

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH-I

KOLKATA

CP(IB) No. 1567 /KB/2019

Petition 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:

Stressed Asset Stabilization Fund, a trust duly registered under the provisions of the Indian Trust Act, 1882, and recognised as a Financial Institution u/s. 2(h)(ii) of the RDBFI Act, 1993 by way of Gazette Notification, for acquiring by transfer, the stressed assets of IDBI with a view to recover the amounts there under, having its registered office at 3rd Floor, D Wing, IDBI Tower, WTC Complex, Cuffe Parade, Colaba, Mumbai- 400005 in the State of Maharashtra

...Financial Creditor

-Versus-

I.C. Textiles Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, and having Corporate Identification No- U18101WB1983PLC035976 and its registered office at 29, Strand Road, Mohta House, First Floor Kolkata-700001 in the State of West Bengal.

.... Corporate Debtor

Date of Hearing : 13 December, 2021

Date of pronouncing the order : 14 March, 2022

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing):

For the Financial Creditor : Ms. Sweta Gandhi Murgai, Advocate

For the Corporate Debtor : Mr. Rajarshi Dutta, Advocate

Mr. Rahul Auddy, Advocate

ORDER

Per :Balraj Joshi, Member (Technical):

1. This Court convened through video conferencing.
2. This Company Petition under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **Stressed Asset Stabilization Fund (SASF)** (hereinafter referred to as the Financial Creditor), a trust duly registered under the provisions of the Indian Trust Act, 1882, and recognised as a Financial Institution u/s. 2(h)(ii) of the RDBFI Act, 1993, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **I.C. Textiles Limited** (hereinafter referred to as the Corporate Debtor).

Submissions of the Applicant Financial Creditor:

3. The case of the Financial Creditor is that the Corporate Debtor had approached erstwhile Industrial Development Bank of India (IDBI) for sanction of credit limits for carrying out its business. The Corporate Debtor submitted a loan application with IDBI in 1994 for the purpose of setting up a new dying unit in Vadodara District in Gujarat. Accordingly, a Rupee Term loan (RTL) of Rs. 5,00,00,000/- (Rupees Five Crore only) and Foreign Currency Loan (FCL) of \$ 6.35 million, then equivalent to Rs. 20,00,00,000/- (Rupees Twenty Crore only) was sanctioned on November 08, 1994 to the Corporate Debtor. In consideration, the Corporate Debtor had executed several security documents in favour of IDBI. The Corporate Debtor hypothecated its movable properties, pledged shares as well as mortgaged the said property at Vadodara, Gujarat.
4. The Corporate Debtor was further granted additional Rupee Term loan of ₹14,30,00,000/- (Rupees Fourteen Crore Five Lakh only) on 17th September, 1999. The securities hypothecated, pledged and mortgaged were further renewed from time to time upon additional grant of financial assistance in November 1994 and September 1999.

