



IN THE NATIONAL COMPANY LAW TRIBUNAL

COURT NO. V, MUMBAI BENCH

Company Petition No. 1245/(IB)-MB-V/2021

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

In the matter of

State Bank of India,

Corporate Centre:

State Bank Bhavan, Madame Cama Road,
Nariman Point, Mumbai – 400021

.... Petitioner/Financial Creditor

Vs.

Arshiya Northern FTWZ Limited,

302, Level 3, CeeJay House, F- Block, Shiv Sagar
Estate, Dr. Annie Besant, Road, Worli Mumbai
Mumbai – 400018

...Corporate Debtor

Order Pronounced On: 14.11.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (Via Video Conference):

For the Petitioner :Mr. Rishi Thakur a/w Umang Thakar i/b ZBA

For the Corporate Debtor :Mr. Nausher Kohli, Advocate

Per: H.V. Subba Rao, Member (Judicial)



ORDER

1. The Petitioners/Applicant viz. 'State Bank of India'. (hereinafter as **Petitioner**) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against 'Arshiya Northern FTWZ Limited' (hereinafter as '**Corporate Debtor**').
2. In the requisite Form-1, under the head "Particulars of Financial Debt" the amount claimed to be in default is Rs. 125,57,87,984.00/- along with interest. The date of default is stated to be 31.01.2013.
3. The Petition reveals that the Corporate Debtor had approached the Petitioner for credit facility for the purpose of developing of a free trade warehousing zone project in Uttar Pradesh. Pursuant to that, the Petitioner had provided a term loan facility of Rs. 45 Crores which is a part of total facilities aggregating to Rs. 280.37 Crores sanctioned by the Consortium Lenders (led by Punjab National Bank) for the purpose of financing the Projects. The Corporate Debtor and lenders including SBI executed a Common Loan Agreement dated 07.05.2010 with respect to the SBI Facility. The SBI Facility was disbursed on various dates (a) 24 May 2010; (b) 31 May 2010; (c) 10 June 2010; (d) 24 June 2010; (e) 30 June 2010; (f) 22 July 2010; (g) 26 July 2010; (h) 6 August 2010; (i) 15 September 2010; and (j) 12 October 2010.
4. The Petitioner has filed the security held/ secured by SBI facility which are as follows:
 - (a) First charge over the entire immovable properties and assets of Corporate Debtor both present and future.
 - (b) The charges registered with Registrar of Companies.
5. In the year 2013, the debts of the Corporate Debtor were restructured under the erstwhile Corporate Debt Restructuring framework and



accordingly SBI credit facility of Rs. 40.61 Crores was restructured to Rs. 47.51 Crores. The Petitioner issued the sanction letter dated 28.09.2013 approving the restructuring of SBI facility which is acknowledged and admitted by the Corporate Debtor.

6. The Corporate Debtor started defaulting in payment of their obligation under the SBI facility from 31.01.2013 and consequently, the account of the Corporate Debtor was classified as Non-Performing Asset (NPA) from 30 September 2014.
7. The Corporate Debtor vide its letter dated 27.11.2019 acknowledged its liability to the extent of outstanding amount of Rs. 47.50 crores and further requested for one-time settlement amount of Rs. 35.63 crores together with proposed instalments.
8. The list of documents annexed to the Petition which is evident of default are as follows: -
 - (a) A copy of the minutes of the CDR meeting dated 26.06.2015.
 - (b) A copy of Letters dated 5 January 2015; 6 February 2015, 25 February 2015, 3 March 2015, 5 March 2015 and 16 March 2015 and SARFAESI notice dated 14.10.2015 issued by Punjab National Bank, being the lead bank of the consortium to the Corporate Debtor.
 - (c) A copy of the balance and security confirmation letter dated 12 September 2016.
 - (d) A copy of letter dated 28.04.2017 wherein the Corporate Debtor clearly and unequivocally admits debts owed to the Petitioner as on 31 March 2017.
 - (e) A copy of letter dated 27.11.2019 and minutes of joint lenders forum held on 09.01.2019.
 - (f) A copy of annual reports for the FY 2018-19, 2019-20 and 2020-21.



