

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP (IB) No.201/Chd/Hry/2018

**Under Section 7 of Insolvency and
Bankruptcy Code, 2016**

In the matter of:

State Bank of India, having its registered office at State Bank Bhawan, 14th
Floor, Corporate Centre, Madame Cama Road, Nariman Point, Mumbai-
400021, Maharashtra

And

Branch Office at Stressed Assets Management BR.I, 6th Floor, Mohan Singh
Place, Baba Khark Singh Marg, Connaught Place, New Delhi- 110001

... Petitioner-Financial Creditor

Versus

SRS Ltd., SRS Tower, 3rd Floor, Near Metro Station, Mewla Maharajpur, GT
Road, Faridabad- 121003

...Respondent-Corporate Debtor

Judgment delivered on 21.08.2018.

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

Present:-

For the Petitioner : 1) Mr. Robin Singh Sirohi, Advocate
2) Mr. S.S. Brar, Advocate

For the Respondent : 1) Mr. Nitin Kant Setia, Advocate
2) Mr. Manish Verma, Advocate

Per: R.P.Nagrath, Member (Judicial):

JUDGMENT

This petition has been filed by State bank of India, a financial creditor
under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short to be

referred hereinafter as the 'Code') to initiate insolvency resolution process against the respondent-corporate debtor for the default committed in repayment of the financial debt. State Bank of India is a Public Sector Bank, having head office at Nariman Point, Mumbai and the petition is being filed through Mr. Sudhir Kumar Pandeya, Assistant General Manager, Stressed Assets Management BR.I, 6th Floor, Connaught Place, New Delhi- 110001.

2. The Chairman of State Bank of India in exercise of power under Section 27 of the State Bank of India Act, 1955 has authorized all the officers on whom the signing powers have been conferred by notification dated 27.03.1987 to sign applications, reply, affidavit, counter affidavit, sur rejoinder and generally all pleadings and file applications for initiation of corporate insolvency resolution process before the National Company Law Tribunal, under provisions of the Code on behalf of the bank or in connection with any proceedings before the National Company Law Tribunal for or against the Bank under the Code. This authorization letter (Annexure P-1) is dated 16.06.2017. Along with this authority letter, the notifications under which various officers of the Bank have been authorized to sign, verify the pleadings etc., have also been annexed and it is not disputed that the Assistant General Managers of the State Bank of India are among those authorized signatories. Regulation 76 of the State Bank of India General Regulations, 1955, elaborates the authority given to various officers to sign the pleadings and Regulation 77 thereof empowers all these officers to sign documents for and on behalf of the State Bank of India.

3. Respondent SRS Ltd., the corporate debtor is a company registered under the Companies Act, 1956, on 29.08.2000 with authorized

share capital of ₹ 280,00,00,000/- and paid up capital of ₹ 278,58,20,000/- as per master data at Annexure P-2, whereas in the petition the authorised share capital is stated to be ₹28,00,00,000/- and paid up capital is ₹27,85,82,026/-. As per the master data, the corporate debtor has filed the balance sheets with the Registrar of Companies upto 31.03.2017. With this master data, the details of the properties of the corporate debtor mortgaged with the Bank have also been mentioned. The certificate of incorporation of the respondent-corporate debtor is Annexure P-3. Annexure P-4 is the copy of the Memorandum and Articles of Association of the respondent-corporate debtor.

4. The petition has been filed by moving an application in Form-1 as prescribed under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (for brevity the 'Rules'). The facts of the case briefly stated are that the petitioner-financial creditor granted/enhanced/renewed loans from time to time to the corporate debtor with last renewal of loan initiated on 30.03.2016. The loan is a consortium arrangement whereby loan was granted by State Bank of India and its subsidiary banks such as State Bank of Patiala (SBP), State Bank of Travancore (SBT) and State Bank of Bikaner and Jaipur (SBBJ). Later on these Banks were merged with State Bank of India by Gazette Publication dated 22.03.2017 (Annexure P-42). The first sanction of loan was granted by State Bank of India and its subsidiaries banks on 22.03.2007. A total of ₹ 50 Crores fund based limit was granted by State Bank of India, which included Cash Credit of ₹ 3 Crores and Term Loan of ₹ 47 Crores.

