

IN THE NATIONAL COMPANY LAW TRIBUNAL.

KOLKATA BENCH,

KOLKATA

C.P (IB) No. 482/KB/2019

In the matter of

An application 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 Assets Stabilization Fund (SASF), 3rd Floor, D – Wing, IDBI Tower, WTC Complex, Cuffe Parade, Mumbai - 400 005

...Financial Creditor

Versus

In the matter of:

ER Textiles Limited (ERTL), 1/433, Gariahat Road, Block 4A (4th Floor), Jodhpur Park, Kolkata – 700 068, West Bengal.

...Corporate Debtor

Date of hearing: 22/11/2021

Order Pronounced on :14 /01/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Ms. Sweta Gandhi Murgai, Advocate] For Financial Creditor
2. Ms. Gunja Pachisia, Advocate]

1. Mr. Shaunak Mitra, Advocate] For Corporate Debtor
2. Mr. Patita Paban Bishwal, Advocate]

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The court is convened by video conference today.
2. This 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 has been filed by **Stressed Assets Stabilization Fund** through Shri Dipak Rao Patil, its Manager (Authorization letter along with letter issued by Ministry of Finance, Government of India conveying the appointment of Shri Umesh Jain as executive trustee of **SASF** and delegation of powers of **SASF** collectively annexed as annexure 2),(hereinafter referred to as the Financial Creditor). The financial creditor seeks initiation of Corporate Insolvency Resolution Process in respect of ER Textiles Ltd. (ERTL)/Corporate Debtor.
3. The brief facts in this case are that ER Textiles Ltd., the Corporate Debtor herein is primarily engaged in manufacturing of wearing apparels. The company approached IDBI for sanction of credit limits to set/up facilities of composite Textile Mills at Hosur, Tamil Nadu. At the request of the company, IDBI had sanctioned term loan of Rs. 150,00,00,000/- to the Corporate Debtor in April 2000 under the Technology Upgradation Fund Scheme. However only a sum of Rs. 71,16,39,550/- was disbursed on various dates during 19.07.2001 to 18.06.2002 and the balance assistance was cancelled. It is further submitted in the petition that in consideration of grant of credit facilities as aforesaid by IDBI, has availed by the Corporate Debtor, the Corporate Debtor had executed several security documents in favour of IDBI. The Corporate Debtor company hypothecated its immovable properties as well as mortgaged the said properties measuring 20.04 Acres in village Mugalapally, Hosur Taluk, Krishnagiri District in the state of Tami Nadu, 47.175 acres at village Nariganapuram in Hosur Taluk, Krishnagiri district, 1.260 acres at village Sanamangalam, Hosur Taluk Krishnagiri District and 35.730 acres at village Amuthakondapalli, Hosur Taluk, Krishnagiri district in the State of Tamil Nadu and its promoters pledged shares of the Corporate Debtor. It is further submitted that the personal guarantees dated 10.05.2001, against the assistance availed from

IDBI was obtained from Shri Grandhi Eswara Rao, Late Smt. Grandhi Saraswathi and Ms. Grandhi Sarita. The Company in its meeting dated 06.03.2002 resolved inter-alia to offer its immovable properties being a land in various villages and districts in State of Tamil Nadu as mentioned above.

4. It is further submitted that due to financial irregularities in the group, project implementation was affected. In March 2003 IDBI had also approved funding of interest of Rs. 15.42 Crores. However, the project implementation still did not improve as the Corporate Debtor defaulted in repayment of dues on 17th March, 2004, IDBI recalled the loan facility extended to the Corporate Debtor and invoked personal guarantees on 15th April 2004. On 30th September 2004 by way of a transfer deed IDBI the original lender transferred to SASF, the Financial Creditor herein of the opinion performing assets and its directors/guarantors to repay the outstanding dues of Rs. 406,43,61,224/- as on first August 2013.
5. It is further submitted that simultaneously the Financial Creditor initiated proceedings under Section 19 of the recovery of debts due to banks and Financial Institutions to 1993. It is submitted that OA No. 428 of 2018 was filed before the Debts Recovery Tribunal at Hyderabad for a sum of Rs. 686,36,32,232/- and sale of assets for realization of dues recoverable by the Financial Creditor. By an order dated 20th October 2018, the said OA proceedings were disposed of by allowing the relief sought and with directions for issuance of certificate for a sum of Rs. 686,36,32,232/- in favour of the Financial Creditor and against the Corporate Debtor and its personal guarantors. It is submitted that the outstanding amount claimed by the Financial Creditor is Rs. 895,93,38,943/- as on 1st January 2019 which the Corporate Debtor has defaulted in making payment.
6. The Financial Creditor has placed on record the following documents along with the petition:-
 - i. Copy of Trust Deed- Annexure A-1
 - ii. Authorisation Letter along with letter issued by Ministry of Finance, Govt. of India conveying the appointment of Shri Umesh Jain as Executive Trustee of SASF and Delegation of Powers of SASF- Annexure A-2

- iii. Copy of Memorandum and Articles of Association of E R Textiles Limited- Annexure A-3.
- iv. Company Master Data extracted from the website of Ministry of Corporate Affairs- Annexure A-4
- v. Written Communication by the proposed IRP in Form-2 and Certificate of Registration of IP- Annexure A-5
- vi. Copy of Statement of Accounts of E.R. Textiles Ltd. (upto 01.01.2019)- Annexure A-6
- vii. Copy of Deed of Hypothecation- Annexure A-7
- viii. Copy of Declaration and Undertaking- Annexure A-8
- ix. Copy of Memorandum of Entry- Annexure A-9
- x. Valuation Report dated 13.07.2013- Annexure A-10
- xi. Certificate of Charge creation/modification from ROC- Annexure-A11
- xii. Copy of personal guarantees dated 10.05.2001 executed by Shri Grandhi Eswara Rao, Late Smt. Grandhi Saraswati and Ms. Grandhi Sarita.
- xiii. Shri Grandhi Eswara Rao – 3,30,00,000 fully paid-up Equity Shares having face value of Rs. 10/- per share.
Shri Grandhi Eswara Rao – 3,34,00,000 partly paid-up Equity Shares having face value of Rs. 10/ - per share.
Smt. Grandhi Saraswathi- 1,10,00,000 partly paid-up Equity Shares having face value of Rs. 10/- per share.
Ms. Grandhi Sarita- 50,00,000 partly paid-up Equity Shares having face Value of Rs. 10/- per share.
Agreement for pledge of shares (2 Nos.) dated 10.05.2001 executed by Shri Grandhi Exwara Rao, Late Smt. Grandhi Saraswathi and Ms. Grandhi Sarita in respect of pledge of following equity shares of ER Textiles Ltd. held by them- Annexure A-13
- xiv. Copy of the application filed by the Financial Creditor before the Debts Recovery Tribunal at Hyderabad, being O.A. No 428 of 2018- Annexure A-14

- xv. Copy of order dated 20.10.2018 passed by the Presiding Officer in O.A. No. 428 of 2018- Annexure A-15
- xvi. Copy of the ledger account of the corporate debtor in accordance with the Banker's Books Evidence Act, 1891- Annexure A-16
- xvii. Letter of Intend dated 04.04.2000- Annexure A-17
- xviii. Loan Agreement dated 10.05.2001- Annexure a-18
- xix. Letter dated 20.03.2003 issued by IDBI conveying sanction of interest funding- Annexure A-19
- xx. Recall notice dated 17.03.2004 issued by IDBI to ERTL- Annexure A-20
- xxi. Notice dated 15.04.2004 issued by IDBI to Shri Grandhi Eswara Rao, Late Smt. Grandhi Saraswathi and Ms. Grandhi Sarita invoking their personal Guarantees- Annexure A-21
- xxii. Notice dated 13.09.2013 issued by IDBI to ERTL under Section 13(2) of SARFAESI- Annexure A-22.
- xxiii. Annual Report as on 31.03.2012- Annexure A-23
- xxiv. LOA dated 31.03.2006 issued by SASF conveying restructuring of Term liabilities- Annexure A-24
- xxv. Letter dated 26.02.2007 issued by SASF modifying certain terms and conditions of restructuring- Annexure A-25
- xxvi. Letter dated 21.05.2011 revoking restructuring- Annexure A-26
- xxvii. LOA dated 06.02.2012 issued by SASF conveying OTS- Annexure A-27
- xxviii. Letter dated 18.02.2012 of ERTL requesting modifications in the OTS- Annexure A-28
- xxix. Letter dated 24.06.2012 revoking OTS- Annexure A-29
- xxx. Letters of the company dated 09.12.2013, 30.12.2013, 24.07.2014, 04.09.2014, 04.11.2014, 24.12.2014, 13.02.2015 for settlement of dues- Annexure A-30
- xxxi. Letters issued by SASF dated 11.11.2013, 18.07.2014, 20.08.2014, 14.10.2014, 11.11.2014, 19.12.2014, 06.02.2015, 15.04.2015, 07.11.2015 advising company to submit improved settlement proposal- Annexure A-31

xxxii. Order dated 01.10.2015 passed in Case No. 43/2008 by Board for Industrial and Financial Reconstruction- Annexure A-32

xxxiii. Order passed by the Hon'ble High Court at Calcutta in BIFR No. 43 of 2008- Annexure A-33.

7. In reply to the petition the Corporate Debtor has filed affidavit of **Partha Samaddar**, the authorized representative of the Corporate Debtor. It is stated in the affidavit that the application filed by the Financial Creditor is in abuse of the process of law and is not maintainable being mala-fide and fictitious one. It is submitted in the reply affidavit that the Financial Creditor has deliberately suppressed and concealed several material facts and the claim of the Financial Creditor is ex-facie barred by law, particularly the law of limitation.
8. It is further submitted that the application is barred by the principal of waiver, estoppel, acquiescence and principles, analogous thereto. It is submitted that the Financial Creditor has failed to comply with several mandatory requirements under the Code and that the Financial Creditor is guilty of forum shopping and indulging in multiplicity of proceedings and has purportedly wrongfully initiated proceedings before DRT against the Corporate Debtor on the self same purported cause of action. It is submitted that the mandatory conditions under Section 7 of the Code are not complied with in this matter. And there is no record of default with any information utility or credit information company disclosed along with the application though this is a mandatory requirement and since the application is incomplete the same has been filed with malicious and fraudulent motive, there is no cause of action in this matter.
9. It is submitted by the Corporate Debtor that the unit was initially conceived with 32,256 spindles, 216 looms and modern facilities for manufacturing and processing of wide-width Cotton shirting and trouser fabrics and home textiles (Bed sheets, damask and curtain fabrics) at Hosur, Tamil Nadu, with production capacity of 21 million meters of fabrics per annum. The vision was to develop this unit as 100% export oriented unit for exports predominantly to USA and Europe. However, due to various unfavourable conditions, it was converted into non-EOU Unit from June, 2010.

10. It is further submitted by the Corporate Debtor that the project was appraised under Technology Upgradation Fund Scheme (TUFF) of the Ministry of Textiles, Government of India, by IDBI with financial participation by IDBI, LIC of India Punjab and Sind Bank, Union Bank of India, Central Bank of India and Global Trust Bank. The estimated cost of Rs. 377 Crore was proposed to be financed by equity share capital of Rs. 151 Crore and term loan of Rs. 226 Crore. It is submitted that even though IDBI LIC Punjab and Sind Bank had sanctioned a total amount of Rs. 17500 lakhs, they disbursed only 50% that is 87.50 Crore for reasons best known to them. The withdrawal of sanction by these financial institutions of the balance 50% of the sanctioned amount has come as big blow to the company which acted as impediment and derailed the entire project. This back-out had virtually killed the enthusiasm of the promoters and sealed the fortunes even before the project could take off and this is the starting point for all problems being faced by the company. The consequences of this is that the started company faced severe financial crisis due to which the company had to rethink and downsize and limit the entire project to weaving division only.
11. It is submitted that that even though the company ordered and purchased 180 looms till 2005-06, the company was not in a position to operationalize the entire 180 looms as the company did not have resources to export the same and hence to content with the commencement of only 130 looms initially in February, 2006. The balance 50 looms was operationalized two years later. The company was driven to a situation where it was not having funds either to complete the project or to start working capital. This has totally paralyzed the operations leading to losses and consequently default situation.
12. The Corporate Debtor further submits that in the meantime IDBI has transferred the dues of the company to SASF vide transfer deed dated 30th September,2004. The unsustainable debt burden has driven away the strategic investor from looking into company's proposal and proved dearly for the company. It is submitted that as the original plan of the company to develop it as a textile complex consisting up of spinning, processing and garmenting had run into rough weather, the company had to restructure itself only weaving operations which of course does not generate

sufficient margins to absorb the expenditures and take the company beyond breakdown point.

