

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

(IB) 848 (ND)/2019

IN THE MATTER OF:

INTERNATIONAL ASSET

RECONSTRUCTION

COMPANY PVT. Ltd.

Having its Registered Office at:

709, 7th Floor, Ansal Bhawan,

16 Kasturba Gandhi Marg,

New Delhi-110001.

Its branch office at:

Unit no. 301, Block -A,

3rd floor, Millennium Plaza,

Sector-27, Gurugram,

Haryana-122002.

..... Petitioner

V/s

SWASTIK AQUA LIMITED

Having registered office at:

Plot no. F-64/37,

Ground floor, L/P Village,

Katwaria Sarai,

New Delhi-110016

Second Address

14, Palam MArg,

2nd Floor,



Vasant Vihar,
New Delhi-110057

Third Address

Plant at Swastik Estate,
Tatisilwai Industrial Area,
Phase-II, Ranchi,
Jharkhand-835103

Fourth Address

Swastik House,
Gandhi Chowk,
Upper Bazaar,
Ranchi, Jharkhand -834001

..... Respondent

SECTION: Under Section 7 of IBC, 2016

Order delivered on 09.12.2019

CORAM:

JUSTICE SHRI RAJESH DAYAL KHARE, MEMBER(JUDICIAL)

MS. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

PRESENT- Ms. Niruti Samal, Counsel on behalf of Applicant

Adv. Ritesh Khare, Adv. Rahul Adhlaka, Counsel on
behalf of Respondent



ORDER

Per Justice (Retd.) Rajesh Dayal Khare, Member (Judicial)

1. The present petition has been filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor on grounds of its inability to liquidate its financial debt.

2. International Asset Reconstruction Company Private Limited (hereinafter called Petitioner) has sought the Corporate Insolvency Resolution Process of M/s Swastik Aqua limited (hereinafter called the 'Respondent') on the ground that the Respondent committed default in repayment of restructured acquired loan amount of Rs. 5,22,85,492.94/- under section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

3. As per averments made in the petition, the Applicant is an Asset Reconstruction Company registered with Reserve



Bank of India under Section 3 of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, who has acquired the Financial Assets due and payable by the Respondent to the Axis Bank Ltd. vide Deed of Assignment dated 29.09.2011.

4. The Respondent, as borrower had availed various credit facilities from Axis Bank Ltd. The debt of Respondent was acquired by the Applicant Company from Axis Bank Ltd by way of assignment under Section 5 of the SARFAESI Act and at the time when the debt was acquired by the Applicant Company, following amounts were due and payable by Respondent to the Applicant Company as on 29.09.2011:

i. Outstanding Principal: Rs. 2,90,55,794.45

ii. Outstanding Interest: Rs. 59,08,422.90

Total: Rs. 3,49,64,217.35

5. The amount of Rs. 3,49,64,217.35/- was sanctioned vide letter 08.02.2012.



6. The Corporate Debtor as borrower and Mr. Binay sarawgi, Mr. Binord Sarawgi, Mr. Biswanath Sarawgi, Mr. Bijay Sarawgi, Mrs. Leela Sarawgi, Mrs. Sunita Sarawgi and Mrs. Manju Sarawgi as guarantors signed and executed Agreement of Hypothecation dated 13.02.2012/14.02.2012 wherein the Respondent hypothecated assets of the company in favour of the Applicant Company.
7. As per the averments made by the Applicant, the Corporate Debtor utilized the benefits of the Restructuring Package. However, the Corporate Debtor repeatedly defaulted in payment of the principal and interest in terms of the "Restructuring Package". Corporate Debtor and Guarantors signed and executed a Balance Confirmation letter confirming therein that a sum of Rs. 2,45,71,976/- was due and payable by them to the Applicant Financial Creditor as on 31.01.2015 under the Agreement. The Corporate Debtor acknowledged it's liability of Rs. 21,262,499/- vide duly Audited Balance Sheet as on 31.03.2016.
8. The Financial Creditor issued Notice of Demand and Recall of Outstanding dues dated 29.04.2016 to make payment of

Rs. 2,85,12,016.72/- as on 31.03.2016 together with further interest @24% p.a. from 01.04.2016 till the date of payment.

9. The Financial Creditor on 01.08.2017 issued notice under section 13(2) of the SARFAESI Act, 2002 to the borrower, guarantors and mortgagors calling upon to repay the outstanding amount. An O.A. No. 475 of 2018 was filed in DRT, Delhi for recovery against the Corporate Debtor, which is pending before the Hon'ble DRT, Delhi.

