

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.555/MB-IV/2021

Under Section 7 of the I&B Code, 2016

In the matter of:

**Small Industries Development Bank of
India**

[AABCS3480N]

...Financial Creditor/Applicant

V/s

Good Day Foods Private Limited

[CIN: U15209MH2003PTC255426]

...Corporate Debtor/Respondent

Order pronounced on : 05.01.2023

Coram:

Mr. Manoj Kumar Dubey
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s)

: Mr. Shavez Mukri a/w Mr. Vaibhav
Kamble, Advocate i/b
A&G Legal Associate

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being C.P. (IB) No. 555/NCLT/MB/C-IV/2021 filed by Small Industries Development Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code,

2016 (I&B Code) against Good Day Foods Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Application is filed by Mr. K.V. Karthikeyan, authorized by the Financial Creditor vide Authorization Letter dated 15.04.2021, claiming default amount of Rs.1,32,55,424/- (Rupees One Crore, Thirty-Two Lakhs, Fifty Five Thousand, Four Hundred and Twenty-Four only) as on 10.05.2021.
3. The date of Default is 10.02.2020. The petition is filed on 02.06.2021.
4. The case of the Financial Creditor is as under:
 - a) It is submitted that the Corporate Debtor/Respondent approached the Financial Creditor vide application dated 29.06.2015 for grant/sanction of various credit facilities. The Financial Creditor considered the request of the Corporate Debtor and granted/sanctioned Term Loan of Rs. 70.00 Lakhs vide letter of intent dated 03.08.2015. The aforesaid Term Loan of Rs. 70.00 Lakhs was disbursed in the account of the Corporate Debtor in two tranches i.e. on 17.08.2015 and 19.11.2015.
 - b) To further secure the aforesaid Term Loan, the Corporate Debtor through its Directors/Guarantors executed various loan and security documents in favour of the Financial Creditor. The details of documents are reproduced hereinunder: -
 - i. Copy of Loan Agreement dated 04.08.2015
 - ii. Copy of General Conditions Rupee Loan

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- iii. Copy of undertaking for overrun, non-disposal of shareholdings and non-withdrawal of unsecured loans dated 04.08.2015
 - iv. Copy of Deed of Guarantee by Royal Star Health Foods Pvt. Ltd. dated 04.08.2015
- c) To further secure the aforesaid Term Loan facility, the Corporate Debtor also created equitable and hypothecation of assets by way of first charge in favour of the Financial Creditor. The charge was also created/registered with Registrar of Companies, Mumbai on 15.02.2018. The details of security are mentioned in Schedule-A is Part-IV of the Petition.
- d) The Corporate Debtor again approached the Financial Creditor for grant/sanction of Term Loan of Rs.130 Lakhs vide application dated 29.01.2018. The Financial Creditor considered the request of the Corporate Debtor and granted/sanctioned Term Loan of Rs.130 Lakhs and issued letter of intent in the name of the Corporate Debtor on 14.02.2018. The aforesaid Term Loan of Rs. 130.00 Lakhs was disbursed in the account of the Corporate Debtor in various tranches i.e. on 28.02.2018, 07.03.2018, 13.03.2018, 25.04.2018, 20.07.2018, 08.08.2018 and 31.08.2018.
- e) To further secure the aforesaid Term Loan of Rs.130 Lakhs, the Corporate Debtor through its Directors/Guarantors executed various loan and security documents in favour of the Financial Creditor. The details of documents are reproduced hereinunder: -
- i. Copy of Loan Agreement dated 15.02.2018;
 - ii. Copy of General Conditions Rupee Loan

