IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P. (IB)/02/KB/2020

A Petition 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.

And

In the matter of:

Central Bank of India

...Financial Creditor

Versus

In the matter of:

Shima Edibles Private Limited (CIN U15319WB2004PTC098199)

...Corporate Debtor

Date of Hearing: 05.05.2022

Date of pronouncing the order: 14.07.2022

Coram:

Shri Rohit Kapoor	***:***	***Member (Judicial)***
Shri Harish Chander Suri	***:***	***Member (Technical)***

Appearances (through Video Conferencing/physical hearing)

For Financial Creditor	:	Mr. Santosh Kumar Ray, Adv.
	:	Ms. Rituparna Sanyal, Adv.
For Corporate Debtor	:	Mr. M. R. Sarbadhikari, Adv.

ORDER

Per Rohit Kapoor, Member (Judicial)

1. The Court is convened *via* hybrid mode.

2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 ***('the Code')*** read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Central Bank of India (***'CBI'*** or***'Financial Creditor'***), represented byMr. Hriday Tiwari, Asset Recovery Branch, duly authorizedby virtue of Power of Attorney dated 14 December, 2017[1]for initiation of Corporate Insolvency Resolution Process***('CIRP')*** against Shima Edibles Private Limited ***('Corporate Debtor')***.

3. The present Petition was filed on ***24 January, 2020*** before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted ina sum of Rs.37,20,01,350/-.

4. It is submitted in the Petition, Part – II that the authorized share capital of the Corporate Debtor is Rs.6,00,00,000/- (Rupees Six Crore only) with paid up Capital as Rs.4,29,00,000/- (Rupees Four Crore Twenty Nine Lakh only).

5. ***Submissions by theLd. Counsel appearing on behalf ofthe Financial Creditor:***

   a) The Corporate Debtor was in need of financial assistance and had approached the Financial Creditor for loan. Thereafter, The Financial Creditor granted a loan of Rs.466.00 Lakhs and Bank Guarantee of Rs. 14.00 Lakhs on 14 September, 2005 to the Corporate Debtor.[2]

   b) The directors of the Corporate Debtor also executed Guarantee Agreement dated 15 September, 2005 agreeing to remain liable as sureties and declared that the said Guarantee would be a continuing guarantee and shall be binding on their heirs and successors.

[1] Annexure – B of the Petition.
[2] Annexure A-4 of the Petition.

c) Further at the request of the corporate debtor an application was made to the Financial Creditor enhance the Loan Facility given to the Corporate Debtor. The Financial Creditor on 27 March, 2006 allowed the said loan facility in favor of the Corporate Debtor to the limit of Rs.516.00 Lakhs as Term Loan, Rs.250.00 Lakhs as Cash Credit Facility and Rs.14.00 Lakhs as Bank Guarantee.

d) At the request of the Corporate Debtor, the Financial Creditor extended and enhanced the loan facilities.The Corporate Debtor also created charge over its moveable and immovable assets.

e) The Corporate Debtor enjoyed the credit facility by drawing amount thereunder from time to time but did not adhere to the terms and conditions of the terms of the loan facility. Despite repeated requests, the Corporate Debtor failed to regularize the accounts and therefore on the ***27 September, 2011*** all the accounts were classified as Non Performing Asset (NPA).

f) The Financial Creditor considering the aforesaid default on 13 September, 2012 through its advocate issued demand notice to the Corporate Debtor. Thereafter, sometime in the year 2018 the Corporate Debtor had prayed for One Time Settlement (OTS) which was not acceptable by the Financial Creditor.

g) Later when there was a settlement and write off scheme available with the Financial Creditor the same was communicated to the Corporate Debtor *vide* letter dated 04 May, 2019 and a reply was also received from the Corporate Debtor. However, no payments were received from the Corporate Debtor.

h) The Financial Creditor has also initiated a proceeding before Debts Recovery Tribunal, Kolkata under section 19 of the Recovery of Debts due to banks and Financial Institution Act, 1993 for recovery of debts due to