5. The managing directors of the Corporate Debtor pledged their shares at the time of availing additional RTL of ₹14,30,00,000/- (Rupees Fourteen Crores Thirty Lakh Only) and one of the managing directors namely, Shri Sunil Jain had given personal guarantee against the assistance availed from the Financial Creditor.
6. On or about 31st March 2002, the Corporate Debtor ceased to pay either principal or interest or any part of the installments in both the categories of Loan account. Sometime in 2007, the Corporate Debtor approached the Financial Creditor for negotiable settlement and accordingly a negotiated settlement proposal was offered to the Corporate Debtor on 3rd April, 2007 and also on 3rd September 2009, which was accepted by the Corporate Debtor.
7. From time to time the said credit facility was renewed. On 8th November 2018 the Corporate Debtor in writing confirmed the outstanding balance of ₹88.25 Lakh- pending as per the last One Time Settlement (OTS) approved by SASF in July 2009, which was revoked in June 2012 on account of non-payment of balance dues as per the terms and conditions of OTS, in its account with the Applicant.
8. SASF had issued upon the Corporate Debtor a recall notice on 27th September 2018 thereby calling upon the Corporate Debtor to pay the outstanding due of ₹898,53,58,409/- (Rupees Eight Hundred Ninety Eight Crore, Fifty Three Lakh, Fifty Eight Thousand, Four Hundred Nine only) as on 1st April 2018. The guarantees were invoked vide notice dated October 10th 2018 thereby calling upon the guarantors to repay the outstanding due of ₹146,75,49,736/- (Rupees One Hundred Forty Six Crores Seventy Five Lakh Forty Nine Thousand Seven Hundred Thirty Six Only).The pledge of shares was also invoked vide notice dated May 22nd, 2019 thereby calling upon the pledgers to repay the outstanding ₹10,66,70,84,950/- (Rupees One Thousand Sixty- Six Crore Seventy Lakh Eighty-Four Thousand Nine Hundred Fifty Only) as on 1st May, 2019.
9. Total dues as on June 01, 2019 in the Company loan account stood at ₹1082,94,94,335/- (Rupees One Thousand Eighty Two Crores Ninety Four

Lakh Ninety Four Thousand Three Hundred Thirty Five only) inclusive of interest and other charges up to 1st June 2019 and the execution of security documents.

Submissions on behalf of the Corporate Debtor:

10. The Corporate Debtor submits that the claim of the Applicant is barred by limitation and deserves to be dismissed. It is settled law that an Application under section 7 and/or section 9 of the Code has to be filed within three years from the date on which the right accrues, in terms of Article 137 of the Limitation Act, 1963. In the instant case, the loan facilities were sanctioned in November 1994 and September 1999. Thereafter, OTS was sanctioned on 3rd September 2009 and the same was revoked on 7th June 2012. The letters issued by the Corporate Debtor, on which the Applicant is relying were issued on 15th June 2012 and 20th March 2013.
11. It is submitted that in view of the clear admission that negotiated settlement was revoked on 7th June 2012, the Applicant can at best claim limitation only upto a period of 3 years from the date of revocation of OTS under Article 137 of the Limitation Act, 1963. In the instant case the period of three years expired on 7th June 2015. This settled legal position has been reiterated in the matter of **B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates** 2018 SCC OnLine SC1921, and **Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) Limited** 2019 SCC OnLine SC1239.
12. The Applicant has also relied on notices issued by the Applicant between 2017 and 2018. In this regard it is submitted that merely by issuing letters in May 2017 and legal notices in September 2018 and October 2018, no fresh cause of action accrues in favour of the Applicant as limitation already stood expired in June 2015. The Corporate debtor in this regard has relied on the legal position taken in the case of **Vijay Kant Motilal Kothari vs. Safire Hotel Private Limited** MANU/CF/0431/2013.
13. It is the contention of the Corporate Debtor that the account was classified as Non- Performing Asset on 31st March 2002 and therefore from the date of