13. It is submitted that the Company's performance from financial year 2000-01, got severely affected due to severe recession in the textile industry, lopsided duty structure imposed by the Government. The plant machineries were old, due to which the productivity from the machines has gone down due to high cost trade funds and non availability of working capital, the company could not bargain for better prices with its customers and suppliers. What is worse is the frequent power cuts imposed by TNEB, which again paralyzed the operations and liquidity position of the company. It is submitted that the cumulative effect of the above had the effect of deteriorating the liquidity position of the company from year to year and the company had to struggle from the first day because of most callous and unprofessional behaviour of Financial Institutions. Sanctioned limits were never disbursed and no working capital limit has been sanctioned thereby crippling the operations from the beginning.
14. It is stated that the IDBI/SASF never followed the Government Directives, rendered the unit sick and made the promoters lose huge amounts. The company was declared sick by BIFR and allowed the company to file restructure plan which was not approved by SASF in spite of repeated requests by company as well as BIFR. It is stated that the IDBI maintained a callous and unprofessional attitude by not releasing the funds and forced the promoters to borrow from the market at a high interest.
15. It is submitted that the Corporate Debtor was declared as a non-performing asset by the Financial Creditor on 1st May, 2002, therefore, the application is ex facie barred by limitation. It is submitted that the Provisions of Prevention of Money Laundering Act (PML Act) having been invoked against the company in the year 2014 and the Enforcement Directorate, Hyderabad has issued various notifications attaching the properties vide its order dated 19th March, 2014. It is submitted that the proceeding against the Corporate Debtor were also initiated by enforcement Directorate before the Adjudicating Authority under the PML Act.

16. It is stated that in the backdrop of the existence of proceedings initiated much before the advent of IB Code, the present petition is misconceived. The application filed under Section 7 of the Insolvency and Bankruptcy Code Rules, 2016 is barred by limitation in view of Section 137 of Limitation Act and Section 238A of the IB Code, 2016. The Corporate Debtor has further submitted that period for the purpose of calculating limitation under Section 137 of the Limitation Act would begin from the date of recall of debt that is 17th March 2004. It is further submitted that for the purpose of IB Code, 2016, the debt became due and payable on 17th March, 2004 when it was declared NPA by IDBI and that NCLT had no jurisdiction to entertain the application filed under Section 7 , as the debt become due and payable on 17th March, 2004 when the account became NPA. The limitation period as per Section 137 of the Limitation Act and Section 238 A of the IB Act, it is 3 years from the date of when the debt became due and payable.
17. The Corporate Debtor has further submitted that the right to sue accrues when a default occurs. If a default has occurred over 3 years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act. The Corporate Debtor has referred to and relied upon various authorities of the Hon'ble Supreme Court of India to place its defence.
18. In the rejoinder affidavit filed by the Financial Creditor, the deponent Mr. Imran Khan who is Assistant General Manager of the Financial Creditor has submitted that the defence sought to be put forward by the Corporate Debtor is totally misleading incorrect frivolous and made to twist the correct facts. It is submitted that the Corporate Debtor has failed to make out any substantial grounds of defence and is attempting to make false, frivolous and incorrect statements. It is submitted that the Corporate Debtor has attempted to create a purported fictitious dispute when there is none. It is submitted that the liabilities of the Corporate Debtor have been recognized by BIFR and it was upheld by the Appellate Authority under Prevention of Money Laundering Act, 2002. The Financial Creditor in its rejoinder has disputed and denied the various allegations made in the reply affidavit. It is stated that the loan agreement had ceased on 31.12.2003, however, even prior to that by 18.06.2002 the Corporate Debtor failed to remit and regularize the loan

account hence only a sum of Rs. 71,16,39,550/- was disbursed and the balance sanction was cancelled.

