



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

TP No. 40/CTB/2019

(Formerly CP (IB) No. 24/KB/2018 on the file of NCLT, Kolkata)

In the Matter of:

An application under section 7 of Insolvency and Bankruptcy Code 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

-And-

In the Matter of:

State Bank of India, Stressed Assets Management Branch, Nagaland House, 8th Floor, 11 and 13, Shakespeare Sarani, Kolkata- 700071, Registered office- Samridhi Bhavan, Block B, 1, Strand Road, Kolkata- 700001

...Financial Creditor

-Versus-

Visa Steel Limited, having its registered office at: 11 Ekamra Kanan, Nayapalli, Bhubaneswar- 751 015, Odisha.

... Corporate Debtor

Appearances (through video conferencing)

For the Applicant	:	Mr. Arun Kathpalia, Sr. Adv for Mr. Siddharatha Datta, Adv. Ms. Suhani Dwivedi, Adv. Mr. Deepanjan Dutta Roy, Adv.
For the Respondent	:	Mr. Joy Saha, Sr. Adv for Mr. VVV Sastry, Adv. Mr. Tridib Bose, Adv. Mr. PP Bishwal, Adv.



Order reserved on: 15.11.2022

Order Pronounced on: 28.11.2022

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

ORDER

Per: P. Mohan Raj, Member (Judicial)

1. This application under Section 7 of Insolvency and Bankruptcy Code 2016 with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, has been filed by the **State Bank of India** through its authorised person Assistant General Manager, Mr. Gurupada Chakravorty , having its address at: Samriddhi Bhavan , Block -B,1, Strand Road, Kolkata, 700001, West Bengal thereby seeking initiation of **Corporate Insolvency Resolution Process (CIRP)** against of **Visa Steel Limited** a company incorporated under the provisions of Companies Act 1956, and a company within the meaning of the Companies Act, 2013 having its Registered Office at- 11 Ekamra Kanan, Nayapalli , Bhubaneswar – 751 015 (Herein and after referred as the Corporate Debtor).

The case of Petitioner in nutshell as follows:

2. The financial creditor sanctioned several loans to the corporate debtor. The petitioner/Financial creditor Sanctioned renewal of working capital credit facilities, renewed credit facilities, Sanctioned short Term Loan, Ad-hoc Letter of Credit limit and corporate loan between 18.08.2006 and 31.08.2009. When the



corporate debtor committed default at its request Master Restructure Agreement was entered between the consortium of Banks lead by the Financial Creditor/SBI and Corporate debtor on 19.12.2012 and on the same day Hypothecation, guarantee agreements and other related agreements were also executed. The corporate debtor failed to adhere to make payment as per the Master Restructure Agreement. The corporate debtor shows the loan liability in its financial statements for the period from 2013-2014 to 2016-2017. The Corporate debtor also acknowledged the debt for the purpose of Section 18 of Limitation Act 1963 through its revival letter dated 29.10.2015. The corporate debtor confirmed the total balance amount of Rs.8111,76,46,983.53 as on 31.03.2017 in his letter dated 05.07.2017 addressed to the financial creditor. When the CDR failed on 13.12.2017 the financial creditor declared the account of corporate debtor as NPA back dated to 11.07.2012. The total due amount as on 13.12.2017 was Rs.982,82,01,341.70/- Then the Petitioner filed this petition before NCLT, Kolkata on 21.12.2017. for an initiation of CIRP.

The Reply of Respondent is as follows:

3. The petition is filed in December 2017. The respondent filed I.A.No.21 of 2019 in May 2019 challenging the maintainability of the petition. This Adjudicating Authority allowed the maintainability application and dismissed this petition on 25.06.2019. The Financial creditor preferred an Appeal before the NCLAT in Company Appeal No.294-295 of 2020, the same was allowed on 15.03.2021. The Respondent preferred Civil Appeal before Supreme Court of India in Civil Appeal No.2810-2812 of 2021 the said appeal is still pending. The



corporate debtor was demerged and transferred to an entity Visa Special Steel Limited, the scheme was approved by this Tribunal in T.P.No.17-18/CTB/2019 by order dated 08.07.2019. The Company ApeecalNo.240 of 2019 preferred by this petitioner before the NCLAT-Delhi was dismissed on 16.10.2019. The Petitioner preferred a Civil Appeal No. 56 of 2020 before the Hon'ble Supreme Court of India the Hon'ble Supreme Court of India stayed the order of NCLT dated 08.07.2019 by order dated 17.01.2020. The petitioner also filed proceedings before the Debt Recovery Tribunal, Kolkata in O.A.No.411 of 2018 against the VISA Special Steel Limited, the same is pending. This petition is filed in pursuant of the direction of RBI letter dated 28.08.2017. There are substantial grounds to challenge the petition of its maintainability. It is a matter of record that the default of corporate debtor occurred on 11.07.2012 and this instant petition was filed in December 2017 is barred by Limitation. The respondent denies the allegation that the outstanding due amount is Rs.982,82,01,341.70/- It is denied that subsequent defaults occurred in various accounts in the month of May and June 2015. The petitioner carried out an evergreening exercise with the only intention to extort money. For these reasons the petition should be dismissed.

