

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
COURT-I
KOLKATA**

CP (IB) No. 623/KB/2020

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Bank of India

...Financial Creditor

Versus

**Suryadeep Multipurpose Cold Storage LLP
[CIN: AAA-5627]**

...Corporate Debtor

Order pronounced on: 10 January 2023

Coram:

Shri Rohit Kapoor : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (through video conferencing):

For the Financial Creditor : Mr. K Thaker, Advocate
Ms. S Thaker, Advocate
For the Corporate Debtor : Mr. Joy Saha, Senior Advocate
Ms. Jayati Chowdhury, Advocate
Ms. M. Chowdhury, Advocate
Ms. Sucheta Mitra, Advocate

ORDER

Per Balraj Joshi, Member (Technical)

1. This Court convened through hybrid mode.

2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 by Bank of India, represented by **Mr. Ram Kumar Roy**, authorized through a Letter of Authority dated 14 January 2020¹, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Suryadeep Multipurpose Cold Storage LLP (“Corporate Debtor”).
3. The Corporate Debtor was incorporated on 18 July 2011, having CIN: AAA-5627 under the Limited Liability Partnership Act, 2008. It’s registered office is 348/1, G.T. Road, Chatra, Serampore, District-Hoogly, West Bengal-712201. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 24 February 2020 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.19,21,23,253/- (Rupees Nineteen Crore Twenty-One Lakh Twenty Three Thousand Two Hundred and Fifty Three only) as on 15 January 2020 with further interest @13.15% per annum from 16 January 2020. The date of default has been mentioned as 01 June 2019.

Submission of Mr. K. Thaker, learned Counsel appearing for the Financial Creditor

5. The learned Counsel submitted that the Financial Creditor had sanctioned an overall limit of Rs.8.01Crore to the Corporate Debtor which was enhanced to Rs.9.27Crore *vide* sanction letter dated 29 October 2013. The loan was further enhanced on to Rs.20.78Crore *vide* sanction letter dated 08 June 2016 .
6. The loan accounts of the Corporate Debtor were classified as Non-Performing Asset on 30 April 2018 and again on 30 September 2018 due to default, but both the accounts were regularized on payment of overdue interest and instalments.

¹ Pp. 39 and 40 of C.P.

7. The Financial Creditor at the request of the Corporate Debtor and as per its One Time Policy Guidelines dated 15 January 2019, restructured the credit facilities *vide* sanction letter dated 30 March 2019.
8. With respect to the restructured Funded Interest Term Loan (FITL) and Working Capital Term Loan (WITL) accounts, the Corporate Debtor enjoyed moratorium but with respect to the existing loan accounts, interest was to be serviced on month-to-month basis which is evident from the Supplementary Term Agreements dated 30 March 2019.
9. The Corporate Debtor has acknowledged the credit facilities in its audited Balance Sheets for the Financial Year 2018-19 and also given Balance Confirmation Letters. The Corporate Debtor *vide* its letter dated 19 October 2020 to the Financial Creditor has unconditionally admitted the debt.
10. The Corporate Debtor has raised the defence in its Reply Affidavit that the account classification as Non-Performing Asset is premature since the loan accounts have been restructured on 30 March 2019. The learned Counsel submitted that the as per the terms of the restructure, interest on existing Term Loan-I and Term Loan-II accounts have been charged at present effective rate at 11.15% per annum from 01 March 2019 with monthly rest. The said interest has been charged accumulating 1 year MCLR 8.65% +BSS (0.30%) +crp (2.20%) exactly at the concessionary rate prescribed in MSME Circular.
11. The learned Counsel submitted that the Corporate Debtor by executing the Supplementary Term Loan Agreements on 30 March 2019 has unequivocally agreed to pay interest from 01 March 2019 followed by the resolution of the Corporate Debtor dated 30 March 2019.
12. The learned Counsel placed reliance on Clause 3.3 and 2.1.2(ii) of the Prudential and Income Recognition Norms as per RBI guidelines wherein it has been stated that even if the interest remains overdue for a period of more than 90 days in respect of the term loan, the said loan account shall be classified as Non-Performing Asset and a cash credit account is to be treated

as 'out of order' if the outstanding balance remains continuously in excess of the sanctioned limit.

