IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CP (IB) No. 376/Chd/Pb/2018

Under Section 7 of Insolvency and Bankruptcy Code, 2016

In the matter of :

1. **State Bank of India**
Corporate Office at
Madame Cama Road,
Nariman Point,
Mumbai-400021.
2. One of its Branch at:
State Bank of India,
Stressed Asset
Management Branch,
Admin Office Building,
Fountain Chowk,
Ludhiana-141001. …Applicant/Financial Creditor

Versus

M/s Saber Paper Board Pvt. Ltd.,
(Earlier Known as Jai Durga
Paper Mills Pvt. Ltd.), registered
office at:
VPO – Jugiana, G.T. Road,
Ludhiana, Punjab-141001. …Respondent/Corporate Debtor

Judgement delivered on: 07.01.2020

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

For the applicant : 1. Mr. PBA Srinivasan, Advocate.
2. Mr. Parth Tandon, Advocate.

For the respondent : Mr. Rohit Suri, Advocate.

Per: Pradeep R. Sethi, Member(Technical)

JUDGEMENT

The present petition in Form No.1 is filed by State Bank of India (**SBI**) for the initiation of Corporate Insolvency and Resolution Process (**CIRP**) in respect of Saber Paper Board Pvt. Ltd. (**Saber**). 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 Saber is stated to be at V&PO Jugiana, G.T. Road, Ludhiana-141001. Therefore, jurisdiction lies with this Bench of the Tribunal.

2. The petition is signed by Shri Kailash Chander, Assistant General Manager (**AGM**)of SBI. His affidavit verifying the application is at page 33 of the petition. It is submitted that Shri Kailash Chander, AGM is competent to sign and verify the present application in terms of General Regulations No.76 & 77 of State Bank of India, General Regulations, 1955 and as per the authority given vide notice dated 27.03.1987 published in the Gazette of Government of India on 02.05.1987 (Annexure A-1 of the petition).

3. In Part IV of Form 1, the amount claimed to be in default is stated as follows:-

Account No.	***Amount claimed to be in default (In Rs.)***
30091145174	*25,09,46,229.00*
30355319644	*8,45,63,566.00*
31551054888	*32,75,66,048.00*
32790147412	*4,99,15,905.00*
Uncharged interest from 01.11.2013 to 30.09.2018	*76,04,36,331*
Total	*147,34,28,079*

4. It is also stated that the days of default are 2068 days as on 30.09.2018 calculated from 30.01.2013 (NPA date).

5. In part V of Form 1, the particulars of the security are given as under:-

Primary Security WC & TL	*30.61 crs (our share rs 15.27 crs)*
For both WC and term loan	*0.66 crs (our share 0.33 crs)*
Guarantee	*1. Sh. Dinesh Soin 2. Sh. Abhishek Soin 3. Sh. Satish Kumar Soin 4. Smt Ritu Soin Corporate Guarantee 1.Saber Packaging Pvt. Ltd. 2. Sigma Carton Pvt. Ltd.*

6. Copies of the certificates of the registration of charges issued by Registrar of Companies along with copy of Search Report dated 06.10.2018 is stated to be annexed as Annexure A-6(colly) of the petition.

7. In Part III of Form No.1, Shri Vikram Bajaj, Regn. IBBI/IPA-002/IP-N00003/2016-17/10003 is proposed as Interim Resolution Professional (**IRP**).

8. Vide Order dated 11.01.2019, notice of the petition was directed to be issued to Saber.

9. Reply was filed by Saber vide Diary No.2355 dated 09.05.2019. It was stated therein that the statement of account produced by SBI is not in accordance with the law laid down by the Hon'ble Supreme Court in **Central**

Bank of India vs. Ravindra SLP (C) No.2421 of 1993 in which it was held that although compounding of interest i.e. capitalisation of interest is permissible in the law but further interest cannot be claimed on the amount of penal interest. It is stated that in the present case, the perusal of statement of account succinctly establishes that SBI has levied further interest on penal interest and also levied further interest on liquidated damages. It is submitted that no specific authorisation for filing application before the NCLT under Section 7 of the Code has been appended; there is no authority vested with Shri Kailash Chander, AGM, SBI to appoint nor is there any letter or document which would *inter alia* show the appointment of Mr. Vijkram Bajaj as an IRP in terms of the said provisions of Section 7(3(b) of the Code; the petition is bad for non-joinder and mis-joinder of necessary parties in as much as joint funding and facilities were granted to Saber by various banks and institutions; the petition is primarily in the form of forum hunting since process under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (**SARFAESI Act 2002**) and the Recovery of Debts and Bankruptcy Act, 1993 have clearly been included by SBI; the SBI has already acted upon the TEV report and the bank was required to carry out restructuring the account itself and the default squarely pay on the part of SBI for failure to comply with the terms and conditions as already agreed upon.

