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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH-I, CHENNAI**

IBA/363/2019 filed under Section 7
of the Insolvency and Bankruptcy
Code, 2016 r/w Rule 4 of the
Insolvency and Bankruptcy
(Application to Adjudicating Authority)
Rules, 2016

In the matter of **M/s. Lakshmi Subbaiah Tex Pvt. Ltd.**

UNION BANK OF INDIA

Having its Central Office at
Union Bank Bhavan
No.239, Vidhan Bhavan Marg,
Nariman Point,
Mumbai – 400 021

... Financial Creditor

-Vs-

M/s. LAKSHMI SUBBAIAAH TEX PVT. LTD.

9/7B, Dindigul Main Road,
Vilangudi, Madurai – 625 018

...Corporate Debtor

Order Pronounced on **05.05.2020**

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor : Rohan Rajasekaran, Advocate
For Corporate Debtor : S.P. Muralikrishnan, Advocate

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. This Application has been filed by the Financial Creditor invoking the provisions of Section 7 of the Insolvency and

Bankruptcy Code, 2016 ("I&B Code-2016") r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "AAA Rules") against *M/s. Lakshmi Subbaiah Tex Private Limited* (hereinafter referred to as 'Corporate Debtor'). The prayer made in the Application is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part – I of the Application discloses the details of the Financial Creditor from which it is evident that the Financial Creditor is a Bank having its Central Office at Mumbai. Part – II of the Application discloses the fact that the Corporate Debtor is a Private Limited Company having CIN: U17122TN2008PTC069973 which was incorporated on 25.11.2008 and having Nominal Share Capital and Paid – up Share Capital of Rs.4,25,00,000/- and Rs.3,25,00,000/- respectively and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.9/7B, Dindigul Main Road, Vilangudi, Madurai - 625018. Part – III of the Application discloses the fact that the Financial Creditor has proposed the name of one Mr. Swaminathan Prabhu as the Interim Resolution Professional.



3. From Part – IV of the Application, it can be seen that the Financial Creditor is claiming that a total sum of Rs.28,43,33,566.87/- (Rupees Twenty Eight Crores Forty Three Lakhs, Thirty Three Thousand and Five Hundred and Sixty Six and Eighty Seven Paisa only) to be in default as on 30.09.2018 and the Corporate Debtor has failed to pay the same. It has also been stated that the account of the Corporate Debtor was classified as NPA on 31.07.2017.

3. Part – V of the Application discloses the list of documents attached by the Financial Creditor in order to prove its 'Financial Debt', which *inter alia* includes the following;

- i. Demand Promissory Note (SD-21G)
- ii. Letter of continuity (AD-09M)
- iii. Packaging Credit Agreement (SD-04)
- iv. Letter of Hypothecation of Bills (SD-17)
- v. Interest Agreement (SD-24)
- vi. Letter of confirmation (SD-23-A)
- vii. Renewal of Limits
- viii. Letter of Extension of Mortgage
- ix. Slippage of Corporate Debtor account in NPA category

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor has approached the Financial Creditor with the request to sanction initially a Packaging

Credit facility to the tune of Rs.16 Crores in order to meet the export needs and based on the said request, the Financial Creditor has sanctioned a sum of Rs.16 Crores to the Corporate Debtor vide Packaging Credit Agreement dated 06.08.2016, the copy of the said Agreement is placed at pages 9 to 18 of the typed set filed with the Application.

5. Apart from the above, the Learned Counsel for the Financial Creditor submitted that the facility Duty Draw back, Cash Credit, Term Loan was granted to the Corporate Debtor and the Financial Creditor, in order to secure the loan, has executed (i) Three Demand Promissory Note for a total sum of 27 Crores on 06.08.2016, (ii) Letter of Hypothecation of Bills dated 06.08.2016 and (iii) Interest Agreement dated 06.08.2016. (iv) Hypothecation Agreement of Goods and Debts dated 06.08.2016.

6. Further, it was submitted by the Learned Counsel for the Financial Creditor that the Financial Creditor by their letter dated 06.08.2016 has renewed the Credit facilities, which were granted to the Corporate Debtor, in and by which the proposed limit amount was fixed as Rs. 29.28 Crore. The copy of the Renewal of Limits letter is placed at pages 42 to 48 of the typed set filed with the Application.

7. The Learned Counsel for the Financial Creditor has submitted that the Corporate Debtor has failed to pay the amounts legitimately due to the Financial Creditor even after repeated requests made by the Financial Creditor and hence the Financial Creditor by their letter dated 01.08.2017 which is placed at page 51 of the typed set filed along with the Application has declared that the account of the Corporate Debtor has been classified as Non Performing Asset (NPA) on 31.07.2017.

