

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

C.P. (IB) No.09/GB/2018

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

In the matter of:

Stressed Assets Stabilization Fund (SASF) ... Financial Creditor

-Versus-

National Plywood Industries Ltd. (NPIL) ... Corporate Debtor

Coram:

Hon'ble Mr. Hari Venkata Subba Rao, Member (J)

Hon'ble Mr. Ashutosh Chandra, Member (T)

ORDER

Date of Order: 26<sup>th</sup> August, 2019

The above Company Petition is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, IBC) by Stressed Assets Stabilization Fund (in short, SASF) hereinafter called as Resolution Applicant/Financial Creditor (in short, FC) against National Plywood Industries Limited (in short, NPIL), hereinafter called as respondent/Corporate Debtor (in short, CD).

2. The brief facts of the applicants are as follows:

i) Originally, Industrial Development Bank of India (in short, IDBI) granted certain loan facilities to the principal borrower, one National Boards

Limited (in short, NBL), under its project finance scheme way back on 27.03.1997 for which the present CD/respondent, NPIL, stood as Corporate Guarantor for due discharge of the loan facility granted to the principal borrower in case of its default. Thereafter, the said principal borrower, NBL, committed default in repayment of the said loan facility to the IDBI and, therefore, the IDBI recalled the loan facility on 09.11.2001 against the principal borrower as well as its personal guarantors/Directors and vide letter dated 03.12.2001 invoked corporate guarantee of the present CD by demanding a sum of Rs.5,42,94,868/-(Rupees Five crores Forty Two lacs Ninety Four thousand Eight hundred Sixty Eight only). As there was no response from the principal borrower and its personal guarantors, IDBI filed O.A.27/2002 on the file of Debts Recovery Tribunal (in short, DRT), Guwahati, and obtained a recovery certificate dated 05.01.2005 against the principal borrower and its personal guarantors. The present CD could not be made party to the said O.A. as it had filed a reference before the Board for Industrial and Financial Reconstruction (in short, BIFR) and the said reference was pending before BIFR till 30.11.2016 when SICA was repealed. As the principal borrower failed to clear the dues to the FC despite obtaining recovery certificate by the FC and despite entering into One Time Settlement (in short, OTS) with the FC, the amount became unrecovered from the principal borrower and its personal guarantors.

ii) IDBI assigned its debts in favour of the present Resolution Applicant vide Deed of Assignment dated 30.09.2004. Therefore, SASF being the assignee of IDBI filed the above Resolution Application against the CD on 12.03.2019 against the CD after termination of the BIFR proceedings and repealing of the SICA Act.

3. The CD/respondent filed detailed reply opposing the above application mainly on the following grounds:

i) The above application is barred by limitation.

ii) The Deed of Guarantee said to have been executed by the CD is only a draft Deed of Guarantee and is not legally enforceable.

iii) The Resolution Applicant being an operating agency before BIFR wilfully omitted the claim against the CD in the Draft Rehabilitation Scheme prepared by themselves as they are conscious that the corporate guarantee was only a draft guarantee that cannot be acted upon.

iv) The Resolution Applicant having entered into OTS with the principal borrower for an amount of Rs.215.89 lakhs without the knowledge and consent of the CD, is now demanding an exorbitant amount of Rs.133 crores and odd from the CD which is highly illegal.

v) The Resolution Applicant failed to prove the default of debt which is condition precedent for invoking the provisions of Section 7 of the IBC and, therefore, the above application is not maintainable.

4. Heard both sides and perused the record. Let us examine the above pleas raised by the CD in the above application.

5. As far as the above referred plea with regard to exorbitant claim of Rs.133 crores is concerned, the above plea is beyond the pleadings and scope of an enquiry under Section 7 of the IBC. As far as the plea with regard to the omission of the claim in Draft Resolution Plan before BIFR is concerned, the SASF is not expected to deal with it as it remains in suspended animation till the principal borrower commits default as the undertaking in a guarantee is collateral.

6. With regard to the plea of the draft nature of the deed of guarantee is concerned, we have carefully gone through the Deed of Guarantee executed by the CD, which is a complete contract that was reduced into writing and signed by both parties and, therefore, it cannot be held as a Draft Deed of

Guarantee under any stretch of imagination and the above plea raised by the Corporate Debtor does not hold any water.