13. The Corporate Debtor has not deposited the interest at the agreed rates and hence, default has occurred in the account since 20 April 2019 from when the outstanding balance remains continuously in excess of the sanctioned limit and the Term Loan accounts on and from 01 April 2019 and as per the Prudential Norms of Income Recognition of RBI, the Cash Credit and Term Loans Accounts have been classified as NPA on and from 30 September 2019.
14. The Corporate Debtor has admitted that the accounts have been declared as NPA on 30 September 2019 *vide* its letter dated 19 October 2020.
15. The learned Counsel submitted that the Corporate Debtor has alleged that as per the CIBIL report, the account was standard till August 2019 and hence the account cannot be declared as NPA on September 2019. To counter this, the learned Counsel submitted that from the CIBIL report it is apparent that the working capital loan and term loan are both sub-standards. The learned Counsel submitted that in terms of the CIBIL report, the term 'standard' means payments are made within 90 days. In the instant case, payment were made within 90 days upto August 2019, the irregularity was in September 2019 when the accounts became sub—standard and the same is reflected in the CIBIL report.
16. The Financial Creditor has placed the following documents on record:
 - a. Copies of sanction letters dated 25 June 2012, 29 October 2013, 08 June 2016, 30 March 2019. [**Annexure 1-C @Pgs. 52-58, Annexure 1-Q @Pgs. 139-148, Annexure 1-Z @Pgs. 180-189, Annexure 2-N @Pgs. 277-288 respectively of the Company Petition**]
 - b. A copy CIBIL Report. [**Annexure 3-E @ Pgs. 563-579 of the Company Petition**]

- c. Copies of the loan agreement dated 26 September 2012, 17 August 2016, 30 March 2019. [**Annexure 1-I @ Pgs. 85-91, Annexure 2-F @ Pgs. 213-219, Annexure 2-W @ Pgs. 376-381 respectively of the Company Petition**]
- d. A copy of the demand notice. [**Annexure 3-B @ Pgs. 427-438 of the Company Petition**]

17. The Financial Creditor has proposed the name of Mr. Surya Kanta Satapathy, registration number IBBI/IPA-001/IP-P00598/2017-18/11050, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration².

Submission of Mr. Joy Saha, learned Senior Counsel appearing for the Corporate Debtor

18. The learned Senior Counsel appearing on behalf of the Corporate Debtor submitted that the date of default is questionable as the account of the Corporate Debtor as there is inconsistency with the dates of NPA i.e. 30 April 2018, 30 September 2018, and 30 September 2019 which has been stated in the Company Petition. Hence, the Petition is liable to be dismissed. In this regard reliance has been placed on *Hinduja Leyland Finance Limited v. Fly Express Logistic Pvt. Ltd.*³
19. The loans accounts of the of the Corporate Debtor were restructured on 30 March 2019⁴. The learned Senior Counsel led us through letter for restructuring wherein there is moratorium on each account. For FITL- the moratorium period was for 12 months, Term Loan-I and Term Loan-II- moratorium was for a period of 7 months, Proposed FITL, Proposed WCTL-

² Pp. 41-42 of CP

³ CA(AT) (Ins.) No. 553 of 2022.

⁴ Pp. 277-

I and Proposed WCTL-II- moratorium was for a period of 12 months. Hence, there was moratorium in respect of each of the restructured limits as on the date of NPA i.e. 30 September 2019. In view of the moratorium on repayment, the accounts could not have been classified as NPA. Further, no principal or interest was payable during moratorium.

20. The learned Senior Counsel then led us through the CIBIL Report wherein the accounts were stated to be Standard till August 2019 and Sub-standard on September 2019. It is submitted that in the Master Circular of the Reserve Bank of India that an account can be classified as NPA only when it has remained out of order and Sub-Standard for a period of ninety days and more. The CIBIL report clearly reflects that the account which was standard in August 2019 could not have been declared to be NPA in September 2019. Hence, the declaration of NPA is misconceived.