- classification the limitation expired in 2005 and mere settlement entered between the parties in 2009 does not result in continuation of cause of action.
14. The Applicant has also placed on record letter dated 8th November 2018 issued by the Respondent Company in continuation of the settlement entered into between the parties. Without prejudice to other rights and other objections, it is submitted that no fresh cause of action accrued in favour of the Applicant on 8th November 2018 as limitation already stood expired in 2015. It is settled law that continuation of cause of action on the basis of admission of liability can only be during the continuation of the period of limitation. Therefore, letter dated 8th November 2018, which was issued by the Respondent Company beyond the period of limitation gives no fresh cause of action and/or continues the cause of action in favour of the Applicant. On this ground also, the Application is barred by limitation.
 15. Section 18 of the Limitation Act, 1963 provides that effect of acknowledgment is only in case the acknowledgment is issued within the prescribed period of limitation. Therefore, the letter issued by the Respondent in 2018 cannot continue the period of limitation as the period of limitation expired in 2015. The Corporate Debtor in this regard has relied on Hon'ble Supreme Court's judgement in the matter of **JC Budhraja vs. Chairman, Orrisa Mining Corporation Limited and Others** AIR 2008 SC 1363.
 16. The OTS/ Settlement proposals are not unequivocal and unconditional admission of liability and they are issued without prejudice to legal and other contentions of the parties. During this period the Applicant never initiated any legal proceedings against the Corporate Debtor and even the Original Application (OA) was filed in the year 2019 i.e. beyond the period of limitation. The Original Application (OA) no. 356 of 2019 filed by the Applicant before the Debt Recovery Tribunal (DRT), Ahmedabad is also barred by limitation and therefore not maintainable.
 17. The Applicant is only entitled to ₹88,75,000/- (Rupees Eighty-Eight Lakh Seventy-Five Thousand Only), which is the amount due under the negotiated settlement approved on 3rd September 2009. *Vide* letter dated 3rd September

2009, the applicant approved negotiated settlement of dues for an amount of ₹12,35,00,000/- (Rupees Twelve Crore Thirty-Five Lakh Only). Out of the total settlement amount of ₹12,35,00,000/-, the Applicant has already received ₹11,46,25,000/- (Rupees Eleven Crore Forty-Six Lakh Twenty-Five Thousand Only) by 30th August 2011. The remainder amount could not be paid due to circumstances beyond the control of the Corporate Debtor.

18. The Corporate Debtor, vide letter dated 20th March, 2013, requested the Applicant to give some time for making the remaining payment. In absence of any reply from the Applicant to the said letter till May 2017, the Corporate Debtor was under the *bonafide* impression that the Applicant had extended the period for repayment of the remaining amount of the settlement amount. In their reply sent in May 2017, the Applicant requested the Corporate Debtor to come and discuss the matter with prior appointment.
19. During this period, the Corporate Debtor could not pay the remaining amount as they were pursuing litigations pending before the DRT- I, Delhi and was also simultaneously trying to enter into a negotiated settlement with Canara Bank.
20. Since more than 92% of the settlement amount was received by the Applicant in 2011 itself, the Applicant is bound by the terms of the negotiated settlement dated 3rd September 2009. Therefore, the liability of the Corporate Debtor, if any is limited to the remaining amount of the negotiated settlement, which is to the tune of ₹88,75,000/-. The corporate Debtor is ready and willing to pay the said amount along with interest for the delayed payment.
21. Time was never the essence of the contract between the parties, as is clear from the fact that even in its 2017 communication, the Applicant called the Corporate Debtor to come forward for discussion.
22. The outstanding amount of ₹1082,94,94,335/- (Rupees One Thousand Eighty-Two Crore Ninety-Four Lakh Ninety-Four Thousand Three Hundred Thirty-Five Only) inclusive of interest as on 1st June, 2019 as claimed by the Applicant, is unsubstantiated, false and inflated. The Applicant has not filed any ledger statement and has only placed on record a calculation annexed at page 118 to

120 of the Paper Book. Further, no complete statement of account has been filed from the date of grant of the alleged loan till the date of filing of the instant application.

