

IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
NEW DELHI

No.(IB)-189(ND)/2017

SECTION: UNDER SECTION 7 IBC 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
State Bank Bhawan, Madame Cama
Road, Nariman Point, Mumbai and
one of its local Head Office
At Sector 17-B, Chandigarh and one of
Its Branches called Stressed Assets
Management Branch, situated at Ist
Floor, LHO Building, Sector-17 A,
Chandigarh-160017.

....Applicant

V/s

M/s Namdhari Food International Pvt. Ltd.
307, NDM-2, Netaji Subhash Palace,
Pitampura,
New Delhi-110034.

.....Respondent

Coram:

R.VARADHARAJAN
Hon'ble Member (Judicial)

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For the Petitioner : Mr. Sanjiv Kakra, Advocate
Mr. Kanwal Kakra, Advocate
Ms. Vaishali Kakra, Advocate
Mr. Irfan Ahmad, Advocate
Mr. Bheem Sain Jain, Advocate
Mr. Rohit Oberoi, Advocate
Mr. Vipin Bhaskar, Advocate,
Mr. Ishaan Verma, Advocate,
Mr. Pranav Gambhir, Advocate

For the Respondent : None

ORDER

Order delivered by : Shri R. VARADHARAJAN On: 30.08.2017

This is an application which has been filed by State Bank of India in the capacity as a 'Financial Creditor' of the 'Corporate Debtor' namely, Namdhari Food International Pvt. Ltd, the respondent on the ground that it has committed a 'default' in the repayment of amounts owed under financial facilities which were granted to the 'Corporate Debtor' on different dates, the latest being vide sanction letter dated 7.4.2016. The Applicant avers that the facilities which were extended to the 'Corporate Debtor' by way of consortium loan, wherein, both the Applicant Bank as

well as the State Bank of Patiala had sanctioned overall financial facilities to the tune of Rs.63.56 crores and the following table shows the exposure of each bank in relation to the financial facilities granted to the 'Corporate Debtor' namely:

State Bank of India	Rs.48.56 crores
State Bank of Patiala	Rs.15.00 crores

2. It is further averred that out of the sum of Rs.48.56 crores sanctioned by the Applicant Bank, a sum of Rs.45.00 crores was sanctioned in the form of Cash Credit Limit and the remaining Rs.3.56 crores by way of term loan. In relation to State Bank of Patiala, it is averred that the entire amount of Rs.15.00 crores was granted by way of Cash Credit(Hypothecation). Subsequently, from time to time, it is averred that both SBI as well as State Bank of Patiala, enhanced or modified the financial facilities granted to the 'Corporate Debtor'. On 11.12.2013, it is submitted by the Applicant Bank that the applicant Bank and its consortium partner State Bank of Patiala sanctioned an overall financial limit to the tune of Rs.68.90 crores and in relation to

which the 'Corporate Debtor' executed working capital consortium agreement for the said sum on 11.12.2013 and a Joint Deed of Hypothecation, in order to secure the sum granted by way of financial facilities. It is also averred that on 2.4.2015 'Corporate Debtor' executed the balance confirmation letter of the even date with respect to the financial facilities and acknowledging the outstanding dues in different accounts as on 31.3.2015. It is further submitted that on 1.8.2015 at the request of the 'Corporate Debtor' the financial facilities granted by the Applicant Bank were reduced and further renewed to the extent of Rs.43 crores vide sanction letter dated 1.8.2015 and again vide sanction letter dated 7.4.2016, the financial facilities granted by the Applicant Bank were further reduced and renewed to the extent of Rs.42 crores. It is further represented that the amount of financial facilities of the outstanding liability of the Applicant Banks were duly acknowledged by the 'Corporate Debtor' in its annual report dated 3.9.2016 for the financial year ending 31.3.2016. In view of the persistent default, the accounts of the 'Corporate Debtor' came to be classified as 'non-performing asset'

by SBI on 27.9.2016. Further, an Original Application in OA bearing No.917/2017 was filed for the recovery of a sum of Rs.61,99,53,876.79 under the provisions of RDDBFI Act,1993 against the Corporate Debtor and it is also represented that the amount claimed in the above said OA does not include future interest payable by the 'Corporate Debtor' for the amount outstanding.

