

Judgement

PER: SH. L. N. GUPTA, M(T) & Dr. P.S.N. PRASAD, M(J)

Stressed Assets Stabilization Fund (for brevity, the **“Applicant”**) through its Manager, Smt. Shreshtha Paul has filed the present application 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 with a prayer to initiate the Corporate Insolvency process against M/s Dwarikadhish Spinners Limited. (for brevity, the **“Respondent”**).

2. The Respondent namely, M/s Dwarikadhish Spinners Limited. is a Company incorporated on 19.07.1984 under the provisions of the Companies Act, 1956 with CIN U17115PB19884PLC019259 having its registered office at 1, Village Kouli Majra, Tehsil Derabassi, Lalru, Distt. SAS Nagar- 140501, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 40,00,00,000/-, and the Paid-up Share Capital is Rs.32,11,00,000/- as per the Master Data.

3. It is averred by the Applicant that the Respondent/ Corporate Debtor was sanctioned two Term Loans on 05.04.1999 and 21.12.2000 for an amount of Rs. 1060 Lakhs. The loans were secured by mortgage of the land and building of the Respondent situated at village Kouli Majra near Lalru Tehsil Derabassi, and also by Hypothecation of all movable properties of the Respondent. The total debt amount disbursed to the Respondent is to the tune of Rs. 10,60,00,000/-.

4. The detailed particulars of the unpaid Financial Debt including the total amount of default and the date of default as claimed by the applicant in Part IV of the application reads thus:

| | | |
|---------|--|---|
| 2. | AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM) | ₹154,33,12,274 with interest up to 01.09.2018 The loan wise amount due with dates of default is given below in the table: The workings for computation of amount and days of default in tabular form is annexed herewith as Annexure A-9 (35) |
| LOAN | PRINCIPAL AND INTEREST AS ON 01.09.2018 | DATE OF DEFAULT |
| LOAN-I | ₹80,92,42,379.00/- | 01.01.2003 |
| LOAN-II | ₹73,40,69,895.00/- | 01.01.2003 |

5. As per Part IV of the application (ibid), the Applicant has claimed an outstanding “financial debt” of Rs. 154, 33,12,274/- and relied on 01.01.2003 as the “date of default”. It has been stated that the Account of the Respondent Company was classified as NPA on account of default on 01.04.2003. It is further submitted that on 15.12.2003, the Applicant Bank issued the recall notice and on 11.07.2006 & 25.08.2009, the Applicant Bank issued the Notice under Section 13(2) of SARFESI Act, calling upon the CD and other obligors to pay the defaulted amount.

6. To substantiate its plea, the Applicant has relied on the following documents placed on record:

- (i) Copy of OA No. 325 of 2010 pending before DRT-II Delhi;
- (ii) The last Balance Sheet and Annual Return for the year ending March 31, 2013 filed by the CD with ROC and of March 31, 2016;

- (iii) Loan Agreements dated 13.05.1999, and 09.01.2001;
- (iv) Sanction Letters dated 05.04.1999, and 21.12.2004;
- (v) The Demand Notices under Section 13(2) SARFAESI Act dated 11.07.2006, and 25.08.2009;
- (vi) Copy of the BIFR Order dated 18.11.2013;
- (vii) Letter of withdrawal consent for SOCA.

7. Based on the facts described above and the documents, the Applicant has prayed for the initiation of CIRP against the Respondent Company.

8. On issuance of notice, the Respondent filed its Reply dated 21.01.2019 and Written Submissions dated 03.03.2022 stating mainly the following:

8.1 The First Motion application was filed by the Applicant vide CP NO. 51 of 2008 before the Punjab & Haryana High Court under Section 391-394 of the Companies Act 1956 seeking sanction of the Scheme of Arrangement between the Respondent/CD, the Creditors, including the Financial Creditor/Applicant herein. The meetings of the creditors of the Respondent were convened under the due procedure of law, under the chairmanship of the court appointed Chairman i.e. Ms. Ritu Singh, Advocate. On 20.06.2008, the financial creditor wrote a letter to the court appointed Chairman Ms. Ritu Singh, showing their intention to agreeing to the option III of the Scheme of Arrangement, whereby the Financial Creditor was to receive Rs.459.36 lacs with the terms agreed.

