

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

CP (IB)/252/CHE/2022

*(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 **SRI LAKSHMI SARASWATHI SPINTEX LIMITED***

IDBI BANK LIMITED,

Having registered office at IDBI Tower,
WTC Complex, Cuffe Parade,
Mumbai 400 005

and having Branch Office at NPA Management Group,
115, Anna Salai, P.B. No.805, Saidapet,
Chennai – 600 015.

... Applicant/Financial Creditor

-Vs-

SRI LAKSHMI SARASWATHI SPINTEX LIMITED

Having its registered office at No.9, (Old No.8),
Crescent Road, Shenoy Nagar,
Chennai – 600 030.

...Respondent/Corporate Debtor

Order Pronounced on 15th June 2023

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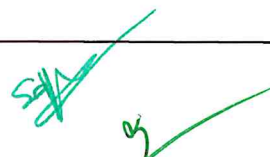
**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Financial Creditor : Ms.Pavitra Sundarrajan. Advocate
For Corporate Debtor : Mr.Jagannathan Krishnan, Advocate*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by **IDBI BANK LIMITED**
(hereinafter referred to as 'Financial Creditor') on 07.08.2022 under
Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code)





r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against Sri Lakshmi Saraswathi Spinners Ltd (hereinafter referred to as 'Corporate Debtor'), ⁴ For initiating CIRP against the Corporate Debtor.

2. Part-I of the Application describes that the Applicant is a bank. One Shri. Mohanasundaram M, DGM has affirmed the Affidavit. The Letter of Authority is annexed at page no.221.

3. Part II of the Application describes that the Respondent Sri Lakshmi Saraswathi Spinners Ltd was incorporated on 20.12.2010 with CIN No.U17120TN2010PLC078474 having registered office at No.9, (Old No.8), Crescent Road, Shenoy Nagar, Chennai – 600 030, within the jurisdiction of this Tribunal.

4. In Part-III of the Application, the Applicant has proposed the name of CA.M. Suresh Kumar, FCA, Reg.No.IBBI/IPA-001/IP-P00110/2017-2018/10217 (AFA valid till 20.11.2023) as the Interim Resolution Professional (IRP).

5. Part-IV of the Application reveals that the total amount of default as claimed by the Applicant herein is Rs.19,26,88,818.22 as on 30.04.2022 with further interest at contractual rates with effect from 01.05.2022.

6. Financial Creditor submits that the Corporate Debtor had approached them seeking financial assistance by way of working



capital facilities and the Financial Creditor vide its sanction letter dated 23.02.2015 granted the working capital facilities with an overall limit of Rs.15 Crore.

7. The terms of the financial assistance were modified vide letter dated 21.07.2015.

8. In consideration of availing these facilities, the Corporate Debtor had executed the following:

a) Facility Agreement dated 27.07.2015 for the working capital facilities of Rs. 15 crores agreeing to repay the same on terms and conditions contained therein.

b) A Deed of Hypothecation dated 27.07.2015 wherein first charge is created on the current assets and second charge is created on all movable fixed assets (both present and future) in favour of the Financial Creditor.

c) An Omnibus Counter Guarantee Agreement dated 27.07.2015 in favour of the Financial Creditor thereby guaranteeing the due repayment of cash credits extended to Corporate Debtor by the Financial Creditor.

d) Memorandum of deposit of title deeds before the Sub Registrar, Avinasi, Coimbatore under document No. 9395/2015 whereby the factory premises of the corporate debtor was created as mortgage on 12.03.2015 and deposited



by way of constructive delivery on 25.08.2015 with Bank of Maharashtra to secure loan aggregating to a sum of Rs 1,85,00,000/ on first pari passu charge basis. Further the corporate debtor again created mortgage by way of constructive delivery in respect of the above mentioned immovable properties with Bank of Maharashtra on 27.08.2015 as security for the due repayment of working capital facilities of Rs. 15 crores by the Corporate Debtor to financial creditor on second charge basis.

