

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

CP(IB) 2042 (MB)/2018

(Under Section 7 of the IBC, 2016)

In the matter of

Stressed Assets Stabilisation Fund

... Financial Creditor

Vs

Shree Vindhya Cast Coaters Ltd

... Corporate Debtor

Order delivered on 31.5.2019

Coram:

Hon'ble Member (Judicial) Shri V.P. Singh

Hon'ble Member (Technical) Shri Ravikumar Duraisamy

For the Petitioner: Mr Aditya Bapat, a/w Siddharth Mataliya, i/b Link Legal, Meena Chandrasekhar, DGM, SASF, Radhey Shyam

For the Respondent: None.

Per: Member(Judicial) V.P. Singh.

ORDER

1. This Company Petition has been filed by the Petitioner, **Stressed Assets Stabilisation Fund** under Section 7 of IBC, 2016 for initiation of CIRP against the Corporate Debtor, **Shree Vindhya Cast Coaters Ltd**, for non-payment of

a financial debt of Rs.208,19,51,173/- (Rupees Two Hundred and Eight Crores Nineteen Lakhs Fifty One Thousand One Hundred and Seventy Three Only) (comprising principal amounts of credit facilities and interest thereto and such other amounts payable by the Corporate Debtor) due as on April 1, 2018

2. It is stated in the Petition that the Financial Creditor has granted the debt of Rs.4,30,00,000. The debt mentioned above was granted during the period from 6th March 1998 to 30th March 1999.

3. It is further stated in the petition that an amount of Rs.208,19,51,173 is in default as on 1.4.2018, the details of which are as under:

Nature of debt/claim	Amount (Rs.)
Principal Dues	4,30,00,000
Normal Interest Dues	16,02,06,664
Further Interest Dues	146,57,20,102
Liquidated Damages Dues	41,30,24,407
TOTAL Dues	208,19,51,173

4. The Financial Creditor is a Trust set up by the Government of India and is also a Financial Institution notified by the Government of India for recovery under the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Central Government made a provision of Rs.9000,00,00,000/- in the Budget for the Financial Year 2004 - 2005 for acquiring the Stressed Assets of the erstwhile Industrial Development Bank of India (from now on referred to as “**IDBI**”, now known as IDBI Bank Limited), the original lender herein. Accordingly, the Central Government for acquiring the Stressed assets to the extent of Rs.9000,00,00,000/- from IDBI, vide Trust Deed dated September 24, 2004, set up a special purpose vehicle in the form of a Trust in the name of ‘Stressed Assets Stabilization Fund’. Copy of the Trust Deed is enclosed with the petition as Annexure A-16. By the Transfer Deed dated September 30, 2004 executed by IDBI in favour of the Financial Creditor, IDBI unconditionally and irrevocably sold, assigned, transferred and released to and unto the Financial Creditor the loan/facility sanctioned by IDBI to the Corporate Debtor with an intent that the Financial Creditor shall be the full and absolute legal owner and the only legal person to receive the amounts due and payable by the Corporate Debtor to the Financial Creditor. Copy of the Transfer Deed is enclosed with the Petition as Annexure A-17.

5. It is stated in Part V of Form 1 of the petition that on August 16, 1996, a loan agreement was executed between the Corporate Debtor and IDBI wherein a loan of Rs.6,00,00,000/- was granted to the Corporate Debtor, and the Corporate Debtor executed the deed of hypothecation in favour of IDBI. Further guarantee agreement dated August 16, 1996, was executed by Shree Vindhya Paper Mills Limited in favour of IDBI for securing the term loan facility. The loan was also secured by creating a charge over immovable properties situated at Jalgaon district, Maharashtra, through Memorandum of Entry recorded on March 17, 1997, and November 19, 1999, and all the charges have been duly filed with the Registrar of Companies.

6. The account of the Corporate Debtor was categorized as Non-performing asset on March 29, 2000, on account of the default committed by the Corporate Debtor in repayment of the financial debt.

7. It is further stated in the petition that on 17.4.2002, IDBI issued a recall notice to the Corporate Debtor, recalling the entire loan along with the interest and other monies due in respect thereof. However, Corporate Debtor failed to repay the same. It was also intimated to the Corporate Debtor that on account of their failure to repay the loan, the undisbursed portion of Rs.1.70 Crores was cancelled. Copy of the recall notice is annexed with the Petition as Annexure A-20.

8. It is also stated in the petition that on 23.5.2002, IDBI issued a corporate guarantee invocation letter to Shree Vindhya Paper Mills Limited, being the Corporate Guarantor of the Corporate Debtor to pay the outstanding amounts owed by the Corporate Debtor on account of the non-payment of dues by the Corporate Debtor.

9. It is further stated in the Petition that on 3.5.2007, Shree Vindhya Paper Mills Limited issued a letter to the Financial Creditor intimating their proposal towards the one-time settlement of all the dues payable by the Corporate Debtor and Shree Vindhya Paper Mills Limited. On 5.9.2007, the Corporate Debtor issued a letter to the Financial Creditor conveying proposal for modification in terms of the one-time settlement. Copy of the letter dated 5.9.2007 is annexed with the application as Annexure A-23. On 6.2.2008, a letter was issued by the Financial Creditor to the Corporate Debtor and the Corporate Guarantor

expressing its approval for the combined proposal of one-time settlement amount of Rs. 906.14 Lakhs. Copy of the said letter is annexed with the application as Annexure A-24. On April 25, 2008, May 19, 2008, and June 2, 2008, Shree Vindhya Paper Mills Limited issued letters to the Financial Creditor proposing modifications to the said proposal for one-time settlement of the dues payable by the Corporate Debtor and Shree Vindhya Paper Mills Limited.