23. The instant Application has been filed by the Applicant subsequent to filing an OA before the DRT, Ahmedabad. The statements in the instant application have been prepared and filed so as to cover the lacuna of the OA and in answer to the objections taken by the Corporate Debtor therein. The alleged statements annexed to the application are not complete. Despite the contention that the loan was sanctioned in 1994/1995, the alleged statements show entries from 2003. Thus, the debt is not substantiated from the alleged statements of accounts, as filed by the Applicant, and hence is not maintainable.
24. The Applicant contends that total 5 facilities were granted based on which the outstanding amount is ₹1082,94,94,335/-. However, there is no explanation of having five accounts when admittedly only three facilities were sanctioned and disbursed.
25. Further, the Applicant, in Page 509 para (b) of the document of restructuring of debt dated 14th September 2004, has admitted that as against alleged facilities of ₹14.30 Crores the released amount was only ₹10.75 Crores. Further, in the notices dated 27th August 2018 and 6th October, 2018, the outstanding amount is clearly mentioned as ₹10,74,68,190/- (Rupees ten Crore Seventy-Four Lakh Sixty-Eight Thousand One Hundred Ninety Only). Further, in the notice dated 27th September, 2018, the Paper Book of the Applicant reflected that the principal amount due is ₹34,70,43,903/- (Rupees Thirty-Four Crore Seventy Lakh Forty-Three Thousand Nine Hundred Three Only). Similarly, in Appendix – I to the negotiated settlement dated 3rd April, 2007, the amount outstanding has been mentioned as ₹3470.43 Lakh. The same is also reflected in notice dated 10th October, 2018.
26. The loan agreement date 18th May 1995 pertaining to the Foreign Currency Loan clearly provides that the lender shall accept the fully paid shares in satisfaction of the defaulted account and the amount so converted shall cease to carry interest as from the date of conversion and the outstanding amount in

respect of the loan shall stand correspondingly reduced. Invoking the said clause, part of the Foreign Currency loan was converted into equity, as is evident from Page 509 of the Paper Book.

27. The alleged statements of accounts on which the applicants has placed reliance are false, not in accordance with law and the same are not supported with proper certificate as per law. The purported Statements of Accounts as filed by the Applicant are not in compliance of the provisions of the Banker's Book of Evidence Act and the law laid down in the matter of **Central Bank of Indian vs. Ravindra** (2002) 1 SCC 367. Further, the said certificates are un-signed and do not provide the name of the person- in – charge of the computer system. Further. the certificate does not comply with the provisions of the Banker's Book of Evidence Act as they do not mention the period for which the statement of account is being produced. Also, the certificate to made by the Principal Accountant and the Branch Manager of the Applicant is missing from the Original Application.
28. The Applicant has failed to provide the material particulars as to the varying rates of interest, penal interests and/or liquidated damages and capitalization thereof for the various periods. Further the alleged Statements of Account do not disclose the rates of interest debited from time to time, periodically; the rates of penal interests debited from time to time, periodically; the particulars as to the capitalization of interest and penal interest and for what period and on what amounts has such interest and penal interest been charged and debited from time to time; the periods and amounts of interest and penal interest charged and debited from time to time on various charges shown to be debited from time to time in the purported statements of accounts; the periods where such interest has been debited from time to time.
29. The Statement at Page 358 of the Paper-Book further reflects zero balanced outstanding as on 30th March 2011 but shows charging of interest on the same from 2001 till 2019. The statement at Page 375 of the application reflects that the alleged loan was sanctioned on 30th June, 2001. However, the list of dates and contentions in the application clearly show that no loan was sanctioned in

June 2001. Further, the alleged statements at Page 389, 390 and 394 start from January 1960, when admittedly, the Company was incorporated in 1983 and the loan transactions commenced in 1994-1995.

30. No complete Statement of Account has been filed by the Applicant despite the contention that the loan was sanctioned by the IDBI complete statements of accounts of IDBI have not been placed on record. The Statements of Account do not specify the complete period of the alleged loan transactions., the rates of interest charged from time to time. It is submitted that the deliberate concealment of the rate of interest being levied highlights the malafide intent on part of the Applicant in as much as the outstanding amounts as per the said statements of Accounts are wrong and thus, vehemently denied.
31. There are no documents on record to reflect what rate of interest was charged from time to time and only for certain periods rates of interest have been mentioned. There are many discrepancies in the claim. The outstanding principal as shown at various pages are different. Further, page 345 also reflects charging of interest, further interest and liquidated damages separately. A perusal of the chart at Page 345 reflects that between 1995 till 2001 Applicant charged interest between 16% to 20% as interest, interest @ 16% to 20% as further interest/ compounding interest from 1995 and interest @ 2.1% as liquidated damages from 1995. Further, a perusal of the chart at Page 345 reflects that for some alleged facilities between 1999 till 2004 Applicant charged interest between 5% to 20% as interest, interest @ 16% to 20% as further interest / compounding interest, PP interest @ 20% and interest @ 2% as liquidated damages. This clearly demonstrates why the alleged calculation is now coming to more than ₹1000 Crores.
32. While filing the instant petition, which has been filed after the filing of OA and Written Statement, the Applicant with a view to cover the lacuna in the pleading and contentions in the OA has filed additional statements of accounts with the instant petition. The said conduct clearly establish that no complete and proper statements are maintained by the Applicant Bank and such

