



**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 10.06.2024 AT 01:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/73/7/AMR/2022		7 of IBC	Union Bank of India Vs. Sri Ravichandra Textiles Private Limited

ORDER

Present: Mr. V. Sethu Madhava Rao, Ld. Counsel for the FC
Mr. Vivek Chandra Shekhar, Ld. Counsel for the CD

Orders pronounced. CP(IB)/73/7/AMR/2022 is admitted, IRP appointed and recorded vide separate sheets.

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI

CP (IB)/73/7/AMR/2022

In the matter of
M/s SRI RAVICHANDRA TEXTILES PRIVATE LIMITED

[Petition under Section 7 of the Insolvency & Bankruptcy Code, 2016
R/w Rule 4 of Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016]

Between:

UNION BANK OF INDIA

Asset Recovery Branch,
Door No: 26-15-150, Andhra Bank Building,
Changalraopeta, Visakhapatnam – 53001,
Email: ubin0817295@unionbankofindia.bank

...Applicant/Financial Creditor

Versus

M/s SRI RAVICHANDRA TEXTILES PVT LTD

Reg Office: Flat No: 2, Sai Prakash Apartments,
Ground Floor, 1st Lane, Vidya Nagar,
Guntur, Andhra Pradesh – 522007.

...Respondent Company/Corporate Debtor

Date of Order: 10.06.2024

CORAM:

SHRI RAJEEV BHARDWAJ, HON'BLE MEMBER (JUDICIAL)
SHRI SANJAY PURI, HON'BLE MEMBER (TECHNICAL)

Parties/Counsels Appearance:

For the Applicant/FC

: Mr. Peri Rama Krishna, Advocate

For the Respondent/CD

: Mr. Vivek Chandra Shekar, Advocate

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(ORDER)
(Per: Bench)

1. This Petition is filed by Union Bank of India (Financial Creditor/Applicant) under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) against M/s. SriRaviChandra Textiles Pvt Ltd (hereinafter referred to as “Corporate Debtor”), alleging non-payment of Rs. 37,29,25,289.68/- together with interest as on 10.05.2022.
2. **The contentions put forth by the Financial Creditor are:**
 - a. It is averred by the Financial Creditor that the Corporate Debtor had availed Open Cash Credit (“OCC”) Limits, Term Loan facilities etc. since 2011.
 - b. The Corporate Debtor had availed a Term Loan facility of Rs. 23 Crores and OCC limit of Rs. 10 Crores & Bank Guarantee (“BG”) for Rs. 0.65 Crores from the Financial Creditor and the same were accepted and acknowledged by the Corporate Debtor vide sanction letters dated 26.10.2011 & 08.09.2012. The terms and conditions of the sanction letters were accepted vide Board Resolution dated 26.12.2011 by the Corporate Debtor.
 - c. The Financial Creditor sanctioned another Term Loan facility of Rs. 1.06 Crores and enhanced the OCC limit from Rs. 10 Crores to Rs. 14 Crores and the same has been confirmed by the Corporate Debtor

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through resolution dated 14.03.2014. The Applicant sanctioned ADHOC OCC limit of Rs. 2.40 Crores vide sanction letter dated 15.09.2017 and OCC limit enhanced to Rs. 18 Crores vide sanction letter dated 04.01.2018. The credit facilities were last renewed vide letter dated 26.07.2019.

- d. The credit facilities were initially sanctioned to the Corporate Debtor and the loan accounts are maintained by the erstwhile Andhra Bank and the Bank has been merged with the Financial Creditor vide Gazette notification dated 04.03.2020.
- e. The Corporate Debtor's account was declared as NPA on 29.11.2019 due to non-payment of overdue interest and irregular operations in their loan accounts and the Financial Creditor issued a Recall Notice dated 02.12.2019 under section 13(2) of the SARFAESI Act.
- f. Thus averred that the total outstanding amount as on date of filing of this Application is Rs.37,29,25,289.68/-. Hence, prayed the Tribunal to initiate CIRP against the Corporate Debtor as per the provisions of I&B Code, 2016.