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- iii. Copy of undertaking for overrun, non-disposal of shareholdings and non-withdrawal of unsecured loans dated 15.02.2018;
 - iv. Deed of Hypothecation on 15.02.2018
 - v. Copy of Deed of Guarantee dated 15.02.2018
- f) The Financial Creditor submits that the Corporate Debtor availed and enjoyed the credit facilities (Term Loans) but failed to repay the dues as a result of which the Loan of the Corporate Debtor was classified as Non-Performing Assets on 08.07.2019 as per reserve Bank of India Prudential Norms. The Financial Creditor issued Recall Notices to the Corporate Debtor on 19.11.2020 and 06.01.2021 thereby requested and recalling the Corporate Debtor to clear the outstanding dues. Despite receipt of said recall notices, the Corporate Debtor did not repay the outstanding dues.
- g) The Financial Creditor thereafter initiated action under Securitisation and Reconstruction of Financial Assets and Security Interest Act, 2002 (SARFAESI Act) and issued Demand Notice u/s 13(2) on 12.02.2021 thereby demanding and recalling the Corporate Debtor to repay the outstanding dues to the tune of Rs. 1,45,66,574/- within a period of 60 days. Despite receipt of said Demand Notice, the Corporate Debtor neither replied to the said Notice in rebuttal nor repay the outstanding dues.
- h) The Financial Creditor has enclosed the Statement of Accounts for the aforesaid credit facilities granted to the Corporate Debtor which shows that the amount claimed in the Petition is in consonance with the Statement of Accounts. The Petitioner has also enclosed

Certificate under the Banker's Book Evidence Act, 1891. Hence this Petition.

5. The matter was first listed on 26.08.2021 and 21.10.2021, wherein the Court Notice was issued. The Ld. Counsel for the Financial Creditor was directed collect the Court Notice from the Registry and serve the same on the Corporate Debtor. The Ld. Counsel Financial Creditor on 12.01.2022 submits that, the Court Notice sent to the Corporate Debtor was returned with an endorsement left. Thereafter, on the directions of this Tribunal dated 12.01.2022, the Financial Creditor carried out substituted service by way of Publication in two daily leading newspapers. Despite, paper publication, the Corporate Debtor neither appeared nor filed any reply in rebuttal. Therefore, this Bench vide order dated 01.08.2022 proceeded the Corporate Debtor as *ex-parte*.

Findings: -

6. We have heard the Ld. Counsel for the Financial Creditor and perused the records.
7. The Corporate Debtor approached the Financial Creditor for grant/sanction of Term Loans of Rs.70.00 Lakhs and Rs.130.00 Lakhs in the year 2015 and 2018. The Financial Creditor considered the request of the Corporate Debtor and granted/sanctioned Term Loans. The Corporate Debtor availed the credit facilities but failed to repay the dues as a result of which the loan account of the Corporate Debtor was classified as Non-Performing Assets on 08.07.2019 as per Reserve Bank of India Prudential Norms. The Financial Creditor issued Notice u/s 13 (2) of the SARFAESI Act, 2002 on 12.02.2021 thereby demanding and recalling for outstanding dues. Despite receipt of notice u/s 13 (2), the Corporate Debtor did not repay the outstanding dues.

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8. On perusal of records, this Bench finds that the loan was sanctioned and disbursed on the account of Corporate Debtor. However, the Corporate Debtor failed to repay to the same. The Petition is filed on 02.06.2021 and the Petition is filed within the period of limitation i.e. 3 years as prescribed u/s 18 of Limitation Act, 1963. Therefore, this Bench finds there is clear debt and default. This Bench is satisfied with the Application as required under Section 7(5)(a) of the Code and hence Petition deserves to be admitted.
9. The Financial Creditor has proposed the name of Mr. Jeetendra Rajpal Daryani, a registered insolvency professional having Registration Number [IBBI/IPA-001/IP-P00678/2017-2018/11146] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

- a) This Application being C.P. (IB) No. 555/NCLT/MB/C-IV/2021 filed by Small Industries Development Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against Good Day Foods Private Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:
- I. That this Bench as a result of this prohibits:
- 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 possession of the corporate debtor.

II. That 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.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the

liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Jeetendra Rajpal Daryani Bhat, a registered insolvency professional having Registration Number [IBBI/IPA-001/IP-P00678/2017-18/11146] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, and the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

a) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

b) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.

c) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

Manoj Kumar Dubey
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)