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**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, CHENNAI**

IBA/210/2019

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of L.S.P Agro Limited

Stressed Assets Stabilization Fund (SASF)

IDBI Tower, 3rd Floor, WTC Complex,
Cuffe Parade, Mumbai-400005.

---Financial Creditor

V/s

L.S.P Agro Limited

No. 22, Ponneri High Road,
Elanthan Cherry, Andarkuppam Check Post,
Manali New Town, Chennai-600103.

---Corporate Debtor

Order delivered on: 25.01.2020

Coram:

B. S.V. PRAKASH KUMAR, ACTING PRESIDENT

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri. E. Om Prakash, Sr. Advocate*
Shri. P. Elayarajkumar, Advocate
Shri. K. Ramesh, Advocate
For M/s. Ramalingam & Associates

For the Corporate Debtor : *Shri. R. Sankaranarayanan, Sr. Advocate*
For Shri. S. Praveen Kumar, Advocate

ORDER

Per: B. S.V. PRAKASH KUMAR, ACTING PRESIDENT

Order pronounced on: 25.01.2020

It is an Insolvency and Bankruptcy Application filed u/s.7 of

the Insolvency and Bankruptcy Code, 2016 ("the Code") by M/s.



Stressed Assets Stabilization Fund (SASF) (hereinafter referred as "Financial Creditor") for initiation of Corporate Insolvency Resolution Process (in short "CIRP") against M/s. L.S.P Agro Limited (hereinafter referred as "Corporate Debtor") on the ground the Corporate Debtor defaulted repayment of ₹11,05,92,701 as on 29.04.2019.

2. The Applicant case is that, IDBI had sanctioned a Rupee Term Loan of ₹650lacs to the Corporate Debtor based on Loan Agreement dated 06.03.1998, in which, ₹2,12,00,000 was disbursed on 21.03.1998, ₹38,00,000 on 23.03.1998, ₹2,00,00,000 on 20.08.1998, ₹1,00,00,000 on 6.11.1998, ₹85,00,000 on 17.12.1999, and ₹15,00,000 on 08.12.1999, totaling to ₹6,50,00,000, which is the loan agreement amount. In continuation of the same, IDBI had further sanctioned second term of loan to a tune of ₹425lacs (amount disbursed ₹400lacs) to the corporate debtor through a loan agreement dated 09.06.2000, and disbursed ₹2,00,00,000 on 16.06.2000, ₹1,50,00,000 on 23.08.2000 and lastly ₹50,00,000 on 28.09.2000 totaling to ₹4,00,00,000.

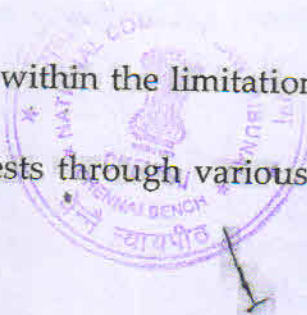
3. When this Corporate Debtor defaulted in servicing the loan, IDBI Bank issued a Recall Notice on 15.01.2002 to the Corporate



Debtor to repay the loan amount. When this Corporate Debtor failed to respond to the same, IDBI had filed an Original Application before the Hon'ble DRT-I, Chennai and the same was taken on file as OA78/2002. The said O.A. was transferred to DRT-II and was renumbered as OA172/2007, wherein the Corporate Debtor has entered into appearance and the same, as on the date of filing this case, was pending before DRT-II.

4. While this loan was pending for repayment, the Central Government of India, looking at IDBI corporation established under IDBI Act accumulating nonperforming assets and net NPAs standing at ₹9000Crores approximately on March 31, 2004, set up a special purpose vehicle (the applicant) in the form of a Trust with a corpus of ₹100Crores for acquiring the stressed assets of the IDBI. Subsequent thereto, a notification was issued by the Ministry of Home Affairs dated 24.09.2004 notifying this Applicant as a Financial Institution as defined u/s. 2(h) (2) of the Recovery Due to Banks and Financial Institution Act,1993.

5. To prove that, this debt is claimed within the limitation, the Corporate Debtor has filed Letter of Requests through various One



Time Settlement (OTS) proposals dated 10.09.2008, 27.01.2014, 27.05.2014, 08.07.2016, 30.10.2016 and 14.10.2017.

6. Despite several letters of request being issued for settlement to the Corporate Debtor, nothing fructified, and the Financial Creditor finally on 23.01.2019 filed this application before this Tribunal to initiate CIRP against the Corporate Debtor.

7. Pending this Section 7, IBC application before this Adjudicating Authority, the Original Application filed by the Applicant before DRT-II, Chennai has been allowed in favor of the Applicant and against the Corporate Debtor on 29.04.2019.

8. As against these submissions, the Corporate Debtor has stated that this Applicant has no locus to file this application on behalf of the Creditor i.e. Industrial Development Bank of India which came into existence in the year 1964, because this Act was repealed and the undertaking of Industrial Development Bank of India was vested with Industrial Development Bank of India Limited, a Company registered under the Indian Companies Act.

Thereafter on 02.07.2004, the Industrial Development Bank of India



Act and the IDBI as a Bank ceased to exist. Therefore, the Trust Deed dated 24.09.2004 is null and void. When it was ceased to exist on 24.09.2004, the Transfer Deed is said to have been executed in favor of this Applicant was as on 30.09.2004, such transfer could not be construed as valid transfer because as on the date of transfer, the transferee was not in existence. Since the Trust Deed executed by the Central Government of India (out of Tamil Nadu), it cannot be recognized as a Trust Deed enforceable within the State of Tamil Nadu.

9. That apart, since this Application has not been filed by all the trustees of the Trust, it cannot be considered as that this application has properly authorized by the Trustees of the Applicant herein. Since these Trustees have given power to some other to file this case, this application cannot be treated, for it has not been filed by the person properly authorized as per Trust Act.

10. The Corporate Debtor counsel has further stated that the loan is shown as taken in the year 2000 and admittedly this loan account being declared as NPA before 2001, and thereafter IDBI Bank having already filed OA 78/2002 before DRT-I, Chennai



(subsequently has become OA172/2007 before DRT-II, Chennai), the same being pending before DRT Chennai, the Corporate Debtor Counsel says this claim is hit by Limitation because pendency of Suits before some other forum will not save the limitation. Even assuming that this Applicant version is correct, the Corporate Debtor Counsel says, to say that the OTS letters given with a promise of repayment of OTS amount saves limitation, this Applicant has to show that acknowledgement or endorsement given by Corporate Debtor from the date of default until the date of OTS proposal was within limitation. He further says that unless, there is an acknowledgement of the claim in every three years from the date of loan acknowledgement, a claim cannot be considered as claim falling within the limitation period. The Corporate Debtor has relied upon various judgments to say that this application filed by this Trust is not maintainable to say that this IBA is not filed within the limitation as contemplated under Limitation Act, 1966.

11. For this amount not being paid, the Applicant has stated that the amount claimed to be defaulted in repaying by the Corporate Debtor is ₹215,80,69,513 comprising of principal, interest, further



interest and liquidated damages as on October 01, 2018.

12. On hearing both sides, now the points for consideration are:

a) Whether, this IBA is maintainable by the Applicant or not for the Corporate Debtor Counsel says the Applicant has no locus to file this Application.

b) Whether the claim is hit by limitation or not;

13. It is a Trust constituted by the Central Government of India for taking over the loan given by IDBI, this Trust being constituted by the Central Government of India for the purpose of acquiring the stressed assets of IDBI; it cannot be called as non-entity to file an application before this Bench or otherwise Adjudicating Authority. Even in Sec. 3(14) of the Code, any institution as the Central Government by notification specifies as the financial institution, such institution shall be treated as financial institution notified by the Central Government Authority. As to Authority to file this Application, for the signatory of this Application being validly authorized, the Corporate Debtor cannot take it as defense to say the person signed the application is not competent to file this Application.



