

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.596/MB-IV/2022

Under Section 7 of the I&B Code, 2016

In the matter of:

State Bank of India

[PAN: AAACS 8577K]

...Financial Creditor/Petitioner

V/s

Sterling Oil Resources Limited

[CIN: U23209MH2006PLC163026]

...Corporate Debtor/Respondent

Order pronounced on: 16.05.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Nausher Kohli a/w Mr. Ahsan
Allana, Advocates i/b JSA

For the Respondent(s) : Mr. Hemant Shah, Advocate

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application being CP (IB) No.596/MB-IV/2022 filed by The State Bank of India, ("the Financial Creditor/Applicant"), under

Section 7 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the case of Sterling Oil Resources Limited ("Corporate Debtor").

1.1 This application is filed by Mr. Ravi Shankar Prasad, Assistant General Manager, Authorised Signatory of the Financial Creditor vide its Authorization Letter dated 25.11.2021, claiming a default of Rs. 1655,91,73,821.41 as on March 31, 2022 plus further interest @13.65 p.a. with monthly rests in payment of financial debt, arising from the SBLC Facility Agreement dated 22.04.2014 & Guarantee Agreement, which resulted into a decree dated 31.01.2022 passed by Debt Recovery Tribunal ("DRT"). The date of default is stated as 31.03.2022, being the period of 60 days expiring from the date of decree, in part IV of the Application.

1.2 The computation chart showing the total amount in default due to the Financial Creditor by the Corporate Debtor is stated as follows:

STATEMENT OF CLAIM
TOTAL CLAIM CERTIFICATE

A/c name: **M/s. Sterling Global Oil Resources Pvt. Ltd.**
(Date of NPA: 19.06.2016)

Loan Facility	Rate of Interest @ 5% p.a. above Base Rate with monthly rests	Limit (in Rs lakhs)	Outstanding as on 31.03.2022 (Interest applied from the date of creation of Demand Loan upon payment of devolved portion of SBLC amount up to 31.03.2022). (in Rs)	Unapplied interest from 1. 22.03.2016 to 31.03.2022, 2. 16.09.2016 to 31.03.2022, 3. 23.03.2016 to 31.03.2022, 4. 16.03.2017 to 31.03.2022, 5. 16.03.2017 to 31.03.2022, 6. 16.03.2017 to 31.03.2022, 7. 27.02.2018 to 31.03.2022, 8. 21.03.2016 to 31.03.2022, 9. 26.09.2016 to 31.03.2022, 10. 20.03.2017 to 31.03.2022, 11. 07.09.2017 to 31.03.2022, 12. 07.09.2017 to 31.03.2022, 13. 07.09.2017 to 31.03.2022, 14. 07.09.2017 to 31.03.2022 (in Rs.)	Penal Interest (in Rs) @2% / p.a.	Total (in Rs) As on 31.03.2022
1. Demand Loan A/c. No. 35649519292 (Now Balance parked in AUCA A/c. No. 38720339088).	13.65%	Rs.90,948.00	64,26,34,303.00	81,47,55,586.73	7,85,58,135.94	1,53,59,48,025.67
2. Demand Loan A/c. No. 36099708738 (Now Balance parked in AUCA A/c. No. 38720463152).	13.65%	(Total Limit USD 139.92 Million sanctioned under OKW	48,31,95,314.00	52,97,05,098.66	5,35,61,869.60	1,06,64,62,282.26

