IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
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CP (IB) No. 34/CB/2021

In the matter of:

An application under section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

And

In the matter of:

STATE BANK OF INDIA, a banking company and a body corporate constituted under the State Bank of India Act, 1955, having its Head Office at State Bank Bhavan, Nariman Point, Madame Cama Road, Mumbai 400021 and one of its branches at SAMB-II, Kolkata, at 1, Middleton Street, Kolkata- 700071;

...Financial Creditor

Versus

ARSS Infrastructure Projects Limited, having [CIN: L14103OR2000PLC006230], a company incorporated under the provisions of Companies Act, 1956, and a company within the meaning of the Companies Act, 2013 having its Registered Office at Plot No. 38, Sector A Zone-A, Mancheswar Industrial Estate, Bhubaneswar- 751010, Odisha.

...Corporate Debtor

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

Appearances (through video conferencing)

For the Applicant	:	Mr. Subrat Mishra, Adv.
For the Respondent	:	Mr. Ratnanko Banerji, Sr. Adv. Mr. Saswat K. Acharya, Adv. Mr. S. Pholgu, Adv. Mr. S. Dash, Adv. Mr. A Agarwal, Adv. Mr. J. Sahoo, Adv.

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Mr. S. Agarwal, Adv.

Order reserved on: 23.11.2021

Order pronounced on: 30.11.2021

ORDER

Per: Satya Ranjan Prasad, Member (Technical)

1. The Court convened via video conference on 23.11.2021.

2. This application under section 7 of Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by State Bank of India, through its Authorised Officer and Constituted Attorney vide Power of Attorney dated 11.08.2021, thereby seeking initiation of Corporate Insolvency Resolution Process *(CIRP)* in respect of **ARSS Infrastructure Projects Limited** [CIN: L14103OR2000PLC0062302], a company having its Registered Office at Plot No. 38, Sector A Zone-A, Mancheswar Industrial Estate, Bhubaneswar- 751010, Odisha *(hereinafter referred as the Corporate Debtor).*

3. It is submitted in the Petition that the Corporate Debtor has been banking with the Financial Creditor and has been enjoying various credit facilities since the year 2000 and from time-to-time various credit facilities were sanctioned to the Corporate Borrower. In the process at the request of the Corporate Debtor the credit limits were enhanced/reviewed/renewed from time to time on various dates and subsequently on 03.12.2017 at the request of the Corporate Debtor, the Financial Creditor enhanced the credit facilities of the Corporate Debtor aggregating to ₹ 314.68 crores the break-up whereof is as follows:

   a) Working Capital limits for ₹ 263.00 crore;

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b) Term Lona-I for ₹ 1.68 crore;

c) Term Loan-II for ₹ 50.00 crore

The said credit facilities had been sanctioned on certain terms and conditions as envisaged in the said sanction letter dated 03.12.2007. In this connection, that the Corporate Debtor pursuant to its application for enhancement of limits and subsequent discussion with the applicant bank in anticipation of said enhancement passed a Board Resolution in its board meeting held on 27.11.2007 to avail the said credit facilities/enhanced credit facilities to be sanctioned by the Financial Creditor and to accept the terms & conditions thereof and thereby also authorized its director(s) to execute the necessary loan/banking documents to avail the said credit facilities from the Financial Creditor. In order to secure the said credit facilities, the Corporate Debtor and its directors and others executed necessary loan documents in favour of the Financial Creditor. The Corporate Debtor and its directors and guarantors executed the following document on 05.12.2007 *inter alia* for securing repayment of the credit facilities aggregating to Rs. 314.68 crores together with interest thereon at the contractual rates in favour of the Financial Creditor:

a) The arrangement/sanction letter dated 03.12.2007 duly acknowledged by the Corporate Debtor and its directors thereby accepting the terms and conditions of sanction where in the existing facility of ₹ 100.18 crore was enhanced to ₹ 314.68 crore.

b) Board Resolution of the Corporate Debtor dated 27.11.2007

c) C.1-Agreement for loan for overall limit executed on 05.12.2007 by Corporate Debtor

d) C.2-Agreement of hypothecation of Goods & Assets executed on 05.12.2007 by Corporate Debtor where by the Corporate Debtor hypothecated the movable assets as security.

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e) C.4 Deed of Guarantee for overall limit executed on 05.12.2007 by Corporate Debtor guaranteed due repayment of the credit facilities sanctioned in favour of the Corporate Debtor.

f) C.5-Letter regarding the grant of individual limits within overall limits executed/accepted on 05.12.207 by. Corporate Debtor.

g) Omnibus Counter Guarantee executed on 05.12.2007 by Corporate Debtor counter thereby guaranteeing their payment of the liability of Financial Creditor under the bank guarantees to be issued by Financial Creditor within the Bank Guarantee limit of ₹ 235.00 crores.

h) The Board Resolution of Corporate Debtor dated 27.11.2007.

4. It is stated that the erstwhile State Bank of Bikaner and Jaipur (hereafter SBBJ), which subsequently got amalgamated and merged into the Financial Creditor as sated hereinabove, had algo granted Credit Facilities aggregating to ₹ 40.00 crores to the Corporate Debtor initially on 20.08.2010. A break -up of the said credit facilities is as follows:

a. Working capital limits for ₹ 20.00 crores
b. Term Loan for ₹ 20.00 crores.

5. It is stated in the petition that in order to avail the said Credit facilities and to secure repayment thereof with interest at the contractual rates, the Corporate Debtor has attended several Board Meetings on different dates and passed and adopted the necessary resolution and the Corporate Debtor and its directors executed the required documents on different dates of meetings in order to secure repayment of the credit limits aggregating to different loan amount. In the meantime, the Financial Creditor submits, that at the request of the Corporate Debtor vide Letter dated 03.05.2010 to the Financial Creditor for formation of a consortium, a consortium was constituted comprising State Bank of India (i.e., the Financial Creditor herein as the lead Banker), erstwhile State Bank of Bikaner and Jaipur (which subsequently, got amalgamated

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and merged into the Financial Creditor as stated hereinabove) IDBI Bank Ltd. (IDBI), Punjab National Bank (PNB), ICICI Bank Ltd. (ICICI) & Bank of India (BOI). The said consortium was named as SBI Consortium. Upon formation of the SBI Consortium, joint documentation was done on 10th December 2010 whereby *inter alia* the terms and conditions of sanction of the credit facilities by the member banks was recorded.

6. It is stated that the Corporate Debtor has defaulted in repayment of its financial debt and is unable to pay its financial debts as defined under Section 3(6) of the IBC Code, 2016 is clear and evident from the facts stated hereinabove and the documents annexed hereto. The Corporate Debtor has committed default as defined under Section 3(12) of the IBC Code, 2016 with regard to the financial debt owed by it to the Financial Creditor with is in excess of ₹1 core and amounting to ₹2273,12,44,726.92 (Rupees Two Thousand Two Hundred Seventy-Three Crore Twelve Lakh Forty-Four Thousand Seven Hundred Twenty-Six Paisa Ninety-Two only) calculated up to 31.07.2021 including principal and interest amount as on 06.03.2020. Loan sanctioned/renewed as per the last sanction letter, present outstanding, date of default, interest, etc are given in the Annexure-98 of the petition.

7. The Financial Creditor has stated that he has filed this petition since company has a scope of revival by increasing its operations to full capacity and the Financial Creditor is of the view that if the Corporate Debtor is managed through expert person and under the guidance of the Committee of Creditors, there will be a very good chance for revival of the Company through the Resolution Plan as well be approved by the CoC and the same will lead to revival of the Corporate Debtor and also ultimately lead to speedy realization of the dues of the Financial Creditor and other lenders if the Corporate Debtor starts earning more profits under the guidance of the Insolvency Resolution Professional.

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8. It is stated in the petition that the Corporate Debtor failed to maintain financial discipline and committed default in repayment of the credit facilities availed of. Financial Creditor has stated that in spite of several oral and written reminders, the Corporate Debtor failed and neglected to fulfil the contractual terms and neglected to pay the outstanding dues towards the said Credit Facilities availed from the Financial Creditor, due to which the account of the Corporate Debtor was classified as NPA on 10.02.2012. It is further stated that Financial Creditor also issued a notice dated 28.03.2017 under section 13(2) of the SARFAESI Act, 2002. The Corporate Debtor is in default with regards to financial debt owed by it to the Financial Creditor amounting to ₹2273,12,44,726.92/- including principal and interest amount as on 31.07.2021.

9. It is stated in the petition that the Corporate Debtor had written a letter dated 15.01.2021 to the Financial Creditor thereby, admitting default in payment of interest and instalments and also admitting their liability as well as classification of the accounts as NPA. The instant application is, therefore, well within the prescribed period of limitation as the cause of action thereof is continuing.

10. The Corporate Debtor was duly served with notice and was afforded opportunity to file reply, but they failed to do so and learned counsel appearing for the respondent has admitted the default made by respondent.

11. We have also gone through the contents of the Petition the pleadings filed by the Financial Creditor along with Annexures, and the reply of the Corporate Debtor. We are convinced that the loan amount was duly disbursed to the Corporate Debtor. The requisites of an application under section 7 of IBC are available on record and duly proved.

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12. The Financial Creditor has taken consent from **Mr. Uday Narayan Mitra** an Insolvency Professional to become Interim Resolution Professional (IRP) of the Corporate Debtor in Form-2 and that no disciplinary proceedings are pending against him with the Board or IIIPICAI

13. We, therefore, consider it a fit case for admitting the petition, and for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor.

14. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders: -

ORDERS

a. The Petition bearing CP (IB) No. 34/CTB/2021 filed by State Bank of India the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against **ARSS Infrastructure Projects Limited** [CIN: L14103OR2000PLC0062302], the Corporate Debtor, is **admitted.**

b. There shall be a moratorium under section 14 of the Code.

c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.

d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

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e. **Mr. Uday Narayan Mitra (Reg. No. IBBI/IPA001/IP-P00793/2017-18/11360)** having address at 72/1, Dawnagazi Road, Bally,Kolkata,West Bengal ,711201 [email id: udaynarayanmitra@yahoo.co.uk is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to his possessing a valid Authorisation for Assignment (AFA) in terms of 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.

g. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.

h. The Financial Creditor shall deposit a sum of ₹3,00,000 (Rupees three lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

i. In terms of section 7(5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the

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Corporate Debtor and the IRP by Speed Post, e-mail or WhatsApp immediately, and in any case, not later than two days from the date of this Order.

j. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Odisha, Cuttack by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

15. **CP (IB) No. 34/CB/2021** to come up on 05.01.2022 for progress report.

16. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

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Satya Ranjan Prasad
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed this 30th day of November, 2021.

Ravijeet _P.S.