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**BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B) No. 32/7/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 21.07.2017**

Name of the Company: SREI Infrastructure Finance Ltd.
V/s.
K. S. Oils Ltd.

Section of the Companies Act: Section 7 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.	Sandeep Singhi be Singhi & Co.	Advocate	Petitioners	}
2.	Mihir Parikh	"	"	
3.	Pravin Dabhi be Singhi & Co.	"	"	
4.	Rashmi Sapkal be Singhi & Co.	"	"	

ORDER

Learned Advocate Mr. Sandeep Singhi with Learned Advocate Mr. Mihir Parikh with Learned Advocate Mr. Pravin Dabhi with Learned Advocate Ms. Rashmi Sapkal present for Financial Creditor/ Applicant. None present for Respondent.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 21st day of July, 2017.

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No.(I.B) 32/7/NCLT/AHM/2017

In the matter of:

M/s. SREI Infrastructure
Finance Limited,
Vishwakarma,
86C, Topsia Road (South)
Kolkata-700046

: Applicant.
[Financial Creditor].

Versus

M/s. K.S. Oils Limited
Jiwaji Ganj,
Morena
Madhya Pradesh-476 001

: Respondent.
[Corporate Debtor].

Order delivered on 21st July, 2017.

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

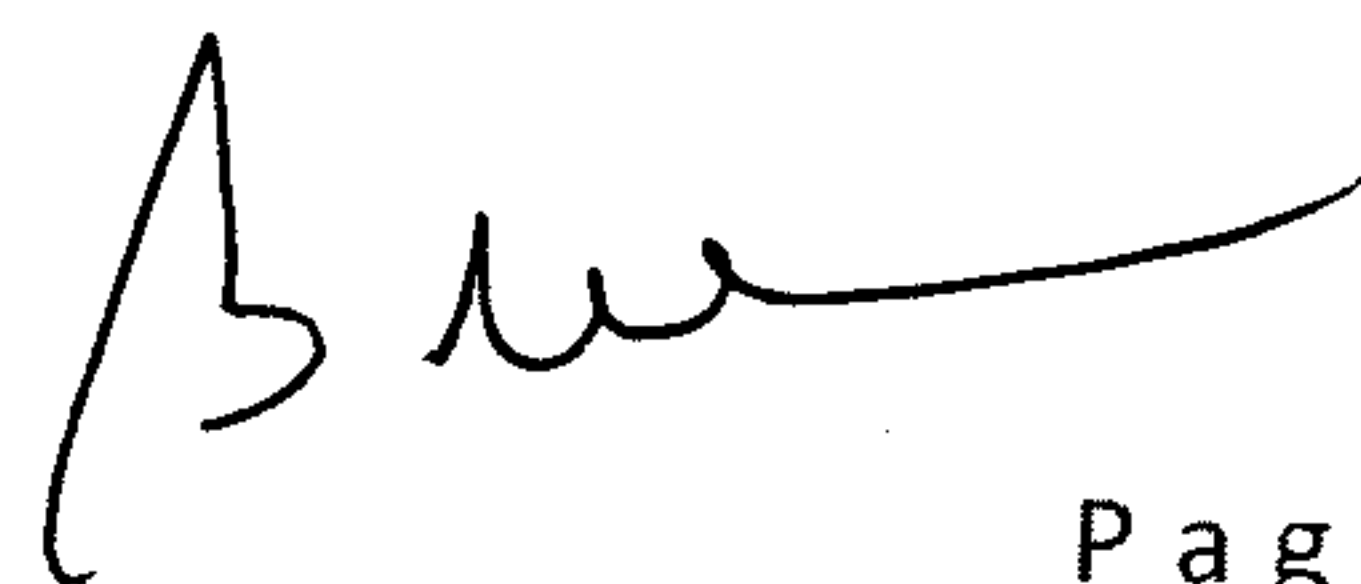
Appearance:

Shri Sandeep Singhi, with Shri Mihir Parikh, learned Advocates for
M/s. Singhi & Co., for Applicant.

Shri Basant Agarwal, learned Advocate for Respondent.

ORDER

1. M/s. SREI Infrastructure Finance Limited filed this
Application invoking Section 7 of the Insolvency and Bankruptcy
Code, 2016 ("Code") in respect of M/s. K.S. Oils Limited.



