

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH -I**

CP(IB)No. 268/MB/2023

Under Section 7 of the Insolvency and
Bankruptcy Code, 2016 read with Rule 4 of the
Insolvency and Bankruptcy (Rule 4 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of

Punjab National Bank(International) Limited

.....Applicant/
Financial Creditor

Versus

Steadfast Shipping Pvt. Ltd

.....Corporate Debtor/
Respondent

Order Delivered on : 27.11.2024

Coram:

Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).

Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor : Mr. Mithilesh Kumar Pandey, Advocate

For the Corporate Debtor : Adv. Smita Durve i/b Adv.Arshil Shah,
Advocate.

ORDER

Per: Justice (Retd) Virendrasingh Gyansingh Bisht

1. This Company Petition has been filed by **Punjab National Bank(International) Limited ("Financial Creditor")**, is seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **Steadfast Shipping Pvt. Ltd. ("Corporate Debtor")** by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for having committed a default in repayment of outstanding debt of USD 8,441,078.20 @ INR 69,21,68,412/- (Rupees Sixty Nine Crores Twenty One Lakhs Sixty Eight Thousand Four Hundred and Twelve Only). The date of default is 23.02.2023.

Submissions made by the Financial Creditor:

2. The Applicant/Financial Creditor provided a term loan facility of USD 5 million to the Principal Borrower under a loan facility agreement dated 10.02.2012, for the purpose of acquiring vessels (Motor Tug Boat, Landing Craft Tug, Motor Tug Boat, and Mooring Boat) valued at USD 7.15 million. The debt remains unpaid to the Applicant/Financial Creditor to date. The company passed a board resolution on 20.12.2012, authorizing Mr. Dileep Thakurdesai and Mr. Partho Protim Burmon Roy, Directors, to jointly and severally sign and execute the loan documents for availing the term loan.
3. The facility agreement was secured by a mortgage deed dated 27.06.2012, in favor of the Applicant bank, as well as by the personal guarantees of Mr. Dileep Thakurdesai and Mr. Partho Roy, executed under personal guarantee agreements dated 10.02.2012. The letter of guarantee executed in favor of the bank provides an unconditional, irrevocable, joint, and

several continuing guarantee for the repayment of all amounts that may be outstanding from time to time under or in respect of the facility. Under the mortgage deed dated 27.06.2012, the Borrower (CD) mortgaged a first charge on the following assets—Motor Tug Bharati-VI (official no. 3594), Landing Craft Bharati-VII (official no. 3408), Mooring Boat Bharati-VIII (official no. 01454), and Mooring Boat Bharati-IX (official no. 01455)—owned by M/s Steadfast Shipping Pvt. Ltd. These assets were provided as collateral security through a simple mortgage in favor of the Financial Creditor.

4. The Corporate debtor has defaulted in repayment of the loans according to the repayment schedule and now has a due for an amount aggregating to USD 8,441,078.20 (@ 1 USD = 82.00; Rs. 69,21,68,412, i.e. Rupees Sixty-Nine Crores Twenty-One Lakhs Sixty-Eight Thousand Four Hundred Twelve as on 30.11.2022) in relation to the loan facility provided to the Principal, Borrower. The borrower defaulted in the said payment of debt on 23.02.2023. Subsequently, Mr. Dileep Thakurdesai submitted an OTS proposal acknowledging debt and default vide letter dated 12.12.2022.
5. Further, the liability/obligation in respect of the claim which is due from the Respondent arose and occurred on the same date on which the principal Borrower defaulted in the payment of debts due. The Financial Creditor has filed tabular calculation sheet showing amount due from the Corporate Debtor, record of default-NESL, date of default which is recorded as on 23.02.2023, statement of accounts etc. along with this present application/petition. The default in respect of non-payment of debt has occurred and the legally enforceable liability/financial debt towards the corporate debtor remaining unpaid. It is pertinent to mention herein that the debt owed by the Respondent and the Corporate Debtor towards the Financial Creditor is a "Financial Debt within the meaning of section 5(8)(h) of the Insolvency and Bankruptcy Code, 2016.

6. The High Court of Justice Chancery Division in claim no. HC-2017-001290 passed an order against each of the Respondent, Mr. Roy and Corporate Debtor in the sum of Five Million Dollars inclusive of interest and cost of the proceedings on the standard basis to be the subject of a detailed assessment
7. Since the Corporate Debtor have not been making any payment towards the satisfaction of the availed loan facility, therefore the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 30.11.2014.
8. The Financial Creditor submits that on 12.12.2022, the Director of Steadfast Shipping Private Limited submitted an OTS proposal, expressing their willingness to settle the matter. The Director of the Corporate Debtor proposed an upfront payment of Rs. 10 Lakhs immediately, as part of the total amount of INR 2.00 Crore, with the remaining balance to be paid within 90 days. It was further stated that the Corporate Debtor will initiate the process to arrange the OTS amount once Punjab National Bank International Limited accepts or confirms the proposal and gives a nod to proceed with the settlement of INR 2.00 Crore.
9. Various telephonic communication and correspondence were exchanged between the parties wherein the debt was acknowledged by the Respondent/Corporate Debtor.
10. The Financial Creditor submits that on 07.02.2020/12.02.2020 the Applicant bank through its counsel sent a notice/Recall Notice /Demand Notice to the Corporate Debtor in order to regularize /repay the outstanding amount of USD 6,764,814.35, whereby the Applicant bank invoked the Guarantee agreement and held the guarantors jointly and severally liable to pay/to clear the entire outstanding amount of USD 6,764,814.35 due as on 06.02.2020.