3. Demand Loan A/c. No. 36120531904 (Now Balance parked in AUCA A/c. No. 38720595713).	13.65%	SBL Facility, which includes share of State Bank of India (SBI) - \$ 117.19 Mn., Erstwhile - State Bank of Mysore (e-SBM) \$ 11.75 Mn., Erstwhile - State Bank of Hyderabad (e-SBH) \$ 7.39 Mn, and Erstwhile - State Bank of Patiala (e-SBP) - \$ 4.43 Mn.) (Post-merger, the share of e-SBM, e-SBH & e-SBP have been taken together). (Demand Loan created in INR @ Rs.65 per USD upon payment of devolved portion of SBL amount).	8,81,76,453.00	10,98,54,492.99	1,06,29,490.22	20,86,60,436.21
4. Demand Loan A/c. No. 36694109137. (Now Balance parked in AUCA A/c. No. 38720599081).	13.65%		92,79,68,745.00	88,50,64,569.36	9,36,61,283.74	1,90,66,94,598.10
5. Demand Loan A/c. No. 36694191699. (Now Balance parked in AUCA A/c. No. 38720602416).	13.65%		47,23,15,829.00	45,04,78,540.41	4,76,71,548.33	97,04,65,917.74
6. Demand Loan A/c. No. 37168028932. (Now Balance parked in AUCA A/c. No. 38720606374).	13.65%		51,25,96,722.00	42,07,03,595.58	4,65,69,061.10	97,98,69,378.68
7. Demand Loan A/c. No. 3756035973. (Now Balance parked in AUCA A/c. No. 38720609965).	13.65%		489,46,55,843.00	348,23,61,441.02	40,06,91,278.33	8,77,77,08,562.35
8. Demand Loan A/c. No. 65252922004. (Now Balance parked in AUCA A/c. No. 38720713104).	13.65%		2,55,93,627.00	3,19,30,659.69	30,88,063.93	6,06,12,350.62
9. Demand Loan A/c. No. 65266164032. (Now Balance parked in AUCA A/c. No. 38720721568).	13.65%		2,17,91,250.00	2,37,10,838.71	24,03,604.73	4,79,05,693.44
10. Demand Loan A/c. No. 65281624989. (Now Balance parked in AUCA A/c. No. 38720724842).	13.65%		22,83,96,629.63	21,71,44,292.73	2,30,02,356.45	46,85,43,278.81
11. Over Draft (AUCA) A/c. No. 62482635156.	13.65%		3,64,55,502.00	3,01,47,951.98	33,29,935.44	6,99,33,389.42
12. Over Draft (AUCA) A/c. No. 62505270348.	13.65%		3,58,05,074.00	2,96,07,223.99	32,70,523.75	6,86,82,821.74

13. Over Draft (AUCA) A/c. No. 62460041746.	13.65%	2,78,17,510.00	2,30,04,509.87	25,40,919.95	5,33,62,939.82
14. Over Draft (AUCA) A/c. No. 64159792736.	13.65%	17,87,10,433.80	14,77,89,861.07	1,63,23,851.68	34,28,24,146.55
TOTAL		857,61,13,235.43	719,62,58,662.79	78,53,01,923.19	1486,29,46,635.95
		857,61,13,235.43	798,15,60,585.98	15,00,000.00 (Legal Charges)	1655,91,73,821.41

Legal charges – Rs 15,00,000.00

Total claim amount = 1655,91,73,821.41 (One thousand Six hundred Fifty Five crore Ninety One Lakhs Seventy Three thousand Eight hundred twenty One rupees and Forty One paise only).

1.3 The liability has arisen out of financial debt provided by the Financial Creditor (in its capacity as a member of the consortium of banks termed as 'OKW Lenders') to SGORPL by way of Standby Letter of Credits ("SBLs") facilities, which came to be invoked by the beneficiaries/discounting banks and upon such invocation, the Financial Creditor had to discharge the obligations on various dates by making payments under such SBLs.

2. The Corporate Debtor is holding 100% (hundred percent) equity shares of Sterling Global Oil Resources Private Limited ("SGORPL"), a Mauritius based entity. SGORPL has holding participating interest in an Oil Prospecting License through Sterling Exploration and Energy Production Company Limited, (SEEPCO, Nigeria) ("Sterling Nigeria"), which is a step-down Asset level entity.

2.1. For the purposes of running and for development of Oil and Gas assets of Sterling Nigeria in the Okwuibome Field ("OKW"), the SBLC facilities were sanctioned to SGORPL by a consortium of 10 lenders led by Bank of Baroda (which includes the Financial Creditor) (OKW Facility). Such SBLC facilities were secured, inter alia, by securities and undertaking provided by the Corporate Debtor as holding company of the said SGORPL.

2.2. Pursuant to the sanction of facility, on April 22, 2014, a SBLC Facility Agreement was entered into. relation to the issuance of the SBLCs. A copy of the SBLC Facility Agreement is annexed with the Petition. The first SBLC was issued by the Financial Creditor on June 25, 2014 and further SBLCs were issued subsequently on various dates. The SBLCs were discounted through Sterling Exploration & Energy Production Company Limited, BVI (SEEPCO BVI) ("Sterling BVI") one of the group companies from Offshore Foreign Currency Lenders. In or around February 2016, the group company of the Corporate Debtor, Sterling BVI failed to meet its periodical debt obligations to Foreign Currency lenders under OKW Facility.