e) Shri C.S. Aditya Praveen created mortgage by deposit of title deeds in respect of his immovable properties on 29.03.2014 and deposited by way of constructive delivery on 25.08.2015 with Bank of Maharashtra to secure loan aggregating to a sum of Rs.25,95,00,000/- on first *pari passu* charge basis. Further the corporate debtor again created mortgage by way of constructive delivery in respect of the above-mentioned immovable properties with Bank of Maharashtra on 26.08.2015 as security for the due repayment of working capital facilities of Rs. 15 crores by the Corporate Debtor to financial creditor on second charge basis and registered as Memorandum of title deeds before the sub registrar, Anna Nagar, Chennai under Document No. 3714/2015.



f) Shri S. Naveen Chandra created mortgage by deposit of title deeds in respect of his immovable properties by depositing the title deeds of the properties with the Financial Creditor on 24.08.2015 as security for the due repayment of the facilities by the Corporate Debtor to the Financial Creditor on exclusive charge basis and subsequently registered Memorandum of Deposit of Title Deeds before the sub registrar, Kodaikanal, as under Document No. 1719/2015.

9. It is stated that the Corporate Debtor again approached the Financial Creditor for renewal of the credit facilities already sanctioned to it and the Financial Creditor vide letter dated 22.07.2016 renewed/revised the existing credit facilities of Rs.15 crores as overall limit comprising of EPC/PCFC/FBP /FBD/FBN/EBR of Rs. 5 crores, letter of credit (foreign/inland) of Rs. 10 crores, (BG/BC/TCBG- inner limit to LC Rs.10.00 crores, LER-Treasury Limit- sub limit to LC Rs.1.50 crore) on various terms and conditions. The Financial Creditor vide letter dated 04.09.2017 also renewed/revised the existing credit facilities of Rs.15 crores overall limit comprising of EPC/PCFC/FBP/ FBD/FBN/EBR of Rs. 7.50 crores, (Cash credit-inner limit to EPC/PCFC/FBP/FBD/FBN/EBR Rs.1.00 Crore), Letter of credit (foreign/inland) of Rs. 7.50 crores, (BG/BC/TCBG-inner limit to LC Rs.7.50 crores, LER-Treasury Limit- sub limit to LC Rs. 1.50 crores) on various terms and conditions.



10. The corporate debtor again approached the Financial Creditor for modification of certain conditions of the credit facilities already sanctioned to it vide its letter dated 04.09.2017, 31.07.2018, 22.08.2018 and 22.11.2018 and the Financial Creditor vide its sanction letter dated 31.07.2018 reduced/revised the existing credit facilities from 15 crores to Rs.12 crores as overall limit comprising of EPC/PCFC/PSC /PSCFC of Rs.5.00 crores, (Cash credit- sub limit to EPC/PCFC/PSC/PSCFC Rs.5.00 Crores), CC of Rs. 7 Crores on various terms and conditions which forms an integral part of aforesaid loan/security documents.

11. It is stated that the Financial Creditor vide its letter dated 22.08.2018 accepted the additional securities offered by the Corporate Debtor, the facilities of Rs.12 crores shall be secured additionally by an exclusive charge on the property of Shri S. Naveen Chandra & Shri G.Nithyanandan. Shri.G. Nithyanandan created mortgage by deposit of title deeds over his immovable properties by depositing the title deeds of his properties in favour of with the Financial Creditor on 22.10.2018 as security for the due repayment of the facilities by the Corporate Debtor to the Financial Creditor on exclusive charge basis and subsequently registered Memorandum of



Deposit of Title Deeds (Document No. 13089/2018) before the Sub Registrar, Avadi, under document No. 13089/2018.

12. It is stated that the Corporate Debtor had been irregular in maintaining its account and did not comply with the terms and conditions of the sanction and that of the facilities availed. Therefore, the Financial Creditor was constrained to issue Recall Notice on 12.03.2019, recalling the entire amounts due under the loans and calling upon the Corporate Debtor to pay Rs.12,26,12,548.57/- due as on 31.01.2019 together with interests, further interest, liquidation damages etc. However, the Corporate Debtor did not pay the said amount legitimately due to the Financial Creditor.

13. The Financial Creditor submits that the account of the Corporate Debtor was classified as a non-performing asset on 28.02.2019 as per the norms prescribed by the Reserve Bank of India. It issued a statutory notice under Section 13(2) of the Securitization and Reconstruction of the Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI) on 28.03.2019 to the Corporate Debtor and its guarantors calling upon them to pay the sum of Rs. 12,11,91,521.57/- due as on 31.01.2019 together with interest, further interest and liquidation damages etc. However, the Corporate Debtor did not pay the amount legitimately due to the Financial Creditor.



