

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-376/(ND)/2020

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

State Bank of India

Corporate Centre At:

State Bank Bhavan, Madame Cama Road, Nariman Point,
Mumbai, Maharashtra-400021,

Local Head Office At:

Sansad Marg, New Delhi-110001,

Having One of Its Stressed Branch At:

Stressed Assets Management Branch-I, 12th Floor,
Jawahar Vyapar Bhawan, 1, Tolstoy Marg, Janpath,
New Delhi-110001

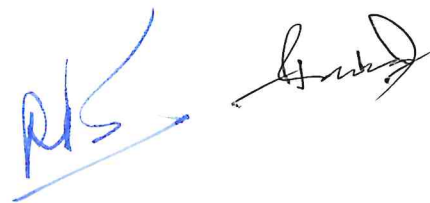
...Applicant/Financial Creditor

Versus

M/s Worlds Window Impex India Pvt. Ltd.

Registered Office At:

75, Khirki Village, Malviya Nagar,
New Delhi-110017



Corporate Office:

E-40/3, Phase-II,
Okhla Industrial Area,
New Delhi-110020

...Respondent/ Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

SHRI. RAHUL BHATNAGAR, Hon'ble Member (Technical)

Counsel for Petitioner/Financial Creditor: Mr. Ajay Gaggar, Mr.
Robin Singh Sirohi & Uttiyo Mallick,
Advocates

Counsel for Respondent/Corporate Debtor: Mr. Virendra Ganda,
Mr. Prashant Mehta, Mr. Raghav
Marwaha, Mr. Anand Sengar

ORDER

Per SHRI.P.S.N PRASAD, MEMBER (JUDICIAL)

Date:23.12.2021

1. This is an application filed by State Bank of India to initiate corporate insolvency resolution process ("CIRP") against M/s Worlds Window Impex India Pvt. Ltd. under Section 7 of the Insolvency and Bankruptcy Code 2016 ("the Code") for the alleged default on the part of the Respondent in settling an

amount of Rs. 516,17,95,970.00/- (Rupees Five Hundred Sixteen Crores Seventeen Lakhs Nineteen-Five Thousand Nine Hundred Seventy Only) as on 30.11.2019. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- That Worlds Window Impex India Pvt Ltd as a borrower along with its Guarantors approached the SBI for grant of various Credit facilities on 05.03.2005, 02.07.2005, 25.01.2006, 21.12.2006, 28.02.2009, 06.05.2010 and subsequently executed various documents in favour of the Consortium Lenders on 10.03.2011, 15.12.2012, 23.11.2013 and 23.12.2014 for the Credit facilities to be granted to Worlds Window Impex India Pvt Ltd.
- That Worlds Window Impex India Pvt Ltd (including the guarantors) signed and executed Revival Letter dated 23.12.2014, 12.12.2017 in favour of the SBI, whereby they acknowledged the debt towards the Bank for the payment of the Outstanding amounts in respect of the present as well as the future indebtedness and liabilities under the said Cash Credit account(s) and other account(s) together with interest, compound interest, additional interest, liquidated damages, costs, charges, expenses and other money in terms of the said Working Capital Consortium Agreement and their liabilities would remain in full force with all relative securities, agreements and obligations.



- That Worlds Window Impex India Pvt Ltd admitted the liabilities qua the Credit facilities granted to it in its Balance sheets up to financial year ending 31st March 2018. The SBI vide several letters called upon Worlds Window Express to regularize the accounts and maintain its financial discipline but Worlds Window Impex India Pvt Ltd failed to do so and the accounts were declared as NPA on 15.05.2019.
- That SBI issued a Legal Demand Notice dated 12.12.2019 for an amount of Rs. 516,17,95,970.00 (Rupees Five Hundred Sixteen Crores Seventeen Lakhs Nineteen-Five Thousand Nine Hundred Seventy Only) as on 30.11.2019 to Worlds Window Impex India Pvt Ltd and the Guarantors) calling upon them to repay the outstanding amount but despite receipt of the said notice the Defaulters have failed to liquidate the outstanding amount.
- That SBI has exclusive collateral security on the following properties for the Credit facilities granted to Worlds Window Impex India Pvt:
 - Equitable mortgage of the Land situated at Survey No. 811, 812 and 813, Khata No. 427/2061, Village Chonda, Opp. Transport Nagar, District- Morena, Madhya Pradesh in the name of the Worlds Window Impex India Pvt Ltd(Borrower Company).
 - Equitable mortgage of the Land admeasuring 0.8290 hectare situated at Khasra No. 399, 400 & 401 and,



Khata No. 58, 24 & 233 on Link Road, Kailashpur, Rupbas, Dadri, District- Gautam Budh Nagar, U.P in the name of Sh. Piyoosh Goyal .

- Equitable mortgage of the Land admeasuring 2.3880 hectare situated at Khata No. 629, Khasra No. 1062 and 1059, Village & Tehsil Loni, District — Ghaziabad (UP) in the name of the Worlds Window Impex India Pvt Ltd (Borrower).
- That various credit facilities were initially granted to Worlds Window Impex India Pvt Ltd in the year 1997 by the Applicant Bank's commercial branch at Connaught Place, Opposite Super Bazar, Delhi-110001. Worlds Window Impex India Pvt Ltd as borrower and the guarantors have executed various loan & security documents in favour of the Consortium Lenders. Thereafter, upon receipt of revival letter and fresh documents from year to year the Sanctions were renewed.
- That Worlds Window Impex India Pvt Ltd as a borrower with the guarantors further approached the Bank for enhancement /renewal of the Credit facilities. The Bank vide its Sanction Letter dated **23.03.2012** granted Working Capital Limits amounting to Rs. 137.00 Crores.
- That Worlds Window Impex India Pvt Ltd approached SBI for enhancement / renewal of the of the various Credit facilities availed by it. SBI vide its Sanction Letter dated



12.11.2013 renewed Working Capital Limits amounting to Rs. 338.25 Crores.

- That Worlds Window Impex India Pvt Ltd again approached SBI for enhancement / renewal of the of the various Credit facilities availed by it. SBI vide its Sanction Letter dated **08.04.2015** renewed Working Capital Limits amounting to Rs. 289.50 Crores.
- That Worlds Window Impex India Pvt Ltd approached SBI for enhancement/ renewal of the of the various Credit facilities availed by it. SBI vide its Sanction Letter dated **23.02.2016** renewed Working Capital Limits amounting to Rs. 289.50 Crores.
- That Worlds Window Impex India Pvt Ltd approached SBI for enhancement/ renewal of the of the various Credit facilities availed by it. The SBI vide its Sanction Letter dated **11.11.2016** renewed Working Capital Limits amounting to Rs. 289.50 Crores.
- That Worlds Window Impex India Pvt Ltd signed and executed Revival Letter dated 23.12.2014, 12.12.2017 in favour of SBI. Defendants vide the aforesaid Revival Letters acknowledged the debt towards the SBI.
- That Worlds Window Impex India Pvt Ltd signed and executed Balance confirmations dated 07.04.2018 and 02.05.2019. It confirmed the balance of Rs. 329,65,21,148.53 in the Cash Credit account No. 53048578971, US Dollars 2,51,38,238.82 in the LC



(Import) account No. 38004702551 and Rs. 23,73,14,510.60 in LC (Inland) A/c No. 37748281158 vide its Balance Confirmation dated 02.05.2019 executed in favour of SBI. Worlds Window Impex India Pvt Ltd admitted the liabilities qua the Credit facilities granted to it in its Balance sheets up to financial year ending 31st March 2018.

- That the Bank vide their several letters called upon Worlds Window Impex India Pvt Ltd and the guarantors to regularize the accounts and maintain its financial discipline but they failed to do so and the accounts were declared as NPA on 15.05.2019.
- That a demand notice dated 12.12.2019 has been issued recalling the Loan amount under Securitisation Act, 2002 to enforce its security in the aforesaid account calling upon them to repay the outstanding amount but despite receipt of the said notice the Defendants have failed to liquidate the outstanding amount.. No reply has been received. In the circumstances the bank has filed an Application in the Debt Recovery Tribunal. Now in view of the default on the part of the Corporate Debtor and the account having become NPA as on 15.05.2019, the Financial Creditor is filing the instant application u/s 7 of the IBC, 2016.



2. Consequent to the notice issued by this Tribunal, the Respondent filed its reply in which the following contentions are made:

- The Respondent submits that the present application filed under section 7 of IBC, 2016 is liable to be dismissed, as Applicant has not approached this Tribunal with clean hands and has suppressed material facts which are just and necessary for proper adjudication of dispute between the parties. The Respondent has been dealing with the Applicant since 1994. The Applicant provided credit facilities under consortium along with Bank of Baroda (Erstwhile Dena Bank) and Punjab National Bank (Erstwhile Oriental Bank of Commerce). The conduct of the Respondent's account has been regular since the inception of the group as it has been acknowledged in the 39th consortium Meeting dated 08.11.2017. The extracts are as under:-

“Mr. Goyal appraised the member banks that the group has never had any instance of irregularity/ non-serving of interest/ development with any member banks since inception of the group even for a single day. The same was acknowledged by the member banks”.

A copy of minutes of the consortium meeting held on 08.11.2017 is annexed with the reply as Annexure-2



- The Respondent in its reply further submits that the present application is liable to be dismissed, as the present application is based on concocted facts and false averments. On 21.01.2019 the Respondent had received a letter from Dena Bank, one of the consortium bank, vide letter no. DB/NP/2101/2018-19 intimating freezing of debit operation in the accounts of the Respondent and withdrawal of LC limits based on a letter received from Department of Financial Services basis alleged communication received from the Income Tax Department regarding irregularities in the credit facilities availed by the World Window Group. This decision was taken by the lenders without any discussions in a consortium meeting and without according any opportunity to the Respondent to present their position on the matter. It is pertinent to mention that the Department till date has not been able to provide any records to prove there was irregularity in credit facilities availed by the Respondent. The Forensic audit conducted by the lenders has also not thrown up any conclusive observations. On 23.01.2019, the Respondent had requested Dena Bank to allow operations in the account citing difficulties in conduct of its operations of the Company. Despite that In January 2019, Dena Bank had put a freeze on the debit operations in the accounts of the Respondent and



subsequently State Bank of India & Oriental Bank of Commerce had also put a stop to the operations in respective accounts. In end of January 2019, the Applicant arbitrarily froze operation in the accounts of the Respondent despite the discussions held in the 43rd Consortium meeting on 24.01.2019. The extracts are as under: -

“Mr. Piyoosh Goyal requested Dena Bank to allow operations in the account of the company as soon as possible since not allowing operations shall hamper the business as well as goodwill of the company and will also put pressure in the realizations of the outstanding dues of the company from the existing debtors in the absence of further supply of material). RM SBI also advised said that sudden freezing of operations in account may cause problems for the company. Mr. Goyal further apprised the bankers that since inception there have been no default or delay in payment by the company and the account had always been standard”.

- The Respondent submits that the Respondent had been regular with the payments before 21.01.2019 but the arbitrary action taken by the lenders had severely impacted the operations of the Respondent. On 05.03.2019 in the 44th Consortium meeting the consortium advised Respondent to open a TRA account and allow holding on operations as a way forward. The



Respondent informed that since the company could not provide further committed material to the customers as it could not open LCs, this led to impacting the business of the customers as well and the company's payment/ dues were held up. It is pertinent to mention that freezing of the Respondent debit operation severely impacted the operations of the company as the company's working capital position was highly strained enabling them to pay their dues on time. The Respondent has also been facing challenges in realization of debts from its existing customers since the Respondent has not been able to supply further materials to these customers following nonavailability of unutilized limits. The customers that the company deals with have a long term business relations, where continuity of trade is vital. No supply of material to these customers has in turn affected their businesses as well. They have created hurdles in realization of debtors. This has not only hampered the operations but has also affected the goodwill of the company.

- Further, the respondent in its reply states that the Petition and the alleged Statutory Notice deliberately failed to acknowledge and/or even mention various efforts made by the Respondent to resolve the current situation brought about by the arbitrary actions of the Applicant.



- The Respondent also submits that the business of the Respondent had come to standstill on account of the arbitrary actions of the lenders including the Applicant and the account turned NPA in May 2019.
- The Respondent also submits that on 07.08.2019 in joint lenders meeting of Respondent, the Applicant informed that the Forensic Auditor for the company to cover the period FY'17, FY'18 & FY'19 (3 years) was appointed and M/s Chaturvedi & company was appointed as the Forensic Auditors. In the same meeting a detailed presentation of resolution plan was given to the lenders. The resolution plan was prepared by the Respondent along with professional help of PwC. The resolution plan proposed to pay off the entire principle outstanding over a period of 7 years in 14 half yearly installments from various sources as per the contributions listed. No adverse findings were recorded by the Forensic Auditor and the issue was closed as per Applicant's satisfaction.
- The respondent submits that the Applicant as lead bank did not call any other meeting or initiate any discussion on resolution of the stress in the Respondent nor was the debit freeze removed despite repeated requests. No discussion was held by the Appellant with the consortium banks on initiating proceedings under IBC and it unilaterally initiated this proceeding by filing



the application on 15.01.2020 These actions of the Applicant are against the spirit of the consortium arrangement and the objectives of reviving the 8 Respondent.

- The respondent submits that on 18th August 2020 the Respondent sent a one-time settlement proposal to the Applicant giving its commitment to settle the lenders dues in the best possible manner despite the Corporate Creditor being severely impacted due to debit freeze of limits by the banks in January 2019 and the state of business. A copy of one-time settlement proposal to the Applicant dated 18.8.2020 was annexed with the reply as ANNEXURE-13.
3. We have gone through the documents filed by both the parties and heard the arguments made by the counsels. The applicant has claimed the default on part of the Respondent for the Loan amount of Rs. 516,17,95,970.00/- (Rupees Five Hundred Sixteen Crores Seventeen Lakhs Nineteen-Five Thousand Nine Hundred Seventy Only) as on 30.11.2019.
 4. Mere plain reading of the provision under section 7 of IBC and decision (supra) shows that in order to initiate CIRP under Section 7 the applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt.
 5. Vide daily order dated 23.11.2021, it has been noted that the Senior Counsel for Corporate Debtor, as per the instructions of

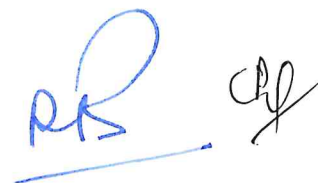
his client, has admitted the debt and default for the reason of submission of their OTS proposal.

6. In the light of the aforesaid facts, we find that the documents submitted by the Financial Creditor and the Corporate Debtor clearly substantiate the Financial Creditor's claim that the Corporate Debtor has indebted and defaulted the repayment of loan amount.
7. In light of the above discussion, after giving careful consideration to the entire matter, hearing the arguments of the parties and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.
8. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Sanjay Gupta, for appointment as Interim Resolution Professional having registration number IBBI / IPA-003 / IP-N00047/ 2017-18 / 10354. Mr. Sanjay Gupta has agreed to accept the appointment as the interim resolution professional and has signed a communication 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. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

9. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.
10. 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. The material on record clearly goes to show that respondent had availed the credit facilities and has committed default in repayment of the outstanding loan amount.
11. We are satisfied that the present application is complete in all respects 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.
12. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.
13. Mr. Sanjay Gupta, having registration number IBBI / IPA-003 / IP-N00047/ 2017-18 / 10354 is appointed as an Interim Resolution Professional.
14. 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.

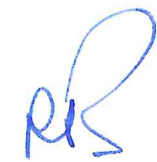
15. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(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.




16. 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.
17. 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

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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.

18. 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.

-Sd/-

(SHRI. RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-Sd/-

(SHRI. P.S.N. PRASAD)
MEMBER (JUDICIAL)