



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO.II
KOLKATA**

C.P.(IB) No. 48/KB/2024

***An application for initiation of corporate insolvency resolution
process by the Financial Creditor under Section 7 of the
Insolvency and Bankruptcy Code, 2016***

IN THE MATTER OF

Central Bank of India

**Stressed Asset Management Branch (SAMB)-1, Mumbai, 346,
Standard Building, 3rd Floor, D.N. Road, Fort, Mumbai-400023.**

... Applicant/ Financial Creditor

Versus

**M/S SCG Exports Pvt Ltd., an existing company having its CIN Number-
U51900WB2006PTC109073 and having its registered address at 601,
Fort Knox, 6, Abanindra Nath Thakur Sarani, Camac Street, Kolkata
700017**

... Corporate Debtor

Date of Pronouncement: 1st August, 2024

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. D. ARVIND, MEMBER (TECHNICAL)

APPEARANCE:

Mr. D. Biswas, Adv.] For the Financial Creditor

Mr. Vikash Kr. Singh

Mr. Rohit Kr. Keshri, Adv.] for CD

Mr. A. Chaurasia, Adv.

Ms. S. Kedia, Adv.

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ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The court congregated through hybrid mode.
2. Learned Counsels of both the parties were heard.
3. This instant application is filed under Section 7 of the Insolvency and Bankruptcy Code,(hereinafter referred to as the “**Code**”) by “**Central Bank of India**”, registered office Chandermukhi, Nariman Point, Mumbai-400021 through Stressed Asset Management Branch, Kolkata, 2nd floor, Zonal Office Building, 33, NS Road, Kolkata 700001 hereinafter referred to as (“Financial Creditor”/ “Applicant”) against **M/s SCG Exports Private Limited**”, registered office at 601, Fort Knox, 6, Abanindra Nath Thakur Sarani, Camac Street, Kolkata 700017 hereinafter referred to as “Corporate Debtor”.

4. BRIEF FACTS OF THE CASE

- 4.1 The Financial Creditor along with several other banks were approached by the Corporate Debtor for financial assistance and finance and facilities which were sanctioned in favour of the Corporate Debtor by several banks including the Financial Creditor/Applicant.
- 4.2 The **Total Amount of Debt in default is Rs. 62,60,06,789.76** inclusive of Principle dues of Rs. 40,50,70,433.36 which is inclusive of both unrealized and unapplied interest of Rs. 22,09,36,356 calculated till **30.10.2023** plus an **uninvoked guarantee of Rs. 50,00,00,000/-**.

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- 4.3** Since the Corporate Debtor failed to honour the terms of the credit facilities, the said account was declared as Non-Performing Assets on 30.11.2021.
- 4.4** The Applicant through its authorised officer sent the demand statutory notice under Form-B of Insolvency and Bankruptcy Board of India Rules on 18.08.2023 asking for repayment of the balance amount of Rs. 40,50,70,433.76/- plus interest from 30.11.2021 along with other charges within the 14 days.
- 4.5** After the expiry of the said 14 days, the Corporate Debtor failed to repay the same amount and thus the instant proceeding is filed under Section 7 of the Code for initiation of Corporate Insolvency Resolution Process

5. SUBMISSIONS ON BEHALF OF THE APPLICANT

- 5.1** It is submitted by the Financial Creditor that on the insistence of Bank of India, who were financing the Corporate Debtor decided to finance as a Consortium of banks.
- 5.2** On different dates i.e, 25.02.2017, 3.3.2017, 4.3.2017, the Corporate Debtor passed a resolution in a Board Meeting by which the Corporate Debtor accepted the proposal of Fund Based Limit of Rs. 290 Crores and Non-Fund Based Limit of Rs 50 Crores aggregating to Rs. 340 Crores, from a Consortium of Banks consisting Bank of India and Central Bank of India, the Financial Creditor herein. A copy of such resolutions have been marked and annexed as **Exhibit E**.

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- 5.3** The Financial Creditor submitted that a bare perusal of the agreement and resolutions makes it evident that the exposure of the Financial Creditor in such consortium financing was limited to Non Fund Based limit of Rs. 50 Crores.
- 5.4** That as on the date of filing this proceeding, credit facilities of Rs. 50 Crores stood sanctioned by the Financial Creditor in favour of the Corporate Debtor. A copy of the acknowledgement of debt entry in Balance Sheet of the Corporate Debtor for March, 2021 is annexed as **Exhibit-G**.
- 5.5** It is submitted that the Corporate Debtor had defaulted in making the payment for more than 90 days, after which the account of the Corporate Debtor was classified as Non-performing Asset on 30.11.2020 and a sum of Rs. 40,50,70,433.36/- was outstanding from Corporate Debtor.
- 5.6** That the Financial Creditor had by way of statutory notice in Form-B dated 18.08.2023 demanded the default amount of Rs. 40,50,70,433.36/- with interest and other charges from 30.11.2020 for regularizing its loan account .A copy of the demand notice is attached and marked as **Exhibit H**.
- 5.7** That the amount claimed to be in default as on 30.10.2023 is Rs. 62,60,06,789.36 (Rupees Sixty Two Crores Sixty Lakhs Six Thousand Seven Hundred Eighty Nine and Thirty Six Paise Only) inclusive of principal dues of Rs. 40,50,70,433.36 inclusive of both unrealised and unapplied interest of Rs 22,09,36,356/-.

