

IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"

CP (IB) No.395/Chd/Pb/2018

Under Section 7 of the
Insolvency and Bankruptcy
Code, 2016.

In the matter of:

State Bank of India
Stressed Assets Management Branch,
Zonal Office Building, Fountain Chowk,
Civil Lines, Ludhiana.
Through Sh. Kailash Chander,
Assistant General Manager.

...Applicant/Financial Creditor.

Vs.

Saber Papers Pvt. Ltd.
having its registered office at
V.P.O. Jugiana, G.T. Road,
Ludhiana, Punjab-141420.

...Respondent/Corporate Debtor

Order delivered on:18.09.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member(Judicial).
Hon'ble Mr. Pradeep R. Sethi, Member(Technical).**

For the petitioner: 1.Mr. Randhir Singh Badhran, Advocate.
2.Ms. Shina, Advocate.

For the Respondent: 1. Mr. Rohit Suri, Advocate.
2. Ms. Mandeep Gujral, Advocate.

Per: Pradeep.R. Sethi, Member(Technical)

ORDER

The present petition in Form No.1 is filed by State Bank of India
(**Financial Creditor**) for initiation of Corporate Insolvency Resolution Process
(**CIRP**) in respect of Saber Papers Ltd. (**Corporate Debtor**). The petition is filed

under Section 7 of the Insolvency & Bankruptcy Code, 2016 (**Code**) read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules 2016**). The registered office of the corporate debtor is at V.P.O. Jugiana G.T. Road, Ludhiana 141011(company master date is at page 928 of the petition). Therefore, the jurisdiction lies with this Bench of the Tribunal.

2. The petition is signed by Shri Kailash Chander, Assistant General Manager of the financial creditor. His affidavit verifying the petition is at page 33 thereof. It is submitted that Shri Kailash, Chander, Assistant General Manager is competent to sign and verify the present petition in terms of General Regulations No.76 and 77 of State Bank of India General Regulations, 1955 and as per authority given vide notice dated 27.03.1987 published in the Gazette of India on 02.05.1987 (page 927 of the petition).

3. It is submitted that w.e.f. 01.4.2017, the financial creditor with sanction of the Central Government and the Reserve Bank of India has acquired by way of amalgamation, the business including the assets and liabilities of *inter alia* State Bank of Hyderabad (**SBH**), State Bank of Bikaner and Jaipur(**SBBJ**) and State Bank of Patiala (**SBP**). It is submitted that in the present case, the corporate debtor was availing loan facilities as per details in Column I of Part IV of Form No.1 from SBP, SBH, SBBJ and State Bank of India(**SBI**) and that consequent to the amalgamation, the present petition is being filed by the financial creditor in respect of the loan facilities availed from the above mentioned banks. It is submitted that at the time of availing loan facilities, the corporate debtor after acceptance of the terms and conditions of the sanction letter, executed loan security documents and mortgaged the immovable properties as detailed in Part V of Form No.1 by way of deposit of title deeds with the financial creditor. It is stated that the loan accounts

of the corporate debtor were declared NPA and notices under Section 13(2) read with Section 13(13) under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFEASI Act 2002) were issued as per details below:-

Name of Bank	Recoverable as claimed in the notice	Date of NPA	Date of SARFAESI Notice	Annexure & page of paper book
State Bank of Hyderabad	57,66,88,371/-	31.10.2013	19.11.2014	1A(34)633
State Bank of India	73,24,40,871/-	30.11.2012	21.11.2014	1A(35)646
State Bank of Bikaner & Jaipur	33,86,35,309/-	31.03.2012	05.11.2014	1A(36)660
State Bank of Patiala	184,95,54,505.59	31.05.2012	18.10.2014	1A(37)672

4. It is stated that despite the notices, the corporate debtor failed to clear the outstanding loan and consequently the authorised officer of SBP the lead bank in the consortium and the other lending banks issued notice on 11.03.2015 of taking possession of the properties detailed in the possession notice (page 914 of the petition).

5. It is submitted that the four banks i.e. SBI, SBBJ, SBP and SBH initiated the recovery process against the corporate debtor before the Debt Recovery Tribunal (**DRT**) and out of the four recovery applications filed before DRT, **OA No.1380 of 2017 (OA Old No.1932 of 2015) titled as SBI vs. Saber Papers Ltd. & Ors.** was decided/allowed by DRT-II, Chandigarh on 18.08.2017 declaring that the defendants are liable to pay the applicant i.e. SBI a total of sum of ₹233,10,54,794.04 with costs and future interest on all accounts from 04.11.2015 till realisation (Diary No.4487 dated 02.09.2019) and the remaining three recovery applications are still pending before the DRT-III, Chandigarh. The statement of accounts are stated to be annexed as Annexure 1A-(40) to 1A-(58) and certificate

under the Bankers Books Evidence Act 1881 is stated to be annexed as Annexure 1A-(39).

