

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

CP(IB)/340(CHE)/2021

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of SAARP NON WOVEN INDIA PVT. LTD.

OXYZO FINANCIAL SERVICES PRIVATE LIMITED

Shop No.G22 C (UGF) D-1(K-84),
Green Park Main,
New Delhi – 110 016.

... Financial Creditor

-Vs-

SAARP NON WOVEN INDIA PVT. LTD.

SF No.476, Valasupalayam Ugayanur Post,
Palladam Taluk,
Coimbatore,
Tamil Nadu – 641 605.

... Corporate Debtor

Order Pronounced on 28th June 2023

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

Present:-

*For Financial Creditor: Mr.Krishnendu Natta, Sr.Advocate
Mr.Prateek Jain, Advocate*

For Corporate Debtor: Mr.B.Sarath Babu, Advocate

ORDER

(Hearing Conducted through VC)

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by **OXYZO FINANCIAL SERVICES PRIVATE LIMITED** (hereinafter referred to as 'Financial Creditor') through Mr.Nipun Gupta Kumar duly authorized vide Board Resolution dated 22.03.2019, under Section 7 of the Insolvency and

Bankruptcy Code, 2016 (IBC,2016) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **SAARP NON WOVEN INDIA PVT. LTD.** (hereinafter referred to as 'Corporate Debtor'), seeking to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional (IRP).

3. In Part-I of the application, it is stated that the Financial Creditor is a private limited company, having registered at Shop No. G22 C (UGF) D-1(K-84), Green Park Main, New Delhi – 110 016.

4. Part II states that the Corporate Debtor is a Private limited company incorporated under the Companies Act on 09.09.2011 with CIN: U17111TZ2011PTC017399. The registered office of the Corporate Debtor as per the MCA master data is situated at SF No.476, Valasupalayam Ugayanur Post, Palladam Taluk, Coimbatore, Tamil Nadu – 641 605.

5. Part III states that, the Financial Creditor has proposed the name of Mr. Narayanan Srinivasan, Reg. No. IBBI/IPA-001/IP-P-01735/2019-2020/12674, to act as the Interim Resolution Professional (IRP).

6. In Part-IV it is averred that the Financial Creditor has claimed a debt of Rs.3,16,58,891/- which is due and payable by the Corporate Debtor. The date of default is stated as 05.04.2021.

7. Part V of the application describes the particulars of Financial Debt as follows,

- i) Copy of sanction letters dated 29.05.2019 and 21.09.2019.
- ii) Copy of Master Facility Agreement dated 30.05.2019 and 21.09.2019.
- iii) Copy of commercial credit information report by Trans Union CIBIL.

8. It is stated that the Corporate Debtor had availed purchase finance facility of Rs.40,00,000/- vide sanction letter dated 30.05.2019 and master facility agreement dated 30.05.2019.

9. Subsequently, the Corporate Debtor availed the business loan vide sanction letter dated 21.09.2019 and master facility agreement dated 21.09.2019. In addition, the Financial creditor provided various financial assistance to the Corporate Debtor and the Corporate Debtor executed various instruments and undertakings to secure its debt.

10. It is stated that the Corporate Debtor failed to pay the entire outstanding and the account become NPA on 05.04.2021. Subsequently, the Financial creditor issued a demand notice dated 14.06.2021 under Section 13(2) of the SARFAESI Act, 2002. Nevertheless, the Corporate Debtor did not clear the majority of its outstanding, which made the Financial Creditor file this application.

11. In the Counter Statement the Corporate Debtor contended that the amount claimed by the Financial Creditor is exaggerated. The Corporate Debtor has paid Rs.1,41,08,130/- towards the outstanding on 21.12.2021.

12. It is stated that the very act of declaring the account of the Corporate Debtor as NPA is disputed on the ground that it was contrary to the circular issued by the Reserve Bank of India during the COVID period. Further argued that

13. It is stated that considering the above averments this Tribunal vide order dated 26.04.2022 directed the Respondent to file proof of payment of Rs.1,41,08,130/- to the Financial Creditor. Accordingly, Respondent filed a memo dated 26.04.2022 along with payment receipts. It is stated that the Financial Creditor had accepted the settlement request of the Corporate Debtor and requested to remit the outstanding. Accordingly, the Corporate Debtor paid the above amount as a full outstanding payment.