3. The Respondent/Corporate Debtor filed Counter stating that:

- a. The Corporate Debtor has not denied about availing credit facilities from the Financial Creditor.
- b. The Financial Creditor submitted that the account of Corporate Debtor was declared as NPA on 29.11.2019 and a Recall Notice was also issued on 02.12.2019 under section 13(2) of SARFAESI Act but the Financial Creditor intentionally omitted to include the payments made

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on various dates between 31.10.2020, 20.11.2020 and an amount of Rs. 30 Lakhs, on 22.01.2021 as well as 25.01.2021 an amount of Rs. 11.5 Lakhs in total, on 15.12.2020 an amount of Rs. 9 Lakhs and on 07.07.2020, 03.10.2020, 09.10.2020, 15.10.2020 and 23.10.2020 the total amount of Rs. 67 Lakhs has been credited to the Corporate Debtor account.

- c. It is submitted that the Financial Creditor already moved an application before the Hon'ble Debt Recovery Tribunal, Visakhapatnam in I.A. No. 1689 of 2020 in SA. No. 393 of 2021 for the sale of the properties of the Corporate Debtor under SARFAESI Act. The Debt Recovery Tribunal passed an interim order to maintain status quo till further orders in SA. No. 393 of 2021 and till the order is not vacated. After the doors of the Debt Recovery Tribunal were closed the Financial Creditor has filed this petition to harass, intimidate and to close the business activity permanently.
 - d. The Corporate Debtor further submitted that when there is status quo on proceedings further with regard to declaration of NPA the cause of action to initiate CIRP does not arise and the CD has also submitted an OTS proposal to pay all the loans and credit facilities at a time.
4. A memo pertaining to the OTS proposal dated 05.02.2022 that amounted Rs.27.60 crores against the total due amount was submitted by the Corporate Debtor to this Tribunal. It is said that while the case was pending, the Corporate Debtor deposited Rs. 1 crore into the Financial Creditor's no-lien account via RTGS on August 8, 2023.

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5. The Financial Creditor filed written submissions, inter-alia stating that:

- a. It is stated that the Corporate Debtor submitted an OTS proposal dated 05.02.2022 and offered to pay an amount of Rs. 26.70 Crores against the outstanding amount of Rs. 34 Crores. The Financial Creditor has not agreed to the said proposal of the Corporate Debtor.
- b. It is stated that by virtue of the OTS proposal, the Corporate Debtor admitted the debt.
- c. It is further stated that as per the principle laid down by the Hon'ble Apex Court the Financial Creditor is at liberty to initiate the simultaneous proceedings under the SARFAESI Act and IB Code against the Corporate Debtor and there is no bar.

6. The counsel for the Corporate Debtor filed written submissions, inter alia stating that:

- a. It is stated that the Corporate Debtor is a flourishing unit with no other creditors. The Hon'ble Apex court in Vidarbha Industries Power Limited Vs. Axis Bank Limited has held that:

“on the other hand, in the case of an application by a Financial Creditor who might even initiate proceedings in a representative capacity on behalf of all financial creditors, the Adjudicating Authority might examine the expedience of initiation of CIRP, taking into account all relevant facts and circumstances, including the overall financial health and viability of the Corporate Debtor. The Adjudicating Authority may in its discretion not admit the application of a Financial Creditor.”

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- b. It is further stated that the delay in repayment is only due to the hindrances faced by the Corporate Debtor. That the claim of the Corporate Debtor is only 37 Crores, the asset value of the Corporate Debtor is more than 47 crore and is not commercially insolvent.
7. Heard both sides and perused the written submissions. In the light of the contentions the points that emerges for consideration of this Tribunal are as follows:
- I. Whether the Financial Creditor can initiate parallel proceedings against the Corporate Debtor under the SARFAESI Act, 2002 as well as under IB Code, 2016?
- II. Whether a financial debt of a sum over rupees one crore is due and payable by the Respondent to the Applicant? If so, whether the Respondent has defaulted in repayment of the same?
- I. Whether the Financial Creditor can initiate parallel proceedings against the Corporate Debtor under the SARFAESI Act, 2002 as well as under IB Code, 2016?**
- a. It is on record that the Financial Creditor has initiated proceedings against the Corporate Debtor before the DRT and the Corporate Debtor has obtained the interim stay and the said proceedings are pending. The Ld. Counsel for the Corporate Debtor has taken the plea that when the proceedings before the DRT under SARFAESI Act are pending, the Financial Creditor cannot initiate IBC proceedings. It is implausible and unsustainable for the Corporate Debtor to argue that when the SARFEASI proceedings are pending before the DRT, Visakhapatnam,

