

**THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH
AT NEW DELHI**

Company Petition No. (IB)-244 (PB)/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Stressed Assets Stabilization Fund (SASF)

Applicant/Financial Creditor

Vs

Jain Studios Limited

Respondent / Corporate Debtor

Judgment pronounced on: 26 .02.2020

CORAM:

Dr. DEEPTI MUKESH, HON'BLE MEMBER (J)

Mr. S. K. MOHAPATRA, HON'BLE MEMBER (T)

For Petitioner:	Ms. Anju Bhushan Gupta, Mr. Kanishk Rana, Advocates.
For Respondent:	Mr. Asif Ahmad, Mr. Vikhyat Oberoi, Advocate



ORDER

S. K. Mohapatra, Member

1. M/s Stressed Assets Stabilization Fund (SASF), claiming as the financial creditor, has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Jain Studio Limited, referred to as the corporate debtor.
2. The Respondent Company M/s Jain Studios Limited (CIN No. L92199 DL 1991 PLC 042611) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 03.01.1991 and presently has its registered office at Jain Studios Campus, Scindia Villa, Ring Road, Sarojini Nagar, New Delhi - 110023. Since the registered office of the respondent corporate debtor is in New Delhi, this



Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. It is appropriate to mention that Mr. Nitesh Kumar Singh, Manager of the applicant company duly authorized has preferred the present application on behalf of the applicant, M/s Stressed Assets Stabilization Fund (SASF), for initiation of Corporate Insolvency Resolution Process against the respondent corporate debtor in terms of the provisions of the Code.
4. The applicant has proposed the name of Mr. Manish Agarwal, for appointment as Interim Resolution Professional having registration number IBBI / IPA - 002 / IP-N00223 / 2017-18 / 10904 resident of 707, Saket, Opp. Rohtash Sweets, Meerut – 250001, (UP) with email-id manishfcs@gmail.com. Mr. Manish Agrawal has enclosed the copy of certificate of registration dated 27th January, 2017 issued by IBBI to act as an insolvency



professional in accordance with the Insolvency and Bankruptcy Board of India (insolvency professionals) Regulations 2016. Mr. Manish Agrawal has agreed to accept appointment as the interim resolution professional and has signed a communication dated 24.11.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere.

5. It is the case of applicant that the respondent corporate debtor had applied for a term loan of Rs.2400 lacs from IDBI Bank in March 2000. The IDBI bank sanctioned term loan of Rs.2400 lakhs to the corporate debtor. The corporate debtor had also agreed to create charge by way of a first mortgage on immovable properties, both present and future and a first charge by way of hypothecation on all the movable properties including movable plant and machinery, machinery



spares, equipment, machinery tools and agreed to procure irrevocable and unconditional personal guarantee and corporate guarantee and Pledge of shareholding of the promoters constituting 26% of the total paid up share capital of the company to secure the loan amount. In March, 2000, sums aggregating to Rs.2348.96 lacs were disbursed by IDBI from time to time to the respondent and the remaining loan amount was cancelled as the corporate debtor failed to avail the same.

6. It is submitted that the corporate debtor failed and neglected to pay the instalments and the corporate debtor also committed other defaults in performance of the conditions of the Loan Agreement.
7. It is asserted that the corporate debtor requested IDBI Bank Ltd. to settle the matter for payment of Rs.24,00,00,000/- in a revised repayment schedule. IDBI vide letter dated 20/07/2001 furnished a revised repayment schedule to corporate debtor. IDBI also granted time to the corporate debtor for payment of interest fallen due



during 01/02/2001 to 01/11/2002 vide letter dated 28/03/2002.

8. It is also stated in the application that the corporate debtor again defaulted in payment as per the revised schedule of payment. Thus, corporate debtor further committed other defaults in performance of the conditions of loan agreement.
9. Thereafter, IDBI served a loan recall letter dated 31/12/2003 to the corporate debtor calling the corporate debtor to pay an amount of Rs.3796.46 lacs as on 01/11/2003 together with further interest thereon with effect from 02/11/2003 at the contractual rate upon the footing of compound interest until realization of the dues.
10. As result, the corporate debtor approached IDBI with a proposal for One Time Settlement (OTS). IDBI accepted the OTS of corporate debtor vide its letter CFD.III.22.B.18(Jain)/564 dated 21/06/2004. Under the OTS, corporate debtor was liable to pay Rs.23,48,96,933/- subject to terms and conditions and was permitted to sell its properties at Gurgaon and



Mumbai mortgaged properties. That the corporate debtor paid an amount of Rs. 231 lakh towards the OTS payment.

11. It is appropriate to mention here that Central Government had set up a Special Purpose Vehicle in the form of Trust by the name 'Stressed Assets Stabilization Fund' (SASF) vide Trust Deed dated September 24, 2004 with the object of acquiring the Stressed Assets of IDBI for the purpose of recovering the amounts due there under. Further, Central Government by notification dated September 29, 2004 has also notified the applicant SASF as Financial Institution under Section 2(h) (ii) of the Recovery of Debts due to Banks and Financial Institutions Act, 1993.