14. In the hearing dated 20.02.2023, the Financial Creditor was questioned by this bench whether any further disbursement was made by the Financial Creditor after issuing the SARFAESI Notice dated 14.06.2021 and clarify that no novation has taken place in the matter post issue of notice dated 14.06.2021.

15. In response, the Applicant vide memo dated 03.03.2023 stated that the total outstanding as on 27.02.2023 is



Rs.2,48,17,835/- and during the period from 15.11.2021 till 27.02.2023, a total amount of Rs.1,76,63,476/- was received from the account of the Corporate Debtor. However, certain payments were made by the Corporate Debtor upon the condition that amounts would have to be disbursed to the vendors of the Corporate Debtor under the purchase finance facility. It is stated that upon request of the Corporate Debtor an amount of Rs.40,20,000/- was disbursed to the vendors and Rs.18,20,000/- was adjusted in the account of M/s.Shree Saai Faab (vendor of the Corporate Debtor). which was acknowledged by the Corporate Debtor in the Memo dated 26.04.2022.

16. It is stated that Rs.1,18,23,476/- has been adjusted in the loan accounts of the Corporate Debtor and after accounting the above payment, Rs.2,48,17,835/- remains outstanding and payable by the Corporate Debtor.

17. We have heard the submissions of Ld. Counsels for both the parties and perused the records.

18. It is admitted by the parties that the Financial Creditor had provided financial assistance to the Corporate Debtor. It is seen that the Demand Notice under Section 13 of SARFAESI Act, 2002 was issued to the Corporate Debtor on 14.06.2021 for non-adhering terms of the sanction letter dated 29.05.2019 for the 'Purchase



Financing' facility for Rs.40,00,000/- and sanction letter dated 21.09.2019 for 'Secured Business Loan' facility for Rs.3,00,00,000/.

19. The ledger statement submitted by the Financial Creditor vide memo dated 03.03.2023 records as follows,

Ledger in respect of the 'Purchase Finance' facility.

1-Apr-22	To	Opening Balance			40,63,277.00	
29-Apr-22	By	IDFC FIRST BANK (10042839497)-CC	Receipt	4490		63,278.00
30-Apr-22	To	Interest	Interest Advise	IA/HR/22-23/748	62,466.00	
27-May-22	To	A. Saravanan Subash Chandar	Journal	4064	20,000.00	
31-May-22	By	IDFC FIRST BANK (10042839497)-CC	Receipt	9913		62,466.00
	To	Interest	Interest Advise	IA/HR/22-23/2875	64,548.00	
30-Jun-22	To	Interest	Interest Advise	IA/HR/22-23/5144	62,466.00	
31-Jul-22	To	Interest	Interest Advise	IA/HR/22-23/7804	64,548.00	
11-Aug-22	By	IDFC FIRST BANK (10042839497)-CC	Receipt	24207		6,69,853.88
31-Aug-22	To	Interest	Interest Advise	IA/HR/22-23/10488	59,538.00	
7-Sep-22	By	IDFC FIRST BANK (10042839497)-CC	Receipt	29282		18,57,475.40
30-Sep-22	To	Interest	Interest Advise	IA/HR/22-23/13387	32,847.00	
31-Oct-22	To	Interest	Interest Advise	IA/HR/22-23/16670	28,139.00	
30-Nov-22	To	Interest	Interest Advise	IA/HR/22-23/19673	27,231.00	
31-Dec-22	To	Interest	Interest Advise	IA/HR/22-23/22836	28,139.00	
31-Jan-23	To	Interest	Interest Advise	IA/HR/22-23/26068	28,139.00	
27-Feb-23	To	Interest on Delayed Payment	Journal	30921	11,64,844.00	
	To	Interest	Journal	30922	24,508.00	
					57,30,690.00	26,53,073.28
	By	Closing Balance				30,77,616.72
					57,30,690.00	57,30,690.00



The above statement clarifies that as of 27.02.2023, Rs.30,77,616/- is due and payable by the corporate debtor.

Ledger in respect of 'Term Loan' facility.

