

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III
IB-1075/ (ND)/2018**

In the matter of:

Stressed Assets Stabilization Fund,
3rd Floor, IDBI Tower, WTC Complex,
Cuffe Parade,
Mumbai-400005

...Applicant

VERSUS

J.L. KNIT (India) Limited
Having its Registered Office at:
C-21, Mansarovar Garden
Kirti Nagar,
New Delhi-110064

...Respondent

CORAM:

MR. R. VARADHARAJAN,
Hon'ble Member (JUDICIAL)
MR. K.K. VOHRA,
Hon'ble Member (TECHNICAL)

Financial Creditor - Mr. Vaibhav Mahajan (Advocate)
Corporate Debtor - Mr. Sugam Seth, Shashank Singh (Advocates)

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Stressed Assets Stabilization Fund
IB-1075/ND/2018

Order

Delivered On – 8.08.2019

1. This is an application filed by Stressed Assets Stabilization Fund (“Applicant”) under Section 7 of the Insolvency and Bankruptcy Code 2016 (“the Code”) seeking to initiate corporate insolvency resolution process (“CIRP”) against J.L. Knit (India) Limited (“Respondent”) in not settling the amount of Rs. 262,72,34,005/- (Rupees Two Hundred and Sixty Two Crores Seventy Two Lakhs Thirty Four Thousand and Five only) including the interest component towards the financial credit given by the applicant. The details of the transaction leading to the filing of this application by the Applicant as averred by it are as follow:
 - i. In the year 1995, the Corporate Debtor approached IDBI for financial assistance to which IDBI agreed, in principal vide its letter dated August 23, 1995, to grant Foreign Currency Loans equivalent to Indian Rs. 580 Lakhs.
 - ii. On 9.11.1995, the Corporate Debtor and IDBI entered into and executed a foreign currency loan agreement (“**First Loan Agreement**”) setting out terms and conditions along with a Deed of Hypothecation and Deed of Personal Guarantee; however the loan was not disbursed to the corporate debtor.
 - iii. Thereafter in the year 1996, the Corporate Debtor requested for certain changes in the project, and the revision sought by the defendant was within the exposure of Rs 580.00 Lakhs sanctioned earlier and the same was accepted by IDBI.
 - iv. On 25.06.1996, the First Loan agreement dated 9.11.1995 was superseded by an identical set of fresh Agreements (“**Second Loan Agreement**”).
 - v. Under Second Loan Agreement, the Corporate Debtor agreed to pay IDBI, interest on principal amount of the said loan outstanding from time to time



semi annually in each year on January 12 and July 12 at the rate of USD LIBOR plus 3.00% to 3.50% per annum including interest tax. The Corporate Debtor further agreed to pay interest at the rate of 1.05% per annum to IDBI on the disbursements made pending creation of security.

- vi. On 22.07. 1996, memorandum of entry recording mortgage by deposit for the property located at Plot No. 121, Matsya Industrial area, Alwar, Rajasthan was executed.
- vii. On 07.03.1997, the Corporate Debtor and IDBI executed another loan agreement ("**Third Loan Agreement**") for an amount of Rs. 108 Lakhs (**Rupee Term Loan**) and the Corporate Debtor agreed to pay an interest on the principal amount outstanding from time to time quarterly in each year on January 1, April 1, July 1 and October 1 at the rate of 20% per annum and a further interest at the rate of 1.50% per annum on the disbursement made pending creation of financial security.
- viii. Under the said Third Loan Agreement, the Corporate Debtor further agreed to pay liquidated damages at the rate of 5.15 % per annum on the defaulted amounts.
- ix. On 25.03. 1997, memorandum of entry recording mortgage by deposit for the property located at Plot No. 121, Matsya Industrial area, Alwar, Rajasthan was executed.
- x. In the year 2000, Corporate Debtor requested IDBI for conversion of Foreign Currency Loans into single currency pool which was agreed to and they entered into and executed an Amendatory Agreement dated 31.03. 2000 ("**Fourth Loan Agreement**").
- xi. Again in the year 2000, the corporate Debtor requested for further financial assistance and IDBI agreed to subscribe to the issue of Non-Convertible

Debentures, pursuant to which an subscription agreement was entered into on 7.03. 2000 for Rs. 200 Lakhs (“**Fifth Loan Agreement**”).

