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

**IBA/895/2019**

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

**In the matter of M/s. Uthara Fashion Knitwear Limited**

**M/s. Stressed Assets Stabilization Fund (SASF)**

**---Financial Creditor**

**V/s**

**M/s. Uthara Fashion Knitwear Limited**

**---Corporate Debtor**

**Order delivered on: 21.11.2019**

**Coram:**

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

**S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

For the Financial Creditor : *Shri. S. Sathiyarayanan, Advocate*

For the Corporate Debtor : **None-Present** on the date of hearing

**ORDER**

**Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

**Order Pronounced on: 21.11.2019**

It is an Insolvency and Bankruptcy Application filed u/s 7 of the Insolvency and Bankruptcy Code, 2016 ("the Code") by M/s. Stressed Asset Stabilization Fund (SASF) (hereinafter called as "Financial Creditor") for initiation of Corporate Insolvency Resolution Process (in short "CIRP") against M/s. Uthara Fashion



Knitwear Limited ( hereinafter called as “Corporate Debtor”) on the ground that it has defaulted in repaying an amount of ₹76,64,72,470 (Principal ₹4,22,50,884, Interest ₹11,83,06,579, Further ₹52,68,98,056 and Liquidated Damages ₹7,90,16,951) as on 01.04.2019.

2. The learned counsel for the Financial Creditor submitted that Industrial Development Bank of India (IDBI), at request, granted financial assistance of ₹600 lakhs by way of Term Loan Agreement dated 02.03.2000 to the Corporate Debtor and the loan disbursed was primarily secured by hypothecation of plant and machinery together with machinery spares, tools and accessories, raw materials, semi-finished and finished goods, consumable stores, book debts and such other movables and equitable mortgage of properties at an estimated value of ₹790.70 lakhs as in the Memorandum of Entry dated 24<sup>th</sup> August 2000. Pursuant to the said Loan Agreement, IDBI disbursed financial assistance aggregating an amount of ₹420.21 lakhs from time to time. Since the Corporate Debtor had not repaid the loan properly, IDBI had cancelled the balance loan amount of ₹179.79 lakh. The account of the Corporate



Debtor was classified as "Non Performing Asset" (NPA) on 29.05.2002.

2.1. Under the Transfer Deed dated 30.09.2004 executed by IDBI in favour of SASF, IDBI unconditionally and irrevocably transferred and assigned to SASF the loan sanctioned by IDBI, including the loan granted to the Corporate Debtor herein with the intent that SASF shall be full and absolute legal owner to receive the amounts payable to IDBI by the Corporate Debtor. Accordingly, SASF is now a secured creditor fully entitled to recover the debt in terms of the said transfer.

2.2. Borrower company approached SASF (Financial Creditor) with One Time Settlement (OTS) proposal in letter dated 18<sup>th</sup> March 2009. The Corporate Debtor paid an amount of ₹25,00,000 towards OTS and defaulted in making further payment. Hence, the Financial Creditor was constrained to revoke the OTS on 31.02.2011 and restored the original liabilities. On 09.03.2011, the Financial Creditor issued Recall



Notice under Section 13 (2) of SARFAESI Act, 2002 was issued to Corporate Debtor.

2.3. On the application filed by the IDBI in OA No.413/2007 before Hon'ble DRT-II, Chennai, the application was allowed on 31<sup>st</sup> August 2009 and it was ordered for the recovery of ₹5,37,28,928 together with further interest at 17% per annum from 21.10.2003 till the date of realization. On 30.11.2012, the Corporate Debtor approached Hon'ble DRT-I, Mumbai and filed Securitization Application No.43/2011. It was argued that SASF (Financial Creditor herein) had no authority to issue notice under section 13(2) or under section 13(4) of the SARFAESI Act since the final order passed by the DRT-II Chennai was in favour of IDBI (Original Creditor) and not in favour of the Financial Creditor (SASF).

Based on the above pleadings by the Applicant/Corporate Debtor (Uthara Fashions Knitwear Ltd), the Hon'ble DRT-I, Mumbai allowed S.A.43/2011 in favour of Corporate Debtor herein. Pursuant to this, the IDBI (Original Creditor) filed M.A.



