

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

CP/1307/IB/2018

Under Section 7 of the IBC, 2016

In the matter of M/s. The Jeypore Sugar Company Limited

M/s. IDBI Bank Limited

---Financial Creditor

V/s

M/s. The Jeypore Sugar Company Limited

---Corporate Debtor

Order delivered on: 25.02.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor: *Mr. S. Sathiyarayanan, Advocate*

For the Corporate Debtor : *Mr. Ashwin Shanbhey, Advocate*

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and Order pronounced on: 19.02.2019

It is a Company Petition filed u/s 7 of the Insolvency & Bankruptcy Code ("**the Code**") by IDBI Bank ("**the Creditor Bank**") for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on the ground that it has defaulted repaying an

amount of ₹183,75,51,582 as on 01.10.2018 as against the loans availed by the Corporate Debtor.

2. On perusal of the record, it appears that the Corporate Debtor availed credit facilities for an amount of ₹31 Crores under the head of "Working Capital Loan", ₹50 Crores under the head of "Rupee Term Loan-I", ₹25 Crores under the head of "Rupee Term Loan-II", ₹30 Crores under the head of "Rupee Term Loan-III", ₹22.73 Crores under the head of "Funded Interest Term Loan", and ₹6.64 Crores under the head of "Term Loan" in aggregate, it comes to ₹165.37 Crores.
3. To support this claim, the Creditor Bank filed dates and events disclosing existence of debt and occurrence of default, which are as follows:

S. No.	DATES	EVENTS
1.	26.09.2005	Initially credit facilities were sanctioned to the tune of Rs. 30.00 Crore to the Corporate Debtor.
2.	15.12.2005	The Corporate Debtor executed various Security Documents for the credit facilities sanctioned by the Applicant Bank.
3.	25.08.2005 to 02.08.2014	The credit facilities to the Corporate Debtor was reviewed / enhanced on various dates and

		Security Documents were executed for the revised credit facilities.
4.	27.02.2013	Working Capital Consortium Agreement was executed between the Corporate Debtor, the Applicant Bank and other Working Capital Consortium Lenders.
5.	30.06.2015	The loan amount of the Corporate Debtor was classified as NPA on 30.06.2015, in accordance with RBI directives.
6.	13.11.2015	The Working Capital Loan and Term Loans are repayable on demand. A Recall Notice dated 13.11.2015 was sent to the Corporate Debtor by the Applicant / Financial Creditor (Pg. 722). In spite of such recall of the facilities and demand for repayment, the Corporate Debtor has not repaid the amount due to the Applicant / Financial Creditor. Thus, committed default u/s 6 of the IBC.

4. Looking at the dates and events as well as the annexures to the Company Petition, we hereby hold that the Creditor Bank has furnished material disclosing the Creditor Bank providing credit facilities as mentioned above, the Corporate Debtor in turn defaulted in repaying the same.

5. As against this case, the Corporate Debtor counsel has set up a defence stating that the Creditor Bank on its own showing has revealed that the date of occurrence of default as 30.06.2015, but whereas this

petition being filed on 24.10.2018, it is self-evident that this petition has been filed after completion of three years from the date of occurrence of default, therefore, this petition is liable to be dismissed on the ground that the debt claim is barred by limitation.

6. To give justification to this argument, the Corporate Debtor counsel has drawn the attention of this Bench to sub-section 12 of Section 3 and Section 7 of the Code for saying that limitation against the claim will start running from the date of occurrence of default.
7. On this premise, the Corporate Debtor having filed counter affidavit, the Creditor Bank counsel has also filed rejoinder rejecting the contention of the Corporate Debtor counsel by saying, as to the Working Capital Loan and Rupee Term Loans being payable on demand, since the Creditor Bank gave Recall Notice on 13.11.2015, the Claim Petition being filed on 24.10.2018, it is evident that the Creditor Bank has made claim within the period of three years from the date of issual of Recall Notice dated 13.11.2015. Secondly, the Creditor Bank counsel has further stated that since the Managing Director of the

Corporate Debtor, vide its letter dated 08.01.2016 agreed to settle the debt dues without any dispute, under this ground also, he says, it has to be treated as claim made within limitation. Thirdly, the Creditor Bank counsel has stated that since the Corporate Debtor has shown in its Annual Report dated 24.08.2017 for the year ended March 2017 reflecting ₹131,81,12,700 is due and payable to the Creditor Bank, such entry in the accounts of the Corporate Debtor is tantamount to acknowledgement of the debt under Section 18 of The Limitation Act.

8. To fortify this argument, the Creditor Bank counsel relied upon a ratio decided in between *Bajansingh Samra vs. Wimpy International Limited (CDJ 2011 DHC 2070 Para 7)*; *Shahi Exports Private Limited and another vs. CMD Buildtech Private Limited (CDJ 2014 DHC 128 Para 13)* holding that admission of debt either in a Balance Sheet or in the form of letter duly signed by the Respondent would amount to an acknowledgement extending period of limitation under Section 18(1) of the Limitation Act, 1963.

