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

IBA/895/2019

(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 **Uthara Fashion Knitwear Ltd.**

Stressed Assets Stabilization Fund (SASF),
IDBI Tower, 3rd Floor, WTC Complex,
Cuffe Parade, Mumbai – 400 005.

... Financial Creditor

-Vs-

Uthara Fashion Knitwear Ltd.,
CIN:U18101TZ1993PLC004607,
57, Elango Street,
Mahalingapuram,
Pollachi – 642002.

... Corporate Debtor

Order Pronounced on 1st July 2022

CORAM:

Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)

ANIL KUMAR B, MEMBER (TECHNICAL)

For Financial Creditor :Mr.T.Ravichandran, Advocate
For Corporate Debtor : Mr.Jayersh R Dolia, Advocate
Mr.Shanmugasundaram Advocate

ORDER

Per: **Justice (Retd) S.RAMATHILAGAM, MEMBER (JUDICIAL)**

Under Adjudication is an Application that has been filed by **Stressed Assets Stabilization Fund** (hereinafter referred to as '*Financial Creditor"*) under Section 7 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC, 2016') r/w Rule 4 of the

Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **Uthara Fashion Knitwear Ltd** (hereinafter referred to as *'Corporate Debtor'*). The prayer made is to admit the Application, initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Financial Creditor from which, it is evident that the Financial Creditor is a Financial Institution as defined in Section 2(h)(ii) of the Debts Due to Banks and Financial Institutions Act, 1993. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Limited Company having CIN:U18101TZ1993PLC004607, the Corporate Debtor was incorporated on 23.09.1993 and the Registered Office of the Corporate Debtor as per the Application is stated to be situated at 57, Elango Street, Mahalingapuram, Pollachi – 642002. As per Part III of the application, the Financial Creditor has proposed the name of one Shri.Ramakrishnan Sadasivan, as the Interim Resolution Professional, who has also filed his consent in Form – 2.

3. From Part-IV of the Application, it is seen that a sum of Rs.76,64,72,470/- as on 01.04.2019 is being claimed by the Financial Creditor as the Financial debt and the date of default is mentioned as 22.06.2018. Part – V of the Application discloses the

details of the documents which have been filed by the Financial Creditor in order to prove the 'Financial debt'.

4. It was further submitted by the Learned Counsel for the Applicant that the Corporate Debtor has availed financial assistance of Rs.600 lakh from Industrial Development Bank of India (IDBI) vide Loan Agreement dated 02.03.2000. Pursuant to the said Agreement, IDBI disbursed Rs.420.21 lakh from time to time and the balance loan amount of Rs.179.79 lakh was cancelled by IDBI.

5. It was further submitted that vide Transfer Deed dated 30.09.2004, executed by IDBI in favour of the Financial Creditor, IDBI transferred and assigned the loan/facility sanctioned by IDBI to the Financial Creditor, including the loan granted to the Corporate Debtor herein, with an intent that the Financial Creditor herein shall be full and absolute legal owner to receive the amounts payable to IDBI by the Corporate Debtor.

6. It was further submitted that in the OA No.413/2007 filed by the Financial Creditor, Recovery Certificate dated 31.08.2009 was issued by DRT-II, Chennai in favour of IDBI. Further, vide order dated 30.04.2015, DRT-II, Chennai allowed substitution of the name of the Financial Creditor in place of IDBI.

7. It was further submitted that the Corporate Debtor had acknowledged its liability in the balance sheet of the year ending

2012-13. Moreover, the Corporate Debtor has acknowledged its debt from time to time by way of proposing One Time Settlement to the Financial Creditor. In view of the above submissions, the Financial Creditor sought to initiate CIRP against the Corporate Debtor.

8. *Per contra,* the Learned Counsel for the Respondent contended that this application is barred by limitation. The Recovery Certificate by DRT-II, Chennai was issued on 31.08.2009 and the time limit to file an application under Section 7 of IBC, 2016 will be only up to 30.08.2012. It was further contended that the date 22.06.2018, mentioned in the application cannot be accepted as the date of default, and argued that no appeal has been filed against the order dated 31.08.2009, passed by the DRT-II, Chennai and the same has attained finality itself. Moreover, the Applicant did not even filed this application even after 6 months after the IBC, 2016 came to force.

