registry is 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. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)