

IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT No. IV, NEW DELHI

C.P. No. IB-1342/(ND)/2018

IN THE MATTER OF:

M/s STATE BANK OF INDIA

...Financial Creditor/Applicant

VERSUS

M/s SHREE AMBICA INTERNATIONAL

FOOD COMPANY PRIVATE LIMITED

...Corporate Debtor/Respondent

SECTION: 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 (for brevity 'the Rules')

Judgment delivered on:16.10.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (J)

SHRI HEMANT K SARANGI

HON'BLE MEMBER (T)

For the Petitioner

: Mr. Avinash Mohapatra, Adv.

For the Respondent

: Mr. Rakesh Kumar, Adv.

Mr. Chetan Bisht, Adv.

Mr. Viabhav Sahni, Adv.

MEMO OF PARTIES

STATE BANK OF INDIA

Having its office at:

STRESSED ASSET MANAGEMENT BRANCH,
1st Floor, Local Head Office,
Madhya Marg, 17A, Sector 17 A
Chandigarh-160017

... APPLICANT/ FINANCIAL CREDITOR

VERSUS

**M/s SHREE AMBICA INTERNATIONAL
FOOD COMPANY PRIVATE LIMITED**

Having its registered office at:

3949-B, Naya Bazar, New Delhi

Having its corporate office at:

1008, D-Mall, Plot No. A-1,
Netaji Subhash Place,
Wazirpur District Centre,
Pitampura, Delhi-110034

... RESPONDENT/ CORPORATE DEBTOR

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the “Code”), read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity ‘the Rules’) by State Bank of India, through its Assistant General Manager, Mr. V.K. Karwal, in terms of General Regulations No. 76 & 77 of State Bank of India General Regulations 1955, exercise of the powers conferred by sub-section (3) of section 50 of the State Bank of India Act, 1955, with the previous sanctions of the Central Government, read with Gazette Notifications published in the Gazette of India dated 02.05.1987, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity ‘the Code’) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity ‘the Rules’), with a prayer to trigger Corporate Insolvency Resolution Process (CIRP), in respect of respondent, M/s Shree Ambica International Food Company Private Limited (for brevity the ‘corporate debtor’).

2. The Respondent company, was incorporated as M/s. Ambica Agrico Exports Pvt. Ltd. on 15.11.2006. The respondent passed necessary special resolution on 22.04.2010 in terms of section 21 of the Companies Act, 1956, and the name of the respondent was changed to M/s. Ambica International Food Company Pvt. Ltd. On 22.04.2010, having CIN U51109DL2006PTC155525 and its registered office is situated at 1008, D Mall, Plot No. A1, Netaji Subhash Place, Wazirpur District Centre, Pitampura, Delhi-110034.
3. As per averments made in the application, the respondent company had been availing Term Loan on standalone basis and Working Capital Facilities under the consortium arrangement from time to time. The Respondent Company had also been availing the Short-Term Loans and Pledge Loans which were repaid by the respondent from time to time.
4. In Part-IV of the Petition, the Financial Creditor has given the details of the total amount of the financial debt and the date on which the debt fell due, as reproduced below;

ACCOUNT No.	Amount Claimed to be in Default (In Rs.)
30989995247 30990048021 31860091341 33333318067 34512163075	Rs.1,44,87,98,629.89/-
Uncharged interest from 01.09.2016 to 31.07.2018	Rs.11,10,00,350/-
Total	Rs.1,44,87,98,629.89/-

Total Default Amount: Rs.1,44,87,98,629.89/-

Days of Default: 01.09.2016 to 31.07.2018

5. In Part-V of the Application, the Financial Creditor has given the details of documents, records and evidence of default:

Loan (Amount in Rs.)	Date of Disbursement
CC: Rs.80,78,00,000/-	10.06.2016

EPC: Rs.72,00,000/-	10.06.2016
SLC: Rs.7,00,00,000/-	10.06.2016
TL-I: Rs.5,00,00,000/-	10.06.2016
TL-II: Rs.17,50,00,000/- Rs.1,13,00,00,000/-	10.06.2016

6. In order to secure the above facilities, the Respondent Company had also given various securities by way of hypothecation of present & future assets, including fixed assets, creating equitable mortgages of factory land and building and various other plots of land. Collateral securities were also submitted by creating equitable mortgages of shops, land residential and/ or commercial plots, residential lands etc. The respondent company had also furnished personal guarantees of directors and corporate guarantees of other companies. The copy of

certificate of registration of charges issued by ROC New Delhi & NCR are annexed.