8.2 On 25.07.2008, the first motion petition was approved by the Hon'ble Punjab & Haryana High Court. Hence, on 30.07.2009 second motion petition bearing No. 89 of 2009 was filed, which was allowed by the Hon'ble Punjab &

Haryana High Court vide order dated 23.07.2019, approving the Scheme and with directions that the scheme will be binding on the Petitioner Company and all its stakeholders. Hence, the same is also binding on the Financial Creditor/Applicant. A Copy of the order the Hon'ble Court dated 23.07.2019 was sent to the Applicant by speed post on 23.09.2019 to choose an option, if the Applicant wants to change its option from Option III to any other option.

8.3 The present application before this Tribunal is filed by the Applicant during the pendency of the Scheme of Arrangement before the Hon'ble Punjab & Haryana High Court, for an amount more than what has been agreed by the Applicant in the proceedings of the Scheme of Arrangement. The amount agreed by the Applicant was Rs.459.36 lakhs only, whereas the Applicant has filed this present petition U/s 7 of the IBC 2016, claiming the principal amount of Rs. 10.60 Crore, which is more than double the amount agreed. The Applicant has deliberately concealed the fact that such a scheme of arrangement is pending before the Hon'ble Punjab & Haryana High Court.

8.4 Since the Scheme of Arrangement duly approved by the shareholders, creditors and by the Hon'ble Punjab & Haryana High Court is available for the implementation, the Respondent humbly prays that the debt of the Applicant be settled in terms of the scheme of arrangement as approved by the Hon'ble Punjab & Haryana High Court and admission of the present petition will be against the interest of the stakeholders including the shareholders.

9. In rebuttal, the Applicant has filed a Rejoinder dated 07.03.2019 to the reply filed by the Respondent; and written submissions dated 15.02.2021 & 16.05.2024 stating mainly the following:

9.1 The fact that the Company Petition no. 89 of 2009 is pending before the Hon'ble Punjab and Haryana High Court, does not prevent the Applicant/Financial Creditor to approach this Tribunal due to reasons i.e., (a) the jurisdiction of the Company Court in relation to proceedings under IBC is expressly barred by virtue of Section 63 & 231 of IBC. Further, by virtue of Section 64(2) of IBC, the Company Court is prohibited from injuncting NCLT from exercising its jurisdiction under IBC. By virtue of Section 238 of IBC, it overrides the provisions of the Companies Act, 1956; (b) there is no bar on the NCLT from proceeding with the IBC application while a Company Petition is pending in a company court as the proceedings before the NCLT are independent proceedings under IBC as held by the Hon'ble Supreme Court in Civil Appeal No. 818/2018 in the matter of **Forech India Ltd. V/s Edelweiss Assets Reconstruction Co. Ltd.**, which must be decided in accordance with the provisions of the Code.

9.2 The CP no. 89 of 2009 vide order dated 23.07.2019 was allowed by the Hon'ble Company Court after remaining pending for ten years. Being aggrieved from the order, the Applicant has filed a Petition in the Company Court for recalling of the said order; and vide order dated 27.11.2019, the operation of the order dated 23.07.2019 has been suspended till the parties are heard. Thus, the CP regarding the Scheme of Arrangement (**hereinafter called as "SOA"**) is still pending for approval. Then, aggrieved from this order, the Respondent has preferred an Appeal CAPP-14-2022 before the Hon'ble Division Bench of Punjab & Haryana High Court, in which an interim order dated 22.09.2022 has been passed staying the operation of the recalling order dated 2nd of August, 2022.

9.3 It is contended by the Petitioner that the Respondent in its submissions related to the SOA has conveniently concealed the defaults committed by it towards compliance/ adherence to the terms and conditions of the said Scheme. It is further contended by the Petitioner that the Respondent, with mala fide intentions after a lapse of considerable time and after withdrawal of consent by the lenders, had filed an Application U/s 391(2) for approval of SOA.

9.4 The Respondent (CD) appeared and filed Reply dated 21.01.2019 and the Applicant (FC) has filed a Rejoinder to the said Written Reply of CD on 07.03.2019 vide diary no.713/2019 further explaining the position of the case. The debt and default have been admitted by the CD and is solely relying upon the approval of Scheme of Arrangement by the Company Court which was subsequently recalled and is even without jurisdiction and thus, no cognizance of the same can be taken in a proceeding U/s 7 of IBC, 2016.

10. We heard the submissions of both parties and perused the pleadings on record, including the Written Submissions filed by both parties. However, before we proceed to deal with the application on its merits, we would like to examine whether the present Application is filed within limitation or not. In this regard, the Applicant contended that the default on the part of the Respondent has been continuing one. The Applicant invites application of Section 23 of the Limitation Act as non-payment of dues in terms of the Demand Notice of DRT caused an injury to the Applicant w.e.f. 02.12.2019 and hence, limitation would begin ticking from 02.12.2019. Hence, it is contended by the Applicant that the present Application is within limitation.