The Applicant Bank avers that in view of Notification No.128 Part.II Section 2 Sub-section 1 and Order No. GSR.157(E) dated 22.2.2017 issued by the Govt. of India, State Bank of Patiala which had also granted financial facilities along with the Applicant Bank, as detailed above, has been acquired by way of Amalgamation by the Applicant Bank under Section 35 of State Bank of India Act, 1955 w.e.f. 1.4.2017 and in the circumstances in view of the acquisition of State Bank of Patiala by the Applicant Bank,even though prior to the said date financial facilities were granted separately by the respective banks has now become one as it has become merged and hence SBI is the Sole Applicant herein in the capacity as the 'Financial Creditor'. The Applicant

Bank also avers that various securities as detailed in Part V, Form A, of the application prescribed for 'Financial Creditor' to initiate the Corporate Insolvency Resolution Process(CIRP) under the provisions of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016(AAA Rules) has been given which amongst others include immovable properties as well as movable properties belonging to the 'Corporate Debtor' as well as those pertaining to the guarantors of the financial facilities made available to the 'Corporate Debtor' and that their aggregate value comes to the extent of Rs.22,26,61,000/- against the amount in default which has been detailed in Part IV of Form A of the AAA Rules, 2016 to the extent of Rs.63,53,44,632.63 under the various financial facilities. In view of the default committed, it is submitted that the Applicant Bank has approached this Tribunal for initiating the CIRP against the Corporate Debtor.

3. Under the prescribed Application in Form-A, the Applicant Bank initially has also named one Mr. Mukul Bansal having registration No. IBBI/IPAA-00336/2016-2017/1912 to be the Interim Resolution Professional (IRP) whose consent it is claimed

has been obtained in Form No.2 and annexed along with the application filed by the Applicant Bank.

4. At the time of hearing, the Ld.Counsel for the Applicant Bank took us through the various documents filed to sustain the claim of default on the part of 'Corporate Debtor' in a sum of Rs.63,53,44,632.63. From the record and as per the submissions made by the Ld. Counsel for the Applicant Bank, it is averred that a default has arisen in relation to the following financial facilities bearing account Nos. pertaining to the 'Corporate Debtor' and the amount claimed to be in default in relation to the said account numbers., which are given as here under:-

Account No.	Amount claimed to be in Default (In Rs.)
30019829831	35,55,71,696.32
320019801134	10,67,34,401.58
11552072271	27,76,711.45
65054772969	15,30,27,490.42
65064751100	1,72,34,332.86
Total Default Value	63,53,44,632.63

5. In order to establish the liability arising out of various facilities granted by the Applicant Bank as well as State Bank of Patiala which now stands acquired by the Applicant Bank, Ltd. Counsel for the Applicant pointed out the sanction letter, the latest one being that of 1.8.2015 annexed as Annexure A-54 to the Application as well as sanction letter dated 7.4.2016 annexed as Annexure A-55 to the Application as filed by the Applicant Bank. Perusal of the sanction letter dated 1.8.2015 discloses that the following credit facilities had been granted vide the said sanction letter by the consortium, details of which are extracted as under:

(Rs. in crore)

Limits	SBI	SBOP
Fund Based		
CC(Hyp)	8.50	2.50
EPC/FBD	32.50	12.50
*FBP(Non LC)	(10.00)	--
Total FBWC limits	41.00	15.00
BG	--	--
Forward Contract	2.00	--
Total NFB Limits	2.00	--
Total FB+NFB	43.00	15.00

thereby the facilities availed by the 'Corporate Debtor' it is seen aggregating in all to Rs.68.00 crores. However, vide sanction letter dated 7.4.2016, it is seen that non-fund based limits in relation to SBI have been reduced from Rs.2.00 crore to Rs.1.00 crore and thus there has been an overall reduction from Rs.43.00 crores to Rs.42.00 crores but however no change in relation to the credit facilities granted by State Bank of Patiala.

