

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP (IB) No. 295/KB/2021

In the matter of:

A petition under section 227 read with section 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016 read with rules 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019;

And

In the matter of:

Reserve Bank of India

...Petitioner/Appropriate Regulator

Versus

Srei Infrastructure Finance Limited
(CIN: L29219WB1985PLC055352)

...Respondent/Financial Service Provider

Order reserved on: 08.10.2021

Order pronounced on: 08.10.2021

Coram:

Shri Rajasekhar V.K. : Member (Judicial)
Shri Harish Chander Suri : Member (Technical)

Appearances (through video conferencing):

For the Petitioner/Appropriate Authority

1. Mr.Sudipto Sarkar, Sr. Advocate
2. Mr. Sanjay Ginodia, Advocate
3. Mr. Nilang Desai, Advocate
4. Mr. Suharsh Sinha, Advocate
5. Mr. Vivek Shetty, Advocate
6. Ms. Neeraja Balakrishnan, Advocate
7. Mr. Nishant Upadhyay, Advocate
8. Mr. Dhavan Bora, Advocate
9. Mr. Umang Trivedi, Advocate

10. Ms. Komal Khar, Advocate
11. Mr. Sushovit Dutt Majumder, Advocate
12. Ms. Pubali Sinha Choudhury, Advocate
13. Mr. Shwetank Ginodia, Advocate
14. Ms. Mini Agarwal, Advocate
15. Ms. Saloni Thakkar, Advocate

ORDER

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

1. The Court convened via video conferencing.
2. This is an application filed by the Reserve Bank of India (Appropriate Regulator) under section 227 read with section 239(2)(zk) of the Insolvency and Bankruptcy Code, 2016 (in short “IBC”) for initiations of Corporate Insolvency Resolution Process (in short “CIRP”) against Srei Infrastructure Finance Limited (in short “SIFL”), the Financial Service Provider.
3. The respondent/Financial Service Providers (in short “FSP”) is a company registered under the Companies Act, 1956, having CIN: L29219WB1985PLC-055352, and registered with the Registrar of Companies, West Bengal, Kolkata. Therefore, this Bench has jurisdiction to deal with the present petition.
4. Mr. Sudipto Sarkar, Learned Senior Counsel appearing on behalf of the Petitioner/Appropriate Regulator submits as follows :-
 - (a) On the basis of credit information available to it, the Reserve Bank of India (in short “RBI”) came to the conclusion that SIFL has committed defaults of significant amount in relation to the financial debt availed by it from various financial creditors;
 - (b) In particular, UCO Bank has intimated *vide* its letter dated 07/10/2021 that the amount claimed to be in default in relation to working capital demand loan facility is ₹165,56,30,967.99. Of this the principal amount due is to the

tune of ₹150.00 crore and the interest amount due is to the tune of ₹15,56,30,967.99.

(c) Date of default with reference to repayment of principal sum is stated to be 13/02/2021. The default with reference to the interest amount is stated to be 01/11/2020. During the course of hearing, Mr. Sudipto Sarkar, Learned Senior Counsel submitted that this was the earliest date of default, and that there are continuing defaults since then.

5. The supporting documents submitted by the UCO Bank to RBI have been made part of the record as Annexure “B” to the petition at pages 21-101 of the petition. The communication dated 07/10/2021 from UCO Bank contains the following:
- various sanctioned letters starting from 25/10/2018 -
 - the Working Capital Consortium Agreement dated 30/11/2018;
 - UCO Bank Account Classification Ledger Statement as of 05/10/2021;
 - Central Repository of Information on Large Credits (CRILC) Report as of 06/10/2021.

These documents demonstrate that the account is in default with the status of “SMA-2”, which means that the interest of principal has been overdue and remains unpaid for a period in excess of 60 days calculated in accordance with the RBI Master Circular on Prudential Norms on Income Recognition, Asset Classification and Provisioning pertaining to advances. E-mail communication evidencing classification of SIFL as a Red Flag Account by UCO Bank. The Certificate under the Bankers’ Book Evidence Act, 1891 is also attached.

6. The RBI *vide* its notification dated 04/10/2021, in exercise of its powers under section 45-IE of the Reserve Bank of India Act, 1934 has superseded the Board of Directors of SIFL and appointed Mr. Rajneesh Sharma as the Administrator. It has also constituted a three-member Advisory Committee to assist the

Administrator of SIFL in the discharge of its duties. The RBI has proposed the same person to be appointed as the Administrator of the Corporate Debtor.

