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**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATHI BENCH**

**PRESENT: HON'BLE JANAB MOHAMMED AJMAL - MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 12.12.2019 AT 10.30 AM**

TRANSFER PETITION NO.	TCP (IB) NO. 62/7/AMR 2019
COMPANY PETITION/APPLICATION NO.	CP(IB) NO 415/7/HDB/2018
NAME OF THE COMPANY	Torus India Ltd
NAME OF THE PETITIONER(S)	Stressed Assets Stabilization Fund
NAME OF THE RESPONDENT(S)	Torus India Ltd
UNDER SECTION	7 OF IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
V V S W Raju	Advocate	9866446467	
K. Sheeya		8897172671	

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

Counsel for the Petitioner (FC) is present. None appeared for the Respondent (CD).  
Order pronounced vide separate sheets. The Company Petition is admitted and CIRP ordered.

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**MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT HYDERABAD**

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**TCP (IB) No. 62/7/AMR/2019  
[CP (IB) No. 415/7/HDB/2018]**

**IN THE MATER OF TORUS INDIA LIMITED**

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

Between:

**Stressed Assets Stabilisation Fund**  
Registered Office at IDBI Tower,  
3<sup>rd</sup> Floor, D-Wing,  
WTC Complex, Cuffe Parade,  
Mumbai – 400 005.

**... Petitioner**

and

**Torus India Limited**  
Registered Office at: 1<sup>st</sup> Floor, B Block,  
Venkat Enclave, Tikkil Road,  
Vijayawada,  
Andhra Pradesh – 520 010.

**... Respondent**

**Date of Order: 12.12.2019**

**CORAM:**

**Hon'ble Janab Mohammed Ajmal, Member Judicial**

**Appearance:**

For Petitioner : Mr. V.V.S.N. Raju, Mr. Praveen Kumar  
Jain and Ms. K. Shreya, Advocates

For Corporate Debtor : Mr. R. Raghunandan Rao, Sr. Counsel  
along with Mr. G. Bhupesh, Advocate.

**ORDER**

The Financial Creditor (FC) of the Corporate Debtor (CD) seeks Corporate Insolvency Resolution Process (CIRP) against it in this Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (the Code).

2. The brief facts leading to the petition are follows.

The Respondent was originally incorporated on 28.09.1984 under the Companies Act, 1956 as a Private Limited Company under the name Kinnera Steels Private Limited. Subsequently it was converted into a Public Limited Company w.e.f. 06.06.1996. Later the name of the Company was changed to the present name w.e.f. 31.12.1999. The Company *inter alia* carried on the business to establish own or acquire ferrous and non-ferrous metal melting furnaces, rolling and re-rolling mills and to carry on business as traders, manufacturers of ferrous and non-ferrous metal ingots, blooms, billets, slabs, grinding media, sheets, cold rolled steel strips and trips of all kinds. It was also engaged in the business of sale, purchase, import, export, deal in aforesaid goods and materials, etc. It approached the Industrial Development Bank of India (IDBI) for grant of credit facilities for financing its projects. The IDBI granted two Term Loan facilities i.e. Term Loan Facility-1 on 19.09.1997 for Rs. 4,80,00,000/- and Term Loan Facility-II on 07.12.2001 for Rs. 2,26,00,000/- totalling Rs. 7,06,00,000/-. The Respondent defaulted in repayment. The IDBI by a registered transfer deed dated 30.09.2004 transferred the loans and underlined security interest to the present Petitioner. IDBI meanwhile issued a Notice of Sale dated 06.09.2017 and Possession Notice dated 10.08.2017 against the scheduled properties of the Respondent Company. Against which the

Respondent Company filed S. A. No. 338/2017 before the DRT, Visakhapatnam. The DRT, Visakhapatnam by order dated 16.07.2018 set aside the Notice of Sale dated 06.09.2017 and Possession Notice dated 10.08.2017 and gave liberty to the lender to initiate SARFAESI proceedings against the Respondent afresh in accordance with law. Later, the IDBI filed an Application namely O.A. No. 339/2017 seeking recovery of debt before the Debt Recovery Tribunal-I (DRT), Hyderabad and the same is pending for adjudication. Since the Respondent committed default the petitioner came up with the present application on 23.07.2018 seeking CIRP.

3. The Respondent appeared in response to the notice and contested the petition. It admitted to have availed various credit facilities from IDBI and hence the petitioner, by way of Term Loans on execution of loan and security agreements. The acquisition of the stressed assets in respect of several hundred companies including that of the Respondent is by means of a single 'Transfer Deed' entered into between IDBI and the Applicant on 30.09.2004. The execution of mortgage or creation of charge over the Plant and machinery is invalid, the reason being that the properties are situated in a Scheduled Area of erstwhile Khammam District (presently Bhadrachalam-Kothagudem District) is prohibited by virtue of Section 3 of A.P. Scheduled Areas (Land Transfer) Regulation, 1959. The assets created do not have any marketable title as the same cannot be transferred by anybody including the respondent Company. Thus, the Applicant cannot claim to be a 'financial creditor', since no debt is legally assigned or transferred to them, and hence the Applicant has no locus standi to file this petition. The project of the Respondent Company started in 2002 and was incurring all overheads and interests on the term loans that have gone into creating the facilities, all the three lenders played the game as if

