

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT HYDERABAD**

\*\*\* \*\*

**TCP (IB) No.87/7/AMR/2019  
[CP (IB) No.200/7/HDB/2019]**

**In the matter of SARITA SYNTHETICS AND INDUSTRIES  
LIMITED**

*(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 of the  
Insolvency and Bankruptcy (Application to Adjudicating Authority)  
Rules, 2016*

Between:

**Stressed Assets Stabilisation Fund**

Registered Office at IDBI Tower,  
3<sup>rd</sup> Floor, D-Wing,  
WTC Complex, Cuffe Parade,  
Mumbai – 400 005.

... **Petitioner/Financial Creditor**

and

**Saritha Synthetics & Industries Limited,**

Registered Office at: Anthakapali Village,  
Rajam Mandal,  
Srikakulam District,  
Andhra Pradesh – 532 127.

... **Respondent/Corporate Debtor**

**Date of Order: 01.10.2019**

**CORAM:**

Hon'ble Janab Mohammed Ajmal, Member Judicial

**Appearance:**

For Petitioner : Mr. V. V. S. N. Raju, Advocate

For Corporate Debtor : Ms. B. Aparna, Advocate.

**ORDER**

1. The Financial Creditor (FC) of the Corporate Debtor (CD) seeks Corporate Insolvency Resolution Process against it in this Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code).

*M. J. J. J.*  
*01/10/19*

*Received on*  
*4.10.2019*  
*M. N. N. N.*

2. The brief facts leading to the petition are follows.

The Respondent originally incorporated on 13.10.1993 under the Companies Act, 1956 was a Private Limited Company. Subsequently it was converted into a Public Limited Company (CIN No. L17116AP1993PLC- 016428) w.e.f. 28.10.1994. The Company *inter alia* carried on the business as Manufacturers, Processors, Dealers, Contractors, Agents, Suppliers, Stockist, Representatives, Importers, Exporters etc. of all varieties of Silks, Artificial Silks, Synthetics, Polyester Rayon and allied yarns in India and abroad. It approached the Industrial Development Bank of India (IDBI) for grant of credit facilities to finance its business activities. The IDBI granted various credit facilities in the shape of Rupee Term Loan and Foreign Exchange Currency Term Loan totalling Rs. 43,32,00,000/- (Rupees Forty Three Crores Thirty Two Lakhs only) between 30.11.1994 and 31.05.2001. The Respondent defaulted in paying back the loans. The IDBI declared the entire account as non-performing asset (NPA) on 30.09.2002. The IDBI by a registered transfer deed dated 30.09.2004 transferred the loans and underlined security interest to the present Petitioner. IDBI meanwhile filed an Original Application namely O.A. No.193/2004 on 27.07.2004 seeking recovery of debt before the Debt Recovery Tribunal-I (DRT-I), Hyderabad. Later, the Petitioner was substituted upon transfer of the debt to it. Respondent had been acknowledging the debt due to the IDBI and the present petitioner vide its Annual Report for the year 2011-2012 and the default committed in repayment of the debt for 12 years. The learned DRT-I, vide order dated 17.08.2018 allowed the application *ex parte* against the Respondent *inter alia* for recovery of Rs. 57,46,47,286/- (Rupees Fifty Seven Crores Forty Six Lakhs Forty Seven Thousand Two Hundred Eighty Six only) with *pendente lite* and future interest at



AW  
10/11/19

rate of 12% per annum from the date of application till realisation. Since the Respondent committed default the petitioner came up with the present application on 25.03.2019 seeking Corporate Insolvency Resolution Process (CIRP).

3. The Respondent appeared in response to the notice and contested the petition. It admitted to have availed various credit facilities from IDBI and hence the petitioner by way of Rupee Term Loans and Foreign Currency Loans on execution of loan and security agreements. It committed default for reasons beyond its control. Default resulted due to extraneous factors namely, slump in the textile sector and devastation caused by natural calamity in the form of cyclone 'Hud Hud' in October 2014. The petitioner did not consider the adverse circumstances nor complied with the Reserve Bank of India (RBI) Master Circular relating to relief measures in areas affected by natural calamities. The Respondent had also the disadvantage of its geographical location. Despite several requests the petitioner has not been paying any heed to the successive One Time Settlement (OTS) proposals nor has accepted the any revival plan. The Petition is otherwise barred by limitation in view of Section 238 (A) of the Code. Therefore, the debt claimed by the petitioner would not be classified as due and payable. In this connection reference is made to Andhra Pradesh Power Coordination Committee & Ors v. Lanco Kondapally Power Limited & Ors., (citation not given). The Petition therefore deserves to be rejected. The Petition was transferred to this Tribunal, after its establishment.
4. Basing on the rival pleadings and the fact that the debt is admitted the following issue arises for consideration.

- i) Whether the Petition is barred by limitation?

9/1/2019  
01/10/19

**Issue No. i:**

5. The following facts are not in dispute. The Respondent had availed credit facilities amounting to Rs. 43,32,00,000/- (Rupees Forty Three Crores Thirty Two Lakhs only) between 30.11.1994 and 31.05.2001. The loans were declared NPA as on 30.09.2002. The IDBI transferred the loans and the underlined security to the petitioner under a registered deed dated 30.09.2004. Meanwhile it had moved an application in O.A. No. 193/2004 before the Debts Recovery Tribunal-I (DRT-I) Hyderabad for realisation of loan amount to the tune of Rs. 57,46,47,284/- (Rupees Fifty Seven Crores Forty Six Lakhs Forty Seven Thousand Two Hundred Eighty Four only) with interest. The learned DRT by its order dated 17.08.2018 allowed the Application *ex parte* against the Respondent and ordered recovery of the amount with *pendente lite* and future interest @ 12% per annum. According to the Petitioner the amount stood at Rs. 158,16,18,256 (Rupees One Fifty Eight Crores Sixteen Lakhs Eighteen Thousand Two Hundred and Fifty Six only) as on 01.03.2019.

The only defence taken by the Respondent is that the debt being barred by limitation an Application under section 7 of the Code could not be maintained. The 'debt' defined under section 3(11) of the Code means, a liability or obligation in respect of the claim which is due from any person and includes a financial debt. 'Default' defined under section 3 (12) of the Code means, non-payment of debt when whole or any part or instalment of the debt has become due and payable and is not paid by the Corporate Debtor. The loans advanced to the Respondent were secured by mortgages. The IDBI, predecessor of the petitioner moved the Debt Recovery Tribunal-I, Hyderabad on 27.07.2004 within 3 years or 12 years, as the case may be from 30.09.2002. There is no quarrel that



AM  
10/11/19

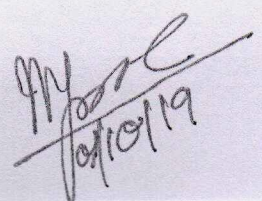
the account of the Respondent had been declared NPA. The Application before the DRT-I Hyderabad was within time. The DRT-I Hyderabad by order dated 17.08.2018 allowed the Application and ordered recovery of the debt with interest, *pendente lite* and future, at the rate of 12% per annum.

7. In view of the order of the DRT-I the debt became due and payable w.e.f. 17.08.2018. The present petition was filed on 25.03.2019 within three years of the date of the order. An Application under section 7 can be filed within 3 years as provided under Article 137 of the Limitation Act. The same has been held by the Hon'ble Apex Court in Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Limited (Civil Appeal No. 4952 of 2019) decided on 18.09.2019. Admittedly the Respondent had committed default in payment of the debt. In view of the orders of the DRT-I, Hyderabad the debt became 'due and payable' subsequent to 17.08.2018. Therefore, the defence contention that the debt was time barred cannot be accepted. The issue is answered in the negative.

8. In an application under Section 7 of the Code the reason for the inability of the Respondent in paying off the debt is not required to be looked into by the Adjudicating Authority. What is required to be seen is the default. In this case the default has been satisfactorily proved. Thus the petition needs to be admitted. The Petitioner has suggested the name of an Interim Resolution Professional (IRP) and has also enclosed his written consent. No disciplinary proceeding is pending against the proposed IRP as ascertained from the website of the IBBI. Hence ordered.

### ORDER

The Company Petition is admitted on contest.

  
10/10/19

- i. The Corporate Insolvency Resolution Process of the respondent shall commence from this date and shall be completed within 180 days hence, as provided under Section 12(1) of the Code.
- ii. Shri Niranjana Miriyala, Chartered Accountant [Registration No. IBBI/IPA-001/IP-P00642/2017-2018/11094, having office at First Floor, H.No.7-1-28/1/A/21, Shyamkaran Road, Ameerpet, Hyderabad - 500 016; e-mail ID: caniranjan@yahoo.com] is appointed as the Interim Resolution Professional (IRP).
- iii. He is directed to take charge of the Respondent/Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of IBC and Rules made thereunder.
- iv. Moratorium under Section 14 of the IBC in respect of the respondent is hereby declared.  
The Directors, Promoters or any other person associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effective discharge of his functions thereunder.
- vi. The Registry is directed to communicate the order to the Petitioner/Financial Creditor and the Respondent/Corporate Debtor.
- vii. The petitioner/OC and the Registry are also directed to send the copy of this order to IRP for necessary compliance.



Dv. Regr. Mast. Regr. (Court Officer)  
National Company Law Tribunal, Hyderabad Bench

MOHEMMED AJMAL  
MEMBER JUDICIAL

प्रमाणित प्रति  
CERTIFIED TRUE COPY

केस संख्या  
CASE NUMBER. TCP (IB) No. 87/7/AMR/2019 [CP (IB) No. 200/7/HDB/2019]  
निर्णय का तारीख  
DATE OF JUDGEMENT. 1/10/19  
प्रति तैयार किया गया तारीख  
COPY MADE READY ON. 4/10/19