

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

IBA/915/2019

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of M/s. S & S Industries and Enterprises Limited

M/s. Stressed Assets Stabilization Fund (SASF)

---Financial Creditor

V/s

M/s. S & S Industries and Enterprises Limited

---Corporate Debtor

Order delivered on: 30.09.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri. S. Sathyanarayanan, Advocate
For M/s. Wise & Worth*

For the Corporate Debtor : *Shri. Arvindh Pandian, Sr. Advocate
Shri. Pawan Jhabakh, Advocate*

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

Order pronounced on 30.09.2019

It is an Insolvency and Bankruptcy Application filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 by M/s. Stressed Assets Stabilization Fund (SASF) (**hereinafter referred to as "Financial Creditor"**) for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely M/s. S & S Industries

and Enterprises Limited (hereinafter referred to as "Corporate Debtor") on the ground that the Corporate Debtor defaulted in making repayment of ₹ 92,35,71,588.83 as on 01.06.2019.

2. The counsel appearing on behalf of the Financial Creditor submitted that the Corporate Debtor had availed financial assistance in the form of Rupee Term Loan of ₹ 1450 lakhs from Industrial Development Bank of India (IDBI) for part-financing the cost of an expansion-cum-diversification scheme and executed an Agreement and other loan documents on 02.09.1994. On the request of Corporate Debtor, the Bank sanctioned USD 156,906 (equivalent to ₹ 50 lakhs) as against Foreign Currency Loan Agreement on 14.11.1994. In respect of the above loans, the Corporate Debtor furnished two Declaration and Undertaking dated 17.05.1995 for a total sum of ₹ 1500 lakhs for mortgaging the immovable properties for the loan availed from Industrial Development Bank of India (IDBI), State Bank of India (SBI) and Indian Bank. The Corporate Debtor mortgaged by depositing the title deeds of properties in favour of IDBI and other lending Banks. The IDBI also subscribed to 18% Non-Convertible Debentures of the aggregate nominal value of ₹ 700 lakhs issued by

the Corporate Debtor with a view to tide over the liquidity constraint faced by the Corporate Debtor and thereby entered into a Subscription Agreement with IDBI on 26.03.1998.

3. It is further submitted that despite repeated reminders and requests, the Corporate Debtor failed to adhere to the terms and conditions of the loan documents and hence the Financial Creditor herein issued Recall Notice under Section 13(2) of SARFAESI Act in respect of the loan taken and debentures subscribed. The Corporate Debtor filed an Application before the Board for Industrial and Financial Reconstruction (BIFR) as its net worth was eroded as of 31.03.1999. By way of Trust Deed dated 24.09.2004, present Applicant was formed as Special Purpose Vehicle in the form of a Trust for acquiring non-performing assets of Assignee Bank (IDBI). By virtue of Transfer Deed dated 30.09.2004, the Assignee Bank transferred the NPA of the Corporate Debtor in favour of Stressed Assets Stabilization Fund (the Financial Creditor herein).

4. It is stated that the Financial Creditor having waited for a considerable period of time and having granted several opportunities to the Corporate Debtor to repay the legitimate dues,

filed O.A.265/2007 before the Hon'ble Debt Recovery Tribunal-II at Chennai on 13.08.2018. The Hon'ble Debt Recovery Tribunal allowed the application with a direction that the Creditor Bank is entitled to recover the defaulted amount from the Corporate Debtor along with interest and issued Debt Recovery Certificate on 14.03.2019.

5. In the light of the above, the Corporate Debtor having defaulted in repayment of dues guaranteed by it, the present Applicant is constrained to file this Application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor under the Insolvency and Bankruptcy Code, 2016.

6. The counsel appearing on behalf of the Corporate Debtor stated that the Company had incurred losses from 1997 onwards and upon its net worth being fully eroded, the same was reported to Board of Industrial and Financial Reconstruction (BIFR) in accordance with the mandatory provisions of Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) and was endorsed as a 'Sick Industrial Company' vide BIFR Letter dated 21.11.2000. It is further stated that Corporate Debtor Company's

proceedings before BIFR and Appellate Authority for Industrial and Financial Reconstruction (AAIFR) continued till December 2016 and when SICA was repealed, both BIFR and AAIFR were abolished. Prior to that, the Hon'ble Madras High Court in Writ Petition 27341/2009 had granted a stay against the rejection of Corporate Debtor Company's references by BIFR and rejection of consequential Appeals by AAIFR. On 24.07.2019 the stay was withdrawn by the Corporate Debtor. Details of borrowings from 13 Lenders comprised of 3 All India Financial Institutions and a consortium of 6 banks in addition to a scheduled bank and Principal amount due to them, as furnished by the Corporate Debtor, is given below:

Principal Dues To All India Financial Institutions And Banks

<i>Lender</i>	<i>Principal (in lakhs)</i>	<i>Due Status</i>
<i>IDBI Bank Limited</i>	224	<i>Decreed</i>
<i>SASF</i>	2,059	<i>Decreed</i>
<i>Oriental Bank of Commerce</i>	545	<i>Pending</i>
<i>Kotak Mahindra Bank Ltd.</i>	570	<i>Pending</i>
<i>Punjab National Bank</i>	150	<i>Pending</i>
<i>Indian Bank</i>	400	<i>Pending</i>
<i>Dhanalakshmi Bank</i>	25	<i>Pending</i>
<i>Total</i>	3,973	

Principal Dues to All India Investment Institutions

<i>Lender</i>	<i>Principal (in lakhs)</i>	<i>Due Status</i>

<i>LIC Mutual Fund</i>	50	<i>Pending</i>
<i>GIC Mutual Fund</i>	25	<i>Pending</i>
<i>UTI Mutual Fund</i>	75	<i>Pending</i>
<i>Total</i>	150	
<i>Total Principal Outstanding</i>	4,123	

7. It is submitted that in view of long pending BIFR proceedings and continuous delay in the conclusion of One Time Settlement (OTS) with its Lenders, the Corporate Company had decided to initiate Corporate Insolvency Resolution Process on its own under Section 10 of the Insolvency and Bankruptcy Code, 2016 and obtained approval of the Shareholders of the Company in the 28th Annual General Meeting held on 19.07.2019. When the Corporate Debtor Company was getting ready to move an application for CIRP, the Applicant had filed the instant application under Section 7 of IBC.

8. On perusal of material placed before this Bench, it is seen that the Applicant relies upon the following documents to establish acknowledgement of debt and default:

<i>Sl.No.</i>	<i>Documents relied upon</i>
1.	<i>Rupee Term Loan Agreement</i>
2.	<i>Foreign Currency Loan Agreement</i>
3.	<i>Declaration and Undertaking executed by Corporate Debtor to create mortgage by depositing the title deeds of properties with IDBI</i>

4.	<i>Subscription Agreement</i>
5.	<i>Trust Deed for acquiring non-performing assets of Assignee Bank (IDBI)</i>
6.	<i>Notice under SARFAESI Act</i>
7.	<i>Order of Hon'ble DRT-II, Chennai dated 14.03.2019</i>

9. On looking at the facts available, we are of the view that this Applicant/Financial Creditor has proved existence of debt and default beyond doubt. Moreover, the Corporate Debtor never denied that it owed money to the Financial Creditor herein. In fact, the Corporate Debtor opted to approach the Adjudicating Authority for commencement of CIRP under Section 10 of the IBC, 2016.

10. Therefore, this Bench hereby admits IBA/915/2019 by appointing Mr. M. Suresh Kumar as Interim Resolution Professional (IRP) looking at the consent given by the Financial Creditor stating that this Financial Creditor would pay remuneration to the IRP and the expenditure thereto until constitution of CoC.

11. In view of the aforesaid reasons, this IBA/915/2019 is hereby admitted with the following directions:

I. that moratorium is hereby declared prohibiting all of the following actions, namely,

- (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 a owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

II. That the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of Sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. That the order of moratorium shall have effect from the date of issue of 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 IBC or passes an order for liquidation of Corporate Debtor under section 33 of IBC, 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 IBC.

VI. That this Bench hereby appoints **Mr. M. Suresh Kumar**, having Regn.No. [IBBI/IPA-001/IP-P00110/2017-18/10217], No.27/9 Nivedh Vikas, Pankaja Mill Road, Puliyakulam, Coimbatore-641045, Mobile 7373052341, (e-mail:msureshkumar@icai.org) as Interim Resolution Professional (IRP), with his consent to carry the functions as mentioned under the Insolvency and Bankruptcy Code. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/ Circulars/Directions issued in this regard.

12. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, Corporate Debtor and Interim Resolution Professional by way of e-mail.

-Sd-

(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-

(B. S.V. PRAKASH KUMAR)
Member (Judicial)

TJS/KNP