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

CP/IB/305/2021

*(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 **Arjun Chemicals (P) Limited**

State Bank of India,

Represented by the its Asst. General Manager,
Stressed Assets Management Branch,
Red Cross Building,
No.32, Montieth Road,
Egmore, Chennai – 600 008.

... *Financial Creditor*

-Vs-

Arjun Chemicals (P) Limited,

RVI Towers, 2nd Floor,
No.149, Velachery-Tambaram High Road,
Pallikaranai, Chennai – 600 100.

... *Corporate Debtor*

Order pronounced on 09th November 2022

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor : Mr. M.L.Ganesh, Advocate
For Corporate Debtor : Mr. Rohan Rajasekaran, Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by **State Bank of India,**
Stressed Assets Management Branch, Red Cross Building, No.32,
Montieth Road, Egmore, Chennai – 600 008 (**the Financial
Creditor**) against **Arjun Chemicals (P) Limited,** RVI Towers, 2nd



Floor, No.149, Velachery-Tambaram High Road, Pallikaranai,
Chennai – 600 100 (**the Corporate Debtor**).

2. The Application was filed on 7th July 2021 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. The Financial Creditor has prayed for commencement of Corporate Insolvency Resolution Process (CIRP) and appointment of IRP.

3. No reply has been filed by the Respondent in this matter.

4. From Part-IV of the Application, it is seen that a sum of Rs.47.40 crores was sanctioned by the Financial Creditor/Bank during the year 2018 to the Corporate Debtor. The outstanding loan is for a sum of Rs.56,32,52,142.22 as on 30.06.2021.

5. It is also seen that the Financial Creditor is holding various securities towards the loan and certificate of charges for a sum of Rs.47.40 crores was registered with the RoC. Record of default is also attached as Annexure-(I)16.



6. Notice was issued by this Tribunal on 16.12.2021 and the matter was heard on 10.01.2022. During the hearing held on 10.01.2022 and interim order was passed which records as under: -

"Ld. Counsel for the Respondent states that settlement talks are going on. However Ld. Counsel for the Petitioner/State Bank of India states that he is unable to confirm the same as he has to obtain instructions from his client."

7. Thereafter the matter was adjourned to 17.01.2022. No hearing could be held on 17.01.2022. During the hearing held on 04.02.2022 the following interim order has been passed.

"Both the parties represent that settlement talks are underway and that the proposal is pending with the Applicant Bank for approval."

8. The matter was again heard on 07.03.2022, the following interim order was passed.

"Ld. Counsel for the Petitioner submits that One Time Settlement (OTS) proposal submitted by the Corporate Debtor which was in principle accepted by the Petitioner herein. It is also stated that a sum of Rs. 2 crores was also paid by the Corporate Debtor. Ld. Counsel for the Petitioner submits that the entire settlement shall take place on or before 31.03.2022. It is noted that there was no reply filed by the Corporate Debtor."

9. On 11.07.2022 again another interim order was passed as under.

"In terms of the earlier order dated 07.03.2022 there has been some development with regard to One Time Settlement (OTS). Details of which will be furnished by both the parties on the next date of hearing without fail, failing which the Bank is directed to proceed with the matter."



On 26.08.2022 the matter was adjourned at request of the Counsel for the Financial Creditor. During the hearing on 23.09.2022, Ld. Counsel for the Respondent shared on the screen OTS letter issued by the Financial Creditor and was instructed to file the same and bring the same on record of this Tribunal. The Financial Creditor and the Respondent have filed two Memos vide SR.No.5660 and 5661 dated 17.10.2022, which are extracted below.

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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH,
CHENNAI**

**In the matter of the Insolvency and Bankruptcy Code 2016
IN THE MATTER OF M/s. Arjun Chemicals (P) Ltd,**

C.P NO. OF 2021

STATE BANK OF INDIA
Represented by its Assistant General Manager,
Stressed Assets Management Branch,
Red Cross Building,
No.32, Montielth Road, Egmore,
Chennai - 8

...Financial Creditor

-Vs-

M/s. Arjun Chemicals (P) Ltd
RVI Towers, 2nd Floor,
No.149, Velachery- Tamburam High Road
Pallikarunai, Chennai- 100

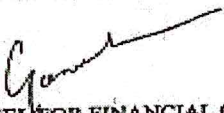
...Corporate Debtor

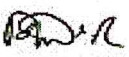
**JOINT MEMO FILED BY THE FINANCIAL CREDITOR AND
CORPORATE DEBTOR**

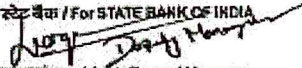
It is respectfully submitted that the corporate debtor had remitted a sum of Rs.10crores in two instalments on 30.09.2022 and 15.10.2022 pursuant to OTS letter dated 30.11.2021 given by the financial creditor. As per the terms and conditions of OTS, the corporate debtor shall pay a sum of Rs.35crores plus interest on or before 30.11.2022. The corporate debtor has undertaken to remit the aforesaid sum within the said stipulated time failing which it shall abide by the terms and conditions as envisaged thereon.


It is therefore respectfully prayed that this Hon'ble Tribunal may be pleased to record the aforesaid submission and permit the financial creditor to withdraw the above application with liberty to approach this Hon'ble Tribunal for the same cause of action in the event of failure in complying with the terms and conditions and thus render justice.

Dated at Chennai on this 15th day of October, 2022


 COUNSEL FOR FINANCIAL CREDITOR


 COUNSEL FOR CORPORATE DEBTOR

वल्लो भारतीय स्टेट बैंक / For STATE BANK OF INDIA

 Assistant General Manager / Asst. General Manager
 Stressed Assets Management Branch
 FINANCIAL CREDITOR


 FOR ARJUN CHEMICALS (P) LTD
 CORPORATE DEBTOR
 DIRECTOR

✓

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH,
CHENNAI
In the matter of the Insolvency and Bankruptcy Code 2016
(IN THE MATTER OF M/s. Arjun Chemicals Pvt Ltd)

C.P NO. 305 OF 2021

STATE BANK OF INDIA

Represented by its Assistant General Manager,
Stressed Assets Management Branch,
Red Cross Building,
No.32, Montieth Road, Egmore,
Chennai – 8

...Financial Creditor

-Vs-

M/s. Arjun Chemicals Pvt Ltd
RVI Towers, 2nd Floor,
No.149, Velachery- Tambaram High Road
Pallikaranai, Chennai- 100


...Corporate Debtor

MEMO FILED BY THE FINANCIAL CREDITOR

It is respectfully submitted that the corporate debtor had remitted a sum of Rs.10crores in two installments on 30.09.2022 and 15.10.2022 pursuant to OTS letter dated 30.11.2021 given by the financial creditor. As per the terms and conditions of OTS, the corporate debtor shall pay a sum of Rs.35crores on or before 30.11.2022. The corporate debtor has undertaken to remit the aforesaid sum within the said stipulated time failing which it shall abide by the terms and conditions as envisaged thereon.

It is therefore respectfully prayed that this Hon'ble Tribunal may be pleased to record the aforesaid submission and permit the financial creditor to withdraw the above application with liberty to approach this Hon'ble Tribunal for the same cause of action in the event of failure in complying with the terms and conditions and thus render justice.

Dated at Chennai on this 15th day of October, 2022


COUNSEL FOR FINANCIAL
CREDITOR

10. Be that as it may, it is also seen that the Corporate Debtor was not adhering to the schedule of payment and which was confirmed by the Ld. Counsel for the Financial Creditor during the hearing on 23.09.2022.



11. Along with the Memo, a letter issued by the Financial Creditor has been attached which is bearing **Ref.No.SAMB/CLO-II/20-21/765** dated 30.11.2021.

12. From the said letter, it is observed that as early as 30.11.2021, the Financial Creditor has accepted the One Time Settlement (OTS) for an amount of Rs.35 crores. It is also seen from the Memo that post the hearing on 23.09.2022 the Respondent in the matter has paid the Financial Creditor a sum of Rs.2 crores on 30.09.2022 and further a sum of Rs.8 crores on 15.10.2022.

13. As recorded hereinabove the first hearing in the matter has taken place on **10.01.2022**. As such it is seen that nearly 41 days before the first hearing took place, the OTS has been accepted in the matter by Financial Creditor and none of the parties brought the above fact to the notice of this Tribunal that the OTS has been accepted and that some payments have been received by the Financial Creditor.

14. Not only this, for six (6) hearings none of the parties brought this to the knowledge of this Tribunal that the matter has been settled between the Financial Creditor and the Respondent. Not only this the Financial Creditor has filed some more cases against





the guarantors of the Corporate Debtor and Section 7 applications are pending before this Bench and as well as Bench-II of NCLT Chennai.

15. From the above, it discerns that from the first hearing which was held on 10.01.2022, **DEFAULT** was cured in view of the novation / OTS which is dated 30.11.2021 and as such no default survived as early as on 10.01.2022 which was the date of the first hearing in the matter.

16. These sorts of applications are clogging the Board of this Tribunal. The OTS letter dated 30.09.2021 which was duly accepted and signed by the Respondent and its guarantors and was **novation**. Curing the default as early as 30.09.2021 i.e., before the first date of hearing in the matter and nothing has survived as early as 10.01.2022. It seems that the Financial Creditor was using this Tribunal merely for recovery of its dues / settlement amount and was not interested to seek the corporate insolvency resolution which is the aim of Insolvency & Bankruptcy Code, 2016.

17. We may add here that the Financial Creditor has successfully used this Tribunal for "**recovery**" which is established by the payment of Rs.10 crores as detailed supra.



18. We deplore such conduct of the Financial Creditor and also by the Respondent in the matter along with respective Counsels to drag on the matter which is already settled.

19. Taking into consideration the Memo filed by both parties, this Company Petition is ordered as withdrawn out of Court and is dismissed. No liberty.

20. Accordingly, CP/IB/305/2021 is **disposed of**.

— Sd —

SAMEER KAKAR
MEMBER (TECHNICAL)

— Sd —

JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT