IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

CP (IB) – 542(PB)/2022

ORDER UNDER SECTION 7 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 R/W 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:

11th FLOOR, STC BUILDING, 1 TOLSTOY MARG, JANPATH, NEW DELHI-110001.

......APPLICANT/FINANCIAL CREDITOR

VERSUS

SHREE BANKEY BEHARI EXPORTS LIMITED

HAVING ITS REGISTERED OFFICE AT:

2647, NAYA BAZAR, NEW DELHI-110006.

CIN: U93000DL1994PLC060087

......RESPONDENT/CORPORATE DEBTOR

ORDER PRONOUNCED ON: 13.12.2022

CORAM:

CHIEF JUSTICE (RETD.) RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SH. AVINASH KUMAR SRIVASTAVA

HON'BLE MEMBER (TECHNICAL)

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APPEARANCES

For the Financial Creditor	: Mr. Prateek Kumar, Ms. Raveena Rai and Ms. Apeksha Dhanvijay, Adv.
For the Corporate Debtor	: None

ORDER

PER: AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

Brief Facts:

1. This is an Application filed by the **STATE BANK OF INDIA**, the Financial Creditor (FC)/Applicant on 07.06.2022, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC,2016**") r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("**Adjudicating Authority Rules**"), for initiating the Corporate Insolvency Resolution Process ("**CIRP**"), declaring moratorium and for appointment of Interim Resolution Professional ("**IRP**"), against the Corporate Debtor (CD)/Respondent viz., **SHREE BANKEY BEHARI EXPORTS LIMITED**, on the ground that the Corporate Debtor has defaulted to make a Payment of a sum of Rs. 754,94,95,045 (Rupees Seven Hundred Fifty Four Crores Ninety Four Lakhs Ninety Five Thousand Forty Five Only).

2. The Applicant is a Public Sector Bank established under the State Bank of India, Act, 1955. The State bank of Indore got merged with the State Bank of India in the year 2010. The State Bank of Hyderabad, the State Bank of Patiala, the State Bank of Mysore, the State Bank of Bikaner and Jaipur and the State Bank of Travancore were associated banks of the State Bank of India and with effect from 01.04.2017, the aforesaid associated

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bank got merged with the State Bank of India. Therefore, all the rights and liabilities of the aforesaid banks got vested with the State Bank of India.

3. The Corporate Debtor was incorporated on 07.07.1994, as a Company Limited by Share (Non- govt. Company) having CIN: U93000DL1994PLC060087, under the Companies Act, 1956. The Authorised Share Capital of the Corporate Debtor is INR *200,00,00,000 (Rupees Two Hundred Crores only)* and the Paid-up Share Capital of the Corporate is INR *191,00,00,000 (Rupees One Hundred Ninety One Crores only).* On the date of application, the Corporate Debtor is engaged in the business of Agro Commodities viz. gram, dal, wheat products and trading and processing of gram and rice, etc. The Registered Office Address of the Corporate Debtor is 2647, NAYA BAZAR, NEW DELHI-110006. Therefore, this Bench has jurisdiction to deal with this application. A true copy of the Company Details/Master Data of the Corporate Debtor obtained from the website of the Ministry of Corporate Affairs as on 02.06.2022 is at **ANNEXURE B (Ref: Page 66-67 of the Application).**

4. **Submission of learned Counsel appearing for the Financial Creditors:**

   a) The Corporate Debtor availed various credit facilities from various consortium banks. The Corporate Debtor initially approached the erstwhile State Bank of Mysore for sanction of certain credit facilities which was renewed from time to time and thereafter, also approached the consortium banks for creating consortium loans which was renewed and enhanced from time to time by the Consortium Banks.

b) In the year 2010, the Corporate Debtor approached for renewal of the capital limit with enhancement and the same was sanctioned by the erstwhile State Bank of Mysore and State Bank of Indore. Thereafter, in 2012, 2014, 2015 and 2016 Corporate Debtor again approached associate members of Applicant i.e. State Bank of Mysore, State Bank of Bikaner and Jaipur, State Bank of Patiala and State Bank of Hyderabad for sanction of the credit facilities. The said request was also sanctioned.

c) With the passage of time, the Corporate Debtor failed to meet its obligations under the sanction letters and working consortium agreements. In the meantime, the Banks merged with the Applicant, State Bank of India on 1.04.2017 in pursuance of orders dated 22.02.2017 issued by the Government of India sanctioning the Acquisition of State Bank of Bikaner and Jaipur, State Bank of Hyderabad, State Bank of Mysore, State Bank of Patiala and State Bank of Travancore by State Bank of India in terms of sub section (2) of Section 35 of the State Bank of India Act, 1955 (23 of 1955). Further, the Applicant sent multiple requests, communications and reminders for repayment but the Corporate Debtor neglected its obligations.

d) As per the inspection carried out on 20.02.2017 by the Consortium Bank members of the premises of the Corporate Debtor, they could not find the system in operation and no stocks were available in mills/godowns situated at HSIIDC Rai, Sonipat, Haryana and Mills located at Lawrence Road Industrial Area, Delhi. Further, a Joint Lenders Meeting was held on 01.03.2017 which was attended by Directors of Corporate Debtor along with the officials from consortium bank members. Another joint lenders meeting was convened on 15.03.2017 and on 24.03.2017. In all these meetings, Company representatives were asked to explain the reasons for the non-regularization of accounts and non-submission of stock and receivable statements.

e) Since the Corporate Debtor failed to honor its commitment with regards to the dues towards the Applicant bank, the account of the Corporate Debtor was classified as Non-Performing Account (NPA) on 30.03.2017 by the Applicant. Thereafter, a loan recall notice under section 13(2) of the SARFAESI Act, 2002 dated 01.05.2017 demanding an amount of INR 618,43,85,543.75/- (Rupees Six Hundred Eighteen Crores Forty Three Lakhs Eighty Five Thousand Five Hundred Forty Three And Paise Seventy Five Only) was issued to the Corporate Debtor. The Applicant was constrained to issue possession notice dated 28.11.2017 for the recovery of Rs.648,43.85,543.75/- (Rupees Six Hundred Forty Eight Crores Forty Three Lakhs Eighty Five Thousand Five Hundred Forty Three And Paise Seventy Five Only) and further interest thereon. Due to complete neglect of payment obligations by the Corporate Debtor despite the issuance of loan recall and possession notice, the consortium of banks including the Applicant herein were constrained to approach the Hon'ble Debts Recovery Tribunal III, Delhi ("DRT") by way of an original application being **O.A. No. 396 of 2018 ("OA")**. Under the OA, a recovery certificate was issued under Section 19(7) read with Section 19(22) of the Recovery of Debts Due to Banks and Financial Institution Act 1993 being **RC No. 826 of 2019** dated 13.12.2019. As per the recovery certificate, the Applicant is entitled to a sum of INR 465,64,23,050.11/- (Rupees Four Hundred Sixty Five Crores Sixty Four Lakhs

Twenty Three Thousand Fifty and Eleven Paise Only) as on 30.04.2018 along with interest.

f) Hence, there is a due of Rs. 754,94,95,045/- (Rupees Seven Hundred Fifty Four Crores Ninety Four Lakhs Ninety Five Thousand Forty Five) including uncharged and accrued interest as calculated upto 28.02.2022.

g) The Financial Creditor has placed the following documents on record:

i. Copy of entries in the Banker's Books in accordance with the Banker's Books Evidence Act, 1891 along with the statement of accounts. (**ANNEXURE CC, Ref: Page 485 – 497 of the application**).

ii. Copy of the record of default filed with the information utility dated 22.11.2021. (**ANNEXURE BB, Ref: Page 474 – 484 of the application**).

iii. A copy of the recovery certificate being **RC No. 826 of 2019** issued by DRT – III, Delhi dated 13.12.2019. (**ANNEXURE Q, Ref: Page 299 – 306 of the application**).

iv. Copy of the final order dated 13.12.2019 passed in O.A. No. 396 of 2018. (**ANNEXURE AA, Ref: Page 426 – 473 of the application**)

v. Copy of search report filed by G. Jain and Co. along with charge certificates and copy of the balance sheet as on 31.03.2018 of the Corporate Debtor. (**ANNEXURE DD, Ref: Page 498 – 642 of the application**).

vi. A copy of demand notice/loan recall notice dated 01.05.2017. (**ANNEXURE O, Ref: Page 287 – 286 of the application**)

5. In the present case, the CD has not filed any reply nor written submission till now. The application was served on the

Corporate Debtor's Registered Office Address *vide* speed post on 07.06.2022, on 04.07.2022 and on 22.07.2022. Thereafter in compliance of this Adjudicating Authority's order, the Corporate Debtor was served notice on 26.07.2022 via email. But, despite several reminders, the Corporate Debtor chooses not to contest this application. Hence, the present matter has proceeded ex-parte against the Respondent/Corporate Debtor.