2.3. Accordingly, the Foreign Currency lenders invoked the SBLCs. The SBLC Lenders were thereby forced to honour their

obligation under the said SBLC by crystallizing the amount in INR. On account of devolution of this liability under the said SBLC, the Financial Creditor made payment of various amounts aggregating to Rs.857.61 Crores. Consequent to devolution of the liability under the said SLBC and consequent to the said payment aggregating to Rs.857.61 Crores being made by the Financial Creditor under SBLC on account of invocation of SLBC, on March 19, 2016 a demand was raised upon SGORPL calling upon to immediately reimburse the amounts paid by the Financial Creditor as a SBLC provider to Foreign Currency Facility lenders.

2.4. However, SGORPL defaulted in repaying the above demand owing to which the Financial Creditor. Due to constant defaults under SBLC Facility, the account of SGORPL was declared as a 'Non-Performing Asset ("NPA") on June 19, 2016, in accordance with the guidelines prescribed by the Reserve Bank of India ("RBI"). On April 18, 2017, a revival letter was executed by SGORPL, wherein the outstanding principal debt due and payable as on April 18, 2017 was acknowledged by the SGORPL under the SBLC Facility Agreement.

2.5. Despite making repeated assurances to repay the SBLC Facility and issuing a letter confirming its debt, the parties liable for the debt including the Corporate Debtor failed to repay the outstanding amount under the SBLC Facility Agreement owing to which the SBLC Lenders (including the Financial Creditor) were constrained to issue a Recall Notice dated October 22, 2019 ("Recall Notice") calling upon, inter alia, on SGORPL and its other obligors, including the Corporate Debtor, to immediately

and forthwith make payment of the then outstanding dues of Rs. *6.967.53 Crores (as on 30.09.2019) along with all other charges payable.

2.6. The OKW Lenders, which includes the Financial Creditor also, filed an Original Application before the Ld. Debts Recovery Tribunal, Ahmedabad Bench, ("DRT") in relation to the financial debt qua the SLBCs; and DRT, vide its order dated January 31, 2022 ("DRT Order") directed the Corporate Debtor, jointly or severally with other persons, to pay the Financial Creditor an amount of Rs.1217,60,56,060.54/- (Rupees Twelve Hundred and Seventeen Crores Sixty Lakhs Fifty Six Thousand and Sixty only) along with pendente lite and future interest as per the agreed rate, within 2 months from the date of the DRT Order. The date to make the payment, as provided under the DRT Order expired on March 31, 2022. The Corporate Debtor has till date failed to discharge its liability as per the DRT Order. It is stated that no appeal to the DRT Order was preferred by the Corporate Debtor and hence, the same has attained finality and is thus binding and enforceable against the Corporate Debtor.

2.7. The DRT order in the OA, wherein, inter alia, the DRT held as follows:

"... the liabilities of defendant no. 1 to 7 are joint and several as defendant no. 1 as borrower and Defendant no. 3 as Foreign Currency Borrower, Defendant no. 2 as Undertaking Provider & Corporate Guarantor and Defendant no. 5 as Guarantor and Defendant no. 6 & 7 as Director and Promoter, respectively executed various security documents for due repayment of the SBLC Facility and they are bound by the guarantee agreements/undertakings/assignments/

charge executed by them and defendants no 6 is liable to pay the dues of the bank being joint Managing Director of the defendant no. 1 due to the reasons stated in the body of the judgement and the defendant no. 1 to 7 are jointly and severally liable and their personal assets/properties can also be attached and can be put to sale for recovery of the dues..."

2.8. As per the DRT Order of the DRT, the Corporate Debtor (who was arrayed as Defendant No. 7), was directed to pay the dues to the Financial Creditor, within a period of two months from the date of DRT Order. In addition to the above, in the DRT Order, the Financial Creditor was also permitted to recover pendente lite and future interest at contractual rate (i.e. 13.65% per annum with monthly rests) from the date of filing of OA until realization. Pursuant to the DRT Order, the DRT issued a recovery certificate inter alia in the favour of the Financial Creditor.

3. The Corporate Debtor filed reply dated 14.11.2022 and contended that-

3.1. The Corporate Debtor was never served with any notice inasmuch as the Company has been inactive since 2016.

3.2. That there is no default by the Corporate Debtor and as such, the application ought to be dismissed on this ground alone. It is submitted that Section 7 of the Insolvency and Bankruptcy Code, 2016 specifically states that a corporate insolvency resolution process can be initiated by a Financial creditor only when there is a default. The term default has been defined under Section 3(12) of the Code as a liability or obligation with respect to a claim, which is due from any person. The term claim as per Section 3(6) of the Code

is defined to mean the right to payment or a right to remedy for breach of contract giving rise to a right to payment.

- 3.3. The Promoters in their bonafide entered into a One Time Settlement (OTS) with the banks for their Indian group Companies and Foreign Companies as that was the only way forward. The total amount of OTS of Rs. 6457 Crores (Rs. 3826 Crores towards Group's Indian Companies and Rs. 2631 Crores towards Group's Foreign Companies). The OTS for Indian Companies got scuttled as banks were pressurized to opt for liquidation and insolvency proceedings in spite of the fact the promoters had already paid Rs. 614 Crores towards the OTS amount. However, OTS for foreign companies still stands and these contracts with banks and companies are governed by English and Nigerian law.
- 3.4. The proceedings are already sub-judice before the Hon'ble Supreme Court of India in relation to debt claimed in default and the lead bank i.e Bank of Baroda has already intervened in the matter and made categorical admissions belying the accusations levelled by the SFIO, confirming creation of valid charge, Bank of Baroda had accepted the OTS Proposal of the Promoters in the Account of SGORPL vide Sanctioned acceptance letter dated 04.03.2020 for a total amount of Rs.216.86 Crores. A sum of Rs.9,78,35,933.00 was also deposited. Therefore, it can be safely concluded that Promoters always had an intention to repay and thus even made an upfront payment in compliance of the OTS offer made by them. The consortium accepted total OTS offer of Rs. 2400 Crores out of which Rs. 216.86 Crores was the proportionate share of Bank of Baroda.

- 3.5.A Global Accounting Firm M/s. Baker Tilly got the lifetime accounts audited of the Indian group Companies namely SBL, PMT Machines Ltd, Sterling SEZ and Infrastructure, **Sterling Oil Resources** and Sterling Port Ltd and found that the group's Indian companies have availed disbursement of Rs 7,659 Crores and made the repayment of Rs 11,994 Crores resulting into a net repayment of Rs 1,332 Crores more to Indian lenders over and above what group received.
4. This Bench heard both the Counsel(s) and perused the material available on record.
- 4.1. On perusal of the DRT Order, this Bench finds that the Debt Recovery Tribunal-II, Ahmedabad passed order dated 31.01.2020 in O.A. 771 of 2020 holding that *"the banks will be at liberty to proceed against other movable or fixed assets, if any, to recover their dues on furnishing details before Ld. Recovery Officer, list and proof of such assets but subject to pari passu charge of other tenders. The individual bank may search uncharged properties of Defendant No. 1 to 7 and get the same attached in accordance with law to recover their individual dues, without any sharing on pari-passu pro-rata basis"*. It was further held that the shares of the Corporate Debtor in Sterling Global Oil Resources Private Limited and receivables would be available to the consortium lenders by way of first pari-passu charge as security for due repayment of dues of credit facilities, so the pledger would be bound by the pledge so created and made. After holding so, the DRT finally allowed OA 771 of 2020, in which the Applicant State Bank of India was one of the parties, against Defendant No. 1-7 jointly and severally and also directed them to pay the dues within a period of 2 months from the date of judgement, failing which the

Applicant will be entitled to sell the hypothecated movables, mortgaged properties/ fixed assts, pledged shares, receivables, shareholdings as mentioned in the Schedule of the original application as well as other movables and immovable properties of Defendant No. 1.