10. The rejoinder has been filed by Diary No.5574 dated 14.10.2019. It is submitted therein that SBI has filed a detailed affidavit vide Diary No.4881 dated 12.12.2018 regarding the authority of the authorised officer who filed the present petition. It is stated that SBI has only suggested the name of the IRP and did not appoint Shri Vikram Bajaj as IRP and that it was the sole discretion

of the Tribunal whether to appoint Shri Vikram Bajaj as IRP or not. It is submitted that Section 7 of the Code gives mandate to the financial creditor to file the petition under Section 7 by itself or jointly with other financial creditors and the present petition is filed without including any other financial creditor. It is stated that the proceeding before the Tribunal and before DRT or under the SARFAESI Act 2002 are completely different. It is stated that the conduct of TEV study does not constitute that the bank is inclined to restructuring.

11. We have carefully considered the submissions of the learned counsel for SBI and Saber and have also perused the record.

12. The learned counsel for Saber has pleaded that no specific authorization for filing application before the Tribunal under Section 7 of the Code has been appended. We find that at page 38 of the petition, notice dated 27.03.1987 (published in the Gazette of India dated 02.05.1987) has been filed. This notice is issued in pursuance to 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 the 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, AGM is stated by SBI to be an officer in the Grade SMGS IV and above. Further an affidavit has been filed by Diary 4881 dated 12.12.18 enclosing an authorisation letter dated 26.11.2018 from the Assistant General Manager (Admin) Stressed Assets Management Branch, Ludhiana authorising Shri Kailash Chander, AGM at present posted at SAM

Branch, Ludhiana to sign applications, replies, 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 or in connection with any proceedings before the Tribunal for or against the Bank under the Code. In view of the documents filed, the plea that the application under Section 7 of the Code was not with proper authority is not accepted.

13. It has been pleaded by the learned counsel for Saber that a Techno-Economic Viability Study Report (**TEV Report**) was sought for by the General Manager of SBI for evaluation of the request of Saber for restructuring of its accounts and that this report is at Annexure-R3 of the reply. It is submitted that the bank was required to carry out the restructuring of the account and the present proceeding would not serve any meaningful purpose since the bank itself defaulted to comply with TEV report and the subsequent consortium meetings.

14. It is pleaded by SBI that although the TEV study was got conducted by SBI, TEV study is one of the requirements of restructuring of loans and there are other parameters also on the basis of which SBI took the decision of restructuring and that mere conduct of TEV study does not constitute that SBI is inclined for restructuring.

15. The learned counsel for Saber has referred to **Sardar Associates and Ors. Vs. Punjab & Sind Bank and Ors. 2009 8 Supreme Court cases 257** and to para 15 thereof in which it is held that a bare perusal of Section 51 would clearly show that RBI is entitled to formulate the policies which the banking companies are bound to follow and sub section (3) of Section 21 of the 1949 Act clearly mandates that every banking company shall be bound to

comply with the directions given to it in terms thereof. However, no such directions have been brought to our notice mandating SBI to compulsorily make/accept restructuring of the credit facilities and outstanding amount of Saber. The pleas raised are not accepted.

16. The learned counsel for Saber has pleaded that there is no authority with Sh. Kailash Chander, AGM, SBI to appoint Shr. Vikram Bajaj as IRP. We find that as per Section 7(3)(b) of the Code, the financial creditor is required to furnish along with the application the name of the resolution professional proposed to act as an IRP. Such proposal for appointment of IRP is to be made in Part III of Form 1. We have already held above that Shri Kailash Chander, AGM, SBI is well authorized by SBI to submit the instant application, which includes the authorisation in Part III of the application in Form 1. Therefore, the contention raised is not accepted.