The Points for determination are:

1. Whether the petition is barred by Limitation?
2. Whether the petition against the corporate debtor is hit by an order of demerger scheme passed by this Tribunal in T.P.No.190-191/CTB/2019 by order dated 08.07.2019?



Point No.1

4. The case of the financial creditor/petitioner is the corporate debtor account was classified as NPA on 13.12.2017 but back dated to 11.07.2012. The contention of the petitioner that the corporate debtor committed default on 11.07.2012 is not denied by the corporate debtor, in fact in reply it is stated that it is a matter of record that default occurred sometime on 11.07.2012. (Page 10 clause 'r' of reply). On the petitioner side it is submitted that even though respondent committed default and when it continues for 90 days its account ought to have been classified as NPA on 11.07.2012, since the corporate debtor submitted requisition for Restructure of Debt, the same was considered and Master Restructure Agreement was entered between the consortium of Banks lead by the Financial Creditor/SBI and Corporate debtor on 19.12.2012. When the corporate debtor even after restructure of loan committed default, hence after issued demand notice on 13.12.2017, the corporate debtor account was declared as NPA back dated to 11.07.2012. On the corporate debtor side argued that since the actual date of NPA is 11.07.2012 and this Petition is filed on 21.12.2017 after expiry of three years from date of NPA hence petition is barred by limitation. It is stated that failure to declare NPA instantly and to initiate legal Proceedings amounts to waiver of rights. In this regard respondent side relies upon NCLAT order passed in Jagdish Prasad Sarda vs Allahabad Bank 2020 SCC ONLINE 621. It is also argued that whatever the correspondence taken place between the parties inclusive of acknowledgement of debt made by the corporate debtor after actual date of NPA 11.07.2012 cannot be taken into consideration.



5. The Corporate debtor committed default on 11.07.2012, the corporate debtor admitted its liability in its financial statements for the financial years 2013-2014 to 2016-2017. The corporate debtor acknowledged the debt in its revival letter dated 29.10.2015 addressed to the financial creditor. (Page 1481 volume-V) The corporate debtor also acknowledged the debt in its Balance confirmation letter dated 05.07.2017 addressed to the financial creditor. The corporate debtor initially defaulted on 11.07.2012, subsequently before the expiry of period of limitation acknowledged the debts, the last such acknowledgement is the Balance confirmation letter dated 05.07.2017 and this petition is filed on 21.12.2017. The contention of the respondent that once NPA is declared the said date is default date it could not be shifted nor extended is incorrect. For the purpose of limitation, the default date is subject to acknowledgement of debt as set out in section 18 & 19 of Limitation Act 1963. The position of law is cleared by the Apex court in **Dena Bank (Now Bank of Baroda) Vs C. Sivakumar Reddy and another (2021)10 SCC330 at 388 para 140 read as follows:**

140. To sum up, in our considered opinion an application under Section 7 IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA, if there were an acknowledgement of the debt by the corporate debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.



Further the Apex court in **State Bank of India vs Krishdhan Seeds Private Ltd (2022) SCC Online 632 para 13** runs as follows:

13. In view of the above decisions, the position of law has been set at rest. Neither the NCLT nor the NCLAT had the benefit of adjudicating upon the factual controversy in the context of the decisions of this court. The principles which emerge are that:

(i) The provisions of Section 18 of the Limitation Act are not alien to and are applicable to proceedings under the IBC; and

(ii) An acknowledgment in a balance sheet without a qualification can furnish a legitimate basis for determining as to whether the period of limitation would stand extended, so long as the acknowledgment was within a period of three years from the original date of default.

In view of supra-Apex court citations, the NCLAT order passed in Jagdish Prasad Sarda vs Allahabad Bank 2020 SCC ONLINE 621 relied by the respondent/corporate debtor is no more good law.