statements are prepared at a subsequent stage, which is contrary to the mandate of law and legal requirement.

Rejoinder on behalf of the Financial Creditor

33. The submission of the Applicant is that the date of sanction of the first Term Loan of ₹5,00,00,000/- has been mentioned as 8th April 1994 instead of 8th November, 1994 in the list of dates of the section 7 application.
34. The purported preliminary point of limitation as alleged by the Corporate Debtor as a ground of rejection of the instant application is not tenable. In the balance sheets filed by the Corporate Debtor with the Registrar of Companies, the Corporate Debtor has admitted the outstanding debts due and payable by the Corporate Debtor in favour of the applicant. Further, the Corporate Debtor approached for settlement by letter dated 7th December 2006 and 3rd September 2009. On perusing the books of accounts of the Corporate Debtor as filed with the Statutory Authorities as well as the letters of OTS proposal, it is clear that the debt of the Corporate Debtor is admitted, acknowledged and within the periphery of the Limitation act, 1963. It is further denied that the limitation period expired on 7th June, 2015.
35. The admission of the liability/OTS/settlement proposal establish the debt due and outstanding in favour of the Applicant, accordingly the claim of the Applicant is well within the period of limitation.
36. The Corporate Debtor made a reference to the Board of Industrial & Financial Reconstruction (BIFR) under the Sick Industrial Companies Act, 1985 (SICA) bearing case no. 231/2003. BIFR declared the Company as sick on 24th September 2004. The reference was pending before BIFR at the time of the Government notification date 30th November 2016. The impact of SICA Repealing Act read with the Insolvency and Bankruptcy Code, 2016 made effective is that, all proceedings pending before BIFR under the provisions of SICA would stand abated as on 1st December 2016 and a company in respect of which a reference or enquiry or appeal is pending would stand abated. As a consequence, the Applicant was not able to initiate recovery proceedings

- before the appropriate court of Law between the periods 24th September 2004 to 1st December 2016.
37. At the instance of the Corporate Debtor, an OTS was accepted in the year 2007, however the same was automatically (expressly) revoked on 7th June 2012 since the Corporate Debtor failed to make payments in accordance with the terms of the OTS. As such, the original liability of the Corporate Debtor was restored as per the mutually agreed terms and conditions of the settlement letter. Therefore, there was no reason for the Corporate Debtor to presume that the Applicant had extended the period for repayment of its unfulfilled liability towards the Applicant.
38. As on 1st June 2019, a sum of ₹1082,94,94,335/- is due and payable by the Corporate Debtor as has been indicated in the Statements of Accounts and Computation Sheet annexed to the application. The said dues are based on the Loans, security and structured documents as also facts and statement of ledger maintained by the Applicant.
39. The instant proceeding is an independent proceeding of its own and has no bearing with other pending proceedings against the Corporate Debtor. The interest on the Rupee Term Loan (RTL) of ₹5,00,00,000/- and the Foreign Currency Loan was deferred and the same was split into two accounts *i.e* INDOCH001002 on deferred interest of RTL and INDOCH420002 for deferred Interest of FCL.
40. The dues position certificate submitted by the Applicant with the application clearly reflect that against the sanctioned facility of ₹1430 lakh the principal outstanding was only ₹10,74,68,190/-. The status of the outstanding dues certificate submitted by the Applicant clearly reflect that principal outstanding under all loan facilities stood at ₹34,70,43,903/-.
41. Restructuring package under the aegis of CDR was approved by IDBI vide letter dated 14th September 2004 envisaging inter alia restructuring of principal outstanding, conversion of FITL into CRPS/enquiry and waiver of ₹1969.42 lakh. However, the Corporate Debtor couldnot service its obligations to the

