IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 151- CP(IB) 113 of 2019

Order under Section 7 IBC

IN THE MATTER OF:

Stressed Assets Stabilisation Fund ....**Applicant**
V/s
Skylead Chemicals Ltd. ....**Respondent**

Order delivered on .30/11/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

These cases are fixed for the pronouncement of the order. The order is pronounced in open court vide separate sheet.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
MADAN B GOSAVI
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I

CP(IB) No. 113 of 2019

In the matter of :
CP(IB) No. 113 of 2019

[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

In the matter between:

M/s. Stressed Assets Stabilization Fund
Having its registered office at:
IDBI Tower, 3rd Floor,
Cuffe Parade, Mumbai-400005.

....Financial Creditor

Versus

M/s. Skylead Chemicals Ltd.
CIN: L24110GJ1985PLC008225
Having its registered office at:
Mangalsinhji Mahal, Mangalsinhji Road,
Dist-Bhavnagar, Gujarat-364001.

....Corporate Debtor

Order Reserved On: 02.11.2022
Order Pronounced On: 30.11.2022

Coram: DR. MADAN B. GOSAVI, MEMBER (J)
KAUSHALENDRA KUMAR SINGH, MEMBER (T)

PRESENTS:

For the Financial Creditor : Mr. Ravi Pahwa, Ld. Adv. a.w. Mr. Yash Tandon, Ld. Adv.
For the Corporate Debtor : Mr. Nishith Acharya, Ld. Adv. for Mr. Aditya Tandon, Ld. Adv.

O R D E R

[Per: DR. MADAN B. GOSAVI, MEMBER (JUDICIAL)]

1. The Financial Creditor- M/s. Stressed Assets Stabilisation Fund had filed this application against the Corporate Debtor- M/s. Skylead Chemicals Ltd., under section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") for initiation of the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor on the ground that the Corporate Debtor committed default in paying Financial Creditor of Rs. 90,60,22,736/-.

2. In fact, by order dated 12.01.2021, this Adjudicating Authority had rejected the application of the Financial Creditor filed under section 7 of the IBC, 2016 observing that *"So, in view of facts on record and considering the principles of Law of Limitations as stated above, we are of the view that the instant application is barred by Law of Limitation and not maintainable"*.

3. This order of Adjudicating Authority was challenged by the Financial Creditor before the Hon'ble NCLAT by way of an appeal bearing Company Appeal (AT) (Ins) No. 248 of 2021. The Hon'ble NCLAT after going through the evidence and material on record found that the Financial Creditor has also relied on some documents whereby the Corporate Debtor has created security for this loan and the fact that the SARFAESI proceeding is initiated upon invocation of guarantee dated 20.02.2017, ultimately held that the claim is not time-barred. The Hon'ble NCLAT has observed that *"Keeping in mind the provisions of the Code & law laid down on the subject, it is not in dispute that the dues of the CD are falling within the provisions of Section 18 of the Limitation Act and since debt and default is not in dispute & dues are payable in fact & law & is in accordance with the provisions of the Code, so Section 7 of the Code is attracted"*.

4. In short, while setting aside the order of rejection of the application passed by this Adjudicating Authority, the Hon'ble NCLAT clearly held that in this case, the debt is more than Rs. 1 crore payable by the Corporate Debtor to the Financial Creditor and the Corporate Debtor has committed default. Both facts are proved. So, also the claim is within the limitation. In

view of this, we cannot take any other view of this factual aspect and allow this application.

5. This application is otherwise complete and defect-free. The Insolvency Professional ("IP") whose name is suggested for appointment as Interim Resolution Professional ("IRP") does not face any disciplinary proceedings. Hence, we admit the Corporate Debtor in CIRP and pass the following orders:

ORDER

I. The Corporate Debtor–M/s. Skylead Chemicals Ltd., CIN: L24110GJ1985PLC008225 is admitted in the Corporate Insolvency Resolution Process under Section 7 of the IBC, 2016.

II. We appoint Mr. Tejas Kiranbhai Shah, having Registration No. IBBI/IPA-001/IP-P00089/2017-18/10185 and E-mail Id: tejasshah44@yahoo.com, and having his address at B-201, Narayan Krupa Avenue, Opp. Prernatirth Derasar, Jodhpur, Satellite, Ahmedabad-380015 under section 13(1) (c) of the IBC, 2016 as IRP as proposed by the Financial Creditor.

III. The Moratorium under Section 14 of the IBC, 2016 shall come to effect from the date 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.

IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including the execution of any judgment, decree or order in any Court of law and further prohibits Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing of any of Corporate Debtor 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

SARFAESI 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.

V. Further, litigation or application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., section 14 and section 238 of the IBC, 2016.

VI. The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended, or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.

VII. The IRP so appointed shall make a Public announcement of the Corporate Insolvency Resolution Process (CIRP) immediately as specified under Section 13 of the IBC, 2016 and by calling for submissions of the claim under section 15 of the IBC, 2016.

VIII. The IRP shall perform all his functions as contemplated, *inter-alia,* by Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under legal obligation as per Section 19 of the IBC, 2016 to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with the IRP, do not assist or co-operate, the IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by section 20 of the IBC, 2016, 2016.

X. We direct the Financial Creditor / Applicant to pay the IRP a sum of **Rs. 2,00,000/- (Rs. Two Lakh Only)** as fees & expenses till the CoC decides about his fees/expenses.

XI. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to Interim Resolution Professional, and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after pronouncement of the order.

XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

XIII. Accordingly, CP (IB) No. 113 of 2019 is allowed.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

Rajeev Kr. Sen/Stenographer