But had submitted a settlement letter dated 12.06.2019 along with cheque and also submitted another letter for settlement of loan on 28.07.2022.

14. Date of default is mentioned as 28.02.2019 and the account was classified as NPA on 28.02.2019. It is stated that the Corporate Debtor had provided a settlement letter dated 12.06.2019 along with cheque and another letter dated 28.07.2022 for settlement attached at page nos.214 & 215 of the Applicant's typeset. Part V of the Application provides details of various securities which are held by the Financial Creditor.

15. It is submitted that OA 654/2019 has been filed before Debt Recovery Tribunal – II, Chennai for recovery of dues from the Corporate Debtor and the Guarantors, which is pending adjudication.

16. The Applicant has filed record of default with information utility. The same is appended at page no.209 of the Applicant's typeset.

17. Affidavit of Service was filed by the Applicant under S.R.No.88 dated 09.01.2023. Perusal of the same reveals that notice sent by the Financial Creditor was delivered to the Corporate Debtor on 02.01.2023.

18. The matter was listed on various dates before this Tribunal. It is seen from the various interim orders that the Counsels appeared



on behalf of the Respondent and took time to file reply.

Order dated 31.03.2023 records as under:

"Despite time given to the Respondent, counter has not been filed"

Order dated 09.05.2023 records as under:

"Vide order dated 31.01.2023, last opportunity was granted to the Respondent to file reply/counter. Despite notice, till date, reply/counter has not been filed. Right to file reply/counter accordingly stands closed.

Counsel for the Respondent states that they want to settle the matter, however, due to administrative reasons, talks could not take place.

Counsel for the Applicant states that though OTS proposal was received by the Respondent, but, no amount has been deposited by the Respondent. He further states that the proposal has so far not been rejected."

19. It is seen that several opportunities were given to the Respondents to file reply in the matter. However, no reply was filed and no OTS was sanctioned to the Respondent till date of hearing.

20. We have heard Ld. Counsel for the Applicant and the Respondent and perused the records. It is not in dispute that loans were extended to the Corporate Debtor by the Financial Creditor herein. It is also not in dispute that the account of the Corporate



Debtor has become NPA and that the amount of default is in excess of Rs.1 crore.

21. It is also seen from page nos.214 & 215 of the Application that the Corporate Debtor had requested OTS by two letters dated 12.06.2019 & 28.07.2022. The OTS letters extend the limitation as held by the Hon'ble Supreme Court in the matter of **Dena Bank Vs C. Shivakumar Reddy and Anr. (2021 SCC Online SC 543)**, as under: -

"140. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.

141. Moreover, a judgment and/or decree for money in favour of the Financial Creditor, passed by the DRT, or any other Tribunal or Court, or the issuance of a Certificate of Recovery in favour of the Financial Creditor, would give rise to a fresh cause of action for the Financial Creditor, to initiate proceedings under Section 7 of the IBC for initiation of the Corporate Insolvency Resolution Process, within three years from the date of the judgment and/or decree or within three years from the date of issuance of the Certificate of Recovery, if the dues of the Corporate Debtor to the Financial Debtor, under the judgment and/or decree and/or in terms of the Certificate of Recovery, or any part thereof remained unpaid."

22. In view of the foregoing we conclude that there is a debt and there is a default which is more than Rs.1 crore. Accordingly, the Respondent Corporate Debtor Sri Lakshmi Saraswathi Spinners Ltd



is accordingly ordered to be admitted to Corporate Insolvency Resolution Process.

23. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority,



sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

24. However, during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;



(b) a surety in a contract of guarantee to a corporate debtor.

25. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

26. The Financial Creditor has proposed the name of CA.M. Suresh Kumar, **E-mail ID:- (msureshkumar@icai.org) , Reg. No. [IBBI/IPA-001/IP-P00110/2017-2018/10217]** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 30.11.2023.

27. **CA.M. Suresh Kumar** is appointed as the IRP is directed to take charge of the Corporate Debtor's management immediately.

The IRP is also directed to cause public announcement as



prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

29. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

30. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the order also be



forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

31. Accordingly, the present petition stands **admitted**.



- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)



- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)