98/2014 for impleading the name of SASF in the Transfer Deed and the same was allowed and Corrigendum to order dated 22.04.2015 in DRC No.78/2009 was also issued on 30.04.2015 by the Hon'ble DRT-II, Chennai. Further, on 29.02.2016, Borrowers (Uthara Fashions Knitwear Ltd) filed a review application R.A.3/2015 before the Hon'ble DRT-II, Chennai claiming that *"only debt was transferred and the Secured Asset were not transferred"*. The DRT-II, Chennai has passed an order by inserting the word "not" in between the word "was" and "transferred". On 18.04.2018, the Appellant Bank substituted by SASF (Financial Creditor herein) filed MA/161/2017 challenging the order passed by the DRT-II, Chennai in RA/3/2015. On perusing the clause 1.1.19 of transfer deed, it was held that the term *"Security Interest" shall mean the right, title and interest to any kind whatsoever upon property, created in favour of the Transferor and includes any mortgage, charge, hypothecation, assignment, pledge, guarantee and third party*



security" and confirmed the order dated 22.04.2015 passed by the DRT-II, Chennai.

2.4. To support their claim, the Financial Creditor (SASF) has filed dates and events disclosing existence of debt and occurrence of default, which are as follows:

S.No.	DATES	EVENTS
1.	02.03.2000	Corporate Debtor availed financial assistance from IDBI
2.	28.11.2002	IDBI invoked Guarantee Agreement
3.	16.10.2003	IDBI filed OA before DRT-I, Chennai for recovery of ₹5.37 crores
4.	24.09.2004	IDBI executed Trust Deed and formed Financial Creditor herein for the purpose of recovery of amounts due to IDBI
5.	30.09.2004	Corporate Debtor's loan was transferred to Financial Creditor herein by IDBI by way of Transfer Deed
6.	2007	OA filed before DRT-I was transferred to DRT-II, Chennai and renumbered as OA No.413/2007
7.	24.02.2009	Corporate Debtor offered ₹250 lakh as OTS to Financial Creditor
8.	18.03.2009	Financial Creditor accepted OTS proposal
9.	19.06.2009	DRT-II Chennai allowed and permitted the Financial Creditor for recovery of ₹5.37 crores
10.	09.03.2011	Recall Notice under Section 13(2) of SARFAESI Act issued to Corporate Debtor
11.	22.01.2015	Financial Creditor cancelled Negotiated Settlement since Corporate Debtor defaulted final settlement amount of ₹426.32 lakhs



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3. Looking at the dates and events as well as the annexure to the application, it is apparent that the Financial Creditor has furnished material disclosing that the Financial Creditor (IDBI) has granted credit facilities as mentioned above but the Corporate Debtor defaulted in repaying the same.

4. On perusal of the material and submissions by the Financial Creditor, this Bench is of the view that the Corporate Debtor has defaulted in repaying outstanding debt of ₹76,64,72,470 (Rupees Seventy Six Crores, Sixty Four Lakhs, Seventy Two Thousand, Four Hundred and Seventy). The Financial Creditor counsel has filed proof of service for serving private notice through registered e-mail address of Respondent on 03.10.2019. Moreover, there was no representation on behalf of the Corporate Debtor side when the matter came up for hearing on 25.09.2019, 09.10.2019, 15.10.2019, 18.10.2019 and 06.11.2019 and they have not responded to the Notice sent by the Financial Creditor and by this Tribunal. It appears that there is no defence on the part of Corporate Debtor either to deny or dispute the total outstanding due. In view thereof, we hereby admit



this Application IBA/895/2019 by appointing Mr. Ramakrishnan Sadasivan, as Interim Resolution Professional (IRP) looking at the consent given by the said IRP with directions as follows:

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 an owner or lessor where such property is occupied by or in the possession of the corporate debtor.



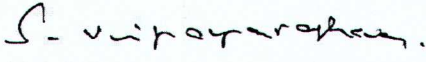
- II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date of 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 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. Ramakrishnan Sadasivan**, as Interim Resolution Professional, having

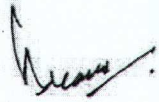
BY



[Regn. No. IBBI/IPA-001/IP-P00108/2017-18/10215], New  
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600 007, E-Mail: [sadasivanr@gmail.com](mailto:sadasivanr@gmail.com), Mobile: 9444455982  
to carry out the functions as mentioned under IBC. Fee  
payable to IRP/RP shall be in compliance with the IBBI  
Regulations/Circulars/Directions issued in this regard.

5. Accordingly, this Application is **admitted**.
7. The Registry is hereby directed to immediately communicate  
this order to the Financial Creditor, the Corporate Debtor and the  
Interim Resolution Professional by way of email.


  
(S. VIJAYARAGHAVAN)  
MEMBER (Technical)

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

KNP/TJS



Certified to be True Copy

  
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