

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No.166/7/HDB/2019

U/s. 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 Suryajyothi Spinning Mills Limited.

Between:

State Bank of India
Stressed Assets Management Branch,
5th Floor, Rear Block of HMWS&SB Compound,
Khairtabad, Hyderabad – 500004,
Telangana.

...Petitioner/
Financial Creditor

And

M/s. Suryajyothi Spinning Mills Limited
Regd. Office at Burgul Village,
Farooqnagar Mandal,
Mahabubnagar district - 509202.
Corporate Office at 105, 7th Floor,
Surya Towers, Sardar Patel Road,
Secunderabad – 500 003.

...Respondent/
Corporate Debtor

Date of Order: 05.09.2019



Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/Counsel Present:

For the Petitioner/Financial Creditor:

Dr. K.V.Srinivas and Ms. M. Aishwarya, Counsels.

For the Respondent/Corporate Debtor:

Mr. Sharad Sanghi, Mr. Kumar Anurag Singh, Mr. G.Jagadish & Ms.
A. Sandhya Rani, Counsels.

Per: Dr. Binod Kumar Sinha, Member Technical.

ORDER

1. The present petition is filed by 'State Bank of India' (hereinafter referred to as '**Petitioner/Financial Creditor**') under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **IB Code, 2016**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Suryajyothi Spinning Mills Limited (hereinafter referred to as '**Respondent/Corporate Debtor**').
2. Brief facts of the present case are as under:
3. The Petitioner/Financial Creditor, is a Public Sector Bank incorporated under the State Bank of India Act, No.23 of 1955, having its Central Office at Mumbai, whereas the Respondent/Corporate Debtor is a limited company incorporated under the Companies Act, 1956, on 23.05.1983 and having its registered office at Mahabubnagar district, Telangana. The main objects of the Corporate Debtor are to carry on the business of Cotton Silk, Rayon, Flax, Jute, Wollen Merchants, Cotton ginnners and Doublers, Carpet makers, jute manufacturers, Spinning, Weaving, dyeing etc.,

It is stated that on approach by the Corporate Debtor, the Financial Creditor and other consortium lenders have sanctioned various fund based and non-fund based limits. The sanctioned limits were drawn by the Corporate Debtor on various dates which were renewed from time to time by the Petitioner/Financial Creditor under consortium banking arrangement. Subsequently, due to various reasons, the Corporate Debtor had failed to repay the same and renewed limits as per the terms and conditions and subsequently, in accordance to RBI guidelines, the CDR empowered group approved a restructuring package in terms of which, the then existing financial limits were restructured and additional



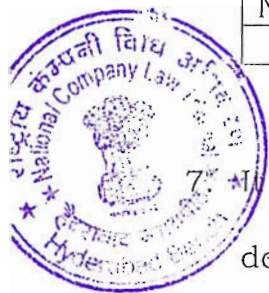
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financial assistance was extended as set out in the approval letter dated 28.02.2013 and later on the Financial Creditor along with other lenders entered into a Master Restructuring Agreement (hereinafter referred as **MRA**) dated 27.03.2013 with the Corporate Debtor.

5. It is stated that the Corporate Debtor, from time to time created security by way of Hypothecation of its movable properties and mortgage of its immovable properties situated at its manufacturing units as security for due repayment of the existing loan facilities. The details of security created by the Corporate Debtor and particulars of the immovable properties pertaining to its manufacturing units are fully described under schedule – II of the aforesaid MRA.
6. It is stated that as on the last date of sanction i.e., 15.01.2015, the limits sanctioned, as per the MRA, by the Petitioner together with other consortium banks were as under:

Type of Limit	Amount in ₹ Crores	
	Applicant	Consortium
Fund Based		
- Working Capital	84.00	121.40
- Term Loan	62.34	150.85
Non Fund Based	15.38	30.84
Total	161.72	303.09

It is stated by the Financial Creditor that the Corporate Debtor had defaulted in the implementation of restructured outstanding limits sanctioned under CDR mechanism sanctioned under MRA dated 27.03.2013. It has been defaulting in the payment of interest and instalments of principal on loans, to the Applicant. Later on, the Corporate Debtor had defaulted in the repayment of the loan amounts and failed to meet the terms and conditions of the MRA and in-spite of several reminders it did not regularize the over-due amounts. The Financial Creditor had declared the account as NPA on 28.02.2017 with



