

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



ITEM No.301
C.P.(IB)/335(AHM)2022

Order under Section 7 IBC

IN THE MATTER OF:

The Cosmos Co.Op.Bank Ltd
V/s
SPS Autotubes Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 15/09/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD
CP(IB)/335(AHM)/2022**

(An application 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. SPS Autotubes Private Limited

THE COSMOS CO.OP BANK LTD.

Head Office:-

Cosmos Tower, Plot No.6,
ICS Colony, University Road,
Ganeshkhind, Shivajinagar, Pune-411007

Branch at

Naroda Road, Opp. Bhagat Petrol Pump,
Naroda, Ahmedabad, Gujarat.

...APPLICANT/FINANCIAL CREDITOR

VERSUS

SPS AUTOTUBES PRIVATE LIMITED

706-707, Wall Street-1,
Opp. Orient Club, Near Railway Crossing,
Ellisbridge, Ahmedabad-380006.

...RESPONDENT/CORPORATE DEBTOR

Order pronounced on 15.09.2023

CORAM :

**SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

Appearance

For the Applicant : Mr. Sandeep Bhatt, Adv.
For the Respondent : Mr. Ravi Pahwa, Adv.



ORDER
(Per: BENCH)

1. This is an Application filed by **Cosmos Co. Op. Bank Ltd.** (hereinafter referred to as “**the Financial Creditor**”) against **SPS Autotubes Private Limited** (hereinafter referred to as “**the Corporate Debtor**”) under Section 7 of the Insolvency & Bankruptcy Code, 2016, seeking thereof to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, to appoint IRP and to initiate moratorium.
2. From Part-I of the Application, it is seen that the Financial Creditor is a Cooperative Bank. From Part-II of the Application, it is seen that the Corporate Debtor is a Private Limited Company incorporated on 28.6.2013 bearing CIN: U28999GJ2013PTC075827. The registered office address of the Corporate Debtor as per the Application is stated to be situated at 706-707, Wall Street-1, Opp. Orient Club, Near Railway Crossing, Ellisbridge, Ahmedabad-380006. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Kailash T. Shah, Reg. No. IBBI/IPA-001/IP-P00267/2017-18/10511; to act as the IRP.
3. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.37,34,56,411.56 which is due and payable by the Corporate Debtor as on 31.08.2022. Part V of the application describes

the particulars of Financial Debt, documents, records and evidence of default as described below:-

		TOTAL- Rs. Rs. 3585.77 LAKH								
	DATE(S) OF DISBURSEMENT	THE DATE OF DISBURSEMENT ARE DIFFERENT FOR ALL SANCTIONS. SANCTION LETTER DATED 12.08.2018, 20.11.2017, 07.12.2018, 31.03.2020, 08.09.2020 AND 15.09.2020.								
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THAT THE DATE ON WHICH THE DEFAULT OCURED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORMAT)	Rs.37,34,56,411.56 as on 31.08.2022 DATE OF DEFAULT; FITL - 28.02.2021 Term Loan-I - 28.02.2021 Term Loan-II - 28.02.2021 Term Loan-III - 28.02.2021 Term Loan IV - 28.02.2021 Cash Credit - 28.02.2021								
PART-V										
PARTICULARS OF FINANCIAL DEBT [DOCUMENTS RECORDS AND EVIDANCE OF DEFAULT]										
1.	PARTICULARS OF SECURITY HELD, IF ANY, THE DATE OF ITS CREATION, ESTIMATED VALUE AS PER THE CREDITOR (1) <u>HYPOTHECATED MOVABLE ASSETS</u> FIRST SCHEDULE Hypothecation of entire current Assets of the Corporate Debtor including stocks, book debts, machineries (described below in detail) and all other current assets, of present and future. M/s. SPS Autotubes Private Limited situated at R.S. No.934 & 935, Village: Dangarwa, Ahmedabad -Mehsana Highway, Ta: Kadi, Dist: Mehsana and at any other place:									
	<table border="1"> <thead> <tr> <th>Sr. No.</th> <th>Description of Plant & Machinery</th> <th>Supplier</th> <th>Qty.</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>WELDED TUBE MILL Welded Tube Mill GP LM80HF-SUS409 capable for manufacturing Stainless Steel both square and rectangular</td> <td>ACETEK ELECTRONICS COMPANY, Hongkong Invoice No.:I-160303 Date: 07/03/2016</td> <td>01 SET</td> </tr> </tbody> </table>	Sr. No.	Description of Plant & Machinery	Supplier	Qty.	1	WELDED TUBE MILL Welded Tube Mill GP LM80HF-SUS409 capable for manufacturing Stainless Steel both square and rectangular	ACETEK ELECTRONICS COMPANY, Hongkong Invoice No.:I-160303 Date: 07/03/2016	01 SET	
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	tube of various grades		
2	S.S. TUBE POLISHING MACHINE Model No:- RTP-9H	ELEVEN STAR ENGINEERING Invoice No.:001 Date: 27/05/2017	1 SET
3	2 WAY SQUARE POLISHING MACHINE Standard Make, 6 heads, roll sets, accessories/attachments, installation, fittings etc.	UDAYA ENGINEERING WORKS Invoice No.G.015 Date:13/12/2017 Invoice No.G.013 Date:02/11/2017	02 SET
4	PRINTING MACHINE 2 Axis Printing Table with Control Panel, PLC System, 200W Servo Motor	Dhruvi Automation Invoice No.011/17-18 Date:10/09/2017	01 No.
5	IA MAC 30-INDO-AIR Make Complete Screw Type Air Compressor without Air Receiver, Vertical Air Receiver (750 Ltr) Air Dryer (150CFM) , Filters – Pre & After, Auto Drain Valve FRP Cooling Tower with accessories/attachments, installation, fittings etc.	INDO-AIR Compressors Pvt Ltd PI No.:IACPL/SALES/KP/16-17/111 Date: 28/07/2016	01 01
6	EOT CRANE 5.0 Ton Double Girder EOT Crane 10.0 Ton Double Girder EOT Crane 5.0 Ton Double Girder EOT Crane	SAFEX Energy Pvt Ltd, Ahmedabad Invoice No.: 9 Date:25/04/2016 Invoice No.: 42 Date:31/07/2016	01 No 01 No 02 No
7	Stores/ Tools, Spare/Drives, Weighing Scale, Material Handling Trolleys/Equipments, Workshop Machineries, Misc. Items etc. Movable type	-	-