2. Applicant is a Company registered under the Companies Act. Mr. Somraj Mukherjee filed this Application on behalf of the Applicant by virtue of Power of Attorney dated 20th March, 2017 given by the Applicant.

3. M/s. K.S. Oils Limited/Respondent is a Company registered under the Companies Act.

4. The facts in brief, that are necessary for disposal of this Application, are as follows;

4.1. Applicant sanctioned Rupee Term Loan of Rs.100 Crores to the Respondent on 16th August, 2010. Respondent accepted the terms and conditions mentioned in the sanction letter. On 23rd August, 2010, Rupee Loan Agreement No. SRE 130 was entered into between Applicant and Respondent.

4.2. In lieu of the loan granted by the Applicant to the Respondent in terms of Rupee Loan Agreement No. SRE 130 dated 23rd August, 2010 and as security for the due repayment thereof Respondent executed following documents in favour of the Applicant;

- (i) Deed of Hypothecation dated 23rd August, 2010;
- (ii) Demand Promissory Note;
- (iii) Mr. Ramesh Chandra Garg executed a Deed of Guarantee dated 23rd August, 2010.

Respondent failed and neglected and refused to make payment of its outstanding dues in accordance with the terms and conditions of Rupee Loan Agreement. Various cheques given by the Respondent to the Applicant towards payment of its outstanding dues under the Rupee Loan Agreement were dishonoured upon presentation. Applicant also initiated proceedings against the Respondent under the provisions of The Negotiable Instruments Act. On the request of Respondent, Applicant restructured the aforesaid Rupee Loan. On

2nd September, 2011 a Supplementary Agreement was entered into between the Applicant, Respondent and Mr. Ramesh Chandra Garg. In terms of the said Agreement, Mr. Ramesh Chandra Garg agreed to stand as a Guarantor for repayment of loan facilities advanced to the Respondent under terms of Rupee Loan Agreement dated 23rd August, 2010 and Supplementary Agreement dated 2nd September, 2011. As security, Respondent executed Deed of Hypothecation dated 2nd September, 2011 creating a charge on the assets of the Respondent Company. Respondent entered into a Master Restructuring Agreement with the Applicant on 14th March, 2012. By virtue of Amendment Agreement dated 28th June, 2013, Applicant became a CDR Lender but the CDR package failed as the Respondent neglected to pay the outstanding amount. Respondent in its Annual Report for the year 2014-15 acknowledged that the Corporate Debtor owes to the Financial Creditor to the tune of Rs. 99,73,00,000/-with a First Charge on the entire assets of the Respondent Company. Similar acknowledgements were also made by the Respondent in its Annual Reports for the year 2011-12, 2013-14 and 2015-16. Applicant filed Original Application No. 458 of 2016 on 22nd June, 2016 before the Debt Recovery Tribunal-I at Kolkata against Respondent and Mr. Ramesh Chandra Garg for recovery of outstanding dues and it is pending.

5. Applicant filed this Application in Proforma-1 as per sub-Rule (1) of Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Applicant also furnished all the information that is required as per Form-1. Applicant before filing this Application served a copy of its Application on the Respondent on 29th May, 2017. Proof of such service is filed.

6. This Application was listed for the first time before this Authority on 5.7.2017. This Adjudicating Authority directed the Applicant to issue notice of date of hearing to the Respondent. Accordingly, Applicant issued notice of hearing to the Respondent and filed proof of service. Respondent appeared through Counsel and

filed its Reply. In the Reply Respondent stated that Respondent Company was India's largest Mustard Oil Producer having 25% market share in Branded mustard oil segment and 11% market share in overall sale of Mustard Oil. It is also stated that Respondent Company was 2nd largest exporter of De-oiled Cake for the financial years 1995-96, 1996-97, 2006-07, 2007-08 and 2008-09. In the year 2010 the Company employed over 3300 people directly or indirectly. The Company had a strong and consumer centric distribution network. According to the Respondent, in Master Restructuring Agreement entered into in March 2012 no WCF was granted to the Company. It is also stated that Secured Creditors filed Original Application No. 306 of 2016 before the Debt Recovery Tribunal-II, New Delhi in respect of the assets of the Company. Respondent also stated that multiple litigations are pending between the Company and Secured Creditors including claims/counter claims, set offs. The Secured Creditors are interested in realization of dues through direct sale under SARFAESI Act. Respondent stated that initiation of corporate insolvency resolution process is not in public interest. It is also stated that incidence of default claimed in the petition would be subject matter of adjudication before DRT, Kolkata. Respondent stated that this Tribunal has to see whether Interim Resolution Professional would be able to prepare resolution scheme.