- xii. Under the said subscription agreement, the Corporate debtor agreed to pay to IDBI interest at the rate of 17% per annum on the principal amount and further interest at the rate of 1.05% per annum on the disbursements made pending financial security.
- xiii. On 14.03.2000 memorandum of entry recording mortgage by deposit for the property located at Plot No. 121, Matsya Industrial area, Alwar, Rajasthan was executed.
- xiv. In the year 2002 and 2005, the Corporate Debtor approached the IDBI with two different One Time Settlement proposals, both of which were violated by the Corporate Debtor as a result of which the Financial Creditor was constrained to revoke the settlement and restore original liability by a letter dated 04.08. 2002.
- xv. First date of default by the corporate debtor is 01.07.2006 in terms of the Foreign Currency Loan, 01.01.2005 in terms of the Rupee Term loan and 07.03.2005 in terms of the Non- Convertible Debentures loan.
- xvi. On 28.09.2004, transfer deed executed by IDBI Bank transferring the facilities granted to the Corporate Debtor to Stressed Assets Stabilization Fund (SASF) i.e. the Financial Creditor together with all underlying interest thereto and all of IDBI Bank’s rights, title and interest in all agreements, deeds and documents in relation to and in connection with the said facilities. In terms of the letter dated 28.09.2004 the obligations and performance of corporate debtor under the facility agreement including the obligation to pay the outstanding loan was due and obligated to SASF.
- xvii. On 13.05.2010, statutory notice under Section 13 (2) of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interests

Act, 2002 issued by the Financial Creditor to Corporate Debtor directing him to pay an amount of Rs 59,83,60,465 as on 31.03.2009 together with further interest thereon upon the footing of compound interest until payment realization failing which SASF shall be entitled to enforce its security interest and taking over the possession and or management of secured assets.

- xviii. In December 2016, the Financial Creditor filed an Original Application under section 19 of the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 and the same is pending adjudication before the Hon'ble Debt Recovery Tribunal-II, Delhi.
 - xix. Vide letters dated 26.11.2016 and 12.12.2016 the corporate debtor has acknowledged the aforesaid liability to the Financial Creditor to reconsider a One Time Settlement proposed by the Corporate Debtor.
 - xx. The Financial Creditor vide letter dated 07.01.2017 rejected the proposed One Time Settlement on various grounds and invited the Corporate Debtor to propose a better One Time Settlement with upfront payment of 25% of the offer to which the Corporate Debtor failed to reply.
2. After due service of notice, it is seen from the records of this Tribunal that the Respondent had entered appearance on 26.11.2018 on which date an opportunity was given to file its reply to the Application and the same was filed.
3. The contentions made by the Respondent in the reply are as follow:
- a. The Corporate Debtor denied the totality of the contents of the petition and the pleadings of the Financial Creditor and also said that it was with the sole purpose of harassing and pressurizing the Corporate Debtor.
 - b. The Corporate Debtor had defaulted in 2001 because of the reasons beyond his control towards payment of principal and interest towards the aforesaid facilities availed by the Corporate Debtor.

