

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

CP(IBC)/14/KOB/2023

(Under Section 7 of the IBC, 2016)

***In the matter of* FURNACE FABRICA (INDIA)
LIMITED**

MEMO OF PARTIES:

STATE BANK OF INDIA,

Stressed Asset Management Branch-1, 2nd
Floor, "The Arcade", World Trade Centre, Cuffe
Parade, Colaba, Mumbai-400005

... Petitioner/ Financial Creditor

-Vs-

FURNACE FABRICA (INDIA) LIMITED,

Opposite MILMA Dairy, Koonamthai, Edapally,
Kochi 682024.

... Respondent/Corporate Debtor

Order delivered on: 01.11.2023

Coram:

Hon'ble Member (Judicial) : TMT. (Retd.) Justice T Krishna Valli

Hon'ble Member (Technical) : Shri. Shyam Babu Gautam

Appearances:

For the Applicant : Mr. Vinod P V, Advocate

For the Respondent : Mr. Rohan Kumar, Advocate

ORDER

Per Coram

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **Furnace Fabrica (India)Limited**. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).
2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is a statutory public sector bank formed under State Bank of India Act, 1955 on 01.07.1955, and supervised by the Reserve Bank of India. As per Part II of the application, the Corporate Debtor is a public Limited Company with Corporate Identification Number U28123KL1985PLC026752 and having its registered office at Opposite MILMA Dairy, Koonamthai, Edapally, Kochi 682024. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Alok Kumar Agarwal, IBBI Registration Number: IBBI/IPA-001/IP-P00059/2017-2018/10137 as the Interim Resolution Professional.

3. Part IV of the application signifies the amount of debt to the tune of Rs. 64,74,11,693/- as on 15.05.2023. Part V of the application describes the particulars of Financial Debt; documents, records and evidence of default as described below:

- a) Sanction/Renewal letter for Loan of Rs.138 Crore dated 03.03.2017
- b) Copy of First Supplemental Working Capital Consortium Agreement dated 14.08.2017
- c) Copy of First Supplemental Joint Deed of Hypothecation dated 14.08.2017
- d) Copy of Omnibus Counter Guarantee Cum Agreement executed by Corporate Debtor dated 14.08.2017
- e) Copy of Deed of Guarantee executed by Mr. A Basheeruddin, Mr. Badri Prasad, Mrs. Sudha Prasad, Mrs. Nezee Basheerduddin dated 14.08.2017
- f) Copy of Deed of Guarantee executed by Furnace Fabrica dated 14.08.2017
- g) Copy of Deed of Indemnity Cum Undertaking executed by the CD, Mrs. Sudha Prasad, Mrs. Nezee Basheerduddin dated 14.08.2017
- h) Copy of Memorandum of Entry dated 14.08.2017 executed by A. Basheerddin, Furnace Fabrica

- i) Copy of Declaration and Undertaking executed by the CD, Furnace Fabrica, Shri Badri Prasad, Neseer basheeruddin and Smt. Sudha Prasad dated 14.08.2017
- j) A copy of deed of indemnity cum undertaking executed by the CD dated 14.08.2017
- k) Copy of sanction letter dated 05.03.2021 for grant of credit facility of 4.81 Crore under GECL 2.0 Scheme
- l) Copy of Agreement of Loan for grant of Rs.4.81 Crores to CD under GECL 2.0 Scheme dated 30.03.2021
- m) Copy of Agreement of Hypothecation of Goods and Assets under GECL 2.0 Scheme dated 30.03.2021
- n) Statement of Loan Accounts of the Corporate Debtor bearing Account No. 40015893931 for the period 17.02.2021 to 15.05.2023, 35754833399 and 10503589136 for the period 01.07.2022 to 15.05.2023, and tabulation of interest calculation along with certificate under Bankers Book Evidence Act, 1891
- o) Copy of Revival Letter dated 04.01.2019
- p) Copy of Revival Letter dated 28.12.2021
- q) Record of Defaults registered with the NESL (Information Utility) with respect to the loan accounts dated 24.02.2023, 25.04.2023 and 11.04.2023
- r) Copy of Index of Charges registered with ROC, Kerala

4. Brief fact of the case is:

- i. The present application is filed by State Bank of India, Stressed Asset Management Branch-1 under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, Furnace Fabrica (India) Limited.
- ii. The Financial Creditor as lead member of a consortium of lenders consisting of SBI, Standard Chartered Bank, Kotak Mahindra Bank, and Axis Bank, sanctioned a loan facility for Rs. 215 crores out of the Rs. 288-crore credit limit to the Corporate Debtor by way of working capital consortium agreement executed on 13.05.2010. Thereafter, Kotak Mahindra Bank exited from consortium and SBI reduced the credit facility to Rs. 138 crore vide sanction/renewal letter dated 03.03.2017. Consortium was reconstituted via 1st supplemental working capital consortium agreement by CD with SBI, SCB, Axis Bank and EXIM Bank on 14.08.2017 wherein total credit facility was revised to Rs. 281 crore.
- iii. CD hypothecated its entire current assets on 24.09.2013 by way of 1st supplemental joint deed of hypothecation agreement dated 14.08.2017. The directors, Mr. A Basheeruddin, Mr. Badri Prasad, Mrs. Sudha Prasad, Mrs. Nezee Basheeruddin executed irrevocable and unconditional personal guarantee on 14.08.2017 guaranteeing principal along with interest and other charges.