- 4.2. The DRT issued a decree dated 31.01.2022 in favour of State Bank of India, amongst others, for a sum of Rs. 1217,60,56,060.54/- for full recovery from Defendants 1-7 jointly or severally and making their personal assets/ properties also subject to attachment and sale for recovery of dues.
- 4.3. It is undisputed fact that decree dated 31.1.2022 has attained finality and such decree requires the Corporate Debtor, along with other obligors named therein, to pay the decretal debt either severally or jointly. It is also not in dispute that the said amount has not yet been paid, though, the Corporate Debtor has pleaded that an OTS came to be approved and in consequence thereto, it paid some amounts under it. But, the fact is that the debt still remains to be undischarged.
- 4.4. The reliefs being sought in these Writ Petitions as well as vide I.A. No. 148951/2021 in W.P. (Crl.) 48 of 2020 relate to the annulment of various criminal proceedings that emanate from the allegations pertaining to availment of credit facilities by Sterling Group of Companies and the alleged non-repayment thereof. It is stated by the Corporate Debtor that the writ petitions were initially filed confined to the FIR(s) lodged by the CBI, however during the course of the proceedings vide I.A. No. 148951/2021 (supra), but the relief sought for extended to all the proceedings that have been initiated

on the same set of accusations *albeit* relating to certain special enactments like the Prevention of Money Laundering Act, 2002 (Enforcement Directorate), Corporate Fraud (under Section 447 of Companies Act, 2013 (SFIO-Serious Fraud Investigation Office), the Prevention of Black Marketing Act, 1980 (Income Tax Department).

4.5. This Bench finds that the Hon'ble Supreme Court passed an interim order dated 1.2.2022

"We have put to the learned ASG that if the APPLICANT is willing to bring in Rs.900 odd crores, he may obtain instructions as to what concessions the State is willing to show in respect of the charge-sheet in question, making it clear that other civil proceedings in any case will be determined on their own merit.

List on 8.03.2022.

Interim order dated 18.1.2022 to continue.

4.6. This Bench further finds that order dated 18.1.2022 passed by Hon'ble Supreme Court stayed the criminal proceedings in view of offer to pay the amounts under criminal complaint and directed that "In view of the fact that the entire amount in respect of which charge sheet has been filed has been volunteered to be paid by the Petitioners, we really see no reason why the money should not be received but then the excuse given today is such that we don't want to say anything more, **except that all proceedings must remain in abeyance till we consider the matter"** :

4.7. However, this Bench finds that the said writ deals with the amount alleged to be misappropriated under criminal complaint and it does not encompass whole of debt, which is outstanding as per decretal

order. Since, the OTS is not in force, this Bench is not persuaded by this contention that the proceedings before Hon'ble Supreme Court shall come in a way to the present application in any manner. As regards contention that the Indian Companies were not net beneficiary of the amounts due from the SGORPL, a fact confirmed by leading accounting firm M/s Baker Tilly, this Bench does not find any merit in this contention, as the decree has attained finality; and there exists a decretal debt which remains undischarged; and the Corporate Debtor is under obligation to discharge the debt thereunder. In the present proceedings, this Bench is not concerned whether the principal debt was availed or benefited the corporate debtor in any manner, as the definition of Financial Debt also includes guarantee.

4.8. In view of foregoing discussion, this Bench is of considered view that financial debt of more than Rs. 1.00 crores is in existence; there is no stay on the enforcement of decree; the debt under decree is a financial debt in view nature of underlying debt being a financial debt; and there is a default in payment of such debt. Accordingly, this application deserves to be admitted.

5. The Financial Creditor has proposed the name of Mr. Purusottam Behera, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-No0940/2019-2020/12993] as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code and has also given his declaration that no disciplinary proceedings are pending against him.

ORDER

- a) This Application being C.P. (IB) No. 596/NCLT/MB/C-IV/2022 filed by State Bank of India, the Financial Creditor/Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (I&B Code) in the case of Sterling Oil Resources Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP) is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:

- 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 possession of the corporate debtor.

- II. That 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.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to

a. such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

b. a surety in a contract of guarantee to a Corporate Debtor.

IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints Mr. Purusottam Behera, a registered insolvency resolution professional having Registration Number [IBBI/IPA-002/IP-N00940/2019-2020/12993], email-purusosbbj@yahoo.com as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

a) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five 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).

- b) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor.
- c) The Registry is directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. Compliance report of the order by Designated Registrar is to be submitted today.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kishore Vemulapalli
Member (Judicial)



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