10. The Corporate Debtor in the reply to the Petition raised the following contentions:

a. It was submitted that alleged Demand/Recall Notice dated 29.04.2016 was not attached as a part of the original application by the Financial Creditor and was filed as additional evidence.

b. It was contended that the Demand/ Recall Notice dated 29.04.2016 was never served on the office of Corporate Debtor and the notice has been created subsequently after filing the application.



c. It was further submitted that as per the records obtained from the website of the Ministry of Corporate Affairs, the Corporate Debtor filed the last Balance Sheet for the financial year 2017-2018 on 09.09.2019. Before that, the last Balance Sheet was filed on 05.11.2015 containing the Balance Sheet for the year 2014-2015. The Corporate Debtor did not file the Balance Sheets for the year 2015-2016 and 2016-2017. The Balance Sheet had been filed with the Registrar of Companies previously on 01.12.2015 and after that on 09.09.2019. No documents have been filed in between.

d. It was further contended that the last acknowledgement of debt was on 31.01.2015 and the same had been filed and included in the Balance Sheet dated 05.11.2015. Assuming 05.11.2015 as the cut-off date for the computation of debt due, it is way beyond the period of 3 years as prescribed under Article 137 of Limitation Act, 1993 and in the teeth of the Hon'ble Supreme Court's judgment in Civil Appeal No. 4952 of 2019 in the matter of Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Limited and Anr.



11. Oral arguments were also heard on 16.10.2019 by this Hon'ble Tribunal and the prayer made in this petition deserves to be admitted.

12. As per the averments mentioned by the Financial Creditor in its application, the Balance Sheet dated 31.03.2016 of Corporate Debtor reflects the liability of Rs, 21,262,499/- against the secured loan in the name of IARC restructuring loan as annexed in Annexure-X. Further, the Corporate Debtor in its reply stated that he has filed the last Balance Sheet for the financial year 2017-18 on 09.09.2019 and not filed the Balance Sheets for the year 2015-16 and 2016-2017. On perusal of the documents filed by the Financial Creditor, it is observed by this Hon'ble Tribunal that the financial statements are true and correct and it appears that futile attempt is sought to be made at the behest of the Corporate Debtor that he had not filed the financial statement for the year 2015-2016 and 2016-2017. Hence, the Corporate Debtor is liable to pay the amount of Rs. 21,262,499/-.

13. Also, it is further observed that the Corporate Debtor and guarantors signed and executed a Balance Confirmation

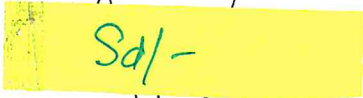
letter confirming a sum of Rs. 2,45,71,976/- was due and payable by the Corporate Debtor to the Financial Creditor as on 31.01.2015. The Corporate Debtor has not replied in its reply for the allegation made by the Financial Creditor regarding execution of Balance Confirmation letter dated 31.01.2015. The Financial Creditor annexed the Balance Confirmation letter dated 31.01.2015 as Annexure-9. It is clear from the letter dated 31.01.2015 that the Corporate Debtor acknowledges and confirms that Rs. 2,45,71,976/- was due to the Financial Creditor as on 31.01.2015. Hence, the Corporate Debtor is held liable for the same.

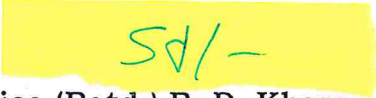
14. The Hon'ble Tribunal, on perusal of the documents filed by the Financial Creditor, is of the view that the Corporate Debtor defaulted in payment of restructured acquired loan and Financial creditor placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore, the Application Section 7 is taken as complete and within the limitation. We therefore, admit this petition.



15. The financial creditor has proposed the name of Ms. Pooja Bahry as the IRP. Her details are as registration no. IBBI/IPA-003/IP-N00007/2016-2017/10063. The consent of the Ms. Pooja Bahry is on record along with the copy of her certificate. We accordingly confirm her appointment as the IRP. She shall take such other and further steps as are required under the statute, more specifically in terms of Section 15,17 and 18 of the Code and file his report.

16. Renotify this case for report of the IRP.


Sd/-
Sumita Purkayastha
Member (T)


Sd/-
Justice (Retd.) R. D. Khare
Member (J)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(J), Justice (Retd.) Rajesh Dayal Khare is not holding court today.

Sd/-

(PRABHAT KUMAR SHARMA)

COURT OFFICER