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effect from 30.03.2013, in accordance with the RBI guidelines. The Respondent had also defaulted in complying with several other terms and conditions of the Agreement. The operations of the Respondent have not been in line with the projections drawn out in the proposal and restructuring proposals sanctioned by the Financial Creditor under CDR Mechanism as per the RBI guidelines. In view of the defaults committed by Respondent as stated above, the Applicant had issued notices to the Respondent for initiation of legal proceedings for recovery of the outstanding amounts.

8. It is stated that the Financial Creditor had issued Demand Notice dated 15.03.2017, u/s. 13(2) of the SARFAESI Act for recovery of a sum of ₹ 186,03,70,537.73/- as on 28.02.2017 and the Corporate Debtor having received the above demand notice dated 15.03.2017, instead of clearing the entire dues within a period of 60 days, issued reply/objections dated 12.05.2017. Further, the Financial Creditor has issued a reply dated 24.05.2017 to the Corporate Debtor for the aforesaid objections.

9. It is stated that as on 24.12.2018, the amount in default was ₹ 340,22,70,058.86/- (Rupees Three Hundred Forty Crores Twenty Two Lakhs Seventy Thousand and Fifty Eight Rupees and Eighty Six Paise Only) plus applicable penal interest and penalties from there on till the repayment of the outstanding amounts. The working for default amount is at page no.1033 in vol. IV of the petition.

10. The Petitioner/ Financial Creditor in support of its claim has placed several documents evidencing the default as stated below:

- a) Copy of the Restructuring proposal approved under CDR Mechanism dated 28.02.2013;
- b) MRA Agreement dated 27.03.2013;
- c) TRA Agreement dated 27.03.2013;




- d) Security Trustee Agreement dated 27.03.2013;
- e) Deed of hypothecation dated 27.06.2013;
- f) Loan documents dated 27.03.2013 executed by the Managing Director and Executive Director of the Corporate Debtor;
- g) Sanction letter dated 15.01.2015;
- h) Notice u/s. 13(2) of SARFAESI Act, 2002 dated 15.03.2017;
- i) Certificate under banker's book of evidence Act issued by the Financial Creditor.

11. Respondent filed counter stating that the financial facilities are were made available by the consortium of three banks namely SBI, IOB and IDBI Bank. Therefore, the filing of the present Petition under IBC by a single financial creditor independently by coming out of the said consortium of the banks is not sustainable under law.

12. It is stated that the present petition has been filed only by the State Bank of India and it has claimed the entire amount with respect to all the consortium banks with a claim of ₹340,22,70,058.86/- is illegal and arbitrary.

13. It is stated that the Petitioner has applied for restructuring of the loan in the month of March, 2015 and for grant of additional facilities, but this Respondent received a letter dated 22.01.2016 with respect to the renewal of working capital facilities. However, the Petitioner bank has classified the account of this Respondent Company as NPA as on 30.03.2013. Therefore, as the renewal of the facilities has been done by the Petitioner bank on 02.01.2016 the classification of the account of the Respondent Company as NPA is absolutely illegal and arbitrary and result of the same is that the account of this Respondent Company remains substandard but not an NPA.



14. It is stated that the present state of affairs are outcome of the MRA or the CDR package not being fulfilled by the banks themselves and further as the loan has been sanctioned by the consortium of three banks, single member of the consortium i.e., M/s. State Bank of India cannot come under the definition of the "financial creditor".

15. In reply to para 3 of the petition, it has been stated that it is false and baseless to state that this Respondent Company has failed to repay the sanctioned limits and that as per the RBI guidelines, the CDR package has been granted to this Respondent Company by restructuring of the package and additional financial assistance was also extended as per the approval letter dated 20.02.2013. The nature of the MRA is not disputed by the Respondent Company, however it needs to be mentioned that it is the petitioner company and every member of the consortium banks should themselves have to know the clauses of the MRA. As per the Corporate Debtor, it is due to sheer negligence of the consortium of banks that the Corporate Debtor has incurred losses.

16. It is further stated by the Respondent that the Petitioner/Financial Creditor made false and baseless averments that it has defaulted in the repayment of the loan amount and failed to meet the terms and conditions of the MRA.

17. Petitioner filed reply to the counter dated 05.08.2019 stating that objections made by Corporate Debtor with regard to Limitation, Lis-pendens etc., are neither tenable nor applicable in this matter. The petitioner submitted that the account of the Respondent was declared as NPA on 28.02.2017 (effective from 30.03.2013) upon failure of approved restructuring proposal of the Corporate Debtor as per RBI norms and since then it is a continuing default and continues to remain so till the recovery proceedings were initiated by the Financial Creditor under the



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provisions of law and even as on today. An extract of the Annual Report for the financial year 2017-18 of the Corporate Debtor downloaded from the MCA portal has also been filed by the Petitioner, wherein it was admitted that "All the loan accounts with SBI, SBH, IDBI and IOB have become non-performing due to non-payment of interest and Principal dues. The respective banks have initiated recovery action and filed application in DRT Hyderabad demanding the full amount and accordingly the total dues have shown under current maturities".

18. Reiterating above, the counsel for Petitioner prayed to allow the instant Petition.
19. The instant case was filed on 25.01.2019 in the registry and after scrutiny the same was listed for hearing on 19.03.2019. This Adjudicating Authority directed to issue notice to Respondent for appearance and making submissions, if any, and for filing proof of service and the matter was adjourned to 11.04.2019.
20. During the hearing held on 12.04.2019, the proxy representing the Corporate Debtor was present and did not file proof of service of notice to the other side and a fresh notice was ordered and matter was adjourned to 30.04.2019. On 30.04.2019, upon representation by proxy, the matter was further adjourned to 13.05.2019.
21. During the hearing held on 13.05.2019, upon no representation by the Respondent, this Adjudicating Authority directed the Petitioner to carry out notice by way of newspaper publication for appearance of the Respondent and the matter was adjourned to 10.06.2019.
22. On 02.07.2019, the counsel for the respondent appeared before this Adjudicating Authority and time was enlarged for filing Counter and the matter was adjourned to 26.07.2019 and thereafter to 29.07.2019 and on 31.07.2019 for filing counter.



23. During the hearing held on 31.07.2019, the counsel for the Respondent filed its counter and prayed time for making submissions stating that senior counsel could not attend as he was held up at Hon'ble High Court. Counsel for the Petitioner made submissions. At request of Respondent's Counsel, time was enlarged till next day for hearing reply submissions. The matter was adjourned to 01.08.2019.

24. During the hearing held on 01.08.2019, the Counsel for Financial Creditor made his submissions, the Counsel for the Respondent made submissions in part. For further hearing, at his request, the matter was adjourned to 05.08.2019.

25. During the hearing held on 05.08.2019, the counsel for the Financial Creditor filed reply to the counter filed by the Corporate Debtor and also some documents and copy of the same was furnished to the other side. Counsel for the Respondent prayed time for verification of documents and for making submissions. Considering the request, time was enlarged and both sides were directed to make submission on next date of hearing and the matter was finally adjourned to 13.08.2019.

26. During the hearing held on 13.08.2019, counsel representing both sides were present and were heard extensively. The counsel for Financial Creditor also filed written submissions. However, the Respondent's counsel sought time till 14.08.2019 for filing written submissions. The matter was reserved for orders.

27. Heard both sides and perused the record including the written submissions filed by the Financial Creditor. No written submissions filed by the Corporate Debtor.

28. It is the case of the Petitioner that it has provided various fund based i.e., working capital and term loan and Non-fund based facilities to the Corporate Debtor for which the Corporate Debtor was liable to repay and




has defaulted in the same. The Respondent nowhere in its counter denied the amount in default but, has stated various reasons as such as (i) The financial facilities were made available by consortium of three banks but the present Petition is filed by single Financial Creditor, (ii) the present petition has been filed only by the SBI but it is claiming the entire amount with respect to all the consortium banks with a claim for ₹340,22,70,058.86/- etc.,

29. The contention of the Corporate Debtor regarding filing of the present petition by the single Financial Creditor, though the Financial Facilities were made available by the three Banks is an untenable ground for rejection of the instant Petition, as Section 7 of IBC, 2016 provides for independent right to every Financial Creditor either by itself or jointly to file an Application for initiation of CIRP against the Corporate Debtor. Thus the said contention of Corporate Debtor is not maintainable.