12. It is submitted that by virtue of the Transfer Deed dated September 30, 2004, executed by IDBI in favour of Stressed Assets Stabilization Fund (SASF), IDBI unconditionally and irrevocably sold, assigned, transferred and released to and unto the SASF the financial assistance sanctioned inter-alia to the



respondent along with the underlying securities with an intent that the SASF shall be full and absolute legal owner and the only person to receive the amounts due and payable by the Borrower Company. As such applicant SASF is legally entitled to recover the amounts due and payable by the Borrower Company to the IDBI.

13. Though, the corporate debtor made payment of Rs.231 lakh towards OTS, but again failed to make further payments. Thus, SASF revoked the OTS vide its letter dated 05/08/2006.

14. That the financial creditor vides its letter Ref. No. BY/SASF/JSL/3462 dated 29/01/2007 demanded the outstanding principal amounts together with interest, accrued interest, liquidated damages, etc. in respect of the loan amount and called upon the guarantors and pledgers to immediately pay to the financial creditor the due amounts.

15. The corporate debtor again approached the financial creditor for settlement. In 2011, the financial creditor approved one-time Settlement (OTS) vide its letter no.



SASF C-2 (JSL)/No 3069 dated 31/03/2011. As per the terms of settlement, the corporate debtor was liable to pay Rs.1600 lakhs (cash: Rs.1100 lakhs and equity: Rs.500 lakhs) subject to terms and conditions. At the request of the corporate debtors issued on various dated 24/06/2011 and 27/01/2012 the time period to pay the OTS was extended by the financial creditor.

16. Since, the corporate debtor again failed to adhere to terms and conditions, the OTS, financial creditor revoked the OTS vide its letter Ref No. 426/SASF/JSL dated 18.09.2012. Financial Creditor again vide its letter SASF C-2 (JSL)/No/954 dated 06.04.2013 restored the OTS on repeated requests of the corporate debtor.

17. However, the corporate debtor again failed to repay the OTS amount as per the stipulated time and hence the financial creditor revoked the OTS vide its letter SASF C-2(JSL)/NO/832 dated 05.03.2015.

18. The financial Creditor had issued legal notice to the corporate debtor vide its letter dated October 13, 2015 and also was served with a notice under Section 13(2) of



the SARFAESI Act dated 22.11.2016. That apart in October, 2016 the financial creditor filed Original Application in Debts Recovery Tribunal against the corporate debtor to recover the loan account from the corporate debtor.

19. It is pertinent to mention here that the respondent corporate debtor has initially filed its objections against the admission of the present application. However, the respondent corporate debtor filed an application being CA No. 867 (PB)/2020 stating that the business operations of the respondent company are closed and the company has accumulated huge losses. It is submitted that the revival of the company through CIRP will be more feasible.

20. In CA No. 867 (PB)/2020 the respondent company has annexed its Board of Director's Resolution passed on 09.01.2020 with the following resolution:

*"RESOLVED THAT the Company not to
object initiation of Corporate Insolvency Resolution*



Process (CIRP) in case no. 'CP No. IB-244(PB)/2019, titled as 'Stressed Asset Stabilization Fund Vs Jain Studios Limited' filed by Stressed Asset Stabilization Fund (SASF) under Section 7 of Insolvency & Bankruptcy Code, 2016 and Hon'ble National Company Law Tribunal, New Delhi Bench (NCLT) may pass necessary order for initiation of Corporate Insolvency Resolution Process (CIRP) of the company and appointment of IRP in the above said case."

- 21.** It is also relevant to refer here the view point of respondent as reflected in the order dated 06.02.2020 which is reproduced below for ready reference:

"Ld. Counsel for the respondent states that application being CA-867 (PB)/ 2020 has been filed enclosing the certified copy of the Board Resolution of the Corporate Debtor, wherein decision has been taken that they will not object



to the initiation of CIRP of the Corporate Debtor since the Company is in financial difficulties.”

22. It is thus seen that respondent corporate debtor has submitted its no objection against the initiation of CIRP and prayed for issuance of directions for initiation of CIRP of the Corporate Debtor.

23. Once there is a debt and default and the application are complete the Adjudicating Authority is bound to admit the application. Needless to say, that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs.1 Lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.



24. It is pertinent to mention here that the scheme of the Code provides for triggering the insolvency resolution process by three categories of persons namely,

- a) Financial creditor
- b) Operational creditor, and
- c) Corporate debtor itself.

25. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the “Financial Creditor” is delineated under Section 7 of the Code, wherein only “Financial Creditor” / “Financial Creditors” can file an application. As per Section 7(1) of the Code an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.

26. The expressions “Financial Creditor” and “Financial debt” have been defined in Section 5 (7) and 5 (8) of the Code and precisely “Financial debt” is a debt along with interest, if any, which is disbursed against the consideration for time value of money.