- c. The Corporate Debtor was ready to settle the loan account, and despite various requests no statement of account or any explanation was given with respect to the inflated outstanding amount arbitrarily calculated by the Financial Creditor.
 - d. The Corporate Debtor approached the Financial Creditor to settle the loan and reconcile the accounts as the same was inflated beyond the terms of the loan agreement. However the officers of the Financial Creditor did not agree to the same and coerced him to sign balance confirmation certificates dated 06.05.2003.
 - e. In October 2004, there was a huge fire at the plant of the Corporate Debtor due to which his business came to a standstill. Also the Financial Creditor failed to state as to when the account of the Corporate Debtor was declared as NPA and as per the loan recall notices issued by the Financial Creditor the amount outstanding stood crystallised on 01.04.2002
 - f. The limitation to file any action to recover outstanding amount expired on 31.03.2005 against the Corporate Debtor and the guarantors.
 - g. The notice by the Financial Creditor has been issued without mentioning the date of declaration of the account of the Corporate Debtor as NPA and/or providing the Corporate Debtor with any statement of account and/or the breakup of the arbitrary calculation of the inflated outstanding amount.
4. In response to the Reply/Objections filed by the Corporate Debtor on 14.12.2018, in compliance of order dated 17.12.2018, a Rejoinder was filed by the Financial Creditor.
5. The contentions made by the Applicant in the Rejoinder are as follow:

- a. The Corporate Debtor has correctly admitted the financial debt and is trying to cheat the Financial Creditor by looting public money.
 - b. The Corporate Debtor has intentionally and habitually failed to honour several One Time Settlement offers made by the Financial Creditor and that all the accounts and statements concerning the loan agreements have regularly been shared with the Corporate Debtor.
 - c. The Corporate Debtor has itself in its Financial Statement filed for the year 2015-16 has admitted that the Financial Creditor had categorized the said loans as NPA in the year 2002-2003.
 - d. The said petition is within limitation because the cause of action is recurring and continuous as there is a continuous breach of contract and torts till date.
 - e. The Corporate Debtor has nowhere in its reply/ objections, denied, that the cause of action accruing in favour of the Financial Creditor is not continuous and recurring.
6. Upon perusal of the documents as filed by the applicant and hearing the submissions as put forth by the Applicant's counsel and on looking at the reply filed by the Corporate Debtor and the rejoinder filed subsequently by the Financial Creditor, the Applicant, it is seen, has provided all the documents to prove that there is a default committed on the part of the respondent as contemplated under Section 3(12) of IBC, 2016, in relation to a debt in existence owed to the Financial Creditor which is in excess of Rs 1,00,000/-. Also the Financial Creditor has always offered for One Time Settlements which the Corporate Debtor has always dishonoured, leaving no option to the Financial Creditor but to revoke the same. The said petition falls within the Limitation period because the Corporate Debtor in its financial statement for the year 2015-16 has acknowledged the debt. Considering the circumstances, this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent.

7. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) 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.

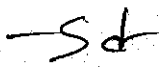
(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

8. The interim resolution professional (“IRP”), proposed by the applicant, is one Mr. Sandeep K Bhatt, registered with Insolvency and Bankruptcy Board of India (IBBI) having registration number IBBI/IPA-003/IP-N00038/2017-2018/10298 who has also filed his consent in Form 2 with necessary declarations and hence he is being confirmed by this Bench. The IRP appointed shall take such other and further steps as

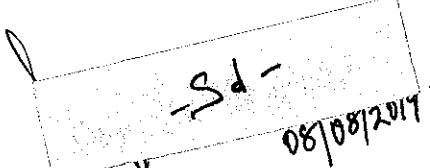
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is required under the statute, more specifically in terms of Section 15, 17, 18, 19, 20 and 21 of the Code and file his report within 30 days before this Bench.

9. Further, directions to be given to the Ex-management to provide all documents in their possession and furnish every information in their knowledge within a period of 1 week to the IRP, otherwise coercive steps to follow.
10. A copy of this order shall be communicated to the Financial Creditor and Corporate Debtor by the Registry of this Tribunal in addition to the IRP appointed.
11. A copy of this order be also sent to the ROC for updating the master data. ROC shall send compliance report to the Registrar, NCLT.



(K.K. VOHRA)
MEMBER (TECHNICAL)



(R. VARADHARAJAN)
MEMBER (JUDICIAL)