nobody was responsible for providing the working capital. Thus, unfortunately the unit could not get working capital limits and ultimately went for BIFR. The BIFR declared the unit as sick and advised it to submit rehabilitation proposal. The proposal was submitted several times but was not acceptable to the Petitioner. While the rehabilitation proposal was pending before BIFR, the Respondent submitted an OTS proposal by way of payment of Rs. 3.15 crores payable in 3 years. However, the Petitioner never did anything in this direction and other lenders declined to agree for settlement. As a result no rehabilitation package was in place and the settlement with the Petitioner was kept in abeyance till the closure of BIFR in the year 2016. Therefore, the debt claimed by the petitioner would not be classified as due and payable. The Petition therefore deserves to be rejected. The Petition filed before the NCLT, Hyderabad Bench was transferred to this Tribunal, after its establishment.

4. Basing on the rival pleadings and the fact that the debt is admitted the following issue arises for consideration.

i) Whether the Petition is barred by limitation?

**Issue No. i:**

5. The following facts are not in dispute. The Respondent had availed credit facilities amounting to Rs. 7,06,00,000/- (Rupees Seven Crores and Six Lakhs only) between 19.09.1997 and 07.12.2001. The IDBI transferred the loans and the underlined security to the petitioner under a registered deed dated 30.09.2004. Meanwhile it had moved an application in O.A. No.339/2017 before the Debts Recovery Tribunal-I (DRT-I) Hyderabad for realisation of loan amount with interest and the same is pending.
6. The only defence taken by the Respondent is that the debt being barred by limitation an application under section 7 of the Code

could not be maintained. The 'debt' defined under section 3(11) of the Code means, a liability or obligation in respect of the claim which is due from any person and includes a financial debt. 'Default' defined under section 3 (12) of the Code means, non-payment of debt when whole or any part or instalment of the debt has become due and payable and is not paid by the Corporate Debtor. The loans advanced to the Respondent were secured by mortgages. The Respondent Company moved S.A.No.338/2017 before the DRT, Visakhapatnam against the Notice of Sale dated 06.09.2017 and Possession Notice dated 10.08.2017 issued by the Petitioner. The DRT, Visakhapatnam vide order dated 16.07.2018 set aside the Notice of Sale and Possession Notice issued by the Petitioner to the Respondent and liberty was given to the Petitioner to initiate SARFAESI proceedings against the Respondent Company afresh in accordance with law. Thus it is clear from the order that there is a debt due from the Respondent Company to the petitioner. There is no quarrel that the account of the Respondent had been declared NPA.

7. The present petition was filed on 23.07.2018 within three years of the date of the order of the DRT, Visakhapatnam. A Petition under section 7 can be filed within 3 years as provided under Article 137 of the Limitation Act. The same has been held by the Hon'ble Apex Court in Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Limited (Civil Appeal No. 4952 of 2019 decided on 18.09.2019). Admittedly the Respondent had committed default in payment of the debt. In view of the orders of the DRT, Visakhapatnam the debt became 'due and payable' subsequent to 16.07.2018. Therefore, the defence contention that the debt was time barred cannot be accepted. The issue is answered in the negative.

8. In an application under Section 7 of the Code the reason for the inability of the Respondent in paying off the debt is not required to be looked into by the Adjudicating Authority. What is required to be seen is the default. In this case the default has been satisfactorily proved. Thus the petition needs to be admitted. The Petitioner has suggested the name of an Interim Resolution Professional (IRP) and has also enclosed his written consent. No disciplinary proceeding is pending against the proposed IRP as ascertained from the website of the IBBI. Hence ordered.


### ORDER

The Company Petition is admitted on contest.

- i. The Corporate Insolvency Resolution Process of the respondent shall commence from this date and shall be completed within 180 days hence, as provided under Section 12(1) of the Code.
- ii. Shri U. Balakishna Bhat, Chartered Accountant [Registration No. IBBI/IPA-001/IP-P00658/2017-2018/11107] having office at A-005, Western Edge-II, Off Western Express Highway, Borivali East, Mumbai – 400 066; Mobile No. 86520 00506; e-mail ID: ubbhat@radissonindia.in is appointed as the Interim Resolution Professional.
- iii. He is directed to take charge of the Respondent/Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of IBC and Rules made thereunder.
- iv. Moratorium under Section 14 of the IBC in respect of the Respondent is hereby declared.
- v. The Directors, Promoters or any other person associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under

section 19 of the Code for effective discharge of his functions thereunder.

- vi. The Registry is directed to communicate the order to the Petitioner/Financial Creditor and the Respondent/Corporate Debtor.
- vii. The Registry shall send a copy of this order to the Registrar of Companies, Andhra Pradesh for effecting necessary alterations in the status of the Respondent/Corporate Debtor in relevant records for general information.
- viii. The petitioner/OC and the Registry are also directed to send the copy of this order to IRP for necessary compliance.
- ix. There would however be no order as to costs.



**MOHAMMED AJMAL**  
**MEMBER JUDICIAL**