Bank *vide* O.A. No. 332 of 2013, later on changed to TA 1660/2013 and is pending for final adjudication

6. ***The Corporate Debtor has filed its reply affidavit, wherein the Corporate Debtor submits as follows:***

   a) One of the director of the Corporate Debtor i.e., Mrs. Firoza Begum died on 07 September, 2016 and the same is known to the Financial Creditor. Since, there is only one director in the Company, the Corporate Debtor has lost its status as 'Private Limited'.

   b) It is also pertinent to mention that the Corporate Debtor is in possession of a third party, namely, MallickHimgarh Private Limited***('Third Party')***and the same has been suppressed by the Financial Creditor.

   c) The Corporate Debtor had entered into a settlement agreement with the Third Party. As per the settlement agreement dated 28 January, 2014 and 22 November, 2014, Third Party was to pay Rs.12.50 Crores to the Financial Creditor and took over the possession of the Cold Storage. Thereafter, third party paid a sum of Rs.6,72,59,012.00 to the Financial Creditor and took over the possession of the Cold Storage but, till date they have not paid the balance amount to the Financial Creditor. Thus, the Financial Creditor should initiate proceedings against the third party not the Corporate Debtor.

   d) The entire debt liability is rested on the third party and the same can be construed from the order dated 15 July, 2014 to 15 June, 2016 of the Ld. DRT, Kolkata.

   e) As per the OTS/settlement agreement with the third partythis instant petition is not maintainable against the Corporate Debtor. Further, the Corporate Debtor is being run by the third party.In this instant Petition the Financial Creditor is stating the date of default as on ***27 September, 2011,*** whereas, as per the T.A. pending before the Ld. Debt Recovery Tribunal the date of NPA is 20 March, 2013.

Analysis & Findings

7. We have heard the Ld. Counsel appearing for the parties and perused the records and the concerned documents annexed to the Petition.

8. Upon perusal of the record it is apparent that the relationship between the parties is financial in nature. The account of the Corporate Debtor was classified as Non Performing Asset (NPA)on the ***27 September, 2011***, but sometime in the year 2018 the Corporate Debtor had prayed for One Time Settlement (OTS) from the Financial Creditor, which resulted in acknowledgement of the debt.

9. Further, with respect to the contention of the Corporate Debtor, where they submit that as per the settlement agreement dated 28 January, 2014 and 22 November, 2014, Third Party was to pay Rs.12.50 Crores to the Financial Creditor and took over the possession of the Cold Storage. It is pertinent to mention that as per the Master Data available in the Ministry of Corporate Affairs' website, Mr. Sheikh Akram Hossain and Ms. Firoza Begam are still the existing directors of the Corporate Debtor.

10. The Financial Creditor has exercised its statutory right under Section 7 of the IBC and filed the present proceedings against the Corporate Debtor. The Financial Creditor has successfullysatisfied this Adjudicating Authority of the existing ***debt*** and ***default***. Hence, in light of the above facts and circumstances, it is, accordingly, hereby ordered as follows:-

    (a) The application bearing ***C.P. (IB)/02(KB)2020***filed by Central Bank of India, the Financial Creditor, under section 7of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Shima Edibles Private Limited, 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. Srigopal Choudhary*** registration number ***IBBI/IPA-001/IP-P01238/2018-2019/11893***, email: ***sgchoudhary@yahoo.com***, 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 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.

(g) The IRP/RP shall submit to this Adjudicating Authority progress reports with regard to the progress of the CIRP in respect of the Corporate Debtor.

(h) The Financial Creditor shall deposit a sum of ***Rs.5,00,000/-*** (Rupees Five 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).

(i) 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.

(j) Additionally, 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. 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.

11. ***C.P. (IB)/02(KB)2020*** to come up on ***29 August, 2022*** for filing the progress report..

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

13. File be consigned to record.

Harish Chander Suri)	**(Rohit Kapoor)**
Member (Technical)	**Member (Judicial)**

Order pronounced on 14th day of July, 2022

S, LRA