9. The Petitioner issued notice under Section 13(2) of SARFAESI on 14.10.2015. The Petitioner also annexed several letters of request sent by the Corporate Debtor with regard to restructuring of debt on 28.04.2017, 27.11.2017 and enclosed the Minutes of Joint Lender meeting of the Corporate Debtor held on 09.01.2019.
10. The Corporate Debtor in its reply denied each and every statement, contention and allegation and submitted that the present petition is not maintainable in the eyes of law as it is time barred and has been filed beyond limitation.
11. The Corporate Debtor has relied upon the judgment of the Hon'ble Supreme Court in the case of *Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Private Limited & Anr* Civil Appeal No. 6347 of 2019, wherein it was held that the period of limitation for an Application seeking for initiation of CIRP by Financial Creditor is three years from the date when right to apply accrues and if the default had occurred over 3 years prior to the date of filing of the Application, the Application would be time barred.
12. The Corporate Debtor has further referred to the order of Hon'ble NCLAT dated 08.02.2022 in the case of *Ravi Iron Limited vs. Jia Lal Kishori Lal & Ors. Comp. App. (AT) (Ins.) No. 122 of 2022*, the NCLT, Delhi Bench dismissed an Application u/s. 9 of the IBC as it was filed beyond the period of 3 years.
13. Heard Mr. Rishi Thakur a/w Dhvani Gala, Advocates appearing for the Petitioner and Mr. Nausher Kohli, Advocate appearing for the Corporate Debtor and perused the record.
14. When the matter was listed before this Bench on 07.09.2022, both the Counsels brought to the notice of this Tribunal that the matter has been settled between the parties under an OTS for a consolidated amount of Rs. 47 crores out of which the Corporate Debtor has already paid an amount of Rs. 7 crores as a down payment and the second instalment of Rs. 16 crores is due and payable on or before 02.11.2022



and by consent, requested this Bench to list the matter on any date after 02.11.2022 for withdrawal. Accordingly, the matter was listed today for reporting settlement.

15. Today, the Counsel appearing for the Petitioner informed this Tribunal that the Corporate Debtor has not paid the second instalment of Rs. 16 crores as agreed and therefore prayed for admission of the above company petition. At this juncture, the Learned Counsel, Mr. Nausher Kohli, appearing for the Corporate Debtor requested this Tribunal to adjourn the matter to some other date on the ground that another company petition filed against the same Corporate Debtor is reserved for order by Court No. 2. When this Tribunal expressed its readiness to admit the above company petition since the “debt” and “default” are not disputed by the Corporate Debtor and also on account of breach of OTS by the Corporate Debtor, he has changed his tenor and tone and requested to hear the matter on merit stating that he has a good point on limitation.
16. The contention raised by the Corporate Debtor with regard to the limitation issue is untenable in view of admission of liability on several occasions through execution of letter of acknowledgment of debts dated 28.09.2013, 12.09.2016, 28.04.2017, 07.11.2019, 07.02.2022. The Petitioner has also enclosed the Balance sheet of the Corporate Debtor for the year 31.03.2020, wherein the Rupee Term Loan from bank was shown under the heading liabilities. Even otherwise the Corporate Debtor has paid the first instalment of OTS very recently and therefore, the question of limitation does not arise in this case as per law laid down by the Hon’ble Apex Court in *Dena Bank (Now Bank Of Baroda) vs C. Shivakumar Reddy*. Therefore, the above contention of Mr. Nausher Kohli, Advocate with regard to the plea of limitation is not legally tenable and liable to be rejected.
17. Accordingly, the above Petition is admitted by passing the following:



ORDER

- a. The above Company Petition No. (IB) 1245 (MB)/2021 is hereby **allowed** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **Arshiya Northern FTWZ Limited**.
- b. This Bench hereby appoints [Mr. Ram Ratan Kanoongo](#) having Registration No. IBBI/IPA-001/IP-P00070/2017-2018/10156, having address at- 708, 7th Floor, Raheja Centre, Free Press Marg, Nariman Point, Mumbai City, Maharashtra, 400021, having email id: rrkanoongo@gmail.com as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Financial Creditor shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards fee till his fee is decided by CoC.
- d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.



- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement 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 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, CP 1245 of 2021 is **admitted**.
- l. In view of the admission of the above Company Petition after hearing the submissions of Counsel appearing for the Corporate Debtor, IA No. 1705 of 2022 becomes infructuous and stands disposed of.
- m. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)