- lenders. The package was revoked in 2008. Hence, FITL was not effected in the accounts system and had not been considered for calculation of due.
42. The restructuring letter dated 29th September 2000 was issued to the Corporate Debtor by erstwhile IDBI and on the basis of which Corporate Debtor had executed the loan agreement dated 11th January 2001. As per the letter, the interest accrued in account of RTL and FCL up to 30th June 2001 was deferred. The outstanding dues as supplied with the application contain all the details of the loan accounts duly accepted by the Corporate Debtor at the time of execution of loan documents.
43. The Statement of Ledger for A/c no. INDOCH420004 provided with the application clearly shows that USD 4.13 million is converted to ₹1895.75 lakh. Hence, there is no point of claiming principal of USD 6.35 million. This amount is only mentioned as sanction facility. The dues are calculated considering USD 4.13 million (₹1895.75 lakh principal outstanding).
44. The balance outstanding is shown zero for the deferred interest account no. NDOCH001002 on Deferred interest of RTL. The Restructuring letter dated 29th September 2000 was issued to the Corporate Debtor by erstwhile IDBI and on the basis of which Corporate Debtor had executed the loan agreement dated 11th January 2001. As per the letter, the interest accrued in account of RTL and FCL up to 30th June 2001 was deferred. The dues position supplied with the application contain all the details of the loan accounts. The averments in paragraphs under reference is made with the ulterior motive to discourse the proceedings and waste the time of the Tribunal by such frivolous, unwarranted and baseless/defenseless reply. Several allegations made in the reply are not remotely connected with the instant claim of the Applicant or the Corporate debtor. In fact the averments are not in reference to the pages referred therein.
45. The Statement of Accounts clearly reflects the outstanding due and payable by the Corporate Debtor, the principal in default along with the applicable rate of interest charged by the Applicant. The certificate of rate of interest clearly showed the interest rates applied since the inception of the account till date for each of the five accounts. As far as the number of accounts shown as five

against the three loan accounts the same is explained in Paragraph no. 12 (i) of this rejoinder.

46. The proceedings before the DRT, Ahmedabad and the pleadings exchanged thereat has no bearing to the instant application under the Insolvency & Bankruptcy Code, 2016 and cannot interfere with the decision of this Tribunal to admit the instant application.

Analysis & Findings

47. Heard the learned Counsel for the Financial Creditor and the learned counsel for the Corporate Debtor and perused the record.
48. The main point of defense of the Corporate Debtor is that the application is barred by limitation. The date of default is mentioned to be 01.07.2001, indicating that the limitation period would end on 30.06.2004.
49. Section 18 of the Limitation Act, 1963 stipulates that if, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.
50. In light of the provision of section 18 of the limitation act, it is necessary to examine whether or not such an acknowledgement of the liability exists and from where a fresh period of limitation could take effect. The Applicant has submitted that the balance sheets of the Corporate Debtor which admit to the dues to the Financial Creditor will act as acknowledgements of the liability of the Corporate Debtor towards the Financial Creditor. In the instant application, the balance sheets have been attached for the years 2003-04, 2012-13, 2015-16, 2018-19, where the acknowledgement of the debt actually exists on Pages 79, 173, 322, 386 of the rejoinder respectively.
51. In order to find an answer to the question that whether the entries made in the balance sheet could pass the muster of an “Acknowledgement” we have to rely on the judgment of the Hon’ble Supreme Court of India in the matter of *A.V.*