6. In Part III of Form No.1, Shri Vikram Bajaj registration No.IBBI/IPA-002/IB-N00003/2016-2017/10003 has been proposed as Interim Resolution Professional (**IRP**) and copy of consent in Form No.2 along with certificate issued by IBBI is stated to be enclosed as Annexure II(A).

7. Vide order dated 12.12.2018, notice of petition to the corporate debtor to show cause as to why the petition be not admitted was directed to be issued.

8. The reply was filed vide Diary 1492 dated 25.03.2019 stating that the instant petition has been filed without any authority from the financial creditor; the proposed IRP is not approved by the financial creditor; the petition is bad for mis-joinder and non-joinder of necessary parties being the other members of consortium of banks; the financial creditor has not approached in Tribunal with clean hands and has concealed material facts.

9. The rejoinder was filed by the financial creditor by Diary No.1717 dated 03.04.2019 reiterating that Shri Kailash Chander, Assistant General Manager is fully competent and authorised officer for filing the application; the objections raised regarding nomination of IRP and concealment of documents are false and frivolous; non-joinder and mis-joinder of necessary parties is wrong and denied.

10. Vide CA No.660/2019, the corporate debtor prayed for declaring that the application filed is hopelessly time barred in view of Section 3(12) read with Section 238A of the Code and Section 433 of the Companies Act read with Article 137 of the Limitation Act. The reply was filed by the financial creditor by Diary No. 4487 dated 02.09.2019 submitting that the limitation of recovery of debt in case of mortgaged property is 12 years and the debt is not a dead debt in any manner and

is in continuation of the debt recovery process initiated before DRT. CA No.660/2019 was disposed of on 05.09.2019 permitting the learned counsel for the corporate debtor to raise the legal grounds, vide advancing arguments in the main petition.

11. We have carefully heard and considered the submissions of the learned counsel for the financial creditor and corporate debtor and have also perused the record. In the present case, the term loans, CC limit etc. were advanced by four banks i.e. SBOP, SBBJ, SBH and SBI and subsequently, vide Gazette Notification dated 22.02.2017 with effect 01.04.2017 the business of the other banks was amalgamated with SBI. The present application is therefore, filed by SBI. As per details in Column No. 2 of Part IV of Form No. 1, the total amount claimed to be in default is ₹517,72,84,977.85 (including uncharged interest up to 31.08.2018).

12. The learned counsel for the corporate debtor has pleaded that no specific authorisation for filing application before the Tribunal under Section 7 of the Code has been appended. We find that at page 927 of the petition, notice dated 27.03.1987 (published in Gazette of India dated 02.05.1987) has been filed. This notice is issued in pursuance of Regulation 76(1) of the State Bank of India General Regulations, 1955 framed under Section 50 of the State Bank of India Act, 1955 by the Executive Committee of Central Board authorising *inter alia* all officers in the grades of SMGS IV and above to sign all documents, instruments, accounts, receipts, letters and advices etc. connected with the current or authorised business of the bank in respect of all matters coming in discharge of the functions of the posts held for the time being. Shri Kailash Chander, Assistant General Manager is admittedly an officer in the grade of SMGS IV and above. Further, at page 926A

of the petition, the Chairman, SBI in exercise of powers under Section 27 of SBI Act, 1955 has authorized all officers on whom signing powers have been conferred by the notification dated 27.03.1987 to sign applications, reply, affidavit, counter affidavit, sur-rejoinder and generally all pleadings and file applications for initiation of CIRP before the Tribunal under the provisions of the Code on behalf of the Bank.

13. We find that in **Company Appeal (AT)(Insol.) No.30 of 2017 Palogix Infrastructure Private Limited Vs. ICICI Bank Limited**, the Hon'ble National Company Law Appellate Tribunal (**NCLAT**) has held in para No.40 that a 'power of attorney holder' is not empowered to file application under Section 7 of the Code, an authorized person has power to do so. In the present case, Shri Kailash Chander, Assistant General Manager is an authorised person and no separate specific authorisation letter is required in his favour. We may add that a specific letter dated 26.11.2013 authorising Shri Kailash Chander, Assistant General Manager issued by the Assistant General Manager (Admin) Stressed Assets Management Branch, Zonal Office Building, Fountain Chowk, Civil Lines, Ludhiana is filed at page 926 of the petition. The objection raised by the corporate debtor is therefore, not accepted.