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the Financial Creditor has no right to start the proceedings under the IB code.

- b. The Ld. Counsel for the Financial Creditor has rightly said that the proceedings before the DRT is not impediment to proceed against the Corporate Debtor. It is proper to quote that Hon'ble NCLAT judgment in the matter of **Punjab National Bank vs. M/s. Vindhya Cereals Ltd., Company Appeal (AT) (Insolvency) No. 854 of 2019** has held that:

“In light of the above pronouncement, we are of the considered view that the Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code, 2016. Section 238 of I&B Code provides that the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law. Thus, the non-obstante clause of I&B Code will prevail over any other law for the time being in force.”

Therefore, the contention of the Corporate Debtor is turned down in view of the foregoing ratio laid down by the Hon'ble NCLAT.

II. Whether a financial debt of a sum over rupees one crore is due and payable by the Respondent to the Applicant? If so, whether the Respondent has defaulted in repayment of the same?

- a. We have no hesitation to hold that the Financial Creditor has established that the Corporate Debtor herein had availed credit facilities to an amount of Rs. 37,29,25,289.68/-, which is over Rs.1 crore and had defaulted in repayment of the same.

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- b. The Corporate Debtor itself admitted the debt in its counter. Moreover, it is seen from the record that the OTS proposal dated 05.05.2022 has been offered to the Financial Creditor for an amount of Rs. 26.70 Crores against the outstanding amount due. The said OTS proposal itself is evident that the Corporate Debtor is admitting the debt. The account of the Corporate Debtor is declared as NPA on 29.11.2019 and the Petition is filed on 26.05.2022. Hence, the claim is well within the limitation period.
- c. Therefore, we unhesitatingly hold that, the Applicant Financial Creditor has successfully established existence of financial debt of a sum over Rupees One Crore, which is due and payable by the respondent/corporate debtor bides its default on the part of the corporate debtor.
8. In view of the above observations, we are inclined to admit the Petition as there is a debt due payable by the Corporate Debtor to the Financial Creditor.
9. Accordingly, we admit the Petition under Section 7 of IBC declaring moratorium for the purposes referred to in Section 14 of IBC.

ORDER

- i. Mr. Venkat Narsinga Rao Kalvakota, (**Registration No. IBBI/IPA-001/IP/P-01361/2018-19/12130**); having office at Flat No. 103, Balaji Vishwam Vihar Apartment, Madura Nagar, Ramanthapur, Hyderabad – 500013, Telangana State; e-mail:kvnassociates@gmail.com; is appointed as the Interim Resolution Professional. No disciplinary

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proceeding is pending against him as per the IBBI website. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 read with Regulations made thereunder. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

- ii. The IRP is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor shall commence from this date and shall be completed within 180 days.
- v. 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.
- vi. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for

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effectively discharging his functions under the Code. Where any personnel of the Corporate Debtor, its Promoter or any other person is 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.

- vii. 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.2,00,000/- (Rupees Two Lakhs 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.
- viii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to the Interim Resolution Professional (IRP).

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- x. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax, Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/employees associations so that they are informed timely of the initiation of CIRP against the Corporate Debtor timely.
- xi. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

Accordingly, CP (IB)/73/7/AMR/2022 stands admitted.

Sd/-

SANJAY PURI
MEMBER (TECHNICAL)

Sd/-

RAJEEV BHARDWAJ
MEMBER (JUDICIAL)

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