9. It was further that the present application was filed after 10 years from the date of issuance of Recovery Certificate and the limitation to file an application under Section 7 of IBC, 2016 is prescribed as 3 years from the date of default, to support this submission the Learned Counsel for the Respondent relied on the decision of Hon'ble Supreme Court of India in ***Dena Bank Vs.***

C.Shicakumar Reddy and Anr.. In view of the above submissions, the Respondent sought dismissal of this application.

10. We have heard the Learned Counsels for both the parties in detail. It is noted that Hon'ble Apex Court had remanded this case to this Adjudicating Authority for a *de novo* hearing.

11. On perusal of the documents placed on record we see that the Corporate Debtor has clearly admitted its debt and default in their submissions. The only contention of the Respondent is this application is not filed within the limitation period prescribed under Section 7 of IBC, 2016.

12. Having noted the contention of the Corporate Debtor, we may now turn to the relevant provisions of IBC, 2016 regarding limitation

> *"**Section 238A: Limitation.** – The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.*

Article 137 of the Limitation Act, 1963 reads as follows

PART II—OTHER APPLICATION

137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues.

Reading the above provisions makes clear that the provisions of the Limitation Act, 1963, as far as applicable to IBC, 2016. Applications under Section 7 of IBC, 2016 derives it limitation period from Article 137 of the Limitation Act as 3 years from the right to apply accrues i.e., date of default.

13. It can be seen that the Recovery Certificate by DRT-II, Chennai was issued against the Corporate Debtor on 31.08.2009. We further see that in the balance sheet of 2011-12 and 2012-13 of the Corporate Debtor, the debt was acknowledged by the Corporate Debtor. We have also noted that in the earlier appeal of this case the question regarding the acknowledgement of debt in the balance sheet was decided by the Hon'ble Supreme Court as follows

> *"35. On the facts of this case, the NCLT, by its judgment dated 19.02.2020, recorded that the default in this case had been admitted by the corporate debtor, and that the signed balance sheet of the corporate debtor for the year 2016-2017 was not disputed by the corporate debtor. As a result, the NCLT held that the Section 7 application was not barred by limitation, and therefore, admitted the same. We have already set aside the majority judgment of the Full Bench of the NCLAT dated 12.03.2020, and the impugned judgment of the NCLAT dated 22.12.2020 in paragraphs 33 and 34. This appeal is, therefore, allowed, and the matter is remanded to the NCLAT to be decided in accordance with the law laid down in our judgment."*

14. It is further seen that the Corporate Debtor has time to time acknowledged the debt on the following dates

21.11.2013.	OTS proposal was given by the Respondent
27.05.2014	A 'Negotiated Settlement 'was arrived between the parties.
22.01.2015	The Negotiated Settlement was revoked since the Corporate Debtor did not comply with the conditions
30.01.2015	OTS proposal received from the Corporate Debtor
27.09.2018	The Respondent through email communication once again made an OTS proposal acknowledging the debt.

15. We have further seen that in the letter dated 27.09.2018 from the Corporate Debtor to the Financial Creditor it was stated as follows

Uthara Fashion KnitWear Limited
[illegible]
Pollachi 642002,[illegible]

TO: Date: 9/27/2018

The Chief General Manager,
SASF,IDBI Tower
[illegible]
Mumbai

Ref: [illegible]

SASF TRUST
28 SEP 2018
INWARD NO.: 786

Dear sir,

Sub:

1. Willing to pay OTS amount Rs226 lakhs the borrowed amount from IDBI.
OR
2. Issuing promoter's equity share for Rs 426 lakhs in the favor of SASF.
(UFKL proposed to set up a Joint Venture project with Chinese investment for manufacturing electrical equipments for EV in the UFKL infrastructure.)

IDBI Chennai sanctioned term loan Rs600 lakhs for 100% EOU Garment manufacturing unit, unit 1 at Udumalpet -Dyeing house and unit 2 [illegible] - garment manufacturing.

IDBI disbursed only Rs 226 lakhs against loan sanctioned amount of Rs 600 lakhs.our company signed loan agreement with IDBI,SBI and SBM Coimbatore for providing term loan and working capital. IDBI was the Lead manager of the consortium loan. IDBI disbursed only Rs 226 lakhs and cancelled the balance term loan which made our company unable to take the term loan disbursement from SBI and SBM.