- Murthy vs. B.S. Nagabasavann* (2002) 2 SCC 642 wherein the Apex Court opined that the amount borrowed by the respondent, if shown in the balance sheet, may amount to acknowledgement and in such case, the creditor might have a fresh period of limitation from the date on which the acknowledgement was made (*Para 5*).
52. Also, the Hon'ble Supreme Court in *Mahabir Cold Storage vs Commissioner Of Income Tax, Patna* 1990 SCR Supl. (3) 469 held that:
“The entries in the books of accounts of the appellant would amount to an acknowledgement of the liability to M/s. Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge of the liability as debt.”(Para 12)
53. Finally in the landmark judgement of **Asset Reconstruction Company (India) Limited vs Bishal Jaiswal** Civil Appeal no. 323 of 2021, the Hon'ble Supreme Court clarified that entries in a Balance sheet do indeed amount to acknowledgement of debt for the purpose of extending the limitation period under Section 18 of the Limitation Act. (Para 10)
54. Since an acknowledgement would initiate a fresh period of limitation, the acknowledgement vis balance sheet of 2003-04 the limitation period would start afresh from 1.04.2004. Further, in light of the pendency of reference preferred by the Corporate Debtor to the Board of Industrial & Financial Reconstruction (BIFR) under Sick Industrial Companies Act, 1985 (SICA), the period between 24.09.2004 to 01.12.2016 shall stand exempted under provisions of section 22 of SICA, indicating that the limitation period would resume from 2.12.2016 and would end in 2019. Again, the acknowledgment of debt vis balance sheet of 2018-19 would culminate into a fresh period of limitation that would end in 2022.
55. Even if the Limitation period is computed from the date of revocation of the OTS on 7th June 2012, the limitation period, which would have ordinarily ended on 6th June 2015, would be extended to 2022, due to the acknowledgments of 2015-16 and thereafter, 2018-19. Hence taking into

account the computation of limitation period in both cases, it is clear that the instant application is well within the period of Limitation.

56. Further, the Applicant claims that as on 1st June 2019, a sum of ₹10,82,94,94,335/- is due and payable by the Corporate Debtor. However, the Corporate Debtor has only admitted to its liability to the tune of ₹88,75,000/- . In this regard, we would like to mention that even without delving into the calculation of the amount stipulated by the Applicant, it is evident from the admission of the Corporate Debtor that a financial debt under section 5 (8) of the Code is due to the Financial Creditor. The exact amount of such financial debt, in the instant case, becomes immaterial as long as the amount admitted by the Corporate Debtor itself is more than the minimum amount stipulated under section 4(1) of the Code, *i.e.*, Rupees one lakh, at the relevant time.
57. In view of the above circumstances, the present petition made by the Applicant is complete in all respect as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, *i.e.*, Rupees one lakh, at the relevant time
58. It is, accordingly, hereby ordered as follows: -
- a) The application bearing ***CP (IB) No. 1567/KB/2019*** filed by ***Stressed Asset Stabilization Fund*** (Financial Creditor), under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against ***I.C. Textile Limited***, CIN: U18101WB1983PLC035976, the Corporate Debtor, is ***admitted***.
 - b) There shall be a moratorium under section 14 of the IBC.
 - c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Shri Sanjay Kumar Agarwal**, registration number **IBBI/IPA-001/IP-P00062/2017-18/10140**, email: **sanjaycal@hotmail.com** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h) The FinancialCreditor shall deposit a sum of Rs. 3,00,000/- (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the FinancialCreditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp

immediately, and in any case, not later than two days from the date of this Order.

- j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
59. **CP (IB) No. 1567/KB/2019** to come up on **06.05.2022** for reporting progress.
60. Certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)

Order pronounced on 14 day of March, 2022

SM[LRA]