

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) -3622/I&BP/MB/2018  
Under Section 7 of the I&B Code,  
2016

In the matter of  
TJSB Sahakari Bank Ltd.  
TJSB House, Plot No. B-5, Road  
No. 2, Wagle Estate, Thane (W)-  
400604

.... Petitioner  
Vs.

M/s. Unimetal Castings Ltd.  
Plot No. 06, Sector E, Parvati  
Co-op. Industrial Estate, Sangli  
Road Yadrav, Ichakaranji Dist-  
Kolhapur, Maharashtra- 416145  
.... Respondent

Order delivered on: 25.01.2019

**Coram:**

Hon'ble Bhaskara Pantula Mohan, Member (J)  
Hon'ble V.Nallasenapathy, Member (T)

For the Petitioner: Mr. Nausher Kohli a/w Ms. Ketaki Deshpande,  
Advocates.

For the Respondent: Mr. Aditya Pimple, Mr. Akash joshi, Advocates  
i/b MAG Legal.

*Per: V. Nallasenapathy, Member (T)*

**ORDER**

1. TJSB Sahakari Bank Ltd(hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process of M/s. Unimetal Castings Ltd (hereinafter called the 'Corporate Debtor') on the ground, that the Corporate Debtor committed default in repayment of loan facilities granted to the Corporate Debtor to the extent of Rs. 6,38,78,416.75/- including interest of Rs. 2,07,95,568/-, under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Petition reveals that the following credit facilities were sanctioned on 25.02.2013 to the Corporate Debtor by SVC Bank consortium wherein the Petitioner bank is the consortium member:

Sr. No.	Facility	By TJSB (Petitioner Bank)	By SVC Bank
1	CC Limit	60,00,000/-	3,90,00,000/-
2	OBD Limit	--	1,00,00,000/-
3	Term Loan 1	45,50,000/-	1,63,80,000/-
4	Term Loan 2	90,00,000/-	75,55,000/-
5	Term Loan 3	1,11,50,000/-	36,90,000/-
6	Term Loan 4	50,00,000/-	1,77,81,000/-
7	Term Loan 5	1,50,00,000/-	--
TOTAL		5,10,00,000/-	9,44,06,000/-

3. The Petitioner enclosed the following security documents respect of sanctioning the loan facilities to the Corporate Debtor
- i. Memorandum of loan sanction on 31.12.2012 in favour of Corporate Debtor.
  - ii. Memorandum of loan sanction on 12.02.2013 in favour of Corporate Debtor.
  - iii. Memorandum of loan sanction on 25.02.2013 in favour of Corporate Debtor.
  - iv. Memorandum of loan sanction on 09.05.2013 in favour of Corporate Debtor.
  - v. Memorandum of loan sanction on 29.03.2014 in favour of Corporate Debtor.
  - vi. Memorandum of loan sanction on 14.07.2014 in favour of Corporate Debtor.
  - vii. Deed of guarantee dated 21.02.2013, 06.06.2013 and 08.08.2014.
  - viii. Deed of hypothecation dated 28.02.2013, 01.03.2013, 05.03.2013 and 08.08.2014.
  - ix. Letter of guarantee dated 21.02.2013, 06.06.2013 and 08.08.2014.
  - x. Promissory Note dated 01.03.2013, 05.03.2013 and 08.08.2014.
  - xi. Letter of lien and set off dated 01.03.2013, 05.03.2013 and 08.08.2014.

- xii. Joint indemnity cum declaration (agreement to create mortgage) dated 08.08.2014.
4. The Petitioner on 04.08.2015 issued recall notice to the Corporate Debtor under the provisions of Multistate Co-Operative Societies Act, 2002 and further issued SARFAESI notice on 29.03.2016.
5. The Corporate Debtor in the reply to the Petition raised the following contentions;
- a. It is submitted that a Corporate Debtor is a medium enterprise as defined under the Micro, Small and Medium Enterprises Development Act, 2006 ('MSMED Act').
  - b. The declaration of the account of the Corporate Debtor as Non Performing Asset ('NPA') w.e.f. 30.06.2015 is illegal, void and no-nest as the same is in contravention of Regulations and Circulars issued by the Government, Reserve Bank of India, etc.
  - c. The claim of Rs. 6,38,78,417/- as claimed in the Petition is not due and payable by the Corporate Debtor.
  - d. The Corporate Debtor being a medium enterprise is statutorily recognised as extremely important for the national economy and certain rights are provided u/s 9 & 10 of MSMED Act.
  - e. The Corporate Debtor is entitled to request the consortium members including the Petitioner herein for restructuring the credit facilities as provided under RBI guidelines such as "Prudential guideline on restructuring of advances by banks" and "Guidelines for rehabilitation of sick, micro and small enterprises". The Central government has also notified the "Framework for revival and rehabilitation of micro, small and medium enterprises". Despite the request of the Corporate Debtor in the year 2014 and 2015 the Petitioner or any other Financial Institution has not made any attempts to restructuring the facilities granted to the Corporate Debtor.
  - f. Consequent to the meeting of the District Level Sick Unit Rehabilitation Committee held on 15.03.2016 under the chairmanship of the District Collector of Kolhapur and the meeting convened by the Joint Director of Industries Pune,

the petitioner by necessary implications agreed to undertake the exercise of getting the requisite Eco-Techno viability report of the Corporate Debtor in order to assist the eligibility/entitlement for the purpose of availing the rehabilitation programme but the petitioner failed to do that.

g. The issue of SARFAESI dated 29.03.2016 by the petitioner under section 13(2) of the SARFAESI Act, 2002 shows their high handedness in exploiting its dominant position vis-a-vis the Corporate Debtor.

6. The above contentions of the Corporