

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

**CP (IB)/ 440 (MB) 2023**

Under section 7 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 4 of the  
Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016

*In the matter of*

**State Bank of India**

[Identification number: TAN No.  
MUMB14834B]

... Applicant/Financial Creditor

Versus

**Shrivallabh Pittie Industries Ltd.**

[CIN: U26960MH2012PLC235201]

... Respondent/Corporate Debtor

**Order Pronounced on 07.03.2024**

***Coram:***

Hon'ble Member (Judicial): Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical): Sh. Prabhat Kumar

***Appearances:***

For the Financial Creditor : Adv. Subir Kumar a/w Adv.  
Disha Shah i/b SDS  
Advocates

For the Corporate Debtor : Mr. Prakhar Tandon i/b Ms.  
Ravleen Sabharwar,  
Advocates

**ORDER**

*Per: Prabhat Kumar, Member (Technical)*

**Brief facts:**

1. This Company Petition is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (“**IBC/Code**”) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **State Bank of India** ("hereinafter referred to as Applicant/ Financial Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Shrivallabh Pittie Industries Limited** ("hereinafter referred to as Respondent/Corporate Debtor").
2. The Corporate Debtor is a Private Limited company incorporated on 31.08.2012 under Companies Act, 1956 with the Registrar of Companies, Maharashtra, Mumbai. Its registered office being situated at 97, Maker Tower ‘F’, Cuffe Parade, Mumbai - 400005. Therefore, this Bench has jurisdiction to deal with this Petition. The Authorised share capital of the Corporate Debtor is Rs. 5,50,00,000/- whereas the paid up capital is Rs. 5,04,10,900/-.
3. The Corporate Debtor is a company involved in the business of manufacturing cotton yarn, polyester, cotton blend, etc.
4. The present Application was filed before this Adjudicating Authority on the ground that the Respondent has defaulted to repay total amount of Rs. 90,60,51,346.78/- (Rupees Ninety

Crores, Sixty Lakhs, Fifty-One thousand, Three Hundred, Forty-Six and Seventy-Eight Paisa only).

5. The date of Default is stated to be 19.07.2021. However, as per the NESL Certificate the date of default is 19.07.2022. Vide order dated 12.09.2023, this bench asked the Applicant to clarify the correct date of default. The Financial Creditor has placed on record affidavit dated 26.09.2023 stating the date of default to be 19.07.2022.
6. The Financial Creditor granted a total amount of Rs.152.44 Crores to the Corporate Debtor vide the following sanction Letters:
  - i. Rs. 100 Crores vide its letter of sanction bearing no. CB/AMT-11/2015-16/1501 dtd. 31.07.2015.
  - ii. Rs. 30 Crores vide its letter of sanction bearing no. CB: AMT-II:2015-16/1770 dtd.22.08.2015 and CB: AMT-II:2015-16/1718 dtd. 12.08.2015.
  - iii. Rs. 8.48 Crores vide its letter of sanction bearing no. CB/MUM/AMT-VII:2021-22/53 dtd.25.01.2022.
  - iv. Rs. 16.96 Crores vide its letter of sanction bearing no. CB/MUM:AMTVII:2020-21/32 dtd.09.02.2021.
7. The total amount of default to the Financial Creditor by the Corporate Debtor is Rs. 90,60,51,346.78/- (Rupees Ninety Crores, Sixty Lakhs, Fifty-One thousand, Three Hundred, Forty-Six and Seventy-Eight Paisa only), Principal amount being Rs.84,02,86,746 (Rupees Eighty-Four crores, Two lakhs, Eighty-Six Thousand, Seven Hundred & Forty-Six only), interest Rs. 5,54,31,983 (Rupees Five Crores, Fifty-Four Lakhs, Thirty-one Thousand, Nine Hundred and Eighty-Three only) and penal interest Rs.1,03,32,617.72 (Rupees One Crore, Three Lakhs, Thirty-two Thousand, Six hundred and seventeen only)

**Submissions made by the Learned Counsel of the Applicant:**

8. The Corporate Debtor approached the 'SBI Consortium [consisting of State Bank of India (the Financial Creditor), Bank of Baroda, Bank of Maharashtra, and Syndicate Bank] for sanction of Term Loan and other credit facilities. Accordingly, Term Loan and other credit facilities were first sanctioned on 12.10.2015 by the SBI Consortium.
9. The same has been renewed several times and the last renewal/restructuring of the account of the Corporate Debtor was done on 25.01.2022 vide Sanction of Guaranteed Emergency Credit Line 2.0 (GECL 2.0) Extension.
10. A total of Rs. 193.31 Crores towards Working Capital facilities and Rs. 275 Crores towards the Term Loan facilities was granted to the Corporate Debtor by the SBI Consortium, out of which, Rs. 126 Crores towards Working Capital facilities and Rs. 100 Crores towards the Term Loan was granted by SBI/ Financial Creditor to the Corporate Debtor.
11. Pursuant to the sanction dt. 25.01.2022, following documents were executed between the parties;
  - i. Agreement of Loan for Overall Limit Dt. 28.01.2022.
  - ii. Agreement of Hypothecation of Goods and Assets Dt. 28.01.2022.
  - iii. Fourth Supplemental Working Capital Consortium Agreement Dt. 28.01.2022.
  - iv. Inter Se Agreement dt. 28.01.2022.
  - v. Borrowers Confirmation to the Inter-Se Agreement dtd.28.01.2022.
  - vi. Third Supplemental Joint Deed of Hypothecation dt. 28.01.2022.
  - vii. Original registered Memorandum of Entry dtd. 16.05.2022.

- viii. Registration of MOE dtd. 28.01.2022.
  - ix. Declaration and undertaking by Corporate Debtor w.r.t. mortgage by deposit of title deeds to the lead bank dtd. 28.01.2022.
  - x. Letter regarding the grant of individual limits within the overall limit 28.01.2022.
12. The documents mentioned above constitute an acknowledgement of the debt by the Corporate Debtor to the Financial Creditor.

**Submissions made by the Learned Counsel of the Respondent:**

13. The Corporate Debtor has contended that the Applicant has failed to comply with mandatory requirement of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 according to which it is mandatory for every Financial Creditor to serve a copy of the Petition on the Insolvency and Bankruptcy Board of India.
14. The Corporate Debtor is using this Tribunal as a recovery forum. The Applicant has relied upon the decisions in the case of *K Kishan v. Vijay Nirman Company Private Limited [2018 SCC Online SC 1013]* and *Vidarbha Industries v. Axis Bank [2022 SCC Online SC 841]*.
15. The Corporate Debtor has also contended that the account of the Corporate Debtor has been wrongfully declared as NPA because the Financial Creditor had been accepting the Instalments of amounts from the Respondent, even after the date of default.
16. The person signing the petition on behalf of the Financial Creditor has no authority to sign the petition and nowhere in the document placed on record by the Applicant it has been mentioned that the signatory has the authority to initiate Corporate Insolvency Proceedings against the Respondent. The Corporate Debtor has

relied on the case of *M/s. Rushabh Civil Contractors Private Limited vs. Centrio Lifespaces Limited [CP (IB) 2161/MB/2019]*.

17. The Applicant has wrongly mentioned the date of default in the Application as 19.07.2021 whereas the Certificate of NPA placed on record by the Applicant states the date of default to be 19.07.2022. On the other hand, as per the Report of Default by the NESL submitted by the Applicant, the date of default is 28.02.2022. Hence, the date of default, which is the cause of action in the present matter, has been changed, which, according to the Corporate Debtor, is not maintainable in the eyes of law.
18. Also, the penal charge for the delayed payments cannot be included in the total financial claimed debt.

**Findings and Decision:**

19. Heard learned Counsel and perused the material available on record.
20. We note from the record that the Corporate Debtor has acknowledged & admitted its liability towards the debt outstanding and payable to the Financial Creditor multiple times during the Limitation period and the same is evidenced by way of Balance Sheet for the financial years 2019-2020, 2020-2021, 2021-2022, and various other agreements entered into between the Financial Creditor and Corporate Debtor. Since the audited financial statement reflects the debt due of applicant, we are of the considered view that the present application is within limitation.
21. The Applicant has filed an affidavit stating the correct date of default to be 19.07.2022 and submitted that the date of default mentioned as 19.07.2021 is result of typographical error. We find that the Corporate Debtor has not disputed this date to be the date default. We further find that the Corporate Debtor has also stated

that the disbursal under the sanction limit was to happen until 30.06.2022 therefore, the Corporate Debtor's account could not have been declared NPA on 19.07.2022 . We find that the Applicant has enclosed certificate stating that the account has been classified as NPA on 19.07.2022 and an account is classified as NPA after 90 days of default meaning thereby the actual default took place 90 days prior to it that is 19.04.2022. The date of default as per NESL certificate is stated to be 28.02.2022. This fact evidences that default has in fact taken place and the date of default, whatever it may be falls outside the period stated in Section 10A of the Code. These evidences further negate the contention of Corporate debtor that the default could not have taken place when some of the facility were due for disbursement on 30.06.2022.

22. As regards contention of the Corporate Debtor that present application is for recovery, we could not find any cogent evidence to suggest that present application is not for resolution of the Corporate Debtor. Accordingly, we do not find merit in this contention also.
23. Vide order dated 02.01.2024 this bench had directed the Applicant to serve a copy of the present Company Petition upon the Insolvency and Bankruptcy Board of India (IBBI) in terms of the Application to the Adjudicating Authority Rules, 2016. The Applicant has complied with the same and has placed on record Affidavit of Service to IBBI dated 05.01.2024.
24. The Applicant has submitted copy of Gazette no. along with specific authorization letter which clarifies that the signatory to the application is duly authorized to sign and file the same.
25. It is clearly evident from the records produced before this Tribunal that the financial debt amounting to more than Rs. 1,00,000 (Rupees One Lakh Only) is due & payable by the Corporate Debtor

as on the date of filing the present Company Petition. Further, there is admission of default and outstanding liability by the Corporate Debtor in various correspondences annexed to the Company Petition.

26. The essential ingredients required to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor such as Financial Debt as defined u/s 5(8) & Default as defined u/s 3(12) of the Code are proved by the Financial Creditor beyond reasonable doubt in the present case.
27. The application made by the Financial Creditors is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable and the default is in excess of minimum amount stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. Moreover, the contention of the Corporate Debtor that the present petition is barred by limitation does not stand since the balance sheets and various agreements between the parties produced before us constitute an acknowledgement of the debt. In view thereof, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
28. The Financial Creditor has proposed the name of Mr. Mukesh Verma, Registration No. IBBI/IPA-001/IP-P01665/2019-20/12522, as the Interim Resolution Professional of the Corporate Debtor. He has filed his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
29. It is, accordingly, hereby ordered as follows: -
  - (a) The petition bearing CP (IB) 440/(MB) 2023 filed by State Bank of India, the Financial Creditor, under section 7 of the

IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Shrivallabh Pittie Industries Limited** [CIN: U26960MH2012PLC235201], the Corporate Debtor, is admitted.

- (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
- (i) 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;
  - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium:-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;

- (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) 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.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Mukesh Verma, Registration No. IBBI/IPA-001/IP-P01665/2019-20/12522, having registered address at B 1506, Sunteck City Avenue 2, Goregaon (W), Mumbai - 400104, Email ID : ip.mukeshverma@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the IBC. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions issued/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 IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- (h) The Financial Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakhs 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). The remuneration of the IRP shall be such as is fixed by the Applicant till constitution of CoC and thereafter the constituted CoC shall decide the remuneration payable to the IRP.
- (i) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

**Prabhat Kumar**  
Member (Technical)

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Sd/-

**Justice V. G. Bisht (Retd.)**  
Member (Judicial)