6. **Analysis and Findings**

I. We have heard the learned Counsel appearing for the FC/Applicant. Ms. Raveena Rai, Ld. Counsel for the FC/Applicant states that advance notice in terms of Rule 4 of Adjudicating Authority, IBC Rules, 2016 has already been issued on the CD's Email id as on 26.07.2022 and *vide* speed post on 07.06.2022 and on 04.07.2022 and on 22.07.2022.

II. The present Application made by the Applicant/FC is complete in all respects as required by law. It is noted that the loan was given in the year 2013-2014 by the Applicant/FC. Default occurred initially on 30.06.2017 i.e. 60 days after the loan recall notice dated 01.05.2017, and again on 13.12.2019 when O.A. filed by the applicant bank against the CD was allowed by the DRT-III, Delhi, but the CD failed to pay the financial debt. As regards limitation, the applicant has sought the exclusion of one year in computing the period of limitation, based on the order of the Hon'ble Supreme Court in *suo-motu* W.P. (Civil) No. 3 of 2020. On this basis, it is claimed that the application filed U/s 7 of IBC, 2016 is well within the period of limitation.

III. On perusal of the record of default of the corporate debtor maintained by the information utility National E-Governance Services Limited (NESL) dated 30.11.2021, we find that this is the record w.r.t. one out of the five loan accounts of which the

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status of authentication by the debtor is shown as "Deemed to be Authenticated" with an outstanding amount of Rs. 100,82,84,737/- (Rupees Hundred Crores Eighty Two Lakhs Eighty Four Thousand Seven Hundred Thirty Seven Only) along with date of default as 30.11.2016.

IV. A certificate under Section 2-A of the Banker's Books Evidence Act, 1891 has been filed by the FC showing total dues of Rs. 754,94,95,045 (Rupees Seven Hundred Fifty Four Crores Ninety Four Lakhs Ninety Five Thousand Forty Five Only) as on 28.02.2022 along with the account statements of the five loan accounts relating to the CD in which financial debt was transferred by the FC and the entries therein are made in the ordinary and usual course of business. The said certificate further disclosed sufficient compliance with the provisions of the Banker's Book Evidence Act of 1891 and the same has been taken on record.

V. It is clear from the reading of the above paragraphs and the perusal of records and documents annexed by the FC in its application, that the debt of the Respondent/CD is due and payable to the Applicant/FC and there is default in payment of the debt of the Respondent/CD, within the meaning of provisions of section 7 of the IBC, 2016 and the default is more than the minimum amount stipulated under Section 4(1) of the IBC, 2016.

Hence, we are inclined to admit this application.

7. **Order**

In light of the above facts and circumstances, it is **hereby ordered** as follows: -

i. The Application bearing **CP(IB)–542(PB)/2022** filed by the Applicants/(FC), under section 7 of the Code read with rule 4

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of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the Respondent/(CD), is hereby admitted.

ii. As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. The Applicant/(FC) has proposed the name of **Mr. Rohit Sehgal** as the Interim Resolution Professional ("**IRP**") address: A-604, Sujjan Vihar, Sector-43, Gurgaon, Haryana-122002. His Email id; iamrs101@gmail.com. His registration number is **IBBI/IPA-002/IP-N00001/2016-2017/10001.** The Applicant has annexed a copy of the Consent Issued by Mr. Rohit Sehgal in Form 2, Written Communication by proposed IRP, **[ANNEXURE-C, Ref: Page 68 – 71 of the application]** as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the Certificate of Registration and Authorization for Assignment in Form B.

Accordingly, **Mr. Rohit Sehgal** is appointed as IRP.

iv. In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

v. During the CIRP period, the management of the CD shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers

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and managers of the CD 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. There shall be no future opportunity given in this regard.

vi. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

vii. 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 CD.

viii. The FC shall deposit a sum of **Rs 2,00,000/- (Rupees Two Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("**CoC**").

ix. In terms of Section 7(5)(a) of the Code, the Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.

x. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

xi. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

Sd/-

(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)