10. On June 6, 2008, after due consideration of the letters issued by Shree Vindhya Paper Mills Limited regarding modifications of the terms and conditions of the proposal for one time settlement of, *inter alia*, the dues payable by the Corporate Debtor, the Financial Creditor issued a letter to the Shree Vindhya Paper Mills Limited, conveying the revised terms and conditions for the settlement of debt payable by the Corporate Debtor and Shree Vindhya Paper Mills Limited.

11. Despite granting many opportunities to the Corporate Debtor to settle their outstanding amounts, the Corporate Debtor failed to do so. On May 21, 2009, the Financial Creditor issued a letter to the Corporate Debtor and Shree Vindhya Paper Mills Limited, conveying that due to persistent breach of conditions of the settlement package by the Corporate Debtor, the settlement package was withdrawn with immediate effect and that the original liabilities were reinstated as per the provisions of the loan agreements.

12. The Financial Creditor, on May 29, 2009, issued a statutory notice to the Corporate Debtor under Section 13(2) of the Securitization and Reconstruction of the Financial Assets and Enforcement of Security Interest Act, 2002 informing the Corporate Debtor to effect the payment of a sum of Rs.34,67,92,674/- towards the outstanding amounts. Copy of the SARFAESI notice is annexed with the Petition as Annexure A-30.

13. The Corporate Debtor, vide its letter dated 28.7.2009 replied to the statutory notice under Section 13 (2) of the SARFAESI Act, 2002, issued by the Financial Creditor, wherein the Corporate Debtor requested for four weeks to make another proposal for one-time settlement of the dues of the Corporate Debtor. However, Corporate Debtor failed to make any further proposal. After that, the Financial Creditor, vide its letter dated 3.8.2009 called upon the

Corporate Debtor to effect payment due and payable to the Financial Creditor forthwith.

14. Further, the Corporate Debtor, vide its letter dated 10.9.2009 conveyed a new proposal of Rs.1.00 Crore towards the one-time settlement of debts of the Corporate Debtor, which was rejected by the Financial Creditor, vide its letter dated 24.11.2009

15. The Corporate Debtor, vide its letter dated 7.1.2010 issued a letter to Bank of India, is one of the lenders, proposing the settlement of the outstanding amounts payable by the Corporate Debtor to all its lenders, including the Financial Creditor.

16. On August 11, 2010, upon the default in complying with the statutory notice dated May 29, 2009 and failure to settle the dues by the Corporate Debtor, the Financial Creditor issued a letter to the Corporate Debtor informing them that the Financial Creditor proposes to take action under Section 13(4) of the SARFAESI Act, 2002.

17. Upon repeated failure to settle the outstanding dues by the Corporate Debtor, the Financial Creditor issued the possession notice on 18.1.2011 in Times of India in respect of the mortgaged property situated at Jalgaon, as per Section 13(4) of the SARFAESI Act, 2002.

18. The Financial Creditor filed an application under Section 19(3) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 before Hon'ble Debt Recovery Tribunal – 1, Mumbai, against the Corporate Debtor for recovery of outstanding balance dues on 21.10.2016, which is pending.

19. Since the Corporate Debtor failed to make the payment, the Financial Creditor filed this Company Petition under Section 7 of IBC, 2016 to initiate the corporate insolvency resolution process against the Corporate Debtor.

20. The Financial Creditor has also attached a Certificate dated 16.5.2018 as required under the Bankers Book Evidence Act, 1891 as Annexure A-19.

21. The Financial Creditor has also filed the Form 2, i.e. the written communication by the proposed Interim Resolution professional, Mr Vijendra

Kumar Jain (Registration No.IBBI/IPA-001/IP-P00721/2017-2018/11253), a copy of which is annexed with the Petition as Annexure A-6

22. We have heard the argument of the Ld. Counsel for the Petitioner and perused the record. On perusal of the record, it appears that this matter came up for hearing on several occasions, i.e. on 8.10.2018, 29.11.2018, 20.12.2018, 1.2.2019, 11.4.2019 and 28.5.2019. On the dates mentioned above of hearing, the Corporate Debtor failed to appear before this tribunal. Till date, no reply has been filed by the Corporate Debtor. It is evident from the record that a default has occurred towards payment of the financial debt by the Corporate Debtor. It is further observed that the financial debt claimed by the Financial Creditor in this Petition is admitted through the Corporate Debtor's various letters issued to the Financial Creditor from time to time including in the one-time-settlement proposals.

23. Given the circumstances stated above, it is clear that the petition filed by the petitioner for initiation of CIRP deserves to be admitted.

ORDER

The company Petition filed by the Petitioner, **Stressed Assets Stabilisation Fund** under Section 7 of IBC, 2016 for initiation of CIRP against the Corporate Debtor, **Shree Vindhya Cast Coaters Ltd, is admitted with the consequential effect of moratorium U/S 14 of the I&B Code 2016 and prohibits following acts ;**

- I
- (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 (SARFAESI Act);

- (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 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 31.5.2019 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 the corporate debtor under section 33, 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 the Code.
- (VI) That this Bench at this moment appoints Mr Vijendra Kumar Jain, 401/402, Sai Trishul, Raviraj Oberai Complex, Off New Link Road, Andheri (West), Mumbai 400 053, Registration No. IBBI/IPA-001/IP-P00721/2017-18/11253 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.

24. Accordingly, this Petition is admitted.

25. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor and the IRP.

Sd/-

RAVIKUMAR DURAISAMY

Member (Technical)

Sd/-

V. P. SINGH

Member (Judicial)