5. Several times enhancement of loan was provided by the financial creditor to the respondent-corporate debtor through various sanction letters and credit facilities. The individual and consortium documents to provide loan facilities were executed which are Working Capital Consortium Agreement dated 25.08.2007, Working Capital Consortium Agreement dated 2.08.2010, Working Capital Consortium Agreement dated 01.02.2014, Agreement for Loan of Overall Limit dated 04.04.2012, and Agreement for loan of Overall Limit dated 24.03.2011 etc.

6. The documents in proof of the aforesaid sanction and grant of the facility are sanction letter dated 22.03.2007 (Annexure P-7); sanction letter dated 06.12.2008 (Annexure P-8); copy of renewal of working capital dated 31.07.2009 (Annexure P-9); renewal of working capital dated 22.05.2010 (Annexure P-10); renewal of working capital dated 21.03.2011 (Annexure P-11); letter regarding grant of individual limits within the overall limit dated 04.04.2012 (Annexure P-12); letter of credit facility dated 12.10.2012 (Annexure P-13); and arrangement letter for credit facility dated 28.11.2013 (Annexure P-14).

7. It is stated that renewal of working capital limits document dated 31.07.2009 (Annexure P-9) was to enhance the loan facility from ₹ 56,87,00,000/- to ₹ 81,87,00,000/-. The subsequent renewal dated 22.05.2010 (Annexure P-10) was to enhance the working capital limit from ₹65,60,00,000/- to ₹ 1,15,56,00,000/-. Again the working capital limit was enhanced from ₹ 1,09,11,00,000/- to ₹ 2,14,11,00,000/-, vide document dated 21.03.2011 (Annexure P-11). The document (Annexure P-12) dated

04.04.2012 relates to the grant of individual limits within the overall limit; the arrangement letter (Annexure P-13) dated 12.10.2012 is for the credit facilities for ₹ 3,16,25,00,000/- and (Annexure P-14) dated 28.04.2013 is for enhancing the credit facility from ₹ 3,05,00,00,000/- to ₹ 3,15,00,00,000/- .

8. Annexure P-15 is the arrangement letter for renewal of the credit facilities dated 16.03.2015 for ₹ 3,13,50,00,000/- and Annexure P-16 is arrangement letter for credit facility dated 31.03.2016 for ₹ 3,10,25,00,000/-.

9. The petitioner has stated that the total amount of default is ₹5,85,20,16,323/- calculated upto 05.05.2018. The petitioner-bank has also filed the computation chart (Annexure P-6) for determining the amount of default, as claimed in the application.

10. The respondent-corporate debtor also executed Deed of Hypothecation dated 25.08.2007 (Annexure P-17); Joint Deed of Hypothecation of even date (Annexure P-18); Agreement of Hypothecation dated 29.12.2008 (Annexure P-19); Supplemental Agreement of Hypothecation of Goods and Assets for Increase in the Overall Limit dated 19.01.2010 (Annexure P-20); Agreement of Hypothecation of Goods and Assets dated 04.04.2012 (Annexure P-21); and the document relating to the equitable mortgage of land and building at Multiplex Site 4, Sector 12, Faridabad, Haryana, measuring 21336,864 sq.mts (Annexure P-22) dated 17.10.2007. The other documents of loan relied upon by the petitioner-bank are from Annexure P-23 to Annexure P-33. Apart from that the corporate debtor also executed the Balance Confirmation letters (Annexure P/34) dated 28.07.2010; Annexure P/35 dated 31.03.2010; Annexure P/36 dated

27.12.2008; Annexure P/37 dated 14.10.2009 and the balance confirmation on 03.08.2009 (Annexure P/38).

12. In order to establish the default, the petitioner-financial creditor has also relied upon the copies of the statements of accounts of the corporate debtor [Annexure P/40 (colly)] certified under Bankers Book Evidence Act, 1891, and the copy of the CIBIL Report (Annexure P-39).

13. Due to the default, the loan facility to the corporate debtor was recalled. The bank issued a notice dated 28.08.2017 (Annexure P-41) under Section 13(2) of the SARFAESI Act, 2002. In this notice, it is informed to the corporate debtor that the operation and conduct of the financial assistance/credit facilities have become irregular and the debt has been classified as Non-Performing Asset (NPA) in accordance with the directives/guidelines of Reserve Bank of India. The amount outstanding as on 27.08.2017 was ₹ 543,36,90,898/- as per this notice.