8. Thus, the Learned Counsel for the Financial Creditor has submitted that the Financial Creditor has granted various credit facilities to the Corporate Debtor on various dates and renewed the same from time to time and the Corporate Debtor has committed default in the repayment of the said loan. The details of the loans granted by the Financial Creditor and the Outstanding Balance are reproduced below;

Sl. No.	Nature of Account	Amount due as on 30.09.2018
1	Packaging Credit	19,79,98,187.39
2	Duty Drawback	1,20,92,237.00
3	Cash Credit	6,00,97,941.14
4	Invoked Guarantee	1,16,91,262.00
5	Term Loan	24,53,939.34
	TOTAL	28,43,33,566.87

Under the circumstances, the Learned Counsel for the Financial Creditor submitted that the debt and default on the part of the Financial Creditor is proved and therefore prayed to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

9. The Learned Counsel for the Corporate Debtor has filed their objections and submitted that the application filed by the Financial Creditor is not maintainable as the same has been filed fraudulently and with a malicious intent, other than the purpose of resolution and hence it attracts Section 65 of the IBC, 2016. Further it was submitted that the Financial Creditor has filed lot of forged documents and suppressed the financial frauds and also the Application is incomplete for non-disclosure of all the information.

10. The Learned Counsel for the Corporate Debtor has submitted that the application filed by the Financial Creditor contains the following suppressed and forged documents;

- a. In page No.3 in Part IV of the Application, the Financial Creditor says the calculation of amount on account wise and statement is attached herewith is suppressed and not enclosed in the documents filed.



- b. In page No.3, in Part V, the copy of Certificate of Registration of charge issued by the Registrar of Companies is suppressed and not enclosed in the documents filed.
- c. In page No.4, copy of entries in banker's book in accordance with the Bankers Book Evidence Act, 1891, it is mentioned that attached bank statement of accounts and the same is suppressed and not enclosed in the documents filed.
- d. The letter of extension of mortgage which is filed in page no.49 was fabricated that the letterhead says Lakshmi Subbaiaah Tex Pvt. Ltd. and on the 50th Page the seal was used in the name of Lakshmi Selvaraj Tex Pvt. Ltd. and the date written in hands as 03.03.2017 is also fabricated.
- e. In the application at page no.53, the attached deposit of title deeds dated 08.09.2003 which contains dissolved company Selvaraj Fabrics Pvt. Ltd. and Mutharasu Spinners Pvt. Ltd. and also it does not contain any signature of the Corporate Debtor's Director till page no.66 and it is having the name of Mr. K.P. S. Selvaraj
- f. In the application at Page No.67, it is mentioned Selvaraj Tex (P) Ltd. dated 04.02.2008 and the amount mentioned is Rs.52,54,34,000/- also not signed by the respective persons and it is not known



why the Applicants have filed this irrelevant documents.

g. In the application at Page No.67, it is mentioned Selvaraj Tex partnership Company dated 09.08.1999 and it does not contain any signature and also does not indicate any loan amount and it is not known why the Applicants have filed this irrelevant documents.

h. In the application at Page No.69 and 70 it is mentioned Selvaraj Tex (P) Ltd. dated 04.02.2008 and the amount mentioned is Rs.52,54,34,000/- and it is not known why the Applicant has filed these irrelevant documents.

11. Similarly, the Counsel for the Corporate Debtor tried to point out all the flaws in the Application filed by the Financial Creditor. Further, it was alleged in the counter that the Financial Creditor has done corporate frauds in connivance with KPS Selvaraj and his wife Mrs. S. Indira Vijayalakshmi along with Axis Bank and completely destroyed the functioning of Lakshmi Subbaiaah Tex Pvt. Ltd. as they are not having any Debt to be paid to the Financial Creditor as the Selvaraj Tex Pvt. Ltd., the original borrower was fraudulently transferred without any financial assistance to Lakshmi Subbaiaah Tex. Pvt. Ltd.



12. Further, it was submitted by the Learned Counsel for the Corporate Debtor that there is a pre-existing dispute with the Financial Creditor, as a subrogation suit was filed by the Corporate Debtor in their individual capacity in Learned Madurai District Court and also a Writ Petition was filed by the Directors of the Corporate Debtor before the Hon'ble High Court of Madras. Apart from the above, the counter filed by the Corporate Debtor, alleges various Financial Fraud done by the Financial Creditor in connivance with the Axis Bank and KPS Selvaraj and his wife Mrs. S. Indira Vijayalakshmi. However, for the sake of prolixity and the same being only an allegation, they are not being extracted in the present order. Finally, the Corporate Debtor has prayed for the dismissal of the Application filed by the Financial Creditor.

13. The Learned Counsel for the Financial Creditor has filed rejoinder and vehemently denied all the allegations and the averments stated in the Counter and has put the Respondent to strict proof of the same. It was further submitted that the Financial Creditor has produced several admitted documents that have been signed by the Corporate Debtor, such as loan agreements, demand promissory notes, to prove the existence of financial debt and the Corporate Debtor cannot now claim contra to what is borne on records.