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6. SUBMISSIONS ON BEHALF OF THE CORPORATE DEBTOR

- 6.1** That the Learned Counsel has denied that the Corporate Debtor was classified as Non-Performing Asset on 30.11.2020.
- 6.2** It is submitted that the Corporate Debtor has made a last payment of Rs. 2,09,62,938 (Two Crores Nine Lakhs Sixty Two Thousand Nine Hundred and Thirty Eight Only) on 22nd June 2021 and thereafter the said Account was classified as Non Performing Assets and the same is evident from the Loan Account Statement for the Financial Year 01.04.2021 to 31.03.2022. A copy of the said Bank Statement is attached and marked as **Annexure R-1**.
- 6.3** However, it is emphatically admitted by the Corporate Debtor that it has defaulted in repayment of the Loan given by the Financial Creditor due to loss in International Trade Transaction and as the default is committed without any malafide intention, the present case is fit for Resolution of the Corporate Debtor.
- 6.4** The Corporate Debtor has thus not resisted admission of the present application.

7. ANALYSIS AND FINDINGS

- 7.1** We have duly considered the submissions made by both the parties and perused the documents on record.
- 7.2** We find that there is no dispute about the default made by the Corporate Debtor and the default amount is in excess of the

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threshold limit. As per the submissions made by the Applicant the date on which the Corporate Debtor's account was declared as Non-Performing Asset which is on 30.11.2020, the same date has been declared to be the date of default.

- 7.3** On the contrary, the said date on which the Corporate Debtor's account was declared as Non-Performing Asset has been objected by the Corporate Debtor and it is submitted that the Respondent has made a last payment of Rs 2,09,62,938 (Two crores Nine Lakhs Sixty Two Thousand Nine Hundred and Thirty Eight Only) on 22nd June 2021 and it is only after that the said account was classified as Non-Performing Asset. The same is evident from the Bank Statement which has been attached and marked as Annexure R-1.
- 7.4** We find that though the date of default as mentioned by the Financial Creditor which is on 30.11.2020 falls within the period of Section 10A of the Code but as the last transaction made by the Corporate Debtor is on 22nd June, 2021, the limitation period will commence from such date and since the present application has been filed within the time limit prescribed, it deserves admission.
- 7.5** At this juncture, we would like to refer to the decision of the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank reported in 2017 SCC SC 1025*** wherein the Apex Court has held as follows:

“28. [.....]It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim,

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is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.


7.6 Further the Corporate Debtor has not denied its debt owed to the Financial Creditor.

7.7 It is, accordingly, hereby ordered as follows:-

- (i) The application bearing CP (IB) No. 48/KB/2024 filed by Central Bank of India (Financial Creditor), under section 7 of the Code for initiating CIRP against SCG Exports Private Limited (CIN:U99999MH1911PTC000337), the Corporate Debtor, is admitted.
- (ii) There shall be a moratorium under Section 14 of the Code.
- (iii) 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 Code, as the case may be.


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- (iv) 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 (hereinafter referred to as the **“Regulations”**).
- (v) Mr. Amit Gupta with IBBI Reg. No. IBBI/IPA-001/IP-P-00016/2016-17/10040, e-mail- caamith.gupta@gmail.com, is hereby appointed as the Interim Resolution Professional (IRP) 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) Regulation, 2016.
- (vi) 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.
- (vii) During the entire CIRP period, the IRP or RP shall be vested with the power for the management of the Corporate Debtor in terms of Section 17 of the Code. The IRP shall be provided by the officers and managers of the Corporate Debtor with all the 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.

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- (viii) The IRP or RP shall submit to this Adjudicating Authority, periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (ix) The Financial Creditor shall initially deposit a sum of ₹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). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- (x) In terms of section 7(7)(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 within two days.
- (xi) The Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor.
- (xii) 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.

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(xiii) **C.P. (IB) No. 48/KB/2024** is **admitted** and **allowed**.

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

8. List the matter on **12.09.2024** for the Progress Report.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This order signed on the 1st day of August 2024.

Oindrila, K. (LRA)