14. The learned counsel for the corporate debtor has referred to **B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates (Civil Appeal No.23988 of 2017)** and has pleaded that the Hon'ble Supreme Court has clearly held that the provisions of Article 137 of the Limitation Act would be applicable to the proceedings under Code. It is stated that it has been alleged by the financial creditor that the default allegedly occurred in 2013 and the provisions of the Code cannot be triggered in 2018 for a claim which was time barred before the enactment of the Code.

15. The learned counsel for the financial creditor has pleaded that SBH, SBI, SBBJ and SBP issued notices under Section 13(2) read with Section 13(13) of the SARFAESI Act, 2002 in October/November, 2014 and that the authorized officer of the SBP lead bank and other lending banks i.e. SBP, SBI, SBH, SBBJ, Corporation Bank, Allahabad Bank, J&K Bank Ltd. issued possession notice for taking possession of the properties detailed in the possession notice (page 914 of the paper book). It is further submitted that SBI, SBBJ, SBP and SBH initiated recovery process against the corporate debtor before the DRT and as discussed above, one **OA No.1380 of 2017 (OA Old No.1932 of 2015) titled as SBI Vs. Saber Papers Ltd. & Ors.** was decided/allowed by DRT III, Chandigarh on 18.08.2017 declaring that the defendants are liable to pay the applicant i.e. SBI a total sum of ₹233,10,54,794.04 with costs and future interest on all accounts from 04.11.2015 till realisation (Diary No.4487 dated 02.09.2019) and the remaining three applications are still pending before DRT III, Chandigarh. It is therefore, submitted that the debt is not a dead debt and that proceeding for recovery were being taken by the respective bank. Reliance has also been placed on **Babulal Bardhaji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. Company Appeal (AT)(Insolvency) No.549 of 2018.** It is pleaded that the decision of Hon'ble Supreme Court in **B K Educational Services Pvt. Ltd. vs. Parag Gupta & Associates** supra was referred to in para No.15 of the Hon'ble NCLAT order. It is stated that in para 29, the Hon'ble NCLAT has referred to Part V (First Division) of Limitation Act relating to 'Suits relating to immoveable property' to recover possession of the property mortgaged and afterwards transferred by the mortgagee for a valuable consideration and has stated that the period of limitation is 12 years since the transfer becomes known to the plaintiff (Article 61(b)). The

Hon'ble NCLAT held that in view of the aforesaid position of law, the property having mortgaged, the claim is not barred by limitation as a period of limitation is 12 years with regard to mortgaged property. The learned counsel for the financial creditor has stated that the Hon'ble NCLAT took into consideration the pendency before the DRT. As per list of dates and events (page 4 of the petition), the first credit facility by way of term loan to the corporate debtor was granted on 24.05.2008 and agreements for hypothecation of goods and assets as well as deposit of title deeds were made on various dates thereafter. Therefore, the present application filed on 27.09.2018 is within the period of 12 years. In view of the order of Hon'ble NCLAT in **Babulal Bardhaji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. Company Appeal (AT)(Insolvency) No.549 of 2018** supra, the present petition is held to be not barred by limitation.

16. The learned counsel for the corporate debtor has argued that there is mis-joinder and non-joinder of the parties in as much as the joint funding and facilities were granted to the corporate debtor by various banks and institutions which is also evident from the Master Restructuring Agreement (**MRA Agreement**) dated 11.02.2013. It is stated that the consortium of banks included SBP, SBH, SBBJ, SBI (since merged into petitioner SBI), Allahabad Bank, J&K Bank Ltd. and Corporation Bank.

17. The MRA agreement at Annexure 1A-33 states in para E thereof that the Corporate Debt Restructuring Forum is a non-statutory voluntary mechanism set up under the aegis of the Reserve Bank of India for efficient restructuring of corporate debt. The details as available in the petition show that the individual banks have granted loans/cash credits. The individual bank is therefore, a financial creditor with the right to file an application for initiation of CIRP on occurrence of

default. The contention raised regarding non-joinder/misjoinder of parties is not accepted.

18. The learned counsel for the corporate debtor has pleaded that the company applied for restructuring on 17.03.2012 and the agreement was finally executed on 11.02.2013 and the final sanction of the bank came on 28.06.2013 i.e. over 15 months after the application for restructuring and valuable time was lost. It is stated that there was requirement of changing the product from 'writing and printing paper' to 'kraft paper' and for the necessary changes in the production line and product mix, the consortium bank had sanctioned an amount of ₹24.00 crores with equity participation of ₹11.87 crores. It is submitted that the promoter contributed a sum of ₹1.43 crores towards capex and ₹9.5 crores as upfront contribution towards restructuring of the company but the banks did not release their part of the commitment of ₹24.00 crores and this *inter alia* caused the failure of the complete CDR package.