A deed of guarantee was executed by Furnace Fabrica, a partnership firm on 14.08.2017 in favour of the applicant. First pari passu charge was created over immovable properties of CD and Furnace Fabrica and of personal guarantors as per memo of deposit of title deeds and declaration of undertaking dated 14.08.2017. Revival letters were also executed acknowledging the liability under loan documents and guarantee agreements on 04.01.2019 and 28.12.2021.

- iv. Further to support CD due to COVID disruptions, SBI additional working capital term loan of Rs. 4.81 crore to CD under GECL 2.0 Scheme vide sanction letter dated 05.03.2021 with repayment period of years which was secured by way of extension of second charge over existing primary and collateral securities including mortgage on pari passu basis. Agreement for loan was executed on 30.03.2021. Despite credit support the CD failed in business and could not submit a statutorily complied proposal for renewal despite granting opportunities before validity of last sanction. Hence as per RBI guideline, the account of CD was classified as NPA on 27.10.2022.
- v. It is stated that as on 15.05.2023, CD is in default of Rs. 64,74,11,693.90/- under various loan accounts- A/c nos. 40015393931, 10503539136, and 35754333399.

- vi. It is stated that applicant has also issued bank guarantee for an amount of Rs. 54,43,80,628.50 to CD which also shall be payable once invoked by beneficiary. The applicant has submitted the default with information utility and the default submitted on 24.02.2023 and 25.02.2023 are 'authenticated' and those submitted on 10.04.2023 and 11.04.2023 are 'deemed to be authenticated'. The debt is above the threshold limit of 1 crore under IBC and jurisdiction falls within this Tribunal.
 - vii. Since no action to settle the debt has been made by the CD, the FC proceeds under IBC to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
 - viii. The application was filed by the FC on 26.05.2023 and states that he has filed the petition within the period of limitation under the IBC.
5. On the respondent side, it is submitted that the petition is not intended for resolution of CD but to harass and coerce CD for recovery of money. It is stated that the CD has more than 40 employees on roll and is a solvent company. The respondent denies the debt and state that the document relied by applicant is insufficiently stamped and therefore invalid. Another contention raised is that one of the consortium lender Standard Chartered Bank has initiated section 95, IBC proceedings against personal guarantor, Mr. Abdul Rehman Basherudeen wherein an interim moratorium exist u/s 96 in relation to all debts of the personal guarantor, and hence the section 7 proceedings are barred in view

of the order passed by this Tribunal dated 13.07.2023. The respondent further state that the application is incomplete for want of a valid authorisation to be produced by proposed IRP.

The applicant in their rejoinder states that the CD is unable to continue its operations efficiently and employees are exiting the company. It is stated that it is in view of this situation that applicant has filed section 7 IBC to bring resolution to CD. The allegation that the loan documents are insufficiently stamped are denied. The contention that section 96 moratorium bars the section 7 process is also denied in view of the fact that the moratorium is only in respect of 'all debts of 'particular guarantor' and not against the debts of the principal borrower which is CD. The applicant relies on the provisions of IBC as well as judgement of apex court in **Lalit Kumar Jain vs. Union of India & Ors (2021 (9) SCC 321)** and Hon'ble Delhi High Court in **Axis Trustee Services Limited vs Brij Bhushan Singh and Ors** in support of the same.

6. Heard the Counsel for petitioner, and perused the documents placed on record. As to the matter of limitation in the case, the date of default of debt by the CD was 27.10.2022 when the account of CD turned NPA in books of FC. The CD acknowledged the debt on multiple occasions last of which by way of letter dated 28.12.2021 requesting proposal for revival of loan. Hence this petition filed on 26.05.2023, comes well within the period of limitation under the law. The debt amounting to Rs. 64,74,11,693/- as on 15.05.2023 is beyond the threshold limit stipulated under the IBC, 2016.

7. As to the contention that the CD is solvent and loan documents are insufficiently stamped, on perusal of the loan agreements and security documents, it is seen the same is duly stamped and properly executed under law. It is also observed that the CD is not in a position to continue business efficiently and initiation of IBC proceedings in this scenario is reasonable and sustainable. As regards to the contention that interim moratorium with respect to section 95 proceedings prohibiting this application, the same is answered in negative by this Tribunal in IA(IBC)/KOB/339/2023 passed along with this order. Hence the objections of respondent CD has no merit.

8. Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial Debt is owed and includes a person to whom such debt has been legally assigned or transferred to; thereby, the applicant herein, is a Financial Creditor. From records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8) of IBC, 2016. Also, the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor.

9. So, in light of the case's facts, circumstances narrated in the preceding paras, and legal provisions envisaged under the code, we believe that this application, as submitted by the Applicant— Financial Creditor, deserves be admitted under Section 7(5) of the IBC, 2016.
10. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.
- A. The petition bearing CP (IB) No. 14/ KOB /2023, State Bank of India, the Financial Creditor, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against FURNACE FABRICA (INDIA) LIMITED, (CIN: U28123KL1985PLC026752), the corporate debtor is **ADMITTED**.
- B. There will be a moratorium under section 14 of the Code.
- C. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.
- D. Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.

- E. The Financial Creditor has proposed the name of one **Mr. Alok Kumar Agarwal**, IBBI Registration Number: IBBI/IPA-001/IP-P00059/2017-2018/10137, email: alok@insolvencyservices.in, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.
- F. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to

the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.

- G. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- H. The financial creditor shall deposit a sum of Rs.3,00,000/- (Three Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).
- I. In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
- J. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.
11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

12. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this, the 1st day of November, 2023.

Rohit/LRA