30. With regard to the contention of the Corporate Debtor regarding claim of the entire amount of Consortium by the present Financial Creditor, it has been clarified by the petitioner/Financial Creditor that the claim made in the instant petition is only with respect to the financial debt owed by the Corporate Debtor to the Petitioner bank and not to other members of the consortium as reflected in page no.1033 (Volume – IV) of the petition.

31. In the instant Petition, the Petitioner has proved its case by placing documentary evidence viz., Copies of Facility Agreements and sanction letters, date and details of all disbursements of the facilities etc., and copies of entries in Bankers Book in accordance with the Bankers Books Evidence Act, 1891 (18 of 1891) which proves that a default has occurred for which the present Corporate Debtor was liable to pay..

32. Hon'ble Supreme Court in the matter of *INNOVENTIVE INDUSTRIES LTD. Vs. ICICI BANK & ANR.*, held that;



“.....The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under subsection (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

33. Further, this Adjudicating Authority deems it appropriate to rely on the Judgement of NCLT, Mumbai Bench, in the matter of *Bell Finvest (India) Limited Vs Luthra Water Systems Private Limited*; which has been upheld by Hon’ble NCLAT and Hon’ble Supreme Court, wherein it is observed as under;

“Further that, as far as the question of churned amount is concerned we are of the opinion that, this Tribunal is not to decide the quantum of amount in default but, this Tribunal is merely to decide whether there is Default under S. 3(12) of the Code or not? And as already said there is Default under S. 3(12) of the Code on the side of the Corporate Debtor. We are of the opinion that, the quantum of claimed amount is to be decided by the Resolution Professional, so appointed”.

Even in the present case the quantum of amount claimed by the Petitioner is to be decided by the Resolution Professional and not by this Adjudicating Authority.

34. In the present case, this Adjudicating Authority is satisfied with the submissions put forth by the Petitioner/Financial Creditor. Further, the Financial Creditor has fulfilled all the requirements as contemplated under IB Code in the present Company Petition and has also proposed



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the name of IRP after obtaining his written consent in Form-2. In view of the above, this Adjudicating Authority is inclined to admit the petition.

35. The instant petition is hereby admitted and this Adjudicating Authority Orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed as per the time line stipulated in section 12 of the IB Code, 2016, reckoning from the day this order is passed.
36. This Adjudicating Authority hereby appoint Mr. Ram Ratan Kanoongo (IRP) as the name proposed by the Financial Creditor and his name is reflected in IBBI website. He has also filed his written consent in Form - 2. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date of this order, and call for submissions of claim in the manner as prescribed.
37. This Adjudicating Authority hereby declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. we order to prohibit all of the following, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*



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d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

38. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

39. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

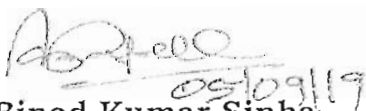
40. The Petitioner/FC as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

41. The Registry is also directed to communicate this Order to the Financial Creditor and the Corporate Debtor.


42. The address details of the IRP are as follows:-

Mr. Ram Ratan Kanoongo
C/o. Headway Resolution and Insolvency Services Pvt Ltd.,
(IPE) 1006, Raheja Centre, Free Press Marg,
Nariman Point, Mumbai - 400 021.
Reg. No: IBBI/IPA-001/IP-P00070/2017-18/10156.

43. The present Petition is hereby admitted.


Dr. Binod Kumar Sinha
Member Technical

Rathi/Rk


K. ANANTHA PADMANABHA SWAMY
Member Judicial

प्रमाणित प्रति
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केस संख्या

CASE NUMBER.....

निर्णय का तारीख

DATE OF JUDGEMENT.....

166/7/AMB/2019.

2/9/19