9. To revert this argument, the Corporate Debtor has not placed any material showing that this debt has not been reflected in the books of the Corporate Debtor.
10. As against this argument, the Corporate Debtor adverted para 27 of a case in between *M/s. B.K. Educational Services Private Limited vs. Parag Gupta and Associates (MANU/SC/1160/2018)* decided by Honourable Supreme Court which is as follows:

“27. It is thus clear that since the Limitation Act is applicable to applications filed under Sections 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. “The right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred Under Article 137 of the Limitation Act, save and except in those cases where, in the facts the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.”

11. It is to state that limitation will start running from the date of default, but before the expiry of prescribed limitation period if the debt is acknowledged, a fresh period of limitation shall be computed from the date of acknowledgement. In this case, the Corporate Debtor has time

to time acknowledged the debt after occurrence of default, in any event, this debt liability having remained showing in the books of the Company as on 24.08.2017, we have not found any merit in the argument of the Corporate Debtor counsel saying that three years period of limitation is over from the date of occurrence.

12. While this Bench dictating this order, this Corporate Debtor counsel has interjected the dictation by showing up a letter written by the Debtor proposing OTS proposal dated 19.06.2017 to say that the Creditor bank has not taken into consideration of the bonafides of the Corporate Debtor.

13. Against this argument, the Creditor bank counsel has rebutted saying that the Creditor bank has written back to the Corporate Debtor through a letter 20.06.2017 saying that the creditor bank would like to inform that the bank was unable to call for JLM to discuss the proposal in the absence of the details of the investor identified by the Corporate Debtor, the proposed plan of action of the investor for the revival of the Corporate Debtor, contours of the settlement proposal, therefore

the bank made a request to furnish a fully tied up proposal to take up the same to the JLM, to which, the Creditor bank counsel says till date no response has come from the Corporate Debtor.

14. On looking at the submissions of either side, we observe that had there been an intention to the Corporate Debtor to settle this claim amount through OTS, the Debtor company would have responded to the letter dated 20.06.2017 but whereas there is no material reflecting that this Corporate Debtor made any efforts to resolve this issue through OTS despite more than one and half years is over from the date the Creditor Bank sent a letter asking the Corporate Debtor to provide full information as aforesaid.

15. By looking at the conduct of the Corporate Debtor, it is clear that the Corporate Debtor made an attempt to set up these letters filed by the creditor bank as defence to impress upon this Bench that the debtor made efforts for one time settlement, but on record no material is there to prove that the Corporate Debtor pursued OTS proposal any time thereafter.

16. While concluding the order, the Corporate Debtor counsel has at last raised an objection saying that he needs time to look into the rejoinder filed by the Financial Creditor. As to this point is concerned, the Creditor Bank counsel has only stated that how this debt is within the limitation. As to this material is concerned, the Debtor counsel has not stated anywhere that the material filed by the Financial Creditor counsel is false. His only argument is he needs time to look into his rejoinder. When it has not been denied that the report filed by the creditor is not the annual report the Corporate Debtor, the only point to be seen is as to whether this can be considered as acknowledgement in furtherance of the occurrence of default.

17. Since the law is clear that the entries in the books of the company is being considered as subsisting liability against the Debtor company, nothing is left to be decided on factual aspects except to the legal aspects as aforementioned. In a situation like this, this limitation issue cannot be called as a mixture of factual as well as legal whereby the opportunity to submit the case from the side of the Corporate Debtor has already been provided, today by seeing the rejoinder filed by the

Creditor Bank, the Corporate Debtor counsel cannot say that he needs some more time to argue this matter. Moreover, in IBC proceedings, no procedure is set out for completion of pleadings, the only thing that is required to be complied is providing an opportunity to the Corporate Debtor to defend the case. That has been provided.

18. On perusal of the process file, we have come to know that this case was filed 30.10.2018, now already three months are over, for this, we regret to say that this is a belated adjudication on a case filed by the Bank.

19. Therefore, we are of the view that the submissions made by the Corporate Debtor are misconceived and for trying to drag out this matter on one or the other pretext.

20. In view of the reasons aforementioned and the material furnished by the Financial Creditor, we are of the view that liability is subsisting against the Corporate Debtor and the Corporate Debtor has already defaulted in repaying the liability, therefore, we hereby hold that it is a fit case for admission. The Financial Creditor has also filed consent

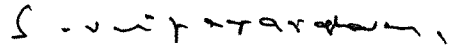
letter given by the Insolvency Resolution Professional, henceforth, we hereby declare moratorium with the following directions:

- I. That Moratorium is hereby declared prohibiting all of the following actions, 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 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 corporate debtor.
- II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

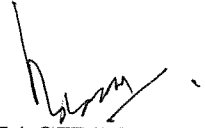
- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from 25.02.2019 till the completion of the corporate insolvency resolution process or until this Bench 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 IBC, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
- VI. That this Bench hereby appoints Mr. V. Venkata Sivakumar, having Registration Number [IBBI/IPA-001/IP-P00187/2017-18/10852] No. 10/11, Dr. Subbarayan Nagar Main Road, Kodambakkam, Chennai-600024, E-Mail: arunasri.siva@gmail.com, Mobile No: 9444785500 as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

21. Accordingly, this Petition is admitted.

22. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email or whatsapp.



(S. VIJAYARAGHAVAN)
MEMBER (Technical)



(B. S.V. PRAKASH KUMAR)
MEMBER (Judicial)

TJS/SR