

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 662-663 of 2022**

**In the matter of:**

**Suzlon Synthetics Ltd.**

Having its office at J & k Textile Park,  
Govindsar Indl. Area, Hatli More,  
Kathua-184101. J&K

... **Appellant**

**Versus**

**Stressed Asset Stabilization Fund**

Having its registered office at:  
3<sup>rd</sup> Floor, D wing, IDBI Tower, WTC Complex,  
Cuffee Parade, Colaba, Mumbai-400005.

... **Respondent No. 1**

**I C Textiles Limited**

Through Mr. Sandeep Khaitan,  
29, Strand Road, Mohta House,  
First floor, Kolkata-700001.

... **Respondent No. 2**

**Present**

**For Applicant: Ms. Purti Gupta, Advocate.**

**For Respondents: Mr. P.K. Mullick, Advocate for R-1  
Mr. Utsav Mukherjee, Advocate for R-2**

**JUDGMENT**  
**(Date: 11.11.2022)**

**[Per.: Dr. Alok Srivastava, Member (Technical)]**

The present appeal has been filed under Section 61 of the Insolvency & Bankruptcy Code, 2016 (in short 'IBC') by the Appellant who is aggrieved by the Order dated 14.03.2022  
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(hereinafter called the Impugned Order) passed by the 'Adjudicating Authority' (National Company Law Tribunal, Kolkata Bench) in CP (IB) No. 1567/ KB/ 2019.

**2.** The Appellant company, which claims to be a financial creditor has assailed the Impugned Order by which the Adjudicating Authority has admitted Section 7 application filed by the Financial Creditor- Stressed Asset Stabilization Fund (in short 'SASF') against the 'Corporate Debtor'- *IC Textiles Limited*.

**3.** The Appellant's case is that he is a secured financial creditor of the corporate debtor, who is assignee of the debts of IFCI owed to the corporate debtor and is pari passu charge holder of the said debts. He has claimed that Respondent No. 1- SASF, which is a financial creditor, had entered into a 'One Time Settlement' (in short 'OTS') and the corporate debtor had paid a substantial amount to SASF in pursuance of the OTS and only an amount of Rs. 88.75 Lakhs remained due and payable by the corporate debtor to SASF under the OTS, and therefore, SASF wrongfully revoked the OTS and subsequently filed an application under Section 7 of the IBC, which was admitted by the Impugned Order.

**4.** The Appellant has stated that the provision of the IBC cannot be used for recovery of pending amount as has been held by Hon'ble Supreme Court in many judgments, and therefore, the *Company Appeal (AT) (Insolvency) No. 662-663 of 2022*

Section 7 petition in the present case is *mala-fide* and filed only for the purpose of recovery and not for insolvency resolution of the corporate debtor. He has also stated that by bringing the corporate debtor under Corporate Insolvency Resolution Process (in short 'CIRP') the other financial creditors of the corporate debtor, including the Appellant Company, are being defrauded as they will not be able to get repayment of their due debts from the corporate debtor.

**5.** We note that the Appellant- Suzlon Synthetics Limited has filed this appeal claiming to be a financial creditor who is adversely affected by the admission of Section 7 application. The Appellant was not a party before the Adjudicating Authority, but since it has claimed to be adversely affected by the Impugned Order, we decided to hear this appeal.

**6.** The Learned Counsel for the Appellant has argued that the financial creditor- SASF has stated an exorbitant debt amount of Rs. 39,30,000,000 (Thirty Nine Crores and Thirty Lakhs Only), in Part IV of the Section 7 application in Form-1, whereas in reality there was an OTS entered into between the corporate debtor and SASF, and in pursuance of this OTS a substantial amount was paid by the corporate debtor to the financial creditor-SASF and

only an amount of Rs. 88.75 Lakhs remained due and payable to the financial creditor-SASF.

**7.** The Learned Counsel for the Appellant has further submitted that the Impugned Order in paragraph 56 notes that the Applicant/SASF has claimed of sum of Rs. 10,82,94,94,335/- as due and payable by the corporate debtor and if such a large claim is considered for SASF, the amounts claimed by the other financial creditors including the Appellant would become very small in proportion and thus, the Appellant along with other financial creditors would suffer a huge financial loss in case the CIRP were to proceed against the corporate debtor. She has contended that, therefore, this is not a fit case for initiating CIRP of the corporate debtor, and for SASF should take action against the corporate debtor for recovery of the said amount of Rs. 88.75 lakhs.

**8.** The Learned Counsel for the Respondent No. 1- SASF has argued that the Appellant has no locus standi to file this appeal as the section 7 petition was filed by SASF and the CIRP has been initiated after admission of the said Section 7 application. He has further argued that in the CIRP against the corporate debtor, in due course claims of all creditors will be obtained which will be duly scrutinized by IRP after every creditor submits proof with regard to its claim when the Appellant will also get an opportunity

to file his claim before the IRP which will be duly scrutinized and finalized and thus no prejudice will be caused to the financial interest of the Appellant. He has also argued that the promoters/ erstwhile director/ guarantors of the corporate debtor have not filed any appeal against the Impugned Order when it is the corporate debtor against which the Impugned Order has been passed and the Appellant appears to be acting as a front for the promoters of the corporate debtor.

**9.** The Learned Counsel for the Respondent No. 1/ SASF has also submitted that the Section 7 application is not barred by limitation and the Adjudicating Authority has categorically dealt with the aspect of limitation in paragraphs 48 to 57 of the Impugned Order, and held that the application was well within limitation. He has referred to the balance sheets of the corporate debtor for FY-2003-04, 2012-13, 2015-16 and 2018-19 and the prosecution of the BIFR case by the corporate debtor between the period 24.09.2004 to 01.12.2016 to claim that this period is exempted for limitation purposes and the balance sheet entries provide acknowledgement of the debt of Respondent No. 1 and in view of all these facts the Section 7 application is well within limitation.