8	Piping Installation for air, water, oil with control valves, pumps etc.	-	-
9	ELECTRICALS Electrification-Main/Sub Control Panel, Electric Transformer, Standard make with Switch Starter, cable/wire fittings etc., complete inclusive of labour & materials etc.	-	-

Date of Creation of charge: Hypothecation of Plant & Machineries vide Agreement No. A-23002 dated 19-10-2015 and Agreement No. A-25379 dated 24-11-2017

Estimated value; As per the Valuation Report dated 09.11.2021

Market Value Rs. 967.00 Lakh at ANNEXURE- A-65.

(2) MORTGAGED IMMOVABLE ASSETS

SECOND SCHEDULE

- i) All that immovable property being leasehold land admeasuring about 8980 Square Meters bearing Plot No 111 in the GIDC Industrial Estate, Kerala standing on Revenue Survey No 188/P, 192/P and 193/P, situated lying and being at Village limits of Mouje: Kerala; Taluka Bavla, within the registration sub district – Bavla District Ahmedabad together with present and future construction standing thereon.
- i) All that immovable property being industrial Non- Agriculture land admeasuring about 11534 Square meters (Total land 11534 Square Meters minus 376 Square Meters i.e. 11158 Square Meters) bearing Revenue Survey No 934 situated. Lying and being at Mouje: Dangarva Taluka Kadi, within registration sub district Kadi, District Mehsana.
- ii) All that immovable property being industrial Non- Agriculture land admeasuring about 38952 Square meters together with construction thereon bearing amalgamated Revenue Survey No 935 situated. Lying and being at Mouje: Dangarva Taluka Kadi, within registration sub district Kadi, District Mehsana
- v) All that immovable property bearing,
 - a) Private Sub Plot No 160 having plot area admeasuring about 400 Square Yards.
 - b) Private Sub Plot No 159 having plot area admeasuring about



652.76 Square Yards.

- c) Private Sub Plot No 183 having plot area admeasuring about 346.58 Square Yards.
- d) Private Sub Plot No 182 having plot area admeasuring about 334.87 Square Yards.
- e) Private Sub Plot No 181 having plot area admeasuring about 400 Square Yards.
- f) Private Sub Plot No 184 having plot area admeasuring about 324.49 Square Yards.
- g) Private Sub Plot No 185 having plot area admeasuring about 354.58 Square Yards.
- h) Private Sub Plot No 186 having plot area admeasuring about 433.85 Square Yards.
- i) Private Sub Plot No 187 having plot area admeasuring about 412.71 Square Yards.

Aggregating in all about 3659.84 Square yards equivalent to 3060.10 Square Meters together with land of Road admeasuring about 563.12 Square yards equivalent to 470.84 Square Meters aggregating in about 4222.96 Square yards equivalent to 3530.94 Square Meters situated in NDK SOPAN scheme standing on the Land bearing Revenue Survey /Block No 78(153 paiki), situated, lying and being at Mouje:Kanotar, Taluka: Bavla, within the registration sub district Bavla District Ahmedabad.