6. Ld. Counsel for the Petitioner also took us through the letter of confirmation as given by the 'Corporate Debtor' annexed as Annexure A-56 as filed along with the application in which the account numbers, the balance due as on 31.3.2016 in relation to the various facilities which had been granted has also been acknowledged by the 'Corporate Debtor,' and the details of which are extracted hereunder:

Account No.	Account Type	Balance as on 31.3.2016
30019801134	Cash Credit (Hyp)	84065610.54 Dr.
30033644955	PCFC	9755341.80 Dr.
30019812205	LC Bills	8343654.00 Dr.
30019829831	Cash Credit(EPC)	317657012.74 Dr.
11502072271	Cash Credit (Hyp)	1416231.66 Dr.
	Total	421236850.74

7. It is seen that as on 31.3.2016, a total sum of Rs.42,12,36,850.74, was due to the Applicant Bank from the Corporate Debtor.

8. Ld. Counsel appearing for the Applicant Bank also pointed out as evidence of sanction of financial facilities and assets to secure it of the 'Corporate Debtor' that the same are reflected in Form 8 filed with the Registrar of Companies in relation to the creation of charge over the asset of the 'Corporate Debtor' for the various financial facilities granted, including the one being dated 19.5.2009 wherein the enhancement of working capital limit from Rs.30 crores to Rs.45 crores and term loan of Rs.2.59 crores to Rs.3.56 crores by the Applicant Bank and to the erstwhile State Bank of Patiala of Rs.12.5 crores in relation to EPC facilities and Cash Credit of Rs.2.50 crores are reflected.

9. A copy of the annual financial statement for the year ending 31.3.2016 of the 'Corporate Debtor' filed as Annexure A-76 alongwith the Application discloses as on 31.3.2016, the total



amount due to the Applicant Bank namely SBI is in a sum of Rs.41,29,07,359 and as against the erstwhile State Bank of Patiala (since acquired and merged with the Applicant Bank) a sum of Rs.15,15,31,849 thereby in all aggregating to Rs.56,44,39,208 as due to the Applicant Bank and in acknowledgement of the amount payable as at 31.3.2016.

10. The Applicant Bank has also furnished a complete statement of accounts in relation to the 5 loan accounts, wherein, the balance has been stuck as at 16.3.2017 and for which the Applicant Bank has also furnished a certificate in terms of Section 2 A (A) of Bankers Books Evidence Act. The above referred statements and the certificate has been annexed by the Applicant Bank as Annexure A-79, A-80,A-81,A-82 and A-83. Further, under Annexure A-85 of the type set of documents filed alongwith the Application, the Applicant Bank has also furnished the calculation of dues as on 26.6.2017 along with the interest and penal interest payable by the Corporate Debtor under 5 accounts aggregating in all to Rs. 64,73,46,912.23 the details of which are as under:

A/c	Outstanding as on 26.06.2017	Interest	Dues	Penal interest	Total Due
30019829831	325032564.70	30539131.62	355571696.32	5059509.44	360631205.76
320019801134	94898166.40	11836235.18	106734401.58	4552285.32	111286686.91
11552072271	2407900.80	368810.65	2776711.45	87270	2863982.17
65054772969	135337547.36	17689943.06	153027490.42	2073116.37	155100606.78
65064751100	14990412.05	2243920.81	17234332.86	230097.75	17464430.61
Total	572666591.31	62678041.32	635344632.63	12002279.60	647346912.23

11. In proof of default, the Applicant Bank has also enclosed a copy of the Original Application bearing No.917/2017 filed by the Applicant Bank under the Recovery of Debt Due to Banks and the Financial Institutions Act in a sum of Rs.61,99,53,876.79 as on 31.3.2017, filed before the Debt Recovery Tribunal-II, Chandigarh, after issue of legal notice dated 30.09.2016 annexed as Annexure A-78 to the application filed. A copy of the report as issued by CIBIL has also been enclosed to sustain the plea in relation to the default committed by the Corporate Debtor.

