

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 903 (IB)/MB/2019

Under Section 7 of the I&B Code, 2016

In the matter of

Stressed Assets Stabilization Fund

...Financial Creditor/ Applicant

v/s

Krystal Stones Exports Limited

...Corporate Debtor

Order Dated 24.09.2019

Coram: Hon'ble Member (Judicial) Mr V.P. Singh
Hon'ble Member (Technical) Mr Rajesh Sharma

For the Petitioner: Adv.Maneesha Patel

For the Respondent: None Present

Per V.P. Singh, Member (Judicial)

ORDER

1. This is an application being CP 903/2019 filed by, **Stressed Assets Stabilization Fund**, Financial Creditor or Applicant, under section 7 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Krystal Stones Exports Limited**, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).
2. This application is filed by Mr Nitesh Kumar Singh, Senior Manager of the Applicant, who is duly authorised to do so vide authorisation dated 13.01.2019. The loan to the Corporate Debtor was given by IDBI Bank Limited that subsequently assigned the said loan account to the Applicant vide Transfer Deed dated 30.09.2004.
3. The Applicant has claimed an amount of ₹2,25,35,74,151/- as due and payable and outstanding as on 01.12.2018 including interest, further interest and liquidated damages.

4. The Applicant has submitted two Deeds of hypothecation dated 20.05.1996 that were executed under the Rupee Loan Agreement dated 20.05.1996 for ₹1 crore and Foreign Currency Loan Agreement dated 20.05.1996 for ₹3.88 crores. Subsequently, a charge was registered upon the movable properties of the Corporate Debtor with the ROC, Bombay on 21.05.1996 for securing ₹4.88 crores including rupee Term Loan of ₹1 crore, Foreign Currency Term Loan of ₹3.88 crores.
5. The Corporate Debtor was granted rupees Term Loan for ₹1 crore, Foreign Currency Term Loan for ₹3.88 crores vide two loan agreements dated 20.05.1966, Rupee Term Loan for ₹42 lakh vide loan agreement dated 13.08.1998 and rupee Term Loan for ₹1.25 crore vide agreement dated 13.08.1999. The lender, vide its letter dated 27.07.2001, intimated the Corporate Debtor about the default committed and recalled the outstanding amount under all the said facilities along with interest aggregating to ₹9,44,47,364/- as on 30.06.2001.
6. The Applicant has submitted the ledger statements of the Corporate Debtor, dated 19.12.2018, maintained by the Applicant along with its certificate under the Banker's Book Evidence Act, 1891 certifying the outstanding amounts as reflected in the Ledger statements.
7. The Corporate Debtor chose not to appear or file an objection against the admission of this application. By order dated 02.07.2019 it was informed vide affidavit of service, that the notice issued on the Corporate Debtor is returned with postal remark "left". Further, on 17.09.2019 we have recorded that the Corporate Debtor did not appear before this Tribunal even after service of notice by way of publication of notice in the newspaper. There are no objections filed by the Corporate Debtor even after ample opportunities to do the same.
8. At the outset, it is pertinent to note that the Ld. Debts Recovery Tribunal at Jaipur issued a recovery certificate in O.A. 131/2001 for ₹9,71,36,998/- in favour of the Applicant namely IDBI on 16.08.2002. The Corporate Debtor filed a reference bearing Case no. 489/2002 before the Ld. BIFR which by its order dated 11.07.2005 rejected the reference. On 10.05.2006, the Corporate Debtor filed an

appeal against the rejection order of the Ld. BIFR before Ld. AAIFR in Appeal No. 176/2006. The Ld. AAIFR vide its order dated 21.02.2007 rejected the appeal of the Corporate Debtor on the ground of it being filed beyond stipulated time period for filing an appeal. The Corporate Debtor filed an appeal before the Hon'ble High Court of Delhi at New Delhi in W.P. (C) 4258/2007, against the order of Ld. AAIFR. The Hon'ble High Court of Delhi vide its judgment dated 11.02.2008 remitted the matter back to Ld. AAIFR. The Ld. AAIFR again vide its order dated 08.10.2009 dismissed the appeal filed by the Corporate Debtor. In appeal, the Hon'ble High Court of Delhi vide order dated 12.04.2010 again remitted the case to the Ld. AAIFR for deciding the case on merits.

9. The Ld. AAIFR vide its order dated 18.01.2016 finally rejected the appeal on merits recording therein that the Corporate Debtor had proposed One Time Settlement of ₹3.10 crore to the Applicant in May 2014 and after rejection of the OTS the Corporate Debtor did not make any efforts to settle the matter with the Applicant. It was observed that the company is neither interested in revival nor has any promotor with means to revive it. Further, it was also observed that the filing of reference under SICA is for misusing the protection of section 22 of SICA and due to such pending references of the company, all the recoveries have stalled and execution of recovery certificate could not be initiated, including the recovery certificate dated 16.08.2002 issued in the favour of the present Applicant. The Ld. AAIFR imposed cost upon the company for gross misuse of the provisions of SICA with ulterior motives for more than 12 years. The said order of the Ld. AAIFR was upheld in its entirety in W.P. (C) 5716/2016 by the Hon'ble High Court of Delhi vide its judgment dated 15.07.2016.
10. On perusal of the documents submitted by the financial creditor, it is clear that on 01.12.2018, debt amounting to ₹2,25,35,74,151/- is due and payable by the Corporate Debtor to the Applicant. The judgment establishes the debt and default both in proceedings before the Ld. AAIFR vide its judgment dated 18.01.2016 recording therein that the Corporate Debtor had proposed One Time Settlement of ₹3.10 crore to the Applicant in May 2014 and after rejection of the

OTS the Corporate Debtor did not make any efforts to settle the matter with the Applicant. As observed in the judgment, the recovery certificate issued in favour of the Lender of the Corporate Debtor dated 16.08.2002 could not be executed because of the pending references and the conduct of the Corporate Debtor indicated that the Corporate Debtor is only interested in misusing the protection of section 22 of SICA. Further, the Hon'ble High Court of Delhi dismissed the Writ Petition filed by the Corporate Debtor against the judgment of Ld. AAIFR, vide its judgment dated 15.07.2016. The Ledger Statements of the Applicant also reflect the disbursement of loan amount as well as the outstanding amount payable by the Corporate Debtor against the said loan. The outstanding amount that is in default is more than ₹1,00,000/-.

11. The application filed by the financial creditor is on proper Form 1, as prescribed under the Adjudicating Authority Rules and application is complete.
12. The Applicant has proposed the name of Mr Vijay Pitamber Lulla, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00323/2017-18/10593] as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code. In Form 2 annexed to the Application, the proposed IRP has declared that no disciplinary proceedings are pending against him.
13. The Application under sub-section (2) of Section 7 of I&B Code, 2016 filed by the financial creditor for initiation of CIRP in prescribed Form 1, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is complete. The existing financial debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 7 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This petition filed under Section 7 of I&B Code, 2016, filed by **Stressed Assets Stabilization Fund**, against **Krystal Stones**

Exports Limited, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 activity 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That 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 Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.
- VI. That this Bench at this moment appoints Mr Vijay Pitamber Lulla, a registered Insolvency Resolution Professional having Registration Number [IBBI/IPA-001/IP-P00323/2017-18/10593] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.
14. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

24th September 2019