11. Further the Applicant bank through its Counsel on 14.11.2020, sent a notice to Respondent and other personal guarantors and borrower company for repayment of entire outstanding amount.
12. On 09.12.2022, the Applicant Bank issued a Demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Respondent.

Findings

13. Heard learned counsel and perused the materials on record.
14. We find that the Corporate Debtor has defaulted on several terms as stipulated in the Agreement and has also failed to repay the outstanding amount due. This Company Petition has been filed by **Punjab National Bank(International) Limited ("Financial Creditor")**, seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") against **Steadfast Shipping Pvt. Ltd. ("Corporate Debtor")** by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**Code**") read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for having committed a default in repayment of outstanding debt of USD 8,441,078.20@ INR 69,21,68,412/- (Rupees Sixty Nine Crores Twenty One Lakhs Sixty Eight Thousand Four Hundred and Twelve Only). The date of default is 23.02.2023.
15. Since the Corporate Debtor have not been making any payment towards the availed loan facility, therefore the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) on 30.11.2014
16. We find from the submission of the Financial Creditor that an OTS proposal was submitted on 12.12.2022 by the Director of Steadfast Shipping Private Limited submitted an OTS proposal, indicating their

willingness to settle the matter. We further note from the submission of the Financial Creditor that the Corporate Debtor submitted an OTS proposal on 30.10.2023 with the Petitioner Bank. Further, said One-Time Settlement ('OTS') proposals was under consideration was live as conveyed during the course of hearing of this Company Petition. OTS proposals fall within the ambit of "acknowledgment of debt" as contemplated u/s 18 of the Limitation Act, 1963. Accordingly, the present petition is within limitation.

17. This Bench observes that, despite several opportunities having been granted for settling the matter amicably, no progress has been made. The learned Counsel for the Financial Creditor submits that he has received instructions indicating the likelihood of a settlement occurring in the near future. However, the settlement has not materialized despite the passage of time. We note that, in recent hearings, the parties were actively engaged in pursuing a settlement, but the settlement has failed to materialize as on date. Sufficient time has already been granted to both the parties to arrive at settlement, and the proceedings to initiate CIRP can not be put on hold for an uncertain period. The Corporate Debtor has admitted its liability for the outstanding amount that is due and payable.
18. The Financial Creditor submits that on 07.02.2020, and 12.02.2020, the Applicant bank, through its counsel, issued a Notice of Demand/Recall Notice to the Corporate Debtor, requesting the regularization and repayment of the outstanding sum of USD 6,764,814.35. By virtue of this notice, the Applicant bank invoked the Guarantee Agreement and held the guarantors jointly and severally liable for the payment of the entire outstanding amount of USD 6,764,814.35, as of 06.02.2020.
19. On 09.12.2022, the Applicant Bank issued a Demand notice under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating

Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019 to the Respondent.

20. From perusal of the record and the documents relied upon by the Applicant it stands proved that there has been a financial debt in respect of which default has been committed by the Corporate Debtor and further that the Application has been filed within the period of limitation. Therefore, the Application u/s 7 of the Code, deserves to be admitted. It is ordered accordingly in the following terms:

ORDER

- a. The petition bearing CP (IB) 268/MB/C-I/2023 filed by **Punjab National Bank International Limited**, the Financial Creditors, under Section 7 of the Code read with Rule 4(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **Stead Fast Shipping Pvt Ltd**, the Corporate Debtor, is admitted.
- b. This Bench hereby **appoints Mr Nilesh Rajendra Kothari, Registration No: IBBI/IPA-002/IP-N01225/2022-23/14132 as the Interim Resolution Professional** having email: - ca.nkothari@gmail.com, Mobile No.-9850032207; Address at A704,Iskon Riverside, Near Shelaleikh Society,Shahibaug,Ahmedabad,Gujarat-380004 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. There shall be a moratorium under section 14 of the IBC, in regard to the following:
- i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- d. Notwithstanding the above, during the period of moratorium: -
- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- e. 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 Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.
- f. 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.

- g. The Financial Creditor shall deposit an amount of **Rs. Three Lakhs** towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- h. 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 Code. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- i. The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by speed post and email immediately, and in any case, not later than two days from the date of this Order.
- j. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

JUSTICE V.G. BISHT
Member (Judicial)