19. We note that at page 26 of the reply filed vide Diary No.1492 dated 25.03.2019, it is stated that in terms with the CDR, an amount of ₹4.00 crores was released. Therefore, consequent to the CDR, the banks released part of the amount and similarly, the promoters also contributed part of the amount. As per details in Article XII of the CDR (Annexure 1A-33 of the petition), the promoters were to infuse fresh contribution of ₹35.97 crores of which ₹18.96 crores is towards restructuring scheme and ₹17.01 crores is towards capex requirement of the company. It is not the case of the corporate debtor that the complete promoters contribution has been infused.

20. It has also been pleaded that there is a dispute with regard to the title of the property upon which the unit and factory is set up and as such, the ownership

of the land is in question. The proceedings are stated to be pending before the Divisional Commissioner, Kangra for 27.09.2015 (para (ff) of reply filed by Diary No.1492 dated 25.03.2019)). The matter is, therefore, pending and plea for non-payment/restructuring of the loans on the ground of the dispute is without any basis.

21. The Hon'ble Supreme Court in **M/s Innoventive Industries Ltd. vs. ICICI Bank Civil Appeal No.8337-8338 of 2017** has held in para No.29 and 30 thereof as under:-

“29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

22. The Hon'ble Supreme Court has held that the Adjudicating Authority (AA) has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred and it is of no matter that the debt is disputed so long as the debt is “due”. In the present

case, the occurrence of default is proved and the pleas raised do not result in the debt not being “due” since there is no interdiction by any law and the payment is not postponed to a future date. The contentions raised are therefore, not acceptable.

23. The learned counsel for the corporate debtor also pleaded that the IRP is wrongly nominated since there is no authority vested with Shri Kailash Chander, Assistant General Manager to appoint an IRP. We find that the nomination of the IRP is to be made in Part III of Form No.1 and a certificate is also given in Form No.1 that the IRP nominated is fully qualified and permitted to act as an Insolvency Professional in accordance with the Code and the associated Rules and Regulations. We have already held above that Shri Kailash Chander, Assistant General Manager is duly authorized to sign Form No. 1 as well as the affidavit and verify the petition. The nomination of the proposed IRP is a part of Form No.1 and is therefore, well covered by the authorization. The objection is therefore, not accepted.

Section 7(5)(a) of the Code reads as follows:-

“(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

24. In the present case, we find that in the Master Restructuring Agreement dated 11.02.2013 (Annexure 1A-33) the corporate debtor has given acknowledgement of indebtedness in para 2.1 thereof acknowledging and confirming the existence of the amount of the existing loans outstanding to each of the Existing Lenders as set out in Schedule II thereto. The occurrence of default is

proved through the filing of the account statement of the loan accounts duly supported by certificate under Bankers Books Evidence Act, 1881 as well as the notice given under SARFAESI Act, 2002 and the recovery proceedings initiated before the DRT.

25. We have considered the contents of Form No.1 above and find that the application in Form No.1 is complete.

26. The IRP has furnished Form 2 at page 920 certifying that there are no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professional Agency.

27. The requirements of Section 7(5)(a) are satisfied in the present case. We therefore, admit the application for initiation of CIRP in case of M/s Saber Papers Ltd. and give directions for moratorium and appointment of IRP as under.

28. We declare the Moratorium in terms of sub-section (1) of Section 14 of the code as under:-

(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 Securitization 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.

29. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

30. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

31. The following directions are issued in respect of the appointment of the Interim Resolution Professional:-

- i) Appoint Mr. Vikram Bajaj, registered insolvency professional bearing Registration No. IBBI/IPA-002/IP-N00003/2016-17/10003; email ID: bajaj.vikram@gmail.com Address: Flat 12, Vasudha Apartment Plot 41, Sector 9, Rohini, Delhi-110085 as Interim Resolution Professional.
- ii) The term of appointment of Mr. Vikram Bajaj shall be in accordance with the provisions of Section 16(5) of the Code;
- iii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the

management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the corporate debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the corporate debtor has ownership rights recorded in the balance sheet of the corporate debtor etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the corporate debtor;

- iv) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- v) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against corporate debtor;

- vi) It is hereby directed that the corporate debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the corporate debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the corporate debtor;
- vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and
- viii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.
32. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

September 18, 2019

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Sd/-

(Pradeep R. Sethi)
Member(Technical)