27. In the present case IDBI had sanctioned and disbursed the loan amount recoverable with applicable interest by entering into loan agreements with the corporate debtor. The corporate debtor had borrowed the credit facility against payment of interest as agreed between the parties. The loan was disbursed against the consideration for time value of money with a clear commercial effect of borrowing. The outstanding debts have since been assigned in favour of the applicant. Moreover, the debt claimed in the present application includes both the component of outstanding principal and interest. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant being the assignee can clearly be termed as '*Financial Creditor*' so as to prefer the present application under Section 7 of the Code.

28. The application filed by the applicant financial creditor under sub-section 5 (a) of Section 7 of the code, has to be admitted on satisfaction that:



- i. *Default has occurred.*
- ii. *Application is complete, and*
- iii. *No disciplinary proceeding against the proposed IRP is pending.*

29. The applicant financial creditor has filed the present application under Section 7 of the Code in the requisite FORM-1 to initiate Corporate Insolvency Resolution Process against the respondent Corporate Debtor. Form-1 filed under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. It is seen that the applicant has furnished the required information and other facts including loan documents in support of outstanding debt and default. The applicant has annexed to the application detail particulars of 'financial debt' including loan documents, records and evidence of default as required under subsection 3 (a) of Section 7 of the Code. On a bare perusal of the Form reveals that the



same is complete in all respect and there is no infirmity in the same.

30. Sub-section (3) (b) of Section 7 further mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Manish Agarwal, for appointment as Interim Resolution Professional having registration number IBBI / IPA - 002 / IP-N00223 / 2017-18 / 10904 resident of 707, Saket, OppRohtash Sweets, Meerut - 250001, (UP) with email-id manishfcs@gmail.com. Mr. Manish Agrawal has enclosed the copy of certificate of registration dated 27th January, 2017 issued by IBBI to act as an insolvency professional in accordance with the Insolvency and Bankruptcy Board of India (insolvency professionals) Regulations 2016. Mr. Manish Agrawal has agreed to accept appointment as the interim resolution professional and has signed a communication dated 24.11.2018 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is also a



declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Manish Agarwal as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code.

31. It is accordingly seen that the present application filed under Section 7 of the Code is complete and there is no disciplinary proceedings pending against the proposed interim resolution professional.

32. With regard to occurrence of default; it is seen that loan facilities were sanctioned to the corporate debtor and an amount of Rs. 2348.96 Lacs was disbursed to the respondent company in March 2000. The respondent corporate debtor accepted the loan facilities and executed loan agreements to secure the loan amount. Charge was also created on the immovable properties which has been reflected on the MCA data of the corporate debtor. Besides various OTS proposals exchanged between the



parties are on record. The applicant has relied upon the recent OTS proposal made by corporate debtor on 08.03.2018 which was rejected by the applicant on 24.04.2018.

33. It is thus seen that the applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default.

34. It is pertinent to note here that respondent corporate debtor has admitted that the business operations of the respondent company are closed and the company has accumulated huge losses. It is submitted during hearing that the revival of the company through CIRP will be more feasible. In addition, respondent corporate debtor through its Board Resolution has conveyed its no objection against the initiation of CIRP of the Corporate Debtor since the company is in financial difficulties. It is thus seen that respondent corporate debtor had availed the loan facilities and has committed default in repayment of the huge outstanding financial debt.



35. Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited V. Kirusa Software Private Limited reported in AIR 2017 SC 4532 at Para 19 has observed that:

*"Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application. **The adjudicating authority/Tribunal is not required to look into any other criteria for admission of the application.**" (Emphasis given)*

36. An application of financial creditor under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence of existence of default. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and



record satisfaction in a summary adjudication as to the occurrence of default before admitting the application.

37. The material placed on record confirms that applicant financial creditor through deed of assignment has stepped into the shoes of IDBI, who had disbursed loan facilities to the respondent corporate debtor and the respondent has availed the loan and committed default in repayment of the outstanding financial debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed IRP. Applicant has placed on record voluminous and overwhelming evidence in support of the disbursement as well as to prove the default. There has been admission of non-repayment of the dues due to financial difficulties. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding



financial debt from the corporate debtor and that there has been default in payment of the financial debt.

38. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

39. Mr. Manish Agrawal, having registration number IBBI / IPA - 002 / IP-N00223 / 2017-18 / 10904 resident of 707, Saket, Op. Rohtash Sweets, Meerut – 250001, (UP) with email-id manishfcs@gmail.com. is appointed as the interim resolution professional.

40. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

41. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lacs with the Interim Resolution Professional namely Mr. Manish Agarwal to meet out the



expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per rules and shall be paid back to the Financial Creditor.

42. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.”

43. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply



to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

44. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim

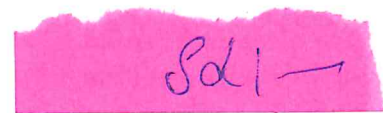


Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

- 45.** The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.



(S. K. MOHAPATRA)
MEMBER (T)



(DR. DEEPTI MUKESH)
MEMBER (J)