**10.** The tribunal put a fair question to the Learned Counsel for the Appellant as to how the Impugned Order, which is against the corporate debtor adversely affects the interest of the Appellant. The Learned Counsel for the Appellant has replied that the only reason why such an order of admission of Section 7 application and initiation of CIRP against the corporate debtor affects the Appellant and other financial creditors is because the Adjudicating Authority has, in paragraph 56 of the Impugned Order also decided on the amount due and payable to Respondent No. 1-SASF as Rs. 10,82,94,94,335/-, whereas in view of the fact that the corporate debtor has actually paid a substantial amount by way of partial payment of the OTS amount to Respondent No. 1-SASF, and its liability is only to the tune of Rs. 88.75 Lakhs. She has submitted that if such a huge claim of Respondent No. 1 is taken in the CIRP, the relative claims of other financial creditors including the Appellant would become proportionately very small which would adversely affect the financial interest of the Appellant and other financial creditors and Respondent No. 1 would also get a disproportionately high voting share.

**11.** We reproduce paragraph 56 of the Impugned Order hereunder, wherein, as claimed by the Appellant, the Adjudicating Authority has given views on the claim of Respondent No. 1:-

*“56. Further, the Applicant claims that as on 1<sup>st</sup> June 2019, a sum of Rs. 10,82,94,94,335/- is due and payable by the Corporate Debtor. However, the Corporate Debtor has only admitted to its liability to the tune of Rs. 88,75,000/-. In this regard, we would like to mention that even without delving into the calculation of the amount stipulated by the Applicant, it is evident from the admission of the Corporate Debtor that a financial debt under section 5 (8) of the Code is due to the Financial Creditor. The exact amount of such financial debt, in the instant case, becomes immaterial as long as the amount admitted by the Corporate Debtor itself is more than the minimum amount stipulated under Section 4(1) of the Code, i.e., Rupees one lakh, at the relevant time.”*

**12.** A perusal of the above-stated paragraph 56 of the impugned order makes it clear that the Adjudicating Authority has only recorded the claim of the Applicant and has only unambiguously stated that it is not delving into the calculation of the amount stipulated by the Applicant in Section 7 application, and further the exact amount of financial debt is immaterial as long as the amount admitted by the corporate debtor is more than the minimum amount stipulated under Section 4(1) of the IBC i.e. Rs. 1 Lakh at the relevant time of filing Section 7 application.

**13.** We also look at the scheme provided in the IBC as to how the claims are to be invited, received and finalized after due verification by the IRP/RP. Sub-sections (e) and (g) of sub-section (2) of Section 25 of the IBC stipulate that the Resolution Professional has to maintain an updated list of claims and prepare information memorandum in accordance with Section 29. Further the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process For Corporate Person) Regulations, 2016 lays down the modality of invitation of claims by the IRP/RP, starting with public announcement as per Regulation 6 and filing of claims by operational and financial creditors as per Regulations 7 & 8. Thereafter, Regulation 10 and Regulation 12 provide the procedure for substantiation of claims and submission of proof of claims and Regulation 13 relates to verification of claim and Regulation 14 relates to determination of the amount of claim. Thus, we see that there is a very clear, unambiguous and rational procedure outlined in the IBBI (Insolvency Resolution Process For Corporate Person) Regulations, 2016 regarding receipt of claims and thereafter their verification and finalization.

**14.** In the light of detailed provisions in Chapter IV (Proof of Claims) in the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process For Corporate Person) Regulations, 2016 as explained in the aforementioned paragraphs, the invitation, *Company Appeal (AT) (Insolvency) No. 662-663 of 2022*

submission and verification of claims of operational and financial creditors, workmen and employees and other creditors is quite clear. In so far as the facts included in the Section 7 application in Form 1 application is concerned, the financial creditor as to provide information about the debt which is due and payable and also the date and record of default. There is no requirement in the adjudication of Section 7 application to calculate and fix the exact amount of debt in default of repayment. It is only to be seen whether the amount in default is more than the minimum or threshold value that is prescribed in Section 4 (1) of the IBC.

**15.** In view of the aforesaid discussion, and on perusal of paragraph 56 of the Impugned Order, we find that Appellant has not been able to make a case that the Adjudicating Authority had fixed a precise amount of the claim of Respondent No. 1-SASF and thereby caused adverse impact on the financial interest of Appellant. For reasons discussed in detail in earlier paragraphs. We find no substance in the Appeal and dismiss it.

**16.** We also note that this Appeal has been filed by the Appellant- Suzlon Synthetics Limited, claiming to be adversely affected by the Impugned Order. It is a fact that the Section 7 admission order is directed at the corporate debtor. When we look at the reasons and grounds raised by the Appellant in this

appeal, it does not become apparent as to why the Appellant had filed this appeal. Finding no ostensible and good reason for the Appellant to assail the Impugned Order, we feel that this action of the Appellant has caused totally unnecessary wastage of the time available to this Bench for consideration of cases under IBC, when there are many cases waiting for their turn to be heard in appeals. We are of the view that there should be some deterrent to discourage such frivolous litigation. We, therefore, impose a cost of Rs. 2 lakhs on the Appellant which should be deposited in the Prime Minister's Relief Fund within 15 days of this order. The details regarding deposition of Rs. 2 lakhs shall be provided to the Registry of this Tribunal within one month of this order.

17. The Appeal is disposed of with the above-mentioned directions.

[Justice Rakesh Kumar Jain]  
Member (Judicial)

[Dr. Alok Srivastava]  
Member (Technical)

**New Delhi**

**11<sup>th</sup> November, 2022**

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