7. The only issue that remains to be answered is the issue of limitation. It is the contention of the CD that the Corporate Debtor being registered with BIFR on July 1, 2003, an additional period of 5 months was available to the applicant after the proceeding before the BIFR terminated. By operation of law, the Sick Industrial Companies (Amendment) Act, 1985 (SICA) was repealed on and from December 1<sup>st</sup>, 2016, calculating a period of 5 months from December 1<sup>st</sup> 2016, the claim ought to have been made by May 1<sup>st</sup>, 2017. The present claim has been made only in February, 2019 and is clearly barred by limitation. In order to decide the above plea, it is important to mention here that a reference before BIFR was registered at the behest of the Corporate Debtor and hence, the Resolution Applicant cannot institute any suit or proceeding nor continue any pending proceeding against the CD till the termination or abatement of the proceedings pending before BIFR on account of the protection that was available to the CD under Section 22 of the SICA Act. It is the very case of the CD that the BIFR proceedings stands terminated on 01-12-2016 and, therefore, the cause of action to file the above application accrues to the FC from 01.12.2016 and the present application being filed on 12.03.2019 is well within the period of three years provided under the Limitation Act and the above argument of the CD in this regard is not legally sustainable and is liable to be rejected.

8. With regard to the proof of default is concerned, the SASF invoked the guarantee of the CD by issuing a notice dated 03-12-2001 demanding an amount of Rs.5,42,94,864.00 which was not complied by the CD, even though, it is liable to pay as guarantor as its liability is co-existence with that of the principal borrower. The Financial Creditor could not take legal steps immediately against the CD on account of the protection available to the CD under SICA.

Therefore, the above argument of the CD that the Financial Creditor failed to prove the default is out rightly liable to be rejected. Even otherwise, it is not the case of the CD that neither the CD nor the principal borrower has fully discharged their liability to the Financial Creditor. It is an admitted case of both parties that the principal borrower has paid only an amount of Rs.92 lacs (Rupees Ninety Two lacs only) or so, leaving the balance amount under OTS.

9. This Adjudicating Authority having satisfied with the fact that the Corporate Debtor defaulted in making payment towards the liability to the petitioner, the company petition deserves to be admitted.

10. This Adjudicating Authority on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan. The Financial Creditor also furnished the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceeding pending against him, the application under Sub-section (2) of Section 7 of the Code is taken as complete and accordingly this Bench hereby admits the company petition by passing the following orders:

ORDER

- (i) *The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of M/s. National Plywood Industries Ltd.*
- (ii) *We hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.*
- (iii) *The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in*

*clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.*

- (iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:*
- 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 (54 of 2002);*
  - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.*
- (v) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- (vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- (vii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.*

- (viii) *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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*
- ix) *Necessary public announcement as per Section 15 of the IBC, 2016 may be made.*
- (x) *Mr. Sandeep Khaitan, Sanmati Plaza, 2<sup>nd</sup> Floor, Christan Basti, G. S. Road, Guwahati- 781 005, bearing Number of IRP: IBBI/IPA-001/IP-P00532/2017-18/10957, email ID khaitansandeep@gmail.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.*
- (xi) *The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant as per rules.*
- (xii) *Registry is hereby directed under Section 7(7) (a) of the I.B. Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.*
- (xiii) *The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016.*

11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Sd/-

Member (Technical)  
Adjudicating Authority

Sd/-

Member (Judicial)  
Adjudicating Authority

Dated, Guwahati the 26<sup>th</sup> day of August, 2019.

//DEKA/22-08-2019//

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH: GUWAHATI

C.P. (IB) No.09/GB/2018

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

In the matter of:

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Coram:

Hon'ble Mr. Hari Venkata Subba Rao, Member (J)

Hon'ble Mr. Ashutosh Chandra, Member (T)

ORDER

Date of Order: 26<sup>th</sup> August, 2019

Order pronounced vide separate order.

2. In the result, company petition CP (IB) No.23/GB/2019 is allowed and Mr. Sandeep Khaitan is appointed as Interim Resolution Professional (IRP).

Sd/-

Member (Technical)  
Adjudicating Authority

Sd/-

Member (Judicial)  
Adjudicating Authority

Dated, Guwahati the 26<sup>th</sup> day of August, 2019.

//DEKA/26-08-2019