Copies of certificates of Registration of Charges issued by Registrar of Companies along with copy of Search Report dated 05.04.2018 along with the Status Report in respect of search having been conducted from Sub-Registrar by Applicant Bank's empanelled Kumar Vijesh & Associates Company Secretary, Karnal is annexed along with the application.

7. It is further submitted by the applicant, that the corporate debtor failed to maintain the financial discipline and the account was declared Non-Performing Asset (NPA) on 28.12.2016 by the applicant.
8. Further the applicant bank issued a notice dated 04.06.2018 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on the respondent company and other concerned parties.
9. In its defence Corporate Debtor, states that, there is a downfall in the rice industry due to which it has suffered heavy losses. It is not the Respondent but several entities

which were in the rice business in who have also suffered losses. The respondent had switched from small scale to medium enterprise and registered with MSME vide registration no. HR10C0000482, in 01.04.2015, the government of India had approved interest of 3% to all MSME units. The respondent classified its account with the bank in MSME, but despite providing all necessary details and documents the respondent did not receive any interest subvention from the bank. Respondent further states that in spite of various communications with bank he had not received interest subvention. On the contrary, the applicant bank issued a letter to the respondent by which the applicant bank, along with consortium member, imposed various penal charges on the respondent. The applicant bank had decided, along with consortium member banks, to operate a single account for all the transactions of the respondent in which 1% interest (tagging) would be charged. However, later without any notice to the respondent, the above stated interest rate was increased from 1% to 5% by the applicant. Due to uncertain appraisals of interest rates imposed by the applicant, the payment with respect to the

said amount got delayed. The financial crisis and the compliances added to the woes of respondent and the account got declared NPA on 28.12.2016.

10. It is further claimed by the respondent that, the respondent had suffered huge financial losses, due to unavailability of working capital funds, which were promised, but not released by the applicant in time but on the other hand in February 2018, without sending any intimation to the respondent, applicant had blocked and freezed all the accounts of the respondent, due to this the respondent was not able to make day to day payments and suffered financial losses as well as lost market trust.
11. The applicant in its rejoinder states that, the averments made by the respondent in its reply, with regards to the classification of MSME do not absolve the liability of the respondent towards the applicant bank with other consortium banks, further interest subvention is eligible on Export business and borrowers are not eligible for interest subvention, in case of export proceeds are not eligible for interest subvention, with condition that export proceeds are not realized in a stipulated period or advance request for

extension of period of realization of export proceeds is received by the bank or otherwise account of borrowers is over/ NPA. Due to these reasons borrower was not eligible for interest subvention and benefit could not be passed upon to the borrower.

12. Since most of the exposure of the Respondent company was by way of consortium finance, and there is no bar for the applicant to approach this Hon'ble Tribunal for initiating resolution process without seeking consent of other lenders.
13. Under sub-section 5(a) of section 7 of the code, the application filed by the applicant financial creditor has to be admitted on satisfaction that:
 - (i) Default has occurred;
 - (ii) Application is complete, and
 - (iii) No disciplinary proceeding against the proposed IRP is pending.
14. There is sufficient evidence to prove default. The applicant has specified the name of the resolution professional and has annexed Form 2, the consent of the proposed IRP to the application accordingly.

15. In view of the above discussion, this petition is admitted and Mr. Mahesh Bansal, with the address SCF-24, First Floor, Bhadaur House, Ludhiana-141008, email-id emmfee.consulting@gmail.com, mobile no. 9814117576 and having registration number IBBI/IPA-001/IP-P00785/2017-18/11341 is appointed as the Interim Resolution Professional.
16. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional shall immediately make public announcement with regard to admission of this application under Section 7 of the Code. We also declare moratorium in terms of Section 14 of the Code. A necessary consequence of the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) and thus the following prohibitions are imposed which must be followed by all and sundry:

“(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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(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.”

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

18. The Interim Resolution Professional shall perform all his functions religiously and strictly which are contemplated, *inter alia*, by Sections 15, 17, 18, 19, 20 & 21 of the Code. He must follow best practices and principles of fairness which are to apply at various stages of Corporate Insolvency Resolution Process. His conduct should be above board & independent; and he should work with utmost integrity and honesty. It is further made clear that all the personnel connected with the Corporate Debtor, erstwhile directors, promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the affairs of the Corporate Debtor. In case there is any violation by the ex-management or its ex-directors the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of

its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code.

19. The applicant/Financial Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses to be incurred and accounted for by the IRP. The amount shall be reimbursed to Financial Creditor after the COC has approved the expenses of the IRP before appointing Resolution Professional.
20. The registry is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

S/D

(HEMANT KUMAR SARANGI)
MEMBER (Technical)

S/D

(DR. DEEPTI MUKESH)
MEMBER (Judicial)