


**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATHI BENCH**

PRESENT: HON'BLE JANAB MOHAMMED AJMAL - MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 28.10.2019 AT 10.30 AM

TRANSFER PETITION NO.	TCP (IB) NO. 40/7/AMR 2019
COMPANY PETITION/APPLICATION NO.	CP(IB) NO 325/7/HDB/2018
NAME OF THE COMPANY	Sri Vasavi Industries Ltd
NAME OF THE PETITIONER(S)	Stressed Assets Stabilization Fund
NAME OF THE RESPONDENT(S)	Sri Vasavi Industries Ltd
UNDER SECTION	7 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
V V S N Raju	Adv	9866446467	

Counsel for Respondent(s):

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

ORDER

Counsel for the Petitioner is present. None appear for the Respondent.

Orders pronounced vide separate sheets. The Company Petition is admitted.


MEMBER JUDICIAL

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

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**TCP (IB) No.40/7/AMR/2019
[CP (IB) No.325/7/HDB/2019]**

IN THE MATER OF SRI VASAVI INDUSTRIES 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,
3rd Floor, D-Wing,
WTC Complex, Cuffe Parade,
Mumbai – 400 005.

... **Petitioner**

and

Sri Vasavi Industries Limited

Registered Office at: Village V.R. Agraharam,
Rajam Mandal,
Srikakulam District,
Andhra Pradesh – 532 127.

... **Respondent**

Date of Order: 28.10.2019

CORAM:

Hon'ble Janab Mohammed Ajmal, Member Judicial

Appearance:

For Petitioner : Mr. V.V.S.N. Raju, Advocate

For Corporate Debtor : Ms. B. Aparna, Advocate.

ORDER

1. 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.

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The Respondent originally incorporated on 22.01.1985 under the Companies Act, 1956 as a Private Limited Company under the name Sri Vasavi Steel Industries Private Limited. Subsequently it was converted into a Public Limited Company w.e.f. 19.04.1994. Later on the name of the Company changed to Sri Vasavi Industries Limited on 15.01.1998. The Company *inter alia* carried on the business as Manufacturers, Producers, Re-Rollers, Importers, Exporters, Dealers, either retail or wholesale of Steel, Copper, Aliminum, Ferrous and Non-Ferrous metals etc. It approached the Industrial Development Bank of India (IDBI) for grant of credit facilities for financing its projects. The IDBI granted three Term Loan facilities i.e. Term Loan Facility-1 on 08.10.1997 for Rs.1450 Lakhs; Term Loan Facility-II on 30.08.2001 for Rs.1350 Lakhs and Term Loan Facility-III on 03.03.2001 for Rs.1200 Lakhs totalling Rs.4000 Lakhs. The Respondent defaulted in paying back the loans. The IDBI by a registered transfer deed dated 30.09.2004 transferred the loans and underlined security interest to the present Petitioner. IDBI meanwhile filed an Original Application namely O.A. No.153/2004 on seeking recovery of debt before the Debt Recovery Tribunal-I (DRT-I), Hyderabad. Later, the Petitioner was substituted upon transfer of the debt to it. Respondent had been acknowledging the debt due to the IDBI and the present petitioner vide its Annual Report for the years from 1003-04 to 2011-2012 and the default committed in repayment of the debt for 12 years. The learned DRT-I, vide order dated 06.11.2017 allowed the application *ex parte* against the Respondent *inter alia* for recovery of Rs. 58,30,83,741/- (Rupees Fifty Eight Crores Thirty Lakhs Eighty Three Thousand Seven Hundred and Forty One only) with *pendente lite* and future interest as ordered by the DRT-1 from 30.06.2004 till realisation. Since the Respondent committed default the petitioner came up with the present application on 05.06.2018 seeking CIRP.

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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. It committed default for reasons beyond its control. Default resulted due to extraneous factors namely, slump in the Ferro Alloys industry, due to shortage of electricity and devastation caused by natural calamity in the form of cyclone 'Hud Hud' in October 2014. The Respondent established a new unit in West Bengal because of the power incentive given by the then West Bengal Government. The Ferro Alloys industry is highly power intensive with more than 60% of working capital going towards power purchase. Thus, unfortunately the unit could not get working capital limits and ultimately went for BIFR. The BIFR declared the unit as sick and advised the Corporate Debtor to submit rehabilitation proposal. The proposal was submitted several times but was not acceptable to the Petitioner. The issue got abated while pending before BIFR only after passing of the IB Code. While the rehabilitation proposal was pending before BIFR, the Respondent submitted an OTS proposal by way of payment of Rs.50 crores towards full and final settlement of dues. The Respondent paid a sum of Rs.25 Crores and failed to pay the balance amount of Rs.25 Crores. The Petition is otherwise barred by limitation in view of Section 238A of the Code. Therefore, the debt claimed by the petitioner would not be classified as due and payable. In this connection reference is made to Andhra Pradesh Power Coordination Committee & Ors v. Lanco Kondapally Power Limited & Ors., (citation not given). The Petition therefore deserves to be rejected. The Petition was transferred to this Tribunal, after its establishment.

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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. 40,00,00,000/- (Rupees Forty Crores only) between 08.10.1997 to 30.03.2001. 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.153/2004 before the Debts Recovery Tribunal-I (DRT-I) Hyderabad for realisation of loan amount to the tune of Rs. 58,30,83,741/- (Rupees Fifty Eight Crores Thirty Lakhs Eight Three Thousand Seven Hundred and Forty One only) with interest. The learned DRT by its order dated 06.11.2017 allowed the Application *ex parte* against the Respondent and ordered recovery of the amount with *pendent lite* and future interest @ 18% per annum from 30.06.2004 till realisation. According to the Petitioner the amount stood at Rs. 499,80,36,157 (Rupees Four Hundred Ninety Nine Crores Eighty Lakhs Thirty six Thousand One Hundred and Fifty Seven only) as on 01.04.2018.

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 IDBI, predecessor of the petitioner moved the

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DRT-I, Hyderabad in the year 2004 within 3 years or 12 years, as the case may be from 01.04.2002. There is no quarrel that the account of the Respondent had been declared NPA. The Application before the DRT-I, Hyderabad was within time. The DRT-I, Hyderabad by order dated 06.11.2017 allowed the Application and ordered recovery of the debt with interest, *pendent lite* and future, at the rate of 18% per annum.

7. In view of the order of the DRT-I the debt became due and payable w.e.f. 06.11.2017. The present petition was filed on 05.06.2018 within three years of the date of the order. An Application 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-I, Hyderabad the debt became 'due and payable' subsequent to 06.11.2017. 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 Girish Juneja, Chartered Accountant [Registration No. IBBI/IPA-001/IP-P00999/2017-2018/11646] having office at 22, Dignity Apartments, Bon Bon Lane, 7 Bungalows, Versova, Andheri (W), Mumbai – 400 053; e-mail ID: junejagirish31@gmail.com is appointed as the Interim Resolution Professional (IRP).
- 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 petitioner/OC and the Registry are also directed to send the copy of this order to IRP for necessary compliance.


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MEMBER JUDICIAL