17. It is pleaded that SBI cannot charge further interest on penal interest and on liquidated damages. The requirement for initiation of insolvency and liquidation of a corporate debtor as per Section 4 of the Code is that the minimum amount of default is ₹1.00 lac. The details of the further interest claimed to be charged on penal interest and on liquidated damages is not specified by Saber. The total amount claimed to be in default is ₹147,34,28,079. Even if any further interest has been charged as claimed, the quantum of interest would not be such to reduce the amount claimed to be in default to below ₹1.00 lac. The issue regarding the charge of further interest can be examined by the IRP/Resolution Professional as and when claim is submitted by SBI. The contention raised is not accepted.

18. It has been pleaded that there is non-joinder and mis-joinder of necessary parties since joint funding and facilities were granted to Saber by various banks and institutions. We find that under Section 7 (1) of the Code, the application for initiation of CIRP can be filed by a financial creditor either by itself or jointly with other financial creditors. The present application filed singly by SBI therefore, complies with the provisions of Section 7 of the Code.

19. It is pleaded that the petition filed under Section 7 of the Code is primarily in the form of forum hunting by SBI in as much as the process under SARFAESI Act 2002 as well as the Recovery of Debt and Bank Act, 1993 were already initiated by SBI and are pending. However, no provisions in the Code have been brought to our notice which makes the financial creditor ineligible to file application under Section 7 of the Code when proceedings are initiated/pending under SARFAESI Act 2002. We may add here that Section 238 of the Code provide for overriding of the Code over other laws. Therefore, in view of the above discussion, the contention is not accepted.

20. During the course of the hearing, the learned counsel for Saber has pleaded that in Part IV of Form 1, the date of default is shown as 30.01.2013 (NPA date) and therefore, in view of Section 238A of the Code, the present application filed on 22.10.2018 is barred by limitation. The learned counsel for SBI has pleaded that there is an acknowledgement of the debt in the balance sheets of Saber as on 31.03.2013 and 31.03.2016 and therefore, the instant application is not barred by limitation.

21. We find that at Annexure A-55 of the petition, there is a revival letter dated 13.06.2013 addressed to the Branch Manager, SBI regarding several credit facilities for sums not exceeding at any one time in the aggregate

of a sum of ₹67.81 crores granted vide agreement of loan dated 21.12.2010 as modified and/or extended by a Supplemental Agreement dated 30.9.2011. The acknowledgement states as under:-

> *"I/We acknowledge for the purpose of Section 18 of the Limitation Act, 1963 and any like limitation law in order to preclude any question of limitation law, that I/We am/are liable to you for the payment of all outstandings with interest costs, charges, and expenses and other monies due and payable by me/us to you in respect of the said credit facilities granted and/or to be granted under the said documents or in any other manner and which said documents shall remain in full force with all relative securities, agreements and obligations."*

The acknowledgement is signed by a Director of Saber.

22. We also find that the Balance Sheet of Saber as on 31.3.2013 (page 128 of the petition) shows long term borrowing of ₹94,50,26,238 as on 31.03.2013. The details thereof are available at page 132 of the petition inter alia showing term loan from SBI of ₹43,37,31,453 secured by pari passu charge with the other term lenders in all the fixed assets including equitable mortgage of proposed and existing factory land and building at Hambran. The Balance Sheet is signed by the auditors on 17.06.2013 as well as by two Directors of Saber.

23. Page 177 of the petition contains the details of a search carried out by Munish Chopra & Associates, Chartered Accountants, Ludhiana on the directions of the AGM, SAM Branch Civil Lines, Ludhiana. This search is stated to be carried out for the charges registered and annual reports from the date of incorporation i.e. 27.12.1996 to 06.10.2018. The documents forming part of the report of the evidence of the Chartered Accountants based on the records maintained at the website of Ministry of Company Affairs as per Search Report dated 06.10.2018 include annual report dated 30.09.2016;

Director report and Notice as on 30.09.2016; Balance Sheet for the year ended 31.03.2016; and Profit and Loss for the year ended 31.03.2016. The Balance Sheet as on 31.03.2016 (page 100 of the petition) shows long term borrowing of ₹144,93,77,454 and ₹143,35,09,039 as on 31.03.2016 and 31.03.2015 respectively. The classification of borrowings at page 106 of the petition shows secured borrowing (member) of ₹144,51,87,924 for the period 1.4.2015 to 31.3.2016 and ₹143,35,09,039 for the period 1.4.2014 to 31.3.2015. The learned counsel for SBI has not brought to our notice any further bifurcation /details bank wise of the secured borrowing. Page 93 of the petition shows that the Board report was signed on 3.9.2016 by Shri Harbans Lal, Director and Shri Subhash Chand, Director. Page 101 of the petition gives Disclosures - signatures of financial statements in respect of stand alone financial statements for period 01.04.2015 to 31.03.2016 of Saber. Details of Directors signing financial statements given therein is Shri Harbans Lal, Director and Shri Subhash Chand, Director. The date of signing of the financial statements is given as 03.09.2016.

24. We find that Section 18 of the Limitation Act 1963 is as follows:-

> *18. Effect of acknowledgment in writing.—*
> *(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*
> *(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;
(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf; and
(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

25. It has been held in **Teumal Bishamal Sindhi vs. Amar Mohandas Sindhi (1972) 74 Bom LR 644** that a narrow interpretation should not be put on what constitutes acknowledgement under Section 18 and the Section should be construed so as to afford every possible support to a just and lawful claim against and unjust and unconscionable resistance to the claim. It was held on **Ramaswami vs. Kottayya (1924) ILR 48 Mad 693** that an acknowledgement need not contain a promise to pay, express or implied . It was held in **A.U. Murthy v. B.S. Nagabasavanna, (2002) 2 SCC 642 at para 5: AIR 2002 SC 985** that a statement in a balance sheet acknowledging a debt due by the company is sufficient under Section 18.

26. We have examined the facts of the present case with reference to provisions of Section 18 of the Limitation Act, 1963 and the above quoted judgements. The NPA date is stated to be 30.01.2013 and even if the actual date of the default is prior to this date, the revival letter dated 13.06.2013 is afterwards. We have discussed above that the balance sheet of Saber as on 31.3.2013 contains the details of borrowings from SBI and the loan is stated

to be secured by pari passu charge with the other term lenders on all the fixed assets. Even though the name of SBI is not specifically mentioned in the papers on record with regard to the Balance Sheet of Saber as on 31.03.2016, the classification of borrowings at page 106 of the petition clearly shows that there are secured loan from banks including working capital loan. We have noted above that the signatures of the financial statements of Saber as on 31.03.2013 and 31.03.2016 are by two Directors of Saber. We therefore, hold that the contents of the two Balance Sheets as on 31.03.2013 and 31.03.2016 show that there is acknowledgement of liability to SBI made in writing and signed by the Directors of Saber who are to be treated as duly authorized in this behalf by Saber. In view of the Balance Sheet as on 31.03.2013 and revival letter dated 13.06.2013 and the subsequent Balance Sheet as on 31.03.2016, the filing of the application under Section 7 of the Code on 22.10.2018 is held to be within the limitation.

27. Section 7(5)(a) of the Code provides for admission of the application where the Adjudicating Authority is satisfied that –

(a) a default has occurred;

(b) application under Section 7(2) is complete and;

c) there are no disciplinary proceedings pending against the proposed resolution professional.

28. The occurrence of default is proved through the filing of the account statement of the loan account duly supported by certificate under Bankers Books Evidence Act, 1891 (Annexures A-57 and A-58 of the petition) as well as the notice under Section 13(2) of the SARFAESI Act, 2002 dated 31.3.2014 (Annexure A-59 of the petition). We may add that at Annexure R-

12 of the reply, Saber has enclosed a letter dated 04.04.2014 stated to be reply to notice dated 29.03.2014 for inclusion of the name of Saber and its Directors and Guarantors in RBI/Credit Information Company list of wilful defaulters. In the reply, the existence of the default was not challenged and Saber's plea was only restricted to stating that there is nothing done by the promoters/Directors which tantamounts to wilful default and any action by SBI will not only hamper the operation of Saber but will also affect other group companies.

29. 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."*

30. 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.

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

32. The IRP has furnished Form 2 at Annexure A-4 of the petition certifying that there are no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professional Agency.

33. 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 Paper Board Pvt. Ltd. and give directions for moratorium and appointment of IRP as under.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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/- Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

(Pradeep R. Sethi)
Member (Technical)

January 07, 2020
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