- v) All that immovable property bearing Plot No 11 having Plot area admeasuring about 4861.20 Square Meters equivalent to 5814 Square yard (Together with undivided share in the land of Road & common Plot of the Association), situated in Sector-4 of "Pushparaj Village" scheme standing on the (1) land bearing Revenue Survey No 546 & (2) land bearing Revenue Survey No 550 (All Allotted in lieu of the land bearing Revenue Survey No 314/4) both situated, lying and being at Mouje: Kundal Taluka Sanand within the registration Sub District Sanand and District Ahmedabad

- vi) All that immovable property bearing

- a) Private Sub Plot No 163 having plot area admeasuring about 400 Square Yards.
- b) Private Sub Plot No 162 having plot area admeasuring about 400 Square Yards.
- c) Private Sub Plot No 161 having plot area admeasuring about 400 Square Yards.
- d) Private Sub Plot No 180 having plot area admeasuring about 400 Square Yards.
- e) Private Sub Plot No 179 having plot area admeasuring about 400 Square Yards.
- f) Private Sub Plot No 178 having plot area admeasuring about 400 Square Yards.
- g) Private Sub Plot No 188 having plot area admeasuring about 437.85 Square Yards.

Aggregating in all about 2837.85 Square Yards equivalent to



2372.81 Square Meters together with land of road admeasuring about 563.12 Square Yards equivalent to 470.84 Square Meters aggregating in about 3400.97 Square Yards, equivalent to 2843.65 Square Meters situated in NDK SOPAN scheme standing on the land bearing Revenue Survey No 78 (153 Paiki), situated. Lying and being at Mouje: Kanotar. Taluka Bavla within the registration sub-district Bavla, District Ahmedabad.

Date of Creation of charge; Registered Legal Mortgage deed no. 6379 dated 30.11.2015 OF THE Property AT

1. Plot No 111, Kerala GIDC, adm 8980 Sq. Mtr. Mouje; Kerala, Dist Ahmedabad

Estimated value; Rs. 558.43 Lakh valued by valuer Multi Mentor Engg. dated 11.09.2015

2. N A industrial Land at Survey No 934, adm 11534 Sq Mtr. At Dangarva, Kadi, Dist Mehsana, Gujarat

Estimated Value Rs 352.50 Lakh valued by valued Darshana Gajjar dated 27.07.2020)

3. N A Industrial Land at Survey No 935 adm. 38952 Sq Mtr. At Dangarva, Kadi, Dist Mehsana, Gujarat

Estimated Value Rs. 1777.09 Lakh valued by valuer Darshana Gajjar dated 27.07.2020

Date of Creation of charge; Registered mortgaged deed no. 1493 dated 13.03.2018. OF THE Property AT:

1. 1. Plot No 111, Kerala GIDC, adm 8980 Sq. Mtr. Mouje; Kerala, Dist Ahmedabad

Estimated value; Rs. 558.43 Lakh VALUED BY Multi Mentor Engg. DATED 11.09.2015

2. N A industrial Land at Survey No 934, adm 11534 Sq Mtr. At Dangarva, Kadi, Dist Mehsana, Gujarat

Estimated Value Rs 352.50 Lakh valued by valuer Darshana Gajjar dated 27.07.2020

3. N A Industrial Land at Survey No 935 adm. 38952 Sq Mtr. At Dangarva, Kadi, Dist Mehsana, Gujarat

Estimated Value Rs. 1777.09 Lakh valued by valuer Darshana Gajjar dated 27.07.2020

4. Private Sub Plots No 161, 162, 163, 164, 165, "A", "D", "E", 94, All plot aggregating about 2905.09 Sq. Mtrs. Situated at NDK Sopan, Kanotar, Bavla, Dist Ahmedabad

Estimated Value Rs. 63.67 Lakh valued by valuer Multi Mentor dated



08.04.2018

5. Plot No 11, Sector -4, Pushpraj Village, adm. 4861.20 Sq. Mtrs. Situated at Kundal, Ta: sanand Dist: Ahmedabad

Estimated value; Rs. 558.43 Lakh -Multi Mentor Engg. 11.09.2015

Date of Creation of charge; Registered mortgaged deed no. 2690 dated 30.04.2018.FOR:

Its Deed of Rectification, for the date of execution of previous mortgage.

Date of Creation of charge; Registered mortgaged deed no. 1611 dated 30.04.2018.FOR THE Property at:

1. Private Plot No 160,159,183,182,181,184,185,186,187, all agreeing to 3060.10 Sq Mtr. Together with land of Road 3530.94 Sq. Mtr. NDK Sopan, Kundal, Ta: Sanand Dist: Ahmedabad
2. Private Plot No 163,162,161,180,179,178,188, All Aggregating 2372.81 Sq. Mtr. With land of Road, 2843.65 Sq. Mtr situated at NDK Sopan, Kundal Ta: Sanand Dist Ahmedabad.

