

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.101
C.P.(IB)/175(AHM)2022

Proceedings under Section 7 IBC

IN THE MATTER OF:

Asset Reconstruction Company (India) Ltd.
V/s
Sintex Plastics Technology Ltd.

.....Applicant

.....Respondent

Order delivered on: 21/02/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court vide separate sheet.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
Court No. I**

C.P. (I.B.) No.175/NCLT/AHM/2022

[An application under section 7 of the Insolvency and Bankruptcy Code, 2016]

In the matter of :

M/s. Asset Reconstruction Company (India) Limited,

Having its registered office at:
10th Floor, The Ruby, 29,
Senapati Bapat Marg,
Dadar (West), Mumbai-400 028

...Financial Creditor

Versus

Sintex Plastics Technology Limited,

In the premises of Sintex BAPL Limited,
Having office at:
Near Seven Garnala, Kalol,
District: Gandhinagar, Gujarat - 382721.

...Corporate Debtor

Order delivered on 21/02/2023

Coram: Dr. Madan B. Gosavi, Member (Judicial)

Kaushalendra Kumar Singh, Member (Technical)

Appearance:

For the Financial Creditor : Ld. Senior Counsel Mr. Navin Pahwa, along
with Ld. Counsel Ms. Gargi Vyas and Ld.
Counsel Mr. Priyam Shah

For the Corporate Debtor: Ld. Counsel Mr. Arjun Sheth

ORDER

1. The instant application is filed on 14/06/2022 by the Financial Creditor i.e. M/s. Asset Reconstruction Company (India) Limited under section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) to initiate the Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor i.e. M/s. Sintex Plastics Technology Limited for an outstanding amount of Rs. 350,28,00,550/- (Rs. 215,77,95,794/- as principal amount and Rs. 134,50,04,756/- towards interest at 8.55% per annum and penal interest at 2% per annum from 01/04/2022/ till 06/06/ 2022).

2. The averments made by the Financial Creditor are summarised as under:

(i) Axis Bank Limited sanctioned certain facilities to Sintex BAPL Limited (**SBL**) for a total amount of Rs. 250,00,00,000/- (Rupees Two Hundred Fifty Crores Only) vide a sanction letter dated 11/09/2017, pursuant to a facility agreement dated 13/09/2017. The facility was renewed vide a sanction letter dated 05/02/2019.

(ii) The Corporate Debtor i.e. Sintex Plastics Technology Limited executed necessary, irrevocable, absolute and unconditional Deed of Guarantee on 20/12/2017, in favor of the Financial Creditor and secured the entire credit facility granted to the SBL.

(iii) The Corporate Debtor also executed a letter of comfort and undertaking both dated 13/09/2017, undertaking that it shall cause to ensure that SBL fulfils the said debt service obligation in favour of Axis Bank Limited in respect of various credit facilities granted to SBL vide sanction letter dated 11/09/2017, bearing reference number WZ/SME/SCF/AMD-1/2017-18/184.

(iv) Thereafter, One Operational Creditor of SBL, being Zielem Industries Private Limited, filed a petition under section 9 of IBC before Adjudicating Authority bearing CP (IB) No. 759 (AHM) of 2019 for initiation of CIRP against the borrower i.e. SBL.

(v) Further this Adjudicating Authority vide order dated 18/12/2020 admitted CP (IB) No. 759 (AHM) of 2019, thereby commencing CIRP against SBL.

(vi) Consequently, a moratorium in terms of section 14 of the IBC also came into force in respect of SBL w.e.f. 18/12/2020 and Mr. Ketulbhai Ramubhai Patel was appointed as the Interim Resolution Professional (**IRP**) for SBL with a direction to conduct the CIRP in accordance with the provisions of the IBC and in particular, discharge his functions under sections 17, 18, 20 and 21 of the IBC. Thereafter, the IRP took over the management of SBL.

(vii) Thereafter, on 20/12/2020, the Corporate Debtor i.e. Sintex Plastics Technology Limited, being the holding company of SBL had filed an Appeal bearing Company Appeal No. 1135 of 2020 before the Hon'ble National Company Law Appellate Tribunal (**NCLAT**) challenging the admission of order dated 18/12/2020 of the Adjudicating Authority. The only ground of challenge was that a settlement had been arrived between the Operational Creditor and SBL in CP (IB) No. 759 (AHM) of 2019. Therefore, Hon'ble NCLAT vide order dated 04/01/2021, directed the Corporate Debtor i.e. Sintex Plastics Technology Limited to approach this Adjudicating Authority and place on record the terms of settlement and granted liberty to the Respondent to oppose such motion in the said Company Appeal .

(viii) Sintex Plastics Technology Limited filed IA No. 18 of 2021 to record settlement and set aside CIRP of the Corporate Debtor. IA No. 18 of 2021 was opposed by one Financial Creditor of SBL namely

KKR India Financial Services Limited. But later on, this Adjudicating Authority allowed IA No. 18 of 2021 vide order dated 29/06/2021 and allowed the withdrawal of section 9 petition and thereby terminated the CIRP of SBL.

(ix) Thereafter, KKR India Financial Services Limited, challenged the order dated 29/06/2021 before the Hon'ble NCLAT in Company Appeal No. 475 of 2021. The Appellate Tribunal took note of the fact that other financial creditors and operational creditors had large claims pending for payment by the borrower Corporate Debtor-Sintex BPL Limited. Therefore on 12/07/2021, Hon'ble NCLAT stayed the order dated 29/06/2021 which was passed by NCLT and directed status quo ante of the order dated 29/06/2021 of NCLT. Hence, in view of order dated 29/06/2021 passed by NCLT in IA No. 18 of 2021 being stayed by NCLAT, the CIRP in CP(IB) 759 of 2019 proceeded again against SBL.