7. A perusal of the Rupee Loan Agreement dated 23rd August, 2010, Deed of Hypothecation dated 23rd August, 2010, Supplementary Agreement dated 2nd September, 2011; Master Restructuring Agreement dated 28th June, 2013; Statement of Account in accordance with the Banker's Books Evidence Act, 1891; and True Copies of Annual Reports of the Respondent for the years 2011-12; 2013-14; 2014-15; and 2015-16, is sufficient to ascertain the existence of default, and a default has occurred in payment of the debt. Applicant is a Company. Respondent is also a Company registered under the Companies Act. Amount was lent by the Company to the Respondent for interest. Therefore, the amount due from the Respondent to the Applicant is a 'financial debt'. Hence, the

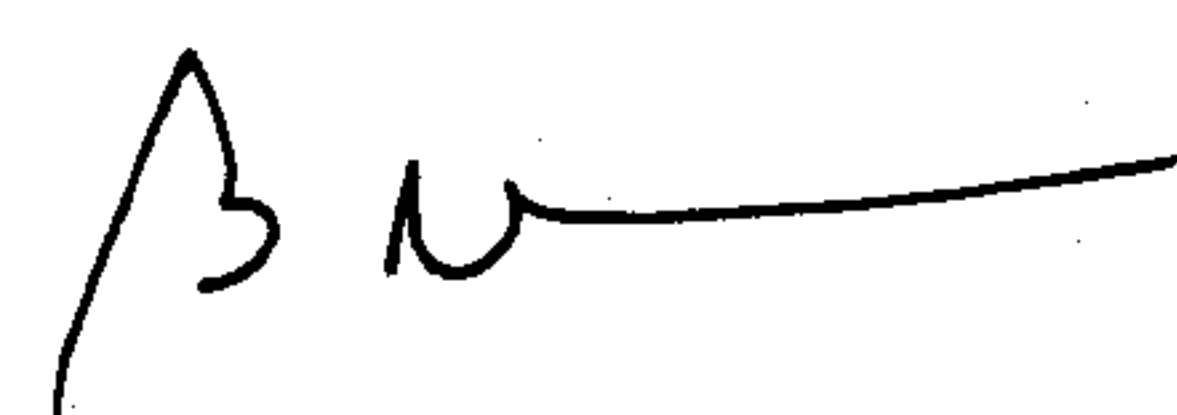


Applicant is a 'Financial Creditor' and the Respondent is a 'Corporate Debtor'. Application filed by the Applicant is complete in all respects. Applicant proposed the name of an Interim Resolution Professional. Applicant also filed the Written Communication of the proposed Interim Resolution Professional. The Written Communication filed discloses that no disciplinary proceedings are pending against the proposed Interim Resolution Professional.

8. The pendency of proceedings before the Debt Recovery Tribunal and the initiation of action under SARFAESI Act by other Secured Creditors is no ground to reject this Application. Provisions of Section 7 read with Rule 4 do not contemplate notice to other creditors, Secured or Unsecured, Operational Creditor or Financial Creditor. There is every opportunity for other Creditors of any class to refer their claims before the Interim Resolution Professional in case of admission of this Application. Therefore, in the absence of any provision enjoining upon this Authority to issue a notice to other Creditors, no notice need be issued to other Creditors.

9. Learned Counsel appearing for the Respondent contended that this Adjudicating Authority has to see whether corporate insolvency resolution process is in the public interest or not. He further argued that 'public interest' includes interest of stakeholders.