12. It is seen from the affidavit of service as filed by the Applicant Bank that the copy of the Application alongwith annexures have been dispatched to the Corporate Debtor at its registered office at Delhi as well as to the address located at Sri Jeevan Nagar. Despite the service of the Application on the Corporate Debtor at both the places which is evidenced from the tracking report as given by 'DTDC' Courier Service, the 'Corporate Debtor' has failed to answer the claim of the Applicant Bank in the capacity as a 'Financial Creditor' before this Tribunal and has thus remained ex-parte. Postal receipt dated 17.08.2017 has also been enclosed by the Applicant Bank evidencing dispatch of notice by post as well upon the directions issued by this Tribunal dated 16.08.2017 thereby the applicant bank discharging its onus in terms of AAA Rules, 2016. It is seen that on behalf of the Applicant to file the present application by the person concerned, who it is stated to be the Assistant General Manager an authorization letter dated 23.06.2017 has also been filed and the application has been signed on behalf of the applicant bank by the authorized person and affidavit also duly verified by him.

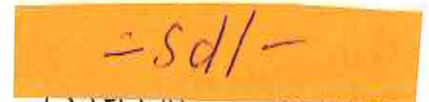
13. Taking into consideration the averments made in the applications as well as the documents filed as annexures A-1 to A-88 by the Applicant Bank, this Tribunal is of the view that a default has been committed by the 'Corporate Debtor' in relation to the financial facilities granted as provided under the provisions of IBC, 2016 and the same has been established and hence calls for the initiation of CIRP as contemplated under the provisions of IBC, 2016. During the course of the hearing, the Applicant Bank made a submission to the effect that in view of Mr. Mukul Bansal named as an IRP (Interim Resolution Professional) originally in the application having his period of registration expired with IBBI, the Applicant Bank is compelled to name Mr. Anil Katia, as an IRP and that in relation to the IRP named subsequently, has also filed his consent in Form-2 as per 'AAA Rules, 2016' and that his name may be considered for appointment as the IRP. This Tribunal has perused Form-2, as filed by the proposed IRP namely Mr. Anil Katia whose registration No. is given as IBBI/IPA-001/IP-P00002/2016-2017/10010 and in view of his certificate being subsisting as evidenced from the Certificate of Registration

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upon direction of this Tribunal is appointed as the IRP to exercise all the powers and duties as enjoined on him by IBC,2016. The IRP, inter alia shall cause the paper publication and call for the claims from the creditors and for convening the Committee of Creditors meeting within the time stipulated under IBC,2016.

14. In view of the Application being admitted and IRP appointed as a necessary corollary, the Moratorium as provided under Section 14 of IBC,2016 in relation to 'Corporate Debtor' will follow suit and the order of Moratorium shall take effect from the date of this order till the completion of CIRP, subject of course to the circumstances as provided under proviso to sub section (4) of Section 14. The management of the Corporate Debtor, in the mean while shall stand suspended taking into consideration the provisions of Section 17 of IBC,2016 and the same shall stand vested with the IRP named herein above and all the parties are directed to co-operate with the IRP in discharging his powers and duties as enjoined under IBC,2016.

15. In terms of the above, the Application stands allowed. Let a copy of this order be communicated to both the 'Financial Creditor' as well as the 'Corporate Debtor' by the Registry, as provided under the provisions of Section 9(5) of IBC,2016.



30/8/17

(R.VARADHARAJAN)

MEMBER (JUDICIAL)

U.D.Mehta