(x) Meanwhile, KKR India Financial Services Limited had filed an application under section 7 of IBC before Adjudicating Authority bearing CP (IB) No. 276 of 2020. This Adjudicating Authority vide order dated 19/07/2021 allowed the application and again admitted SBL in CIRP. The order dated 19/07/2021 was challenged in NCLAT by one of the ex director named Amit Dineshchandra Patel of SBL bearing Company Appeal No. 577 of 2021. NCLAT passed an order that 2 simultaneous CIRP cannot be permitted and thereby set aside the order dated 19/07/2021 passed under section 7 in CP (IB) No. 276(AHM)2020. Consequently, the related CIRP was closed with immediate effect. However, the CIRP as initiated in CP(IB) 759 of 2019, continued ahead.

(xi) During the pendency of the mentioned proceedings, the Axis Bank Limited assigned its debt *vis - a - vis* SBL including all securities, guarantees, letter of comfort etc., to the Financial Creditor

i.e. Asset Reconstruction Company (India) Limited, vide a Deed of Assignment dated 31/03/2022. Accordingly, the Financial Creditor i.e Asset Reconstruction Company (India) Limited stepped into the shoes of Axis Bank.

(xii) Since SBL committed default in repaying the outstanding loan amount, the Financial Creditor invoked the Deed of Guarantee vide its demand notice dated 17/05/2022 and called upon the guarantor Corporate Debtor to repay the entire outstanding amount.

(xiii) Despite receipt of the demand notice dated 17/05/2022, the Corporate Debtor failed to clear the outstanding dues of the Financial Creditor.

(xiv) The Applicant has also submitted that the Corporate Debtor has lost its financial substratum and is in no position to meet its liabilities.

(xv) The name of IRP Mr. Kshitiz Chhawchharia having registration No. IBBI/IPA-001/IP-P00358/2017-2018/10616 is proposed and the consent of the IRP is also placed on record.

3. During the course of hearing on 03/01/2023, the Learned Counsel for the Corporate Debtor submitted that the Corporate Debtor is not in a position to pay the default amount.

4. We have heard the Learned Senior Counsel for the Financial Creditor as well as the Learned Counsel for Corporate Debtor and perused the material on record. It is noted that the Financial Creditor invoked the Deed of Guarantee by sending demand notice dated 17/05/2022 in accordance with the transaction documents which are placed on record by the Financial Creditor. It is also noted that the Financial Creditor has served the demand notice dated 17/05/2022 to the Corporate Debtor. However, the Corporate

Debtor neither replied to the demand notice nor paid the outstanding amount to the Financial Creditor. It is an undisputed fact that an amount of Rs. 350,28,00,550/- (Rs. 215,77,95,794/- as principal amount and Rs. 134,50,04,756/- towards interest at 8.55% per annum and penal interest at 2% per annum from 01/04/2022 till 06/06/ 2022) is the total debt outstanding to be paid by the Corporate Debtor. The Resolution Plan for SBL worth Rs. 1251 crores filed on 07/02/2023 by Resolution Professional, Ashish Chhawchhria is pending for approval before this Adjudicating Authority. M/s. Asset Reconstruction Company (India) Limited, the Financial Creditor who has filed this present petition under section 7 of the IBC is a Secured Creditor in SBL and holds 9.28% voting rights. M/s. Asset Reconstruction Company (India) Limited voted against the Resolution Plan of SBL. The amount claimed by dissenting Secured Financial Creditors, who did not vote in favour of the Resolution Plan is around Rs. 793.07 crores while an amount of Rs. 392.4 crores is provided to such dissenting Creditors who did not vote in favour of the Resolution Plan. Though the approval of the Resolution Plan in the case of borrower company is still pending for approval by this Adjudicating Authority, it is noted that the claim of the Financial Creditor in this application is not fully met in CIRP and as such the present application which is filed within limitation period and defect free, deserves to be admitted.

5. In view of the above, we admit this application and pass the following order as under:

(i) The Corporate Debtor M/s. Sintex Plastics Technology Limited is admitted in CIRP under section 7 of the IBC, 2016.

(ii) The moratorium under section 14 of the IBC, 2016 is declared for prohibiting all of the following in terms of section 14(1) of the IBC, 2016.

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;*
- 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.*

(iii) The order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the Resolution Plan under section 31(1) or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016, as the case may be.

(iv) We hereby appoint Mr. Kshitiz Chhawchharia having registration No. IBBI/IPA-001/IP-P00358/2017-2018/10616 to act as an IRP under section 13(1)(c) of the IBC, 2016. He shall conduct the CIRP as per the provisions of the IBC, 2016 r.w. Regulations made thereunder.

(v) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnels connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 extending every assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do

not assist or co-operate the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(vi) This Adjudicating Authority directs the IRP to make a public announcement of initiation of CIRP and call for submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.

(vii) It is further directed that the supply of goods/service to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by section 20 of the IBC, 2016. The Financial Creditor is directed to pay an advance of **Rs.1,00,000/-** (Rupees One Lakh Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per Rules.

(ix) The Registry is directed to communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

6. Accordingly, **CP (IB) No. 175/NCLT/AHM/2022** is allowed and disposed of.

**-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

**-SD-
DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)**

Shweta Desai – LRA