

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V
(Division Bench)

Item No.-07
IB-622/ND/2022

IN THE MATTER OF:

State Bank of India

....Applicant

Vs.

M/s. Schon Ultra Wares Pvt. Ltd.

.....Respondent

SECTION

U/s 7 IBC

Order delivered on 01.08.2023

CORAM:

**SHRI MAHENDRA KHANDELWAL,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-622/ND/2022
stands **admitted.**

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH**

COMPANY PETITION IB (IBC) NO. 622/ND/2022

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

STATE BANK OF INDIA

Stressed Assets Management Branch-I

Registered Office at:

State Bank Bhavan, Madame Cama Road,
Nariman Point, Mumbai-40021

Branch Office at:

Stressed Assets Management Branch-II
11th Floor, Jawahar Vyapar Bhavan,
Tolstoy Marg, Janpath,
New Delhi-110001

...Applicant/Financial Creditor

Versus

M/S SCHON ULTRA WARES PRIVATE LIMITED

Registered Office at:

Flat No. 94, Neel Kamal Apartments,
Vikas Puri, New Delhi-110018

...Respondent/Corporate Debtor

Order Delivered on: 01.08.2023

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

Appearances:

For the Applicant: Mr. Atul Sharma, Mr. Aditya
Vashishtha, Advs.
For the Respondent: Mr. Ajit Singh, Adv.

ORDER

PER: SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

1. This is a Company Petition filed 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, by State Bank of India, Stressed Assets Management Branch-II (hereinafter referred to as ‘Financial Creditor’), represented by Shri Sohan Lal Meena, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Schon Ultra Wares Private Limited (“Corporate Debtor”). The Financial Creditor was incorporated on 01.07.1955, having Identification No. AAACS8577K.
2. The Corporate Debtor was incorporated on 29.09.2000, having CIN: U26913DL2000PTC107972 under the Companies Act, 1956. Its registered office is at Flat No. 94, Neel Kamal Apartments, Vikas Puri, New Delhi-110018. Therefore, this Bench has jurisdiction to deal with this petition. The Authorised Share Capital of the Corporate Debtor is Rs. 5,00,00,000 (Five Crores). The Paid-Up Capital of the Corporate Debtor is Rs. 4,11,74,000 (Four Crores Eleven Lacs Seventy-Four Thousand).
3. The present petition was filed on 25.07.2022 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs. 29,47,44,198.97 (Rupees Twenty-Nine Crores Forty-Seven Lacs Forty-Four Thousand One Hundred and Ninety-Eight and Ninety-Seven Paise) as on 30.06.2022 (date of default).

Facts of the case as submitted by the learned Counsel appearing for the Financial Creditor: -

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:

- a) That the present Section 7 Petition is filed by the Financial Creditor on 25.07.2022 claiming a financial debt of INR 29,47,44,198.97/- (Rupees Twenty-Nine Crores Forty-Seven Lacs Forty-Four Thousand One Hundred and Ninety-Eight and Ninety-Seven Paise) as on 30.06.2022.
- b) That Schon Ultra Wares Pvt. Ltd. - the Corporate Debtor ("CD") had availed various credit facilities granted by the erstwhile State Bank of Travancore ("SBT" -merged with SBI since 22.02.2017), in the form of term loans, cash credit facilities, overdraft facilities. Details of the said financial assistance granted to the CD is summarized as under:

FACILITIES	PURPOSE	DATE
<p>TERM LOAN-I (INR 6 Crore) (with one-way interchangeability with foreign Letter of Credit (FLC) limit of Rs. 2 Crores within the maximum threshold limit of Rs. 6 crores)</p>	<p>For purchase of Industrial Plot of F-73 & F-74, EPIP, RIICO, Industrial Area, Neemrana, Rajasthan and installation of Plant and Machinery</p>	<p>i) Sanction letter dated 05.09.2013. ii) Loan Agreement dated 10.09.2013.</p>
<p>TERM LOAN-II (INR 1.8 Cr + INR 1 Cash Credit Limit) (with one-way interchangeability with Foreign Letter of Credit limit up to Rs. 50 Lacs within the threshold limit of Rs. 1 Crore.) Enhancement of Cash Credit Limit - (from Rs. 1 crore to Rs. 1.5 Crores and renewed Non-Fund Based Limit of INR 30 Lacs, totalling to INR 1.8 Crores).</p>	<p>For better and smooth functioning of its business.</p>	<p>i) Sanction Letter dated 15.03.2014. ii) Loan Agreement dated 19.03.2014. iii) (Enhancement) Sanction Letter dated 08.12.2014. iv) Supplemental Agreement of Loan dated 08.12.2014.</p>

TERM LOAN-III (5 Cr- Fresh Term Loan + Enhanced Cash Credit Limit- From 1.5 Crore to INR 2 Crore + Renewal of FLC/LC Limit of INR 30 Lacs)	Purchase of fully automated machinery and installation, electrification and other incidental expenses.	i) Sanction Letter dated 13.06.2015. ii) Loan Agreement dated 15.06.2015. iii) Supplemental Agreement for Loan dated 15.06.2015. iv) Agreement of Loan for overall Working Capital Limit dated 15.06.2015.
OVERDRAFT FACILITY: INR 17,33,070	To pay the outstanding dues of EPFO, Regional Office, Jaipur accumulated due to non-payment of Government dues towards PF and ESI.	Supplemental Agreement of Loan dated 30.08.2016.

- c) That the Corporate Debtor committed default in repayment of the said credit facilities on 30.01.2016 and loan accounts were declared as NPA on 28.04.2016.
- d) That subsequently, SBI restructured the credit facilities in the year 2017 with revised payment schedule wherein CD duly acknowledged, admitted the debt and default and accepted the restructuring vide Sanction Letter dated 04.01.2017, that is duly signed and accepted by Corporate Debtor. That the Corporate Debtor further committed defaults after restructuring as well.
- e) That by virtue of this restructuring process, the previous existing loan accounts of the Corporate Debtor were closed and fresh loan accounts ('A/c Nos.') were created in respect of the credit facilities which was restructured of which an amount of INR 26.28 Crores was sanctioned by SBI.

A/C NOS.	DESCRIPTION
67393006835	by reducing the Cash Credit Limit (CC Limit) from INR 2 crore to INR 1.01 crore
67392545439	by carving out overdue amount and irregularity in Cash Credit Limit account into a Working Capital Demand Loan of INR 88 lakhs
67392726481	Overdue instalments into a Working Capital Term Loan (WCTL) of INR 1.15 crore
67392563093	converting the outstanding amounts in Term Loan - I of INR 6 crore, Term Loan - II of INR 1.8 crore and Term Loan - III of
	INR 5 crore into a Restructured Term Loan of INR 11.19 crore
67392619083	(Funded Interest Term Loan) unpaid interest on the credit facilities i.e., restructured CC limit, Restructured Term Loan, WCTL & interest on Term Loan(New up to 31.03.2017) will be recovered from the Funded Interest Term Loan (FITL) of INR 3.31 crore
67392996436	Bank also sanctioned and released a Fresh Term Loan of INR 4.22 crore ; carrying with it renewed Letter of Credit/ Bank Guarantee of INR 30 lakhs and a fresh Forward Contract Limit (sub-limit of letter of credit/ buyer credit) within INR 4.22 crore.
37667159888	Additional Overdraft A/C created by the Bank to honour its commitment of LOU/LOC of 4.22 cr within its limit of Fresh Term Loan A/c of INR 4.22 crore. Since fresh term loan was already disbursed upto INR 1.75 crore, SBI created this A/C No. 37667159888, carrying an overdraft facility of INR 1,62,44,820/-

- f) That the Financial Creditor issued Recall Notice to the Corporate Debtor on 17.05.2019 for total outstanding of INR 19,63,58,823.83/- as on 31.05.2017. Section 13(2) SARFAESI Act Demand Notice was also issued on 01.06.2019 for INR 25,57,78,207.14/- (Rupees Twenty-Five Crores Fifty-Seven Lacs Seventy-Eight Thousand Two Hundred and Seven and Fourteen Paise) as on 25.05.2019.
- g) That the Corporate Debtor has admitted the debt as evident from their balance sheets for the Financial Year 2018-19 to 2020-21.
- h) That the Corporate debtor has failed one time settlement (OTS) in the year 2018 and further failed "Compromise Proposal" in the year 2022, offered by the Corporate Debtor vide letter dated 01.06.2022 offering to pay INR 6.5 Crores as full and final settlement. However, the Corporate Debtor failed to pay entire INR 6.5 Cr and deposited only INR 10 lakhs which was refunded/returned by the Financial Creditor. Hence, this is clear admission of debt on the part of the Corporate Debtor.
- i) That admission of debt is also evident from E-mail dated 30.07.2022, sent by the Corporate Debtor, thereby requesting the Financial Creditor to go for PPIRP option (prepacked) instead of Section 7.

Facts of the case as submitted by the Learned Counsel appearing for the Corporate Debtor

- 5. The details of the submissions made by the Corporate Debtor are as follows:
 - a) That the Corporate Debtor had availed various credit facilities granted by State Bank of Travancore under various heads totaling to a sum of Rs. 15,35,33,000 (Fifteen Crores Thirty-Five Lacs Thirty-Three Thousand) and had paid an amount of Rs. 13,37,72,081 (Thirteen Crores Thirty-Seven Lacs Seventy-Two Thousand Eighty-One) till date.
 - b) That the Corporate Debtor had committed default in payment on 30.01.2016 and the Loan account was declared NPA on 28.04.2016 and the said default or NPA must be for a loan given before that date. That

the Financial Creditor had not disclosed the said loan as the same will disclose the actual disbursal and receiving.

- c) That the credit facilities were restructured vide a sanction letter dated 04.01.2017. The said sanction letter contains the terms of repayment. That no real time transaction took place and it was paper transaction only that was shown as fresh loan, which included the earlier interest, overdue, penalties, etc. However, the Financial Creditor had not revealed, when and how the default has been done to the loan sanctioned in terms of letter dated 04.01.2017. Therefore, there is no cause of action, i.e., date of default in terms of Section 3 (12) IBC.
- d) That the default of the loan could only occur in terms of the sanction letter dated 04.01.2017. Furthermore, the restructuring was done within the moratorium period. Therefore, no default could have occurred as the installment was to start in month of January 2018 and thereafter no default could have occurred on 30.01.2016.
- e) That Financial Creditor have deliberately produced NeSL records of only two accounts and had not produce record of others loan accounts as the same show that there is no default as on date in regard to those accounts. It is further submitted that no other evidence and record has been shown for default prior to alleged date of default of 30.01.2016.
- f) That the Corporate Debtor had always been willing to settle the matter, however, on several occasions, when the initial money was paid, the Financial Creditor had acted in a clandestine manner, that is to say, the Corporate Debtor had paid 20% amount of OTS on 13.11.2018 and the Financial Creditor got receiver appointed on 16.11.2018.
- g) That the said issues were brought before the higher authorities of Bank, the corporate office of Mumbai in its meeting no. 2021-22-05 dated 07.07.2021 had resolved that the Corporate Debtor had given satisfactory justification to the event of willful default. That the Bank decided to

exonerate the Corporate Debtor and Director from being declared as willful defaulter.

Analysis and Findings

6. We have heard the Learned Counsels for the Financial Creditor and the Corporate Debtor and perused the averments made in the petition, reply and rejoinder. Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.
7. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a “debt” owed to the Financial Creditor and whether there is a “default” with respect to such debt.
8. In the present case, the Corporate Debtor availed several credit facilities from the Financial Creditor in the form of term loans, cash credit facilities, overdraft facilities, etc. The total amount as declared outstanding and claimed by the Financial Creditor as on 30.06.2022 is Rupees 29,47,44,198.97/- (Rupees Twenty-Nine Crores Forty-Seven Lacs Forty-Four Thousand One Hundred and Ninety-Eight and Ninety-Seven Paise). The Corporate Debtor committed default in repayment of the said credit facilities on 30.01.2016 and the loan accounts were declared NPA on 28.04.2016. Hence, the said credit facilities were restructured vide Sanction Letter dated 04.01.2017. However, even after restructuring, the Corporate Debtor committed further defaults in repayment of the sanctioned credit facilities.
9. On the perusal of the documents as placed before us such as Sanction Letters dated 05.09.2013, 15.03.2014, 08.12.2014 and 13.06.2015, it is established that there was disbursement of loan by the Financial Creditor in the favour of the Corporate Debtor. Furthermore, on the basis of the

account summary of the Corporate Debtor, as issued by the Financial Creditor i.e., the State Bank of India, it is concluded that the Corporate Debtor owes debt worth Rs. 29,47,44,198.97/- (Rupees Twenty-Nine Crores Forty-Seven Lacs Forty-Four Thousand One Hundred and Ninety-Eight and Ninety-Seven Paise) to the State Bank of India. Therefore, one essential ingredient with respect to Section 7, that there has been a “debt”, stands substantiated.

10. Furthermore, the Corporate Debtor has nowhere denied the existence of the debt. The Corporate Debtor sent a ‘Compromise Proposal’ dated 01.06.2022 to the Financial Creditor, wherein, the Corporate Debtor has requested the Financial Creditor to enter into a settlement by offering Rs. 6.50 Crores as compromise and in lieu of that compromise paid Rs. 10 lacs, however, the said amount of Rs. 10 Lacs was refunded by the Financial Creditor. The said letter dated 01.06.2022, shows the admission of debt on the part of the Corporate Debtor. Furthermore, the E-mail communication dated 30.07.2022, sent by the Corporate Debtor to the Financial Creditor requesting to proceed with PPIRP based resolution instead of taking recourse before this Adjudicating Authority, also shows the admission of debt on the part of the Corporate Debtor. Additionally, the Financial Statements of the Corporate Debtor for the Financial Year 2018-19 to 2020-21, also shows admission of liability towards the Financial Creditor. Furthermore, as per the record of default as maintained by the Information Utility NeSL, it is concluded that there exists a debt worth more than Rs. 1 Crore by the Corporate Debtor towards the Financial Creditor and the said Corporate Debtor has defaulted in the repayment of the said debt. Therefore, another major essential ingredient of Section 7 i.e., “default” with respect to the debt stand substantiated.

11. Additionally, the defence raised by the Corporate Debtor that the default must be in respect of loan given prior to the date of default as mentioned by the Financial Creditor i.e., 30.01.2016, does not appear to hold any value in our opinion for the fact that there has been time to time disbursement

by the Financial Creditor in the favour of the Corporate Debtor even before the said default date i.e., 30.01.2016, as evident from the Sanction Letters dated 05.09.2013, 15.03.2014, 08.12.2014 and 13.06.2015, which were duly acknowledged and admitted by the Corporate Debtor. Therefore, the defence of the Corporate Debtor appears to be moon shine. Hence, the said defence does not hold any ground.

12. From the perusal of aforesaid facts, it is clear that the applicants are Financial Creditors and the debt owed to them by the Corporate Debtor is a Financial Debt, and there has been a default, as stipulated in Sections 3(12), 5(7) and Section 5(8) of the IBC which are as follows:

Section 3(12) of IBC defines Default. *“Default means non-payment of debt when whole or any part or installment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.”*

Section 5(7) of IBC defines Financial Creditor: *“Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.”*

Section 5(8) of IBC defines Financial Debt. *“Financial Debt means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-*

(a) Money borrowed against the payment of interest;

(b) Any amount raised by acceptance under any acceptance credit facility or its de-materialised equivalent;

(c) Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the

Indian Accounting Standards or such other accounting standards as maybe prescribed;

- (e) Receivables sold or discounted other than any receivables sold on non-recourse basis;*
- (f) Any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*
- (g) Any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*
- (h) Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
- (i) The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause.”*

13. The present petition made by the Financial Creditor is complete in all respects as required by law. The Petitioner established that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under Section 4(1) of the Code, stipulated at the relevant point of time. We are of the view that since this Petition was filed on 25.07.2022, and even admittedly the debt owed to the Financial Creditor is an amount of Rs. 29,47,44,198.97/- (Rupees Twenty-Nine Crores Forty-Seven Lacs Forty-Four Thousand One Hundred and Ninety-Eight and Ninety-Seven Paise) which meets the threshold of Rs. One Crore.

Recently, Hon'ble Supreme Court in **Suresh Kumar Reddy v. Canara Bank** in **Civil Appeal No. 7121 of 2022** categorically laid down that the view taken in Innovative Industries still holds good, which lays down that the Adjudicating Authority has only to ascertain the existence of 'debt' and 'default' for admission of an application under Section 7 of the Code.

14. In the light of the above facts and circumstances, and in terms of Section 7(5) (a) of the Code, the instant petition **COMPANY PETITION IB (IBC)/622(ND) 2022** filed by the State Bank of India , the Financial Creditor, under section 7 of the Code read with Rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s Schon Ultra Wares Private Limited, the Corporate Debtor, stands **admitted** and CIRP of M/s Schon Ultra Wares Private Limited is initiated.
15. That the petitioner in part-III of the petition has proposed the name of Mr. Sandeep Mahajan, as Interim Resolution Professional, having Registration Number IBBI/IPA-001/IP-P00991/2017-18/11631 and E-mail ID insolvency@arck.in, is hereby appointed as an Interim Resolution Professional (IRP) for corporate debtor. The consent of the proposed interim resolution professional in Form-2 is taken on record. It is pertinent to mention that the IRP has a valid AFA.
16. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
 - (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.

(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

17. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

18. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (within 3 days) as prescribed by Explanation to Regulation

6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

19. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs (Two Lakh Rupees) with the Interim Resolution Professional namely Sandeep Mahajan to meet out the expenses to perform the initial functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount, however, is subject to adjustment towards Resolution Process cost as per applicable rules.
20. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations.
21. It is further made clear that all the personnel connected with the Corporate Debtor, its 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 day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex- management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing appropriate orders.
22. 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 his obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

23. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.
24. Accordingly, the instant application filed under Section 7 of the Code, 2016 bearing **I.B./622 (ND)/2022 stands admitted.**
25. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)