11. Though the date of NPA in the present Application is averred to be 01.01.2003, it is observed from the record that the DRT-II Delhi had issued Demand Notice/Recovery Certificate in favour of the Applicant on 02.12.2019 in RC no. 530/2019, a copy of which, as placed on record, reads thus:

THROUGH REGD. AD/ SPEED POST. AFFIXATION. JASTI

DEBTS RECOVERY TRIBUNAL-II, DELHI
4th Floor, Jeevan Tara Building, Parliament Street,
New Delhi-110001.

Demand Notice

NOTICE UNDER SECTION 25 TO 28 OF THE RECOVERY OF DEBTS AND DUES TO THE BANKS AND FINANCIAL INSTITUTIONS, ACT, 1993 AND RULE 2 OF THE SECOND SCHEDULE TO THE INCOME TAX ACT, 1961.

RC No. 530/2019
In the matter of:

Dated: 02.12.2019

STRESSED ASSETS STABILIZATION FUND VS M/S DWARIKADHISH SPINNERS LTD.

- CD#1 M/s Dwarikadhish Spinners Ltd.,
A Company incorporated under the Companies Act,
1956 having its registered office at 1, Kouli Majra Lalru,
Tehsil - Dera Bassi, District Patiala.
Also at:
Shamkeen House"
B-1A/20, Mohan Cooperative Industrial Estate,
Mathura Road, New Delhi-110044..
- CD#2 Shri H.B Chaturvedi
S/o Shri Baldev Chaturvedi, I-B North Tower,
Girdhar Lal Apartments, 28, Ferozshah Road,
New Delhi.
Also at:
C/o Dwarikadhish Spinners Ltd.,
Shamkeen House, B-1/A-20,
Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi - 110044.
- CD#3 Shri Amit Chaturvedi,
S/o Shri H.B.Chaturvedi,
R/o I-B, North Tower,
Girdhar Lal Apartments, 28, Ferozshah Road,
New Delhi - 110001.
Also at:
C/o Dwarikadhish Spinners Ltd.,
Shamkeen House, B-1/A-20,
Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi - 110044.
- CD#4 Shri Sumit Chaturvedi,
S/o Shri H.B Chaturvedi,
I-B North Tower, Girdhar Lal Apartments,
28, Ferozshah Road, New Delhi - 110001.
Also at:
C/o Dwarikadhish Spinners Ltd.,
Shamkeen House, B-1/A-20,
Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi - 110044.
- CD#5 Shri Sanjay Chaturvedi,
S/o Shri H.B Chaturvedi, I-B North Tower,
Girdhar Lal Apartments, 28, Ferozshah Road,
New Delhi.
Also at:
C/o Dwarikadhish Spinners Ltd.,
Shamkeen House, B-1/A-20,
Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi - 110044.
- CD#6 M/s Shamkeen Multifab Ltd.,
Shamkeen House, B-1/A-20,
Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi - 110044

This is to notify that a sum of **Rs. 42,96,42,238/- (RUPEES FORTY TWO CRORE NINTY SIX LACS FORTY TWO THOUSAND TWO HUNDRED THIRTY EIGHT ONLY)** has become due from you as per the ibid Recovery Certificate drawn in OA No. 325/2010 by the Presiding Officer, Debts Recovery Tribunal - II, Delhi. The applicant is entitled to recover a sum of **Rs. 42,94,92,238/- (Rupees Forty Two Crores Ninety Four Lacs Ninety Two Thousand Two Hundred Thirty Eight Only)** along with pendent-lite and future interest @17% per annum simple from the date of filing of the OA i.e., 27.12.2010 with cost of Rs.1,50,000/- from the CDs.

The CDs are directed to pay the decretal amount to the CH Bank failing which the same shall be recovered by sale of the hypotheca and the mortgaged property, mentioned below, in pari-passu charge with the other lenders:

Laud admeasuring 65 Bighas 3 Biswas equivalent to 54737 sq. meters comprised in rectangle / khasra numbers, situated at village Kouli Majra, Tehsil Dera Bassi, District Patiala, Punjab, with all the buildings, structures, erections, constructed / to be constructed thereon, mentioned below, by depositing its title deeds with applicant no.2 IDBI as security for the aforesaid loan:

| Ractangle no. | Khasra no. | Bigha | Biswa |
|---------------|------------|-------|-------|
| 1412 | 51 | 2 | 0 |
| 1357 | 39 | 1 | 16 |
| 1369 | 40 | 1 | 16 |
| 1371 | 43 | 1 | 16 |
| 1373 | 44 | 1 | 16 |
| 1375 | 46 | 3 | 0 |
| 1375 | 47 | 5 | 12 |
| 1375 | 48 | 4 | 0 |
| 1375 | 49 | 4 | 0 |
| 1375 | 50 | 4 | 0 |
| 1411 | 51 | 2 | 0 |
| 1447 | 61 | 3 | 0 |
| 1447 | 62 | 4 | 0 |
| 1447 | 63 | 4 | 0 |
| 1447 | 64 | 5 | 7 |
| 1447 | 52 | 4 | 0 |
| 1447 | 58 | 4 | 0 |
| 1447 | 59 | 4 | 0 |
| 1447 | 60 | 4 | 0 |
| 1446 | 61 | 1 | 0 |

In case of any shortfall the same shall be recovered by sale of the personal movable and immovable assets of the CDs jointly and severally.

You are hereby directed to pay the above sum within 15 days of the receipt of the notice, failing which the recovery shall be made in accordance with the Recovery of Debts Due to Banks & Financial Institutions Act, 1993 and Rules there under.

You are, hereby ordered to appear before the undersigned on 04.01.2020 at 10.30 AM for further proceedings.

In addition to the sum aforesaid, you will also be liable to pay:

1. Such interests as is payable for the period commencing immediately after this notice of the certificate/execution proceedings.
2. All costs, charges and expenses incurred in respect of the service of this notice and warrants and other processes and all other proceedings taken for recovering the amount due.

(AWINASH CHANDRA)
Recovery Officer-II
DRT-II Delhi



In this backdrop, we refer to Judgement of the Hon'ble Supreme Court in **“Dena Bank (now Bank of Baroda) Vs C. Shivakumar Reddy and Anr.”**, Civil Appeal NO.1650 OF 2020, the relevant extract of which reads thus:

*“138. A final judgment and order/decree is binding on the judgment debtor. Once a claim fructifies into a final judgment and order/decree, upon adjudication, and a certificate of Recovery is also issued authorizing the creditor to realize its decretal dues, **a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decree and/or the amount specified in the Recovery Certificate.***

*139. **The Appellant Bank was thus entitled to initiate proceedings under Section 7 of the IBC within three years from the date of issuance of the Recovery Certificate.** The Petition of the Appellant Bank, would not be barred by limitation at least till 24th May, 2020.”*

(Emphasis placed)

The present Application is filed on 11.10.2018. Since the Applicant is permitted to file the Section 7 Application, within 03 years from the issuance of Recovery Certificate in terms of the Judgement (ibid), **we find the present Application filed within the period of Limitation.** Hence, we would like proceed ahead and examine the Application on merits.

12. The Respondent in its defence has further contended that the present application is filed by the Applicant concealing the pendency of the Scheme of Arrangement (SOA) under Section 391-394 of the Companies Act 1956, that was allowed by the Hon'ble Punjab & Haryana High Court vide order dated 23.07.2019 and is also binding on the Applicant herein.

Per Contra, the Applicant has contended that the CD has admitted the debt and default and it is solely relying upon the approval of Scheme of Arrangement (SOA) by the Company Court, which was subsequently recalled and is even without jurisdiction and thus, no cognizance of the same can be taken by this Adjudicating authority in a proceeding U/s 7 of IBC 2016; as a Company Petition pending in a Company Court, and the Proceedings under IBC before the NCLT are independent proceedings. The Applicant has relied upon the judgement dated 22.01.2019 of Hon'ble Supreme Court in **Forech India Ltd. V/s Edelweiss Assets Reconstruction Co. Ltd. Civil Appeal No. 818 of 2018**, the relevant para of which reads thus:

“18. After referring to the statutory scheme, as aforesaid, this Court held:

*“17. However, this does not end the matter. It is clear that Respondent No. 3 has filed a Section 7 application under the Code on 11.01.2018, on which an order has been passed admitting such application by the NCLT on 13.04.2018. **This proceeding is an independent proceeding which has nothing to do with the transfer of pending winding up proceedings before the High Court. It was open for Respondent No. 3 at any time before a winding up order is passed to apply under Section 7 of the Code.** This is clear from a reading of Section 7 together with Section 238 of the Code which reads as follows:*

“238. Provisions of this Code to override other laws.-The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

(Emphasis placed)

It is contended that in terms of the ratio of the judgement, the Financial Creditor's Application U/s 7 of IBC, 2016 filed prior to passing of the order by

Company Court of approving the Scheme of Arrangement is clearly an independent proceeding, which must be decided in accordance with the provisions of the code.

13. The Applicant has also contended in its Written Submissions that the Respondent has not filed a copy of the Scheme/SOA with the RoC in terms of provision of Section 391(3) of the Companies Act, 1956. Further, it has added that the IBC has order-riding effect over the other laws by virtue of Section 238 of IBC, 2016.

14. In the aforesaid background of rival contentions, we consider it worthwhile to refer to the recent Judgement of Hon'ble NCLAT in "**Grand Developers Pvt. Ltd Vs Nitin Batra & Ors.**", **Company Appeal (AT) (Insolvency) No. 899 of 2024**, which held the following:

"16. The Company Petition which has been filed in the year 2024 by Respondent No.6- M/s. Mist Direct Sales Pvt. Ltd., Counsel for the Respondent No.2 has produced the order dated 05.04.2024 of the Adjudicating Authority where petitioners have been asked to clarify various aspects. **The petition under Section 230 for scheme by the corporate debtor is independent proceeding but filing of the said petition cannot be a ground to not permit the proceeding under Section 7 which are being halted and obstructed by one or other attempts by corporate debtor and other applicants as noted above.** It is further noticed that the case of the corporate debtor as noticed from the record, it is clear that the RERA registration of the project has already cancelled and there is a dispute of title as claimed by the corporate debtor regarding the land. **We, thus, do not find any substance in the submission of the counsel appearing for Respondent No.6 to accepts the submission**

that Section 7 application be further not proceeded with till application under Section 230 of the Companies Act filed by Respondent No.6 be finalised.

(Emphasis placed)

15. Also, it is a matter of record that the Recovery Proceedings before the Recovery Officer of DRT-II Delhi in respect of the Respondent are continuing. The Respondent has failed to produce or bring on record, any order to show that the aforesaid proceedings are abated in view of the Order regarding approval of the Scheme.

16. To further examine the contention of the Applicant Bank, we refer to Section 391(3) of the Companies Act 1956, which reads thus:

“391. POWER TO COMPROMISE OR MAKE ARRANGEMENTS WITH CREDITORS AND MEMBERS

(1)..

(2)..

(3) An order made by the [Tribunal] under sub-section (2) shall have no effect **until a certified copy of the order has been filed with the Registrar.”**

(Emphasis placed)

It is observed that the Respondent has failed to produce or bring Form INC-28 on record, which could depict that the order of approval of Scheme was filed with the RoC. Hence, in the absence of such compliance, the “Scheme”

cannot be treated as 'made effective' in terms of Section 391(3) of Companies Act, 1956.

17. In view of the discussion foregoing, we find no cogent reason given by the Respondent that as to why the CIRP should not be initiated against it.

18. In the sequel to the above and in the given facts and circumstances, the present Application being complete and the Applicant having established the default on the part of the Respondent in payment of the Financial Debt for an amount being above the minimum threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, the Moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the Moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed:

“(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.”

19. Though the Applicant has proposed the name of Mr. Sandeep Kumar Bhatt as IRP having Registration No. IBBI/IPA-003/IP-N00038/2017-18/10298. However, on verification of his antecedents by LRA on the website of IBBI, his name is not being reflected in the list of IPs. In the circumstances, this Bench appoints Mr. Prem Chand Goyal Email ID: pcg47758@gmail.com subject to the condition that no disciplinary proceeding is pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week of this Order. This Adjudicating Authority further orders that:

Mr. Prem Chand Goyal, as an IRP having Registration No. IBBI/IPA-001/IP-P01780/2019-20/12710, Email ID: pcg47758@gmail.com is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is further directed to take the steps as mandated under the IBC specifically under Sections 15, 17, 18, 20, and 21 of IBC, 2016.

20. The Applicant is directed to deposit Rs.5,00,000/- (Five Lakhs) only with the IRP to meet the initial expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Applicant.

21. A copy of this Order shall immediately be communicated to the Applicant Bank, the Respondent Company, the IRP named above, by the Court Officer/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court officer/Registry to IBBI for their records.

22. **In terms of the above, the present application stands admitted and the matter is accordingly, disposed of.**

**Sd/-
(L. N. GUPTA)
MEMBER (T)**

**Sd/-
(Dr. P.S.N. PRASAD)
MEMBER (J)**