6. In respect of waiver plea of the corporate debtor is concern, when the corporate debtor committed default and its accounts was to be declared as NPA, when the respondent made a request for restructure, then its account was not declared instantly as NPA, then Master Restructuring Agreement was executed between the Consortium of Banks lead by Financial creditor/SBI and Corporate debtor on 19.12.2021 this is evident from the clause 'D' of The Master



Restructuring Agreement (*page 356 volume II of petition*) and in clause 8.3 it is clearly stated under the caption Consequences of Revocation the rights and remedies of the lender under the existing document would continue as if they had not waived or amended (*page 390 volume II of petition*) hence the contention of the corporate debtor that all the rights accrued on the petitioner was waived is not acceptable. The essential element of waiver is that there must be a voluntary and intentional relinquishment of a right. These elements are missing in this case. Thus, the plea of waiver is not proved. In these circumstances it is answered that the petition is not barred by limitation.

Point No.2

7. On the Corporate debtor/respondent side taken a plea that because of demerger the entire accounts of the corporate debtor were bifurcated and assigned to Visa Special Steel Limited, the scheme was sanctioned by this Tribunal in T.P.No.190 & 191 of 2019 by order dated 08.07.2019. The scheme was sanctioned with the consent of financial creditors. The order of this Tribunal was confirmed by the NCLAT in Company Appeal No.240 of 2019 by order dated 16.10.2019. The scheme sanctioned by this Tribunal was stayed by the Hon'ble Apex court in Civil appeal No. 56 of 2020 filed by the Petitioner/Financial creditor by order dated 17.01.2020, the said appeal is still pending. It is stated on the Respondent side the scheme was given effect to its books of account even prior to the stay granted by the Apex court, hence the respondent is not liable for any of the debts.



8. On the petitioner side submitted that the consent was given in the beginning, but when the Corporate Debt restructuring was failed on 23.08.2016 it leads to the consent of the lenders stood revoked. On the respondent side has not submitted any documentary proof to show that the scheme was given an effect on 13.07.2019, but in fact the Visa Special Steels Limited uploaded its form MGT-7 on 18.01.2020. Further as per the scheme only the special steel under taking of the corporate debtor has been demerged to VSSL. As per clause 9 of the scheme the remaining business of corporate debtor continues with it and legal proceedings by or against the corporate debtor shall be continued and enforceful against the corporate debtor. Further if the scheme is implemented as alleged by the respondent, they can very well submit the accounts/balance sheet showing how debts were divided, and what amount of debts were assigned to the VSSL and how much of debts remains with VSL. On the petitioner side without admitting that the scheme was implemented, submitted that even if the scheme is given an effect the remaining debt of corporate debtor runs more than 300 crores. This fact is not refutable by the corporate debtor since no documents have been filed in this regard. These factors shows that the scheme is not yet given an effect.

9. On the petitioner side relies upon S. Elangovan vs ASREC (India)Ltd and another Company Appeal No.102 of 2022 there in para 52 it is observed that “Quantum of liability is not a relevant factor to be taken into account and has no nexus in respect of the Initiation of Corporate Insolvency Resolution process in as much as the “Default” if a debt is equivalent to Rs. 1 crore and above. The same view is expressed by NCLAT in **Rajesh Kedia Ex Director of Ajanta Paper and**



General products Ltd vs Phoenix ARC private Limited 2022 SCC on line page 147 para 15 as follows:

15. In so far as the contention of the Appellant qua the quantum of payment of debt is considered, we are of the earnest view that the same does not fall for consideration before the Adjudicating Authority at the stage of 'admission' of the Application under Section 7 of the code. The only requirement is that the minimum outstanding debt should be more than the threshold amount provided for under the Code. The actual amount of 'Claim' is to be ascertained by the Resolution Professional after collating the 'Claims' and their verification which comes at a later stage. Keeping in view all the aforementioned reasons, this Tribunal is satisfied that there is an admission in 'debt' and 'default' as defined under the Code and we don not find any illegality or infirmity in the Impugned Order dated 07/10/2021, passed by the Learned Adjudicating Authority.

10. The order of sanction of scheme by this Tribunal is stayed by the Hon'ble Apex court, thus the order is not in force hence there is no impediment to proceed with this petition against the corporate debtor. On the respondent/corporate debtor side relies upon the Apex court judgment **Shree Chamundi Mopeds Ltd vs Church of South India Trust Association AIR 1992-** page 1439 and argued that the effect of the interim stay order staying the scheme has not reversed to the prior implementation of the scheme. As discussed above on



the respondent side not proved that the scheme is implemented, further in the supra judgment the Apex court dealt with effect of order of winding up passed by the High Court of Karnataka, when the stay was granted by Delhi High Court, against the final order passed by the Appellate authority. According to section 22(1) of Sick Industrial Companies (Special Provisions) Act 1985, if any inquiry is pending under section 16 or any scheme is under consideration, any sanctioned scheme is under implementation under section 17 or any appeal is pending under section 25, then no proceeding for winding up of company to be proceeded. The Karnata High court after the dismissal of appeal by the Appellate Authority take up the matter and passed an order of winding up. In that context the Apex court held an interim stay order granted in writ petition by Delhi High Court will not amount to the restoration of proceeding and pending before the Appellate authority. Therefore, an interim order passed by Delhi High Court does not have the effect of reviving the appeal which was dismissed, and it will not amount to restoration of an appeal. In the situation this citation is not helpful to the respondent, and applicable to the facts and circumstances of this petition.