19. It is submitted that the said cancellation was in terms of the conditions stipulated in the loan documents itself. Thereafter, at the request of the Corporate Debtor the Financial Creditor on 20th March 2003 had approved funding of interest loan for a sum of Rs. 15.42 crores but in spite of all such facilities extended, the Corporate Debtor continued committing default as a result of which the loan was recalled on 17.03.2004. Therefore, it is denied that the Financial Creditor released only 50% of the sanction. It is denied that the cancellation of remaining sanction caused any impediment or derailed the entire project.
20. It is submitted that the Corporate Debtor had admitted that it had become debt ridden and its performance was affected due to recession in textile industry and the duty being imposed by the Government. The Financial Creditor further denied and disputed that there was any callous or unprofessional behaviour of the Financial Institution or that the Corporate Debtor had to struggle or that the sanctioned limits were never disbursed. It is also denied and disputed that the predecessor of the Financial Creditor never followed directives of the Government or rendered the unit sick or made the promoters lose huge amounts.
21. The Financial Creditor further submits in the rejoinder that the BIFR gave ample opportunities to the Corporate Debtor to settle the claims of the Financial Creditor and LIC but from the orders of BIFR it is apparently clear that the Corporate Debtor was reluctant and deliberately failed to come up with an effective restructuring plan, as a result of which on 1st October, 2015 BIFR considered it just and proper that, the Corporate Debtor be wound up and forwarded the matter to Hon'ble High Court at Calcutta. The Financial Creditor further denied that it did not approve the plan or that the predecessor of the applicant maintained a callous or unprofessional attitude by not releasing the funds or forced the promoters to borrow from market at a high interest or that this application is ex-facie barred by limitation.
22. It is submitted that the claim of the application is well within the laws of limitation as the liabilities of the applicant is admitted in the books of the Corporate Debtor.

The Appellate Tribunal of PMLA of 2002 by its order dated 21st September, 2018 decided in favour of the applicant therein, that the properties are mortgaged in favour of the applicant against the loan facilities, in respect of which the loan has been recalled since the Corporate Debtor committed default and the loan account has been accordingly classified as NPA on 01.05.2002. In fact, the Corporate Debtor had requested the applicant for restructuring its loan account and by its letter dated 31.03.2006 the applicant approved a plan in order to restructure the Corporate Debtor's principal dues and interest outstanding in the books of the applicant as such plan was at the behest of the Corporate Debtor modified and since the Corporate Debtor failed to make any payment in terms of all the restructuring plan, consequentially the same was revoked by the applicant on 21.05.2011.

23. The Financial Creditor however further submitted that it is clear from the record that the Corporate Debtor is not in a position and has failed to make the repayment of the applicant in spite of approaching the settlements on several occasions. It is submitted that even the DRT, Hyderabad, had upheld that the Corporate Debtor has committed default and failed to pay the liabilities arising out of the financial assistance availed by the applicant's predecessor and hence the applicant is entitled to the relief claimed by the applicant, it has prayed that this petition be allowed.
24. During the Course of arguments, Ld. Counsel for the Financial Creditor took us through the petition and the documents placed on record by the Financial Creditor and in the reply affidavit. Even though the Corporate Debtor has blamed the Financial Creditor for not complying with the terms of the sanction and withdrawing with sanction of the balance 50% and the amount which allegedly given big blow to the company and derailed the entire project, we are not convinced because in the Rejoinder, the Financial Creditor has effectively dealt with contention of the Corporate Debtor and therefore the averments of the Corporate Debtor in its reply affidavit cannot be considered. We are satisfied that the Corporate Debtor has failed and committed default in making of the outstanding financial debt and thus the Financial Creditor is entitled to the relief as prayed for.
25. We are satisfied that the petition should be admitted and corporate insolvency resolution process should be initiated against the Corporate Debtor in this case.

26. The application is complete in all respects.

27. Having gone through and considered the pleadings and documents placed on record by both the parties, we consider it fit for admission of the present petition and initiation of CIRP against the Corporate Debtor. We, therefore, admit this petition and pass the following orders:

ORDERS

- (i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating corporate Insolvency Resolution Process against the Corporate Debtor is hereby **admitted**.
- (ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- (iii) Moratorium is declared for the purpose referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under sub-Section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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 Securitisation and Reconstruction

of Financial Assets and Enforcement of Security Interest Act, 2002 (52 of 2002);

- (v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- (vi) The provisions of sub-Section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.
- (viii) 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 the 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.
- (ix) **Shri Anup Kumar Singh** registered with Insolvency and Bankruptcy Board of India, having Registration No. **IBBI/IPA-001/IP-P00153/2017-2018/10322** Email anup_singh@sumedhmanagement.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee or Creditors for evolving a resolution plan subject to production or written consent within one week from the date of receipt of this order.
- (x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the Insolvency commencement date.
- (xi) The Financial Creditor/Applicant is directed to deposit **Rs.5,00,000/-** (Rupees Five Lakhs only) appointed hereinabove within **three** days from

this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

- (xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- (xiii) List the matter on **22/03/2022** for the filing of the **Progress Report**.
- (xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on 14/01/2022

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