10. The main object of enacting 'Insolvency Code' is to have Corporate Insolvency Resolution Plan in respect of Corporate Debtors with an intention to revive the operations of the Corporate Debtor without straightway going to liquidation. In the process of resolution, every Creditor has an opportunity and interest of every stakeholder is to be taken into consideration. Therefore, to say that Corporate Insolvency Resolution Process is not in public interest in all cases is not correct. In the case on hand Corporate Debtor is unable to pay the debts to several Creditors including the present Financial Creditor. Therefore, to keep the Corporate Debtor away from the



Resolution Process is, in my view, not in public interest including the stakeholders. Therefore, the argument of the learned counsel for the Respondent may not suit to the facts of this case.

11 In view of the above discussion, this Petition is admitted under Section 7(5) of the Code. This Adjudicating Authority is also appointing Shri Kuldip Verma, 3, Jagabandhu Modak Road, 4th Floor, Shovabazar, Kolkata-700005 having Registration Number IBBI/IPA-001/IP-POOO14/2016-17/10038 as "Interim Insolvency Resolution Professional" under Section 13(1)(b) of the Code.

12. Section 13 of the Code says that after admission of the application under Section 7, the Adjudicating Authority shall pass an order declaring a moratorium for the purposes referred to in Section 12. Therefore, in view of the commencement of the Insolvency Resolution Process with the admission of this Petition and appointment of the Interim Resolution Professional, this Adjudicating Authority hereby passes the order declaring moratorium under Section 13(1)(a) prohibiting the following as laid down in Section 14 of the Code;

(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);

(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.

(i) The moratorium order in respect of (a), (b), (c) and (d) above shall not apply to the transactions notified by the Central Government.

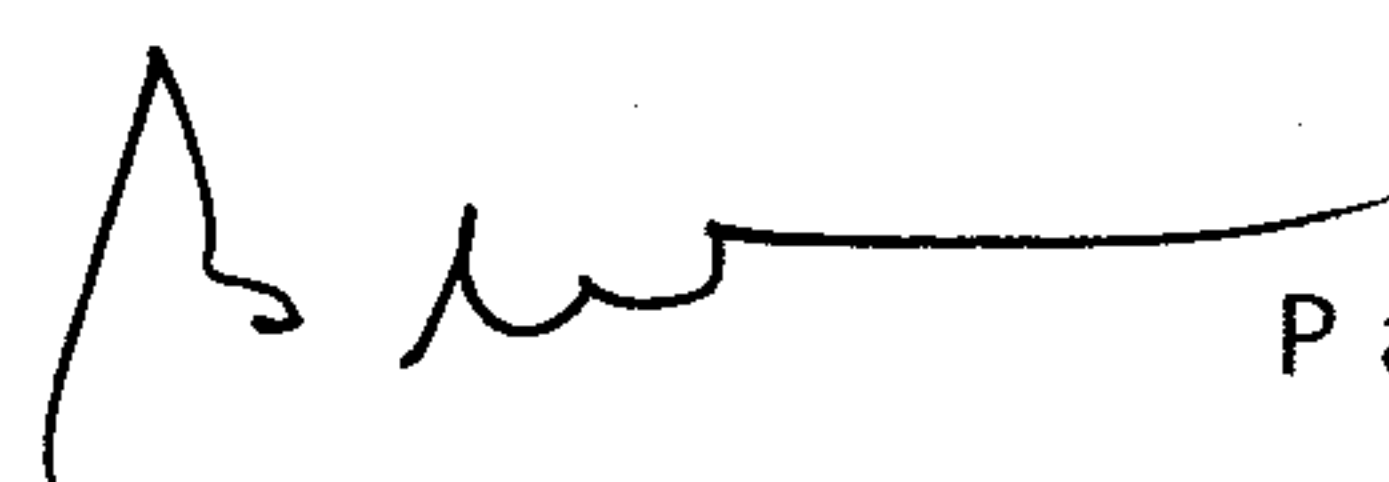
(ii) However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.

(iii) The applicant shall also make public announcement about initiation of 'Corporate Insolvency Resolution Process', as required by Section 13(1)(b) of the Code.

(e) However, the supply of goods and essential services to the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.

(f) The provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

13. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.



14. This Application is ordered accordingly.
15. Communicate a copy of this order to the Applicant Financial Creditor, and to the Interim Insolvency Resolution Professional, and to the Respondent Corporate Debtor.

Signature:



21.7.17

**Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.**