14. The petitioner-bank being a financial creditor has also furnished the written communication in Form-2 given by Ashok Kumar Gulla, Registered Resolution Professional with IBBI bearing No. IBBI/PA-003/IP-N00024/2017-18/10174, proposing him as an Interim Resolution Professional in the event of the petition being admitted. Copy of the written communication is at Annexure P-5.

15. Notice to this petition was issued to respondent-corporate debtor and Mr. Nitin Kant Setia and Mr. Manish Verma, Advocates, who were present on behalf of the corporate debtor, accepted the notice. The Power of Attorney and copy of the Board Resolution dated 30.07.2018 were also filed

on 08.08.2018. Mr. Deepk Garg and Mr. Vinay Bhatnagar have been authorized by the corporate debtor jointly and severally to represent the corporate debtor before this Tribunal. The learned counsel for the respondent submitted that the Power of Attorney has been issued by one of the authorized signatory.

16. On 13.07.2018, the respondent-corporate debtor was provided opportunity to file reply/objection, if any, while adjourning the matter to 08.08.2018. Learned counsel for the respondent-corporate debtor stated that the respondent is not to file any reply/objection to present petition.

17. We have heard the learned counsel for the petitioner-financial creditor, the learned counsel for the respondent-corporate debtor and have perused the record quite carefully.

18. Under sub-section (1) of Section 7 of the Code, a financial creditor can file an application against the corporate debtor when the default has occurred. The application is to be filed in Form-1, as prescribed in Rule 4 of the Rules as per sub-section (2) of Section 7 of the Code.

19. Sub-section (3) of Section 7 of the Code, reads as under:-

“(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.”

20. The financial creditor has relied upon the evidence of default which is in abundance in the present case. The evidence comprises of the sanction letters, agreements of loans, deed of hypothecation, the documents of creation of the securities and all the documents for which reference has already been made, while narrating facts of the case. The statements of different accounts of loan are at Annexure P-40 (Colly). Annexure P-40 at Page 925, Page 942, Page 946, Page 957 and Page 961 are the certificates which are duly certified under the Bankers Book Evidence Act, 1891. In proof of the default committed by the corporate debtor for which the computation chart has already been referred to, the Bank has also filed a CIBIL Report in support of this contention. The report is at Annexure P-39. So the first requirement of sub-section (3) of Section 7 contained in Clause (a) is fulfilled.

21. As per clause (b) of sub-section (3) of Section 7 of the Code, the financial creditor is required to name the Resolution Professional, proposed to be appointed as the Interim Resolution Professional. The written communication by the Resolution Professional proposed to be appointed as Interim Resolution Professional is at Annexure P-5 and on perusal thereof, it shows that the same contains the required declarations. He has also certified that there are no disciplinary proceedings pending against him with the Insolvency and Bankruptcy Board or Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI).

22. The aforesaid discussion also fulfils the requirement of sub-section (4) of Section 7 of the Code, which says that *the Adjudicating Authority shall, within fourteen days of the receipt of the application under*

sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

23. No defect in the application or in the written consent furnished by the Registered Resolution Professional has been either found or has been pointed out on behalf of the corporate debtor. The petition therefore, deserves to be admitted in terms of sub-section (5) of Section 7 of the Code.

24. In view of the above, the petition is admitted and the moratorium is declared in terms of sub-section (1) of Section 14 of the Code, which is as under:-

- (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 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.

25. 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 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

26. 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 pass an order for liquidation of corporate debtor under Section 33 as the case may be.

27. We also appoint Mr. Ashok Kumar Gulla, C/o RBSA Restructuring Advisors LLP. 9th Floor, 9C, Hansalaya Building, 15 Barakhamba Road, Connaught Place, New Delhi- 110001, having Registration No.IBBI/IPA-003/IP-N00024/2017-18/10174 and email address as ashok.gulla@rbsa.com, as an Interim Resolution Profession with the following directions:

- (i) The term of appointment of Mr. Ashok Kumar Gulla, 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 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 moral;

- (iv) The Interim Resolution Professional shall endeavour to constitute the Committee of Creditors after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying constitution of the committee and this Tribunal on or before the expiry of thirty days from the date of his appointment , and shall hold first meeting of the committee within seven days of filing the report of constitution of the committee.
- (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 co-operation in accessing books and records as well as assets of the 'Corporate Debtor';
- (vi) 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'; and

- (vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

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

Pronounced in open Court.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

August 21, 2018
Mohit Kumar