1-Apr-22	To	Opening Balance			2,13,65,348.00	
4-Apr-22	To	Interest	Interest Advise	IA/HR/22-23/121	2,77,228.00	
29-Apr-22	By	IDFC FIRST BANK (10042839497)-CC	Receipt	4488		6,42,524.00
4-May-22	To	Interest	Interest Advise	IA/HR/22-23/2378	2,72,509.00	
31-May-22	By	IDFC FIRST BANK (10042839497)-CC	Receipt	9936		6,42,525.00
4-Jun-22	To	Interest	Interest Advise	IA/HR/22-23/4610	2,67,730.00	
4-Jul-22	To	Interest	Interest Advise	IA/HR/22-23/7229	2,62,889.00	
4-Aug-22	To	Interest	Interest Advise	IA/HR/22-23/10065	2,57,985.00	
11-Aug-22	By	IDFC FIRST BANK (10042839497)-CC	Receipt	24207		8,55,146.12
	By	IDFC FIRST BANK (10042839497)-CC	Receipt	24221		3,50,000.00
	By	IDFC FIRST BANK (10042839497)-CC	Receipt	24222		4,00,000.00
	By	IDFC FIRST BANK (10042839497)-CC	Receipt	24223		2,25,000.00
4-Sep-22	To	Interest	Interest Advise	IA/HR/22-23/12815	2,53,018.00	
7-Sep-22	By	IDFC FIRST BANK (10042839497)-CC	Receipt	29282		6,42,524.60
4-Oct-22	To	Interest	Interest Advise	IA/HR/22-23/15850	2,47,987.00	
4-Nov-22	To	Interest	Interest Advise	IA/HR/22-23/19193	2,42,891.00	
4-Dec-22	To	Interest	Interest Advise	IA/HR/22-23/22329	2,37,729.00	
4-Jan-23	To	Interest	Interest Advise	IA/HR/22-23/25627	2,32,500.00	
4-Feb-23	To	Interest	Interest Advise	IA/HR/22-23/20050	2,27,204.00	
27-Feb-23	To	Interest on Delayed Payment	Journal	30923	11,31,081.00	
	To	Interest	Journal	30924	2,21,840.00	
					2,54,97,939.00	37,57,719.72
	By	Closing Balance				2,17,40,219.28
					2,54,97,939.00	2,54,97,939.00

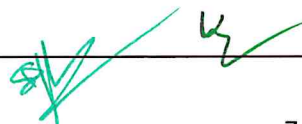


The above statement shows that as on 27.02.2023, Rs.2,17,40,219/- is due and payable by the corporate debtor. Therefore, it is clear that a sum of Rs.2,48,17,835/- is due and payable by the Corporate Debtor. The Corporate Debtor paid Rs.6,42,524.30 on 07.09.2022, which shows that the Corporate Debtor paid the amounts in an irregular basis till 27.02.2023 and it is continuing the default. This very act of the Corporate Debtor amounts to an admission debt and default on the part of the Corporate Debtor.

20. In the case of ***Innoventive Industries Ltd Vs. ICICI Bank & Anr. [2017 SCC Online SC 1025]***, Hon'ble Supreme Court of India held as follows,

"30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise".

21. From the aforesaid discussions, we are of the considered opinion that this application satisfies the debt and default on the part of the Corporate Debtor. The outstanding claim of the Financial

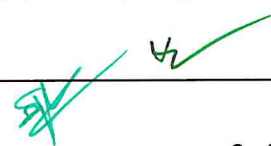


Creditor is more than Rs.1 core. At this stage we are not crystalizing the exact amount of default and leave it to the IRP to decide the same. However, we give a clear finding that amount in default is over Rupees one crore. Thus, it is just and reasonable to initiate CIRP against the Corporate Debtor. It is ordered accordingly.

22. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- 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.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration,



quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

23. 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 the moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central

- Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

24. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (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 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.

25. The Financial Creditor has proposed the name of **Mr. Narayanan Srinivasan, Reg. No. [IBBI/IPA-001/IP-P-01735/2019-2020/12674] E-mail ID:- (ipnaarayanan@gmail.com)**, as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 30.11.2023.

26. **Mr. Narayanan Srinivasan** is appointed as the IRP. He is directed to take charge of the Corporate Debtor's management

immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of the claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

27. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15, 17 and 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

28. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

29. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the order be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order also be

forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be furnished with a copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

30. Accordingly, the present application stands **admitted**.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)