11. From the documents produced on the petitioner side proved the existence of debt and default committed by the corporate debtor these two elements are vital to admit the petition under section 7 IBC 2016. The Apex court in **Innovative Industries Limited VS ICICI Bank (2018) 1 SCC 407 in para 28** observed that the moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted, unless it is incomplete. The Apex court



in **Radha Exports (India) Private Ltd vs K.P.Jayaram and another (2020) 10 SCC 538** para 32 held as follows;

32. The proposition of law which emerges from Innoventive Industries Ltd. is that the Insolvency resolution process begins when a default takes place. In other words, once a debt or even part thereof becomes due and payable, the resolution process begins, Section 3 (11) defines “debt” as a liability or obligation in respect of a claim and the claim means a right to payment even if it is disputed. The Code gets triggered the moment default is of Rs. 1,00,000 or more. Once the adjudicating authority is satisfied that a default has occurred, the application must be admitted, unless it is otherwise incomplete and not in accordance with the rules. The judgment is however, not an authority for the proposition that a petition under Section 7 IBC has to be admitted, even if the claim is ex facie barred by limitation.

In this case the enforceable debt of INR more than one crore and default are satisfied; hence we find, this is a fit case to order Corporate Insolvency Resolution Process against the corporate debtor.

12. The financial creditor has taken consent from **Mr. Ashok Kumar Gulla** having registration No. **IBBI/IPA-003/IP-N00024/2017-2018/10174** having address at: **RSBA Restructuring Advisors LLP, 9C, 9th Floor, Hansabya Building, 15 Barakhamba Road, Connaught Place, New Delhi- 110001** an



insolvency Professional to become interim Resolution Professional (IRP) of the Corporate Debtor in Form No.2 and that no disciplinary proceedings are pending against him.

13. At this juncture we would like to mention the developments made in this case. Today we admitted another Section 7 of IBC, 2016 Petition CP. No. 53/CTB/2020 into CIRP filed by Punjab National Bank against the same corporate debtor Visa Steel Limited and appointed **Shri Ajay Kumar Agarwal**, having IP Registration No. **IBBI/IPA-002/IP-N00608/2018-19/11859** and Email Id: – **cs.aaa.2014@gmail.com**, having Address at: **Ambey Garden, Flat-3C, 3rd Floor, Banglaxmi Abasan, Dasadron Check Post, P.O. R Gopalpur, Rajarhat Main Road, Kolkata – 700136** as an Interim Resolution Professional and also ordered moratorium under Section 14 of IBC, 2016 and given other consequential directions. Since already corporate debtor is admitted into CIRP, no necessity arises to appoint IRP in this petition and to pass an order of moratorium etc.

14. As on today in view of the order of Hon'ble Supreme Court of India Passed in Civil Appeal No. 2810-2812 of 2021 dated 07.11.2022 this order is not effective. When the order become effective the petitioner can file a claim before the IRP/RP appointed in CP No. 53/CTB/2020. In any event when the order become effective and the petitioner could not file the claims before the IRP/RP appointed in CP No. 53/CTB/2020, then the petitioner can approach this Adjudicating Authority for an appointment of IRP, for an order of moratorium and for any necessary and appropriate orders.



IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH

TP No. 40/CTB/2019
IN
CP (IB) No. 24/KB/2018

15. The Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by e-mail or WhatsApp immediately, and in any case, not later than two days from the date of this order.

16. Additionally, the Financial Creditor shall serve a copy of this Order on the Registrar of Companies, Odisha, Cuttack 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.

17. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

In view of the Hon'ble Supreme Court of India, Order passed in Civil Appeal No(s) 2810-2812 of 2021 dated 07.11.2022 this order will not take effect till 29.11.2022.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2022.11.28 12:57:51 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2022.11.28 13:40:13 +05'30'
RAJ

P. Mohan Raj.
Member (Judicial)

Signed on this 28th day of November, 2022.

Supriya-P. s_