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IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI  
BENCH-III

IB-871/ (ND)/2019

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016  
and Rule 4 of the Insolvency and Bankruptcy (Application to  
Adjudicating Authority), Rules, 2016.

In the matter of:

INTERNATIONAL ASSET RECONSTRUCTION COMPANY PRIVATE LIMITED

..FINANCIAL CREDITOR / APPLICANT

VERSUS

M/S. SWASTIK FRUITS PRODUCTS LIMITED

..CORPORATE DEBTOR

**MEMO OF PARTIES:**

INTERNATIONAL ASSET RECONSTRUCTION COMPANY PRIVATE LIMITED

**HAVING ITS REGISTERED OFFICE AT**

709, 7<sup>TH</sup> FLOOR,  
ANSAL BHAWAN,  
16 KASTURBA GANDHI MARG  
NEW DELHI

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International Asset Reconstruction Company Private Limited



**BRANCH OFFICE**

UNIT NO. 301, BLOCK-A,  
3<sup>RD</sup> FLOOR, MILENIUM PLAZA,  
SECTOR 27, GURUGRAM,  
HARYANA- 122002

FINANCIAL CREDITOR/ APPLICANT

AND

M/S. SWASTIK FRUITS PRODUCTS LIMITED

**REGISRERED OFFICE**

PLOT NO. F-64/37,  
GROUNG FLOOR, L/P VILLAGE  
KATWARIA SARAI  
NEW DELHI- 110016

**ALSO AT:**

14, PALAM MARG,  
2<sup>ND</sup> FLOOR,  
VASANT VIHAR,  
NEW3 DELHI- 110057

**ALSO AT:**

PLANT AT SWASTIKA ESTATE,  
TATISILWAI INDUSTRIAL AREA, PHASE-II, RANCHI,  
JHARKHAND-835103

**ALSO AT:**

SWASTIK HOUSE, GANDHI CHOWK,  
UPPER BAZAAR, RANCHI,  
JHARKHAND- 834001

...CORPORATE DEBTOR

**Coram:**

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International Asset Reconstruction Company Private Limited



**R.VARADHARAJAN,**  
**Hon'ble Member (Judicial)**

**K.K. VOHRA,**  
**Hon'ble Member (Technical)**

Counsel for the Applicant : Ms. Nibruti Samal, Advocate  
Counsel for the Respondent: Mr. Mrinali Prasad, Advocate

**ORDER**

**Date: 06.09.2019**

- 1.The present petition has been filed under the provisions of Section 7 of Insolvency and Bankruptcy Code, 2016, as amended (for brevity the "Code") by International Asset Reconstruction Company Private Limited (for brevity "Financial Creditor/ Applicant"), against M/s. Swastik Fruits Products Limited (for brevity "Corporate Debtor").
- 2.The Financial Creditor (FC) is an Asset Reconstruction Company registered with Reserve Bank of India under Section 3 of the Securitisation And Reconstruction of Financial Assets And Enforcement of Security Interest Act, 2002 (SARFAESI), which has acquired the Financial Assets viz. debts due and payable by the Corporate Debtor (CD) to Axis Bank Ltd., as a trustee of IARF I Trust Scheme 1 vide Deed of Assignment dated 29.09.2011. Thus, by virtue of the Provisions of SARFAESI Act, 2002, it is Lender.

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3.The FC acquired the Financial Assets viz. debts of the CD due and payable by the CD to the Axis bank Ltd. and pursuant to the acquisition and at the request of the CD, the FC restructured the acquired loans as a part of Restructuring Package vide its sanction letter dated 08.02.2012.

4.The requisite loan and guarantee documents were executed by the CD and the guarantors on 13.02.2012/ 14.02.2012. The CD time and again acknowledged its liability including vide duly audited balance sheet as on 31.03.2016.

5.In the above circumstances, the total outstanding as on 26.03.2019 to the Financial Creditor by the CD is Rs. 17,72,70,466.98 (Rupees Seventeen Crores Seventy Two Lacs Seventy Thousand Four Hundred Sixty Six and Ninety Eight Paise only).

6.The documents on which the Applicants rely for initiation of Corporate Insolvency Process against the CD are as follow;

- a) Copy of the Agreement for Restructuring of Debt dated 13.02.2012.
- b) Copy of the Agreement of Hypothecation dated 14.02.2012.
- c) Copy of the Audited Balance Sheet of the CD as on 31.03.2016.
- d) Copy of Statement of dues as outstanding on 26.03.2019.
- e) Copy of Courier Receipt for Advance Copy served to CD.

7.Vide order dated 30.07.2019 of this Tribunal, the Ld. Counsel on behalf of the CD sought time to file a reply on behalf of the CD. The Tribunal directed them to file a reply within 10 days. However, the CD filed no reply.

8.The amount which is claimed to be in default by the Financial Creditor is to the extent of Rs. 17,72,70,466.98 (Rupees Seventeen Crores Seventy Two Lacs Seventy Thousand Four Hundred Sixty Six and Ninety Eight Paise only). However, considering the documents filed by

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the Financial Creditor, especially the Balance Sheet of 31.03.2016 in Schedule- IV it is seen that the CD had taken the Debt and failed to pay the same which has been acknowledged by it in the above mentioned Balance Sheet. In the circumstances mentioned above it can be seen that the CD has made a default of debt due to the FC is also in existence remaining unsatisfied as evident prima facie, and that all requirements of Section 7 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) stand fulfilled accordingly this Tribunal is of the considered view that this petition requires to be admitted and that CIRP process is required to be initiated against the Corporate Debtor.

9. It is seen that the Applicant has named an Interim Resolution Professional in Part III of its Application whose details are as follows:

MRS. POOJA BAHRY

Reg. no. IBBI/IPA-003/IP-N00007/2016-2017/10063

59/27, PRBHAT ROAD,

NEW ROHTAK ROAD, NEW DLEHI - 110005

10. It is also seen from the Application that the above named IRP has given a written consent in Form 2 wherein she has agreed to accept appointment as an IRP if Application is admitted. Further, it is also evident from the said Form 2 as filed by the IRP signed under her hand that she is not a related party to the CD and that she is eligible to be appointed as an Independent Director on the Board of the CD. Certificate of registration of the IRP as issued by the Insolvency and Bankruptcy Board of India (IBBI) and self-attested has also been enclosed along with the Application by the proposed IRP and.

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11. Taking into consideration all the above, this Tribunal finds that this is a fit case to be admitted in terms of Section 7 of the Code and thereby initiate CIRP as against the CD with the following consequences:

- a. MRS. POOJA BAHRY having Reg. no. IBBI/IPA-003/IP-N00007/2016-2017/10063 is appointed as the IRP and she shall strictly act in accordance with the provisions of the Code and the attendant Rules enjoined upon him;
- b. In terms of Section 14, as reproduced hereunder, the Corporate Debtor shall be under moratorium on the following terms:

(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.

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12. However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor 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.

13. The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

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

14. The Board of Directors of the Corporate Debtor shall stand suspended on and from this day as envisaged under Section 17 of the Code.

15. In terms of Section 7(7) (a) of the Code the registry of this Tribunal is directed to communicate the order to both the Financial Creditor and the Corporate

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Debtor at the earliest. In addition a copy of the order shall also be forwarded to IBBI for its records. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

With the above directions, the application stands disposed of.

- Sd -

(K.K VOHRA)  
MEMBER (TECHNICAL)

- Sd -

(R.VARADHARAJAN)  
MEMBER (JUDICIAL)

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सहायक पंजीयक  
ASSISTANT REGISTRAR  
राष्ट्रीय कम्पनी विधि अधिकरण  
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