7. Mr. Sudipto Sarkar, Learned Senior Counsel appearing for the Petitioner/ Appropriate Regulator submits that in view of the huge default committed by the respondent/FSP, there is a need to initiate CIRP against the respondents with speed. He, therefore, urged this Adjudicating Authority to pass appropriate orders expeditiously keeping in view the public interest in the matter.
8. Mr. Sudipto Sarkar, Learned Counsel, further submitted that the challenge to the notification dated 04/10/2021 issued the RBI, in Writ Petition (Lodging) No. 22872/2021, was dismissed by the Hon'ble Bombay High Court *vide* order dated 07/10/2021.
9. Rule 5(a)(i) of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudication Authority) Rules, 2019 mandates that no CIRP shall be initiated against an FSP which has committed a default under section 4, except upon an application made by the appropriate regulator in accordance with rule 6. Sub-clause (ii) thereof which specifies that an application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under section 7.
10. Therefore, the first requisite to be seen is whether present petition satisfies the ingredients of section 7 of the Code. For this the existence of debt and default are required to be proved to the satisfaction of the Adjudicating Authority. At page 22 against Sl. No. 2 it has been claimed that the date of default of interest payment in respect of the working capital facility is 01/11/2020 and in respect of principal sum it is 13/02/2021. The amount stated to be in default in respect of the principal sum is ₹150 crores and ₹15.56 crore towards interest. Therefore, the total amount in default is in excess of limits prescribed under section 4 of the Code, which is at present is One Crore Rupees. The present petition is also not hit by limitation.

11. We have heard Mr. Sudipto Sarkar, Learned Senior Counsel appearing for the Petitioner/Appropriate Regulator and perused the records.
12. The documents placed on records *prima facie* prove that there has been a default and that the sum involved in such default is in excess of the threshold limit of one crore rupees prescribed at present under section 4(1) of the Code. Moreover, since the sanction letters are in the year 2018 onwards and date of default from November 2021, the petition is not hit by limitation.
13. We are, therefore, satisfied that this is a fit case for initiation proceedings under section 227 read with rule 5 of the Rules *ibid*, since the debt in question qualifies as financial debt under section 5(8) read with section 3(11) of the Code
14. The RBI *vide* its notification dated 04/10/2021 has superseded the Board of S.IFL and appointed Mr. Rajneesh Sharma, ex-Chief General Manager, Bank of Baroda as the Administrator. The RBI has proposed the name of Mr. Rajneesh Sharma as the Administrator of the Corporate Debtor. He has also filed his written consent in Form 2 to act as such Administrator, which has been placed on record at pages 10-11 of the petition. The Form-2 appears to have been amplified by the Administrator by including certain caveats. Therefore, we were constrained to ask the Administrator whether he was willing to give his consent to act the Administrator unconditionally. Mr Rajneesh Sharma confirmed that he would do so. He is, therefore, hereby directed to file a fresh Form 2 with his unconditional consent to act as Administrator.
15. The Petition made by the Reserve Bank of India is complete in all respects as required by law. It clearly shows that the Respondent/FSP 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. Therefore, the default stands established and there is no reason to deny the admission of the Petition. Therefore, this Adjudicating Authority hereby admits this Petition and orders as follows:
 - a. The Petition bearing CP (IB) No.295/KB/2021 filed by the Reserve Bank of India, the Appropriate Regulator, under section 227 of the Code read with

rule 5 of the Insolvency & Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 for initiating Corporate Insolvency Resolution Process against Srei Infrastructure Finance Limited [CIN:L29219WB1985-PLC055352], the Financial Service Provider, is hereby admitted.

- b. There shall be moratorium in terms of section 14 of the Code in respect of Financial Service Provider.
- 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 section 31(1) of the IBC or passes an order for liquidation of the Financial Service Provider 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.
- e. In terms of rule 5(a)(iii) of the Rules *ibid*, Mr. Rajneesh Sharma, 17-B, Shanaz Apartments, 90 Napean Sea Road, Mumbai 400006, e-mail id: sreadministrator@srei.com; rajneesh_1961@yahoo.co.in, is hereby appointed as Administrator of the Financial Service Provider to carry out the functions as per the Code, subject to his filing his unconditional consent in Form 2 to act as such Administrator. The Administrator shall carry out his functions as contemplated by sections 15, 17, 18, 19 and 20 of the Code.
- f. During the CIRP period, the management of the Financial Service Provider shall vest in the Administrator. The officers and managers of the Financial Service Provider shall provide all documents in their possession and furnish every information in their knowledge to the Administrator within one week from the date of receipt of this Order, failing which coercive steps will follow.
- g. The Registry is hereby directed to communicate this Order to the Petitioner/ Reserve Bank of India and the Administrator by Speed Post, e-mail immediately.
- h. Additionally, the Administrator shall serve a copy of this Order on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Financial Service Provider. 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.

16. CP (IB) No. 295/KB/2021 to come up on 22.12.2021 for filing the progress report.
17. Certified copy of this order be issued, if applied for, upon compliance with all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

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