

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

**CP (IB) No. 252/Chd/Hry/2022**

**Under Section 7 of the  
Insolvency & Bankruptcy  
Code, 2016**

**In the matter of:**

**Globe Fincap Ltd.**

Having its registered office at 609,  
Ansal Bhawan, 16, K.G. Marg,  
Connaught Place, New Delhi-110001  
CIN: U67120DL2008PLC176326

....Petitioner-Financial Creditor

Vs.

**M/s Surya Shakti Resources Private Limited**

Having its registered office at 1198,  
Sector-7D, Faridabad, Haryana- 121006  
CIN: U40300HR2008PTC038120

...Respondent-Corporate Debtor

**Judgment delivered on: 24 .01.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present:**

For the Petitioner-Financial Creditor : Mr. Raghav Kapoor, Advocate

For the Respondent-Corporate Debtor : Ms. Simran Sharma, Advocate

**PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)**

**JUDGMENT**

The present petition has been filed by **Globe Fincap Ltd.** (hereinafter referred to as 'Petitioner/Financial Creditor') through Mr. Pawan Kumar Hira, Authorized Representative under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/s Surya Shakti Resources Private Limited** (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Pawan Kumar Hira, with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 03.07.2008 under the Companies Act, 1956. The company having its registered office at 1198, Sector-7D, Faridabad, Haryana- 121006. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is attached as Annexure-A2 of the petition.

3. The brief facts of the case are that the Corporate Debtor approached the Financial Creditor seeking grant of loan facility. The Financial Creditor sanctioned loan (Revolving Loan Facility) of Rs. 10 crores vide Sanction letter bearing No. SSRPL dated 26.03.2019, with interest @ 18% p.a. for a period of one year from the date of first disbursement. Personal guarantees were entered upon by Mr. Ramesh Chand Saraf, son of Mr. Hanuman Prasad, Mrs. Madhu Saraf wife of Mr. Ashish Saraf, Mrs. Vantika Saraf wife of Mr. Aditya Saraf on behalf of Corporate Debtor guaranteeing the repayment of said loan. Further,

M/s Ridhi Sidhi Financial Private Limited M/s Farista Distributors Private Limited, M/s Guardian Portfolio Consultants Pvt. Ltd, M/s search Finvest Pvt. Ltd and M/s Panchsheel Securities Pvt. Ltd. also stood as guarantors and executed respective deeds of guarantee. Corporate Debtor again approached Financial Creditor in month of March 2021 requesting to sanction the loan amount from Rs.10 crores to Rs.17 crores and extend loan tenure further by period by 9 months which was sanctioned vide Sanction Letter dated 15.03.2021. The Corporate Debtor failed to clear outstanding dues.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs. 16,65,45,616/- (Rupees Sixteen Crores Sixty Five Lakhs Forty Five Thousand Six Hundred Sixteen Only) (including computed @ 18% p.a. till 28.02.2022 i.e, Rs. 6,74,85,616/-) and date of default is 15.12.2021 i.e. when the extended tenure/term of the said loan expired on 15.12.2021, however despite the expiry of the said loan tenure, the Corporate Debtor as well as the Guarantors failed/ avoided to pay/clear the total outstanding dues in respect of the said loan and thus, committed default. Copy of sanction letter dated 26.03.2019 (Annexure A-3 and A-4), 25.03.2020 (Annexure A-16), 15.03.2021 (Annexure A-17); Board Resolutions (Annexure A-1 and A-5); Deed of Guarantee (Annexure A-6 to A-15), Statement of Account (Annexure A-19) is attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor vide order dated 21.09.2022 to show cause as to why this petition be not admitted. The Affidavit of service was filed vide Diary No. 01833/1 dated 05.12.2022. Vide order dated 22.12.2022, learned counsel for the

Respondent-Corporate Debtor stated that due to some unavoidable financial constraints Respondent-Corporate Debtor is not in a position to repay the loan .

6. We have heard the learned counsels and have also perused the record carefully.

7. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—  
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

8. The issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is 15.12.2021 i.e. when the extended tenure/term of the said loan expired on 15.12.2021, however despite the expiry of the said loan tenure, the Corporate Debtor as well as the Guarantors failed/ avoided to pay/clear the total outstanding dues in respect of the said loan and thus, committed default. The present petition is filed vide diary No.01833 dated 05.08.2022 and was refiled vide Diary No. 01833 dated 07.09.2022. It can be said that the present petition is well within the period of limitation of three years.

9. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by sanction letter dated 26.03.2019 (Annexure A-3 and A-4), 25.03.2020 (Annexure A-16), 15.03.2021 (Annexure A-17); Board Resolutions (Annexure A-1 and A-5); Deed of Guarantee (Annexure A-6 to A-15), Statement of Account (Annexure A-19) attached with the main petition. It is deposed by way of affidavit filed vide Diary No. 01833/3 dated 22.12.2022 that Written Master Loan Agreement dated 28.03.2019 had been executed

between the parties. The tenure of the loan had expired, however due to unavoidable financial constraints, the company had not been able to repay the loan. As per the books of accounts of respondent company, a sum of Rs. 16,65,45,616/- was due and payable to the Financial Creditor, as on 28.02.2022. Despite all fair intentions, the Respondent Company was not in a position to pay/clear the aforesaid outstanding dues. The inability to repay, was on account of extreme financial distress and crunch. Therefore, this is a clear case of admitted liability.

10. The application filed in the prescribed Form No.1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Devendra Umrao, had been proposed as Interim Resolution Professional (IRP). Form No.2 dated 02.06.2022 along with certificate of registration issued by Insolvency and Bankruptcy Board of India and Form B dated 10.12.2022 has been submitted by Interim Resolution Professional i.e. Mr. Devendra Umrao is attached at Page 187-191 of the application. The AFA certificate is valid till 10.11.2023 according to the IBBI portal. The Law Research Associate of this Tribunal has checked the credentials of Mr. Devendra Umrao, and there is nothing adverse against him. In view of the above, we appoint Mr. Devendra Umrao, Registration No.IBBI/IPA-003/IP-N00223/2019-2020/12640 Email: devumraoibc@gmail.com, Mobile No. 9871045874 the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Devendra Umrao shall be in accordance with the provisions of Section 16(5) of the Code;

- ii.) 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 the inventory of assets of the Corporate Debtor;
- iii.) 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 morals;
- iv.) 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;

- v.) 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;
  
- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory

auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with requests for information/documents available with those authorities/institutions/others pertaining to the corporate

debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
- ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

11. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.
- e) 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 the 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- f) 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 the corporate debtor under Section 33 as the case may be.

12. We direct the Financial Creditor to deposit a sum of ₹2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Person) Regulations,2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

13. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

14. The petition is admitted accordingly.

-sd- 24.01.2023

**(Subrata Kumar Dash)**  
**Member (Technical)**

January 24 , 2023

SM/TB

-sd-24.01.2023

**(Harnam Singh Thakur)**  
**Member (Judicial)**