21. The Supplemental Affidavit filed by the Financial Creditor that has been affirmed on 16 February 2022 states that the defaults in payment of interest in the accounts have occurred from 01 April 2019 when it entered in SMA-0 status. The accounts were treated as NPA one day after the said accounts were restructured.

Analysis and Findings

22. Heard the learned Counsel appearing for the Financial Creditor and the learned Senior Counsel appearing for the Corporate Debtor and perused the record.

23. The fact that the Financial Creditor disbursed money to Corporate Debtor is not contended. Hence, there is debt. Now let us, whether the Corporate Debtor was in default of the debt that was disbursed by the Financial Creditor.

24. The Corporate Debtor has raised two defenses;

- a. The date of NPA.
- b. There was no default.

25. Let us consider the first defense, the Corporate Debtor has alleged that there are several dates on which the accounts were classified as NPA. This Adjudicating Authority had directed the Financial Creditor to clarify the date of default. The Financial Creditor filed a Supplementary Affidavit dated 16 February 2022, wherein the Financial Creditor has submitted that the Corporate Debtor first committed default in 2018 and the loan accounts were classified as NPA on 30 April 2018. On payment of overdue amount, the loan accounts of the Corporate Debtor were upgraded to standard category.

26. The Financial Creditor further submitted that the Corporate Debtor committed default from June, 2018 and the accounts were classified as NPA on 30 September 2019, the accounts were regularized after part payment of the overdue amount. The Corporate Debtor once again defaulted and the loan accounts were classified as SMA1 on 28 February 2019. The loan accounts were restructured on 30 March 2019. The Financial Creditor lastly submitted that the accounts were last classified as NPA on and from 30 September 2019 which reflects that the Corporate Debtor defaulted in payment with respect to the loan accounts around April 2019.

27. The submissions of the Financial Creditor have cleared the air, therefore the defense of the Corporate Debtor is for the birds.

28. Now let us move on to the second defense of the Corporate Debtor that no default has occurred. On perusal of the restructuring letter dated 30 March 2019 *vide* Reference no. BOI/SRMP/317/2018-19, the proposed restructured payment method in page 280 of the Company Petition states that for Term Loan I, Term Loan II, the instalments would start from December 2019 and end on March 2024 with a moratorium for seven months. At page 281 of the Company Petition, The restructured FITL,

WCTL-I, WCTL-II are stated to commence on May 2020 with 12 months moratorium.

29. The restructuring letter under each table which envisages the restructuring states that “Interest will be served monthly basis as and when applied”, which makes it clear that there was no moratorium on the interests to be paid with respect to the loan accounts. The moratorium was only with respect to the payment of the installment amount.
30. On further perusal of the documents, i.e. the Supplemental Loan agreement at page 381 of the Company Petition, it is clearly stated that “*the Borrower doth hereby agree and undertake to repay to the Bank the balance of Rs.2,28,86,696.99 outstanding in the Term Loan Account with the Bank by the instalments and on the days mentioned in the schedule hereunder written together with interest from 01.03.2019 at the agreed rate of 11.15% p.a. with monthly rests*”. Thus, the Corporate Debtor has failed to make payment of the interest with respect to the loan accounts thereby defaulting in payment of the interest from April 2019 and the defense raised by the Corporate Debtor that there is no default as the loan accounts were in moratorium does not hold water.
31. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time
32. In the light of the above facts and circumstances, it is, hereby ordered as follows:-
- a. The application bearing **CP (IB) No. 623/KB/2020** filed Bank of India, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against

Suryadeep Multipurpose Cold Storage LLP., the Corporate Debtor, is *admitted*.

- b. There shall be a moratorium under section 14 of the IBC.
- c. The 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 sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Surya Kanta Satapathy**, registration number IBBI/IPA-001/IP-P00598/2017-18/11050, email id. suryakantasatapathy@yahoo.co.in, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The Directors, officers and managers of the Corporate Debtor 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 opportunities in this regard.

- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. The Financial Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three 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).
- j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
- k. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

33. CP (IB) No. 623/KB/2020 to come up on 07-02-2023 for filing the periodical report.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I**

**BoI v. Suryadeep Multipurpose Cold Storage LLP.
CP (IB) No. 623/KB/2020**

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

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on the 10th day of January 2023.