IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP/IB/61/CHE/2021

(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. Balsara Engineering Products Limited.***

AXIS Bank Limited,
Southern Recovery Cell,
Jahavr Tower, 1st Floor,
Club House Road,
Anna Salai,
Chennai – 600 002.

... Applicant / Financial Creditor

\- Vs -

Balsara Engineering Products Limited,
Sf-273, Kavaraipettai-Sathyavedu Road,
Thanipoondi Post, Gummidipoondi Taluk,
Thiruvallur, Tamil Nadu 601 202.

...Respondent / Corporate Debtor

On pronounced on 8th March 2022

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : Aditi Mittal, Advocate
For Corporate Debtor : Kumarpal Chopra, Advocate

ORDER

***Per:* R. SUCHARITHA, MEMBER (JUDICIAL)**

This Petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) by Axis Bank Limited against Balsara Engineering Products Limited for initiation of CIRP process.

2. The Applicant herein is represented by an authorized signatory Mr. C. Ravikumar, Assistant Vice President of the Applicant Bank.

3. The Respondent herein is registered in Companies Act, 1956 bearing CIN : U93090TN1995PLC030736 having Registered Office at sf-273, Kavaraipettai-Sathyavedu Road, Thanipoondi Post, Gummidipoondi Taluk, Thiruvallur, Tamil Nadu 601 202.

4. The Applicant states that a sum of Rs.20,31,41,861.24 (Rupees Twenty Crore Thirty One Lac Forty One Thousand Eight Hundred and Sixty One and paise Twenty Four only) is due and payable by the Corporate Debtor to the Applicant Bank herein.

5. The Applicant further states that the Respondent / Corporate Debtor herein has availed various credit facilities with the Bank since 2008. In view of the various credit facilities sanctioned and availed by the Corporate Debtor, the Corporate Debtor has also made hypothecation of the movable and

mortgage of the immovable properties in favour of the Applicant Bank herein.

6. The Applicant further states that as on 31.10.2020, a sum of Rs.16,32,39,181.24 is due and payable towards cash credit facility and a sum of Rs.3,99,02,680/- towards letter of credit. The Applicant states that date of default is 28.08.2018.

7. The Applicant states that by sanctioned letter dated 27.11.2008 – cash credit facility Rs.1.5 Crore; export packing credit facility Rs.2.5 Crore and Forward Contract Loan facility Rs.15 lakh were sanctioned to the Respondent herein.

8. Thereafter at various stages, the loan was enhanced and furthermore facilities were extended to the Respondent. The Respondent has also executed letters of renewal. The last renewal letter is dated 28.02.2018.

9. However, the entire loan account of the Respondent herein was declared as a non-performing asset (NPA) on 30.09.2018. Thereafter, the Applicant had also initiated proceedings under Section 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

10. The Corporate Debtor had made payment of Rs.62,00,000/- (Rupees Sixty Two Lakh only) on 20th September 2019 and again on a few subsequent dates.

11. However, the date of filing of this Application i.e., on 04.01.2021. A sum of Rs.20,31,41,861.24 is due and payable by the Corporate Debtor as on 31.10.2020 plus applicable interest thereon till the date of realization. Hence, date and default of the amount has occurred beyond reasonable doubt.

12. Learned Counsel for the Applicant relies on the citation of the Hon'ble Supreme Court in the matter of Innoventive Industries Ltd. –V- ICICI Bank and Anr., (2018) 1 SCC 407 that,

> "...***The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted*** *unless it is incomplete, in which case it may give notice to the Petitioner to rectify the defect within 7 days of receipt of a notice from the adjudicating authority..."*
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> .....
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> *"... 30. On the other hand, as we have seen,* ***in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is 'due'*** *i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date.* ***It is only when this is proved to the satisfaction of the adjudicating***

authority that the adjudicating authority may reject an application and <u>not otherwise...</u>"

13. The Respondent filed their counter. The Respondent has taken a very few flimsy grounds saying that the pleadings are incomplete in the Application. Furthermore, there is a discrepancy in the amount claimed by the Petitioner.

14. The Petitioner has not enclosed the entire documents as executed between the parties and by letter of final sanction letter dated 28.02.2018 under Clause 5, the amount becomes due and payable only on demand.

15. Since no legal notice has been issued by the Applicant Bank, there is no default on the part of the Respondent herein. The Respondent has also relied on two citations:- (1) The order of the Hon'ble NCLT, Principal Bench in ***Silver Fashions Pvt. Ltd. vs Orient Clothing Pvt. Ltd., Company Petition No. (IB) 403-(PB)/2017*** *and 2) the order of the Hon'ble NCLT, Mumbai Bench in* ***Indus Biotech Private Ltd v Kotak India Venture Fund-1.***

16. In both the cases the Respondent states that the NCLT Benches have dismissed the Application for not filing with the full facts of the case.

17. We have heard both the parties and perused all the documents filed along with the Applications. The Applicant Bank has filed the entire set of documents. Furthermore, debt and default has been proved. The Respondent has executed a letter of renewal dated 28.02.2018 and the documents executed by the Respondent in favour of the Applicant Bank which are also enclosed along with the Application.

18. There is no dispute about debt and default. The Application is complete in all aspects. The Applicant Bank has also taken proceedings under Section 13 (2) of SARFAESI Act, 2002 for recovery of entire amount due and payable by the Respondent and hence the debt and default is proved. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

19. As a consequence of the Application being admitted in terms of Section 7 (5) of the Code, the moratorium as envisaged under the 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 respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

20. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) 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

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

21. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(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.

22. The Financial Creditor has proposed the name of **Mr. Ravindra Beleyur,** with Registration Number: IBBI/IPA-001/IP-P00189/2017-18/10368 *(email id:-ravi@beleyur.com),* whose Authorization for Assignment (AFA) as per IBBI website is valid till 17.11.2022, as the Interim Resolution Professional (IRP) who has also filed his written consent in Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.

23. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

24. 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 IBC, 2016 and file his report within 30 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 CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

25. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

26. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the

moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor 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 Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

29. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

30. Post this CP/IB/61/CHE/2021 for hearing on **25.04.2022**

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

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