14. It is not the first case filed by this Financial Institution, it has filed several cases against various borrowers before various Courts on the stressed assets transferred to it by IDBI. Today it cannot be said that this Applicant Trust cannot file this case on its own. As to transfer of the stressed assets of the IDBI Bank, it has been categorically shown in the Notification dated 29.09.2004 showing transfer of funds saved in the Repealed Act, therefore transfer of funds after repeal of enactment cannot make such transfer as invalid.

15. With respect to limitation, it is true that the Applicant has not placed any material showing that this debt was acknowledged in between 2004 and 2008. When three years have been passed after loan acknowledgement, such claim is to be treated as time barred debt. Any acknowledgement after expiry of three years, date of acknowledgement cannot be called as acknowledgement as stated under Sec.18 of the Limitation Act. In view thereof, we are of the view if we go by the acknowledgements, it is to be treated as time barred debt, but whereas the Hon'ble DRT-II having passed Final Order before adjudication of this matter, the Applicant having filed Debt Recovery Tribunal Order stating that this application stands



based on the Order issued by DRT-II, if not on the original claim, the Debt Recovery Tribunal order determining the claim, the claimant is entitled for an admission order over the decretal amount of ₹11,05,92,701 along with interest at the rate of 12% p.a. from the date of OA till the date of realization together with costs, therefore this application can be admitted based on the DRT Final Order filed by the Applicant.

16. Though, we are of the view that no acknowledgement is present to say that this debt is not time barred, for this Applicant has filed Final Order of the DRT before admission of the case by putting it to the notice of the Corporate Debtor, this Bench can even admit this Insolvency and Bankruptcy Application based on the direction given the DRT against the Corporate Debtor by taking the Order passed by the DRT for initiation of CIRP into consideration. For the Debt Recovery Tribunal having passed the order for payment, we safely infer that this debt is not time barred, therefore, we hereby admit this Insolvency Bankruptcy Application.

17. In Section 7 cases, if debt and default are proved as in existence, even if any difference to the quantum of the claim



mentioned in the application and the quantum of claim due and outstanding against the Corporate Debtor, for the Applicant having proved the existence debt and default, merely by seeing the difference in the quantum, the Petition shall not be dismissed against the Corporate Debtor. Moreover IRP/RP, as the case may be, is entitled to verify the claim and modify the same, therefore the difference in quantum cannot militate against the purpose and object of admission u/s.7 of the Code.

18. In view of the same, this application is hereby admitted by appointing Mrs. Sathyadevi Alamuri as Interim Resolution Professional by looking at the consent given by the Insolvency Professional with the directions as follows:

- I. that moratorium is hereby declared prohibiting all of the following actions, namely,
 - (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 a owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

II. That the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of Sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.



IV. That the order of moratorium shall have effect from 25.01.2020 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of IBC, as the case may be.

V. That the public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints Mrs. Sathyadevi Alamuri, as Interim Resolution Professional (IRP), having Regn.No. [IBBI/IPA-002/IP-N00071/2017-18/10205], No.23 lake Area, 3rd Cross Street, Rear Entrance, Opp. Corporation Zonal Office, Nungambakkam, Chennai-600034, E-Mail: satyadevifcs@gmail.com, Mobile No: 9444373373 with his consent to carry the functions as mentioned under the Insolvency and Bankruptcy Code. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.



19. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, Corporate Debtor and Interim Resolution Professional by way of e-mail.

-SD-

(S. VIJAYARAGHAVAN)
MEMBER (Technical)

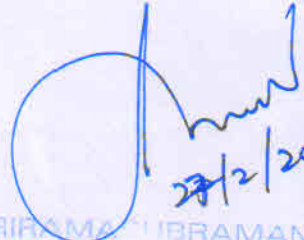
TJS/SR

-SD-

(B.S.V. PRAKASH KUMAR)
ACTING PRESIDENT



Certified to be True Copy


27/2/2020
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ASSISTANT REGISTRAR
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CORPORATE BHAVAN, 3rd FLOOR
29, RAJAJI SALAI, CHENNAI-600001.