

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-24(PB)/2018

IN THE MATTER OF:

State Bank of India

.....**Financial Creditor/
Petitioner**

v.

M/s. Shakti Bhog Foods Limited

.....**Corporate Debtor**

SECTION :

UNDER SECTION 7 of the Insolvency and Bankruptcy Code, 2016

Judgment delivered on 08.02.2018

Coram:

CHIEF JUSTICE (RTD.) M.M. KUMAR
Hon'ble President

S. K. MOHAPATRA
HON'BLE MEMBER (TECHNICAL)

For the Petitioner(s): **Mr. P.V. Dinesh, Mr. Rajendra Beniwal and Ms. Arushi Singh, Advocates**

For the Respondent(s): **Mr. Narendra M. Sharma, Ms. Sakshi Mehley, Mr. N.M. Sharma and Mr. Vivek Malik, Advocates**

JUDGMENT

M.M. KUMAR, PRESIDENT

The 'Financial Creditor'-State Bank of India has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 with a prayer to trigger the Corporate Insolvency Resolution Process in the matter of M/s. Shakti Bhog Foods Limited. The petitioner claims itself to be an 'Financial Creditor' and has asserted that 'Financial debt' for a sum of Rs. 20,45,34,90,165.90 (Rupees Two Thousand Forty Five Crores

Thirty Four Lakh Ninety Thousand One Hundred Sixty Five) as on 27.12.2017 is recoverable under various loan facilities like Corporate loan, Working Capital Credit facility etc. granted by them to the Corporate Debtor. The whole amount is stated to be in default.

The necessity of going into the merit of the claim made by the petitioner is obviated because against the Corporate Debtor Hon'ble High Court of Delhi have admitted Company Petition namely CFSIT, Inc v. Shakti Bhog Foods Limited, Company Petition No. 987/2015 vide order dated 18.01.2018.

The Hon'ble Appellate Tribunal in the case of M/s. Unigreen Global Private Limited v. Punjab National Bank & Ors., Company Appeal (AT) (Insolvency) No. 81 of 2017 decided on 01.12.2017 as well as in the case of Forech India Private Limited v. Edelweiss Assets Reconstruction Company Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 202 of 2017 decided on 23.11.2017 has taken a view that no application under Section 7, 9 & 10 of IBC, 2016 would be maintainable in case a liquidation order has been passed in respect of the same Corporate Debtor in a winding up proceeding either by the High Court or by the Tribunal. In that regard reliance has been placed on the ineligibility clause in



Section 11 (d) of the IBC and the meaning of the word 'winding up' given in Section 2 (23) and 94A of the Companies Act, 2013. The view of the Hon'ble Appellate Tribunal is binding on us as per the principles of stare decisis and the precedents.

In light of the aforesaid view taken by the Hon'ble Appellate Tribunal, Corporate Insolvency Process cannot be initiated against a corporate debtor undergoing a liquidation process. However, it is needless to add that the petitioner would be entitled to file his claim before the official liquidator in accordance with law which shall be duly considered.

The office is directed to communicate a copy of the order to the Financial Creditor and the Corporate Debtor immediately.

The Petition is disposed of in the above terms.



(M. M. KUMAR)
PRESIDENT



(S. K. MOHAPATRA)
MEMBER (TECHNICAL)

08.02.2018
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