Estimated value; Rs. 82.28 Lakh valued by valuer Multi Mentor dated 08.04.2018

4. The Learned Counsel for the Financial Creditor submitted that the Corporate Debtor has availed various credit facilities from the Applicant Bank since the year 2015 and lastly in the year 2020. It is submitted that the Applicant has granted the Corporate Debtor the following credit facilities :-



Sl. No	Type of facility	Amount Rs. Lakh
1	Cash Credit	1000.00
2	Term Loan – I	423.00
3	Term Loan – II	1177.00
4	Term Loan – III	600.00
5	Term Loan – IV	314.77
6	FITL	71.00
	Total	3585.77

5. It is stated that the date of disbursement is different for all the loans. The said loans were sanctioned on different dates vide sanction letters dated 12.08.2018, 20.11.2017, 7.12.2018, 31.3.2020, 8.9.2020 and 15.09.2020.
6. The date of default is stated to be 28.02.2021.
7. In support to of the amount in default a certificate under the Bankers Books Evidence Act along with the Statement of Account is filed at Annexure A-57 of the application.
8. It is stated that the applicant bank has registered its charge on the site of MCA and as evidence thereof the Search Report is placed at Annexure A-55.
9. The Learned Counsel for the Financial Creditor submitted that pursuant to the default the Applicant has filed OA No. 605 of 2021 before the Hon. DRT-1 at Ahmedabad which is pending for adjudication.




10. The Affidavit in support of the application is affirmed by one Mr. Rajendra Pandit, General Manager and Authorized Signatory of the Applicant Bank.
11. It is stated that despite the pendency of the OA and even after several letters and notices, the Corporate Debtor has not repaid the amount and hence the present Application was filed.
12. It is seen that on receipt of notice the Corporate Debtor has filed an IA being IA No. 141/2023 before this Tribunal. The same was withdrawn by the Corporate Debtor as per Interim Order dated 04.09.2023.
13. Reply was filed by the Corporate Debtor vide affidavit dated 13.06.2023.
Para 2 of the said affidavit is reproduced below :-

“I say that I have perused the insolvency petition filed by the Financial Creditor and admit that there is default committed by the Corporate Debtor and due to financial crunch, the Corporate Debtor is unable to service the debts of the Financial Creditor. In that view of the matter, the undersigned has no objection if the Corporate Insolvency Resolution Process is initiated against the Corporate Debtor.”

The said affidavit is affirmed by one Mr. Sunny Jain who as per MCA site happens to be a director of the Corporate Debtor.



14. Heard the submissions made by the Learned Counsel for the parties.
15. The Respondent / Corporate Debtor in his reply has admitted the debt and default. Further, it is also seen that the ‘default’ which is arising in the present Application has happened much after the advent of Covid – 19 and the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016. The amount claimed in default is more than Rs. 1.00 Crores which is under Limitation as the date of default is mentioned as 28.2.2021 and the present application was filed on 13.12.2022.
16. In view of the facts as stated *supra* and also in view of the ‘financial debt’ is proved by the Financial Creditor and the ‘default’ being committed on the part of the Corporate Debtor of an amount of more than Rs. 1 Crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 7(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.
17. The Financial Creditor has proposed the name **Mr. Kailash T. Shah, Reg. No. IBBI/IPA-001/IP-P00267/2017-18/10511** as the Interim Resolution Professional (IRP) who has also filed his consent in Form –



2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 19.12.2023.

18. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-

(i) The Corporate Debtor- **M/s. SPS Autotubes Private Limited** is admitted in Corporate Insolvency Resolution Process under section 7 of the IBC, 2016.

(ii) As a consequence thereof, the moratorium under Section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the IBC, 2016.

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;

d. the recovery of any property by an owner or lessor where



such property is occupied by or in the possession of the corporate debtor.

e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this 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 of the IBC, 2016, as the case may be.

(iv) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.

(v) As proposed by the Financial Creditor, we appoint **Mr. Kailash T. Shah, Reg. No. IBBI/IPA-001/IP-P00267/2017-18/10511**, under section 13 (1)(c) of the Code to act as Interim Resolution



Professional (**IRP**) of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.

- (vi) 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 under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the



submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.

- (viii) The IRP is expected to take full charge of the Corporate Debtor assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (x) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.
- (xi) The Financial Creditor is directed to pay an advance of **Rs.2,00,000/-** (Rupees Two Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress



Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per the Rules.

- (xii) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order.

19. Accordingly, CP (IB)/335(AHM) 2022 stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

Rajeev/PS