IDBI insisted in the loan agreement Promoters of Uthara Fashion Knit wear Ltd should bring promoter equity full amount up front before starting disbursement of term loan. We promoters brought in Rs 240 lakhs and invested for the project and IDBI released a part of the term loan and cancelled the balance term loan and cancelled the balance term loan.

The loan agreement signed among IDBI,SBI,SBM and Uthara fashion it is clearly mentioned in the loan agreement after completing the project from the project revenue the company should start the repayment but our

39

company unable to commence production. It is to be observed the Promoter have invested the equity share completely as per the agreement but IDBI has not fulfilled its obligation of paying the entire term loan Rs 600 lakhs to complete the project. Without complete term loan disbursement from IDBI and other banks our company could not complete the project and unable to commence commercial production and company became sick. IDBI is full responsibility for making our unit sick.

SASF got assigned the loan amount from IDBI without transferring the security of the company in the favor of SASF, which is clearly shown in the DRT Court verdict.

We are now interested to settle the IDBI disbursement amount Rs 226 lakhs OR willing to issue promoters equity share for the value of Rs 426 lakhs as per SASF OTS letter may 2014. Our company now proposed to start a project with the Chinese Joint Venture partner investment to make electrical vehicle equipments.

Our Company already located Partners in China for this Project.

In this situation Our Company is willing to issue promoter share in the favor of SASF to the value of Rs 426 lakhs. SASF can hold the shares or liquidate the shares after the holiday period the market price in the later stage.

We may kindly request you to remove your securities from unit 1 and unit 2 and hand over the property back to the company at the earliest.

Hope your favorable consideration in this matter.

Thanking you,

Yours truly,

V.Padmakumar

Managing director

Uthara Fashion Knit wear ltd

Reading the above e-mail clarifies that the Corporate Debtor has accepted its debt and default by proposing One Time Settlement on 27.09.2018 and the present application was filed on 11.07.2019. Here it is relevant to refer to the decision of Hon'ble Supreme Court in ***Dena Bank Vs. C.Shicakumar Reddy and Anr.***, wherein it was held as follows

> *"142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.*
>
> *143. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of*

Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."

16. Further in the case of Laxmi Pat Surana Vs. Union Bank of India and Anr. Hon'ble Supreme Court held as follows

"Section 18 of the Limitation Act gets attracted the moment acknowledgment in writing signed by the party against whom such right to initiate resolution process under Section 7 of the Code enures. Section 18 of the Limitation Act would come into play every time when the principal borrower and/or the corporate guarantor (corporate debtor), as the case may be, acknowledge their liability to pay the debt. Such acknowledgment, however, must be before the expiration of the prescribed period of limitation including the fresh period of limitation due to acknowledgment of the debt, from time to time, for institution of the proceedings under Section 7 of the Code. Further, the acknowledgment must be of a liability in respect of which the financial creditor can initiate action under Section 7 of the Code."

17. With the aforesaid observations and considering the facts and circumstances of the case as well as the position of Law, we are of the view that this Application as filed by the Financial Creditor is required to be **admitted** under Section 7 (5) of the IBC, 2016.

18. The Financial Creditor has proposed the name of one Shri.Ramakrishnan Sadasivan, we find that the Authorisation for

Assignment (AFA) was expired for Shri.Ramakrishnan Sadasivan. Therefore this Adjudicating Authority based on the latest list furnished by the Insolvency and Bankruptcy Board of India applicable for the period between July 2022 - December 2022 appoints ***Mr.THILAGAR MURUGESAN*** having Registration Number ***[IBBI/IPA-001/IP-P-01659/2019-2020/12715], (e-mail ID: mthilagar@tacas.org)*** as Interim Resolution Professional (IRP) and written communication in the format prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

19. 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 Corporate Debtor including the 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.

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;

20. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) 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 arrangements 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.

21. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code 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.

22. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Corporate Debtor above named by the Registry. 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 a copy of this order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

ANIL KUMAR B
MEMBER (TECHNICAL)

-Sd-

JUSTICE (RETD) S.RAMATHILAGAM
MEMBER (JUDICIAL)

Gopishankar D