14. The Learned Counsel for the Financial Creditor further submitted that all the allegations made by the Corporate Debtor are nothing but a figment of his imagination and a private dispute between the individuals cannot take away the right of the Applicant Bank to file an Application under Section 7 of IBC, 2016 when there is a debt and default committed by the Corporate Debtor. Further, it was submitted that the pre-existing dispute as claimed by the Corporate Debtor has no relevance to the present Application and the suit and writ petition mentioned in the reply have been filed in their individual capacity who signed the reply on behalf of the Respondent. It was also submitted that the Hon'ble High Court of Madras was pleased to dismiss the Writ Petition filed by one Mr. Muneeswaran, holding that the Petitioner therein has approached the Court to settle his personal scores against the Private Respondent, vide its order dated 14.08.2017 passed in W.P.(MD). No. 16278 of 2017 and the same goes on to show that the intention of the Corporate Debtor is to make the court misconceive by making various false allegations.

15. Heard both sides and perused the documents including the pleadings placed on records. A perusal of the counter / objections filed by the Corporate Debtor shows that the Corporate Debtor has only made allegations as against the

Financial Creditor, but has nowhere stated or denied that the amount was not disbursed to the Corporate Debtor. A bare perusal of the documents filed by the Financial Creditor viz. the Loan Agreements, the Demand Promissory Notes, the Letter of Confirmation and the Letter of Renewal limits would manifest the fact that the same are fact borne on record and the Corporate Debtor by simply making an allegation that a financial fraud happened between the parties and without placing on record any concrete evidence to substantiate the same, would not absolve the Corporate Debtor's responsibility to repay the amount to the Financial Creditor.

16. The objections raised by the Corporate Debtor are hypothetical and illusory and it does not warrant any interference by this Tribunal. Further, in relation to the plea of pre-existing dispute as raised by the Corporate Debtor, it is relevant to refer to the decision of the Hon'ble Supreme Court both in **Innoventive Industries Ltd. -Vs- ICICI Bank and another, (2018) 1 SCC 407** as well as **Mobilox Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd.(2018) 1 SCC 353**, wherein the Hon'ble Apex Court after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor where



there is an existence of a 'financial debt' and its 'default' in excess of Rs.1,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the CIRP. The plea of the Corporate Debtor that financial fraud took place in the company and as a result of which, this Application should be dismissed, does not appear to be plausible and it cannot be considered as a ground for not initiating the CIRP against the Corporate Debtor. All these, the Tribunal has to see that whether there is a 'financial debt' which is due and whether there is any 'default' on the part of the Corporate Debtor and whether the Application filed by the Financial Creditor is within the period of limitation. For the said reasons, the objections, as raised by the Corporate Debtor are rejected.

17. The Financial Creditor has satisfied this Tribunal that there is a 'financial debt' which is due and payable by the Corporate Debtor and the Corporate Debtor has committed a default in repayment of the loan to the Financial Creditor and the Application filed by the Financial Creditor is also within the period of limitation and the Application filed by the Financial Creditor is complete in all respects. Hence, this Tribunal is perforce required to admit the Application as filed by the Financial Creditor.



18. Thus, taking into consideration the facts and circumstances of the case as well as the position of law, we are of the view that the Application, as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

19. The Financial Creditor has proposed the name of one **CA. SWAMINATHAN PRABHU** having Registration Number **[IBBI/IPA-001/IP-P01275/2018-2019/11948]** (Email id:- **carpprabhu@gmail.com**) (Mob:- **+91-9488836000**) as *Interim Resolution Professional* (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.



20. As a consequence of the Applications being admitted in terms of Section 7 of the I&B Code, 2016, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- (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."

21. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be



terminated or suspended or interrupted during moratorium period.

- (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified
- (3) The provisions of sub – section (1) shall not apply to such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.”

22. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process



Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub – section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

23. Based on the above terms, the Applications stand **admitted** in terms of Section 7 of the I&B Code, 2016 and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the Financial Creditors as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry, who will also communicate the initiation of CIR Process in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-

ANIL KUMAR B
MEMBER (TECHNICAL)

-SD

R. VARADHARAJAN
MEMBER (JUDICIAL)

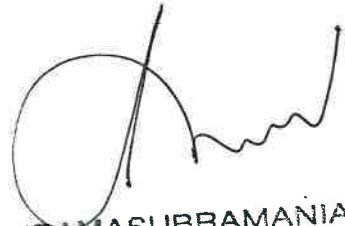
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*Order pronounced by concord in terms of NCLT circulars
dt. 14/04/2020 through video conferencing platform.*

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(P.T.O.)

Members (J) present in person at Chennai and
Members (T) through video conference from Kochi
and the respective parties intimated to be present
through video conferencing and after duly listing
and uploading the cause list dated 05/05/2020
for Chennai Bench-I.



N. SRIRAMASUBRAMANIAN
ASSISTANT REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
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