

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA
(Special Bench)

CP (IB) No. 68/KB/2021

In the matter of:

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016.

and

In the matter of:

Anit Finvest Private Limited

CIN: U67120MH1994PTC161973

...

Financial Creditor

Versus

Riga Sugar Co Ltd

CIN: L15421WB1980PLC032970

...

Corporate Debtor

Order reserved on: 05.10.2021

Order pronounced on: 08.10..2021

Coram:

Shri Rajasekhar V.K.

:

Member (Judicial)

Shri Satya Ranjan Prasad

:

Member (Technical)

Appearances (through video conferencing):

For the Financial Creditor

:

Ms. Debaleena Ganguly, Advocate
Mr. Debabrata Ganguly, Advocate

For the Corporate Debtor

:

Mr. Shaunak Mitra, Advocate
Ms. Neha Somani, PCS

ORDER

Per: Rajasekhar V.K., Member (Judicial)

1. Consequent upon the recusal by Mr H.C. Suri, Member (Technical), this Special Bench was constituted with the approval of the Hon'ble Acting President In terms of the order No.NIL dated 06.09.2021 issued by NCLT Headquarters.
2. This is a petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*the Code*) by Anit Finvest Private Limited (*Financial Creditor*), a

company incorporated under the Companies Act, 1956 and represented by its Directors, Mr. Babulal Soni and Mr Ramesh Purohit, duly authorised by Board Resolution dated 07.12.2020,¹ seeking to initiate Corporate Insolvency Resolution Process (*CIRP*) against Riga Sugar Co Ltd (*Corporate Debtor*).

3. The Corporate Debtor is a listed public company incorporated on 02.09.1980 having CIN: L15421WB1980PLC032970 under the Companies Act 1956, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at 14, Netaji Subhas Road (2nd Floor), PS Hare Street, Kolkata 700 001, in the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this Petition.
4. This Petition was taken up for hearing upon notice on 07.06.2021 based on an urgent application bearing IA No.522/KB/2021. Upon taking up the file, it was observed that there were several defects in the Petition. Therefore, the Adjudicating Authority granted the Petitioner seven days to cure the defects in terms of section 7(5) of the Code, and seven days thereafter to the Corporate Debtor to file their reply affidavit.
5. The matter was listed on 23.06.2021 for hearing, on which date, the Learned Senior Counsel appearing for the Financial Creditor submitted as follows:
 - (a) The financial creditor was a non-banking finance company engaged in the business of giving loans.
 - (b) On 17.03.2015, the board of the Corporate Debtor resolved to apply and avail a loan of ₹1,70,00,000/- (Rupees one crore seventy lakh only) from the Financial Creditor. Mr. O.P. Dhanuka, the Managing Director, and Mr. S. Prasad, the CEO of the Corporate Debtor were authorised to sign and execute the required document in this regard by the same board resolution. A copy of the said board resolution is annexed with the Petition at page 20 and marked as Annexure I Exhibit C.
 - (c) *Vide* letter dated 03.04.2015, the Corporate Debtor requested the Financial Creditor to sanction the said amount for their working capital requirement.

¹ Page 33 of the petition

A copy of the said letter is annexed with the Petition at page 21 and marked as Annexure I Exhibit D.

- (d) On 15.06.2015, the Financial Creditor sanctioned the said amount on the terms that the same would be payable on call or demand after the expiry of one year bearing interest quarterly for the period from 30.06.2015 to 29.06.2016 at the rate of 12% per annum till the repayment value were to be received. The term further provided for a promissory note of the said principal amount drawn by the Corporate Debtor in favour of the Financial Creditor. A copy of the sanction letter is annexed with the Petition at page 22 and marked as Annexure I Exhibit E.
- (e) On 30.06.2015, the Financial Creditor transferred the sum of ₹1,70,00,000/- (Rupees one crore seventy lakh only) from its beneficiary account with Shamrao Vithal Co-operative Bank Ltd., account No.100904180003058 to the Corporate Debtor which was accepted by the Corporate Debtor *vide* letter dated 03.07.2015. A copy of the acceptance letter is annexed with the Petition at page 23 and marked as Annexure I Exhibit F.
- (f) The Corporate Debtor also drew a demand promissory note worth ₹1,70,00,000/- (Rupees one crore seventy lakh only) in favour of the Financial Creditor. A copy of the demand promissory note is annexed with the Petition at page 24 and marked as Annexure I Exhibit G.
- (g) The financial statements of the Corporate Debtor reflect the said loan under short term loans.
- (h) The Corporate Debtor first defaulted in payment of interest in January 2018. Therefore, on 15.04.2018, through a letter, the Financial Creditor intimated the Corporate Debtor that a sum of Rs.4,52,730/- (Rupees four lakh fifty-two thousand seven hundred and thirty only) was due towards interest for the period of January to March 2018 and requested the Corporate Debtor to make payment immediately upon receipt of the said letter. A copy of the letter dated 15.04.2018 is annexed with the Petition at page 25 and marked as Annexure I Exhibit H.
- (i) On 27.04.2018, the Corporate Debtor replied to the Financial Creditor's letter dated 15.04.2018 requesting for further time of six months for payment of interest. The Financial Creditor *vide* letter dated 03.05.2018

granted the Corporate Debtor time till the first week of July 2018 to make the payment of outstanding interest. Copies of the letters dated 27.04.2018 and 03.05.2018 are annexed with the Petition at pages 26 and 27 and marked as Annexure I Exhibit I and Exhibit J, respectively.

(j) Having not received the amount due, on 10.07.2018 the Financial Creditor wrote to the Corporate Debtor recalling the loan amount with immediate effect and directed the Corporate Debtor to pay the principal amount along with the outstanding interest due within fifteen days of receipt of the recall letter. A copy of the recall letter dated 10.07.2018 is annexed with the Petition at page 28 and marked as Annexure I Exhibit K.

(k) In response to the said recall letter, the Corporate Debtor through a letter dated 18.07.2018, requested the Financial Creditor not to recall the loan. On 31.08.2018, the Financial Creditor sent the demand notice for the outstanding amount including the principal and interest accrued. Copies of the letters dated 18.07.2018 and 31.08.2018 are annexed with the Petition at pages 35 and 36 and marked as Annexure I Exhibit L and Exhibit M, respectively.

6. Notice of the Petition was served upon the Corporate Debtor. The Corporate Debtor appeared and filed its reply affidavit. The learned counsel appearing for the Corporate Debtor has made the following submissions:

(a) The Petition is an arm-twisting tactic to wrongfully apply pressure on the Corporate Debtor to pay money to the Financial Creditor. The Financial Creditor has been made aware that the Corporate Debtor has sought reasonable time from the Financial Creditor to make the payment. However, the Financial Creditor has refused to do so and has filed the present Petition with ulterior motive and *mala fide* intent.

(b) Proceedings under section 7 of the Code ought not to be permitted to be misused as a substitute for a civil action for the recovery of money. However, the instant Petition has been instituted to recover money from the Corporate Debtor and not for resolution of insolvency.

(c) The Petition is time-barred for the default as per paragraphs (d) and (g) occurred one year from the date of disbursement which is 30.06.2016. further, there are several defects in the revised Petition.

- (d) The corporate Debtor is one of the oldest sugar manufacturers in India that was making a profit, however, due to various circumstances, it started incurring loss in 2011. The account of Corporate Debtor with its bank was declared as Non-Performing Assets (NPA) in September 2018.
- (e) The bankers allowed a holding on operation, however, it retained 10% of the sugar sale receipts. As a result, the Corporate Debtor was left with a paltry percentage of its revenues to run the plant leading to a severe liquidity crunch. A copy of the document evidencing the mechanism of “holding on operations” is annexed to the reply affidavit at pages 14 and 15 and marked as Annexure B.
- (f) On 14.06.2021, the Principal Secretary, Sugarcane Department, Government of Bihar issued a letter for transfer of 85% of sales realisation of Distillery unit in a special deposit account for payment of cane price. The bankers are keeping 15% of revenue from the distillery unit towards the recovery of dues which leaves nothing for the company.
- (g) The corporate debtor has been incurring losses since 2011-2012 and total losses have accumulated to Rs.126 crore till 2019-2020. At present, the Corporate Debtor also owes Rs.51 Crore to the farmers for two seasons.
- (h) Since December 2020, there has been no sugar or distillery stock for sale. On 22.05.2021, the Corporate Debtor started its distillery operations and has thus far produced Rs. 1.41 Crore worth of ethanol, however, after appropriations are made as aforesaid, there will be no funds left with the Corporate Debtor.
- (i) There is no possibility to generate quick revenue and there are no substantial funds available with the Corporate Debtor to meet its payment obligations.
7. We have heard the learned Senior Counsel for the financial creditor and the learned counsel for the corporate debtor and perused the record.
8. It is apparent from the records that a loan of ₹1,70,00,000/- (Rupees one crore seventy lakh only) was sanctioned by the Financial Creditor to the Corporate Debtor the repayment of which has been defaulted.

9. The Corporate Debtor first defaulted in payment of interest in January 2018. After this, the Financial Creditor requested payment on 15.04.2018. Upon request from the Corporate Debtor, on 03.05.2018 the Financial Creditor extended the period of repayment till the first week of July 2018. Having not received any amount, the Financial Creditor finally recalled its loan on 10.07.2018.
10. As per Part IV of Form I, the date of default is 01.04.2018. The present Petition was filed on 30.01.2021, it is therefore within the limitation period.
11. The Corporate Debtor has also admitted the existence of debt time and again. The only defence taken by the Corporate Debtor is its inability to pay due to the continuous losses incurred by it.
12. The Financial Creditor has proposed the name of Mr. Neeraj Jain, having registration number IBBI/IPA-001/IP-P01067/2-017-2018/11758, e-mail: reachneerajjain@gmail.com as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with a copy of the certificate of registration.
13. The Petition made by the Financial Creditor 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 more than the minimum amount as stipulated under section 4(1) of the Code at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. Given this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.
14. It is, accordingly, hereby ordered as follows: -
 - a. The Petition bearing CP (IB) No.68/KB/2021 filed by Anit Finvest Private Limited, the Financial Creditor, under section 7 of the Code read with rule

4(1) of the Insolvency & Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating Corporate CIRP against Riga Sugar Co Ltd [CIN: L15421WB1980PLC032970], the Corporate Debtor, is admitted.

- b. There shall be a moratorium under section 14 of the Code.
- 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 Code, 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. Neeraj Jain (Reg. No. IBBI/IPA-001/IP-P01067/2-017-2018/ 11758), having address at 4, Synagogue Street, Suite No. 205, 2nd Floor, facing Brabourne Road, Kolkata- 700001, e-mail id: reachneerajjain@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP 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, 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 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 periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

- h. The Financial Creditor shall deposit a sum of ₹3,00,000 (Rupees three 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, the Court Officer is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post, e-mail or 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.
15. CP (IB) No. 68/KB/2021 to come up on 22.12.2021 for filing the progress report.
16. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Satya Ranjan Prasad
Member (Technical)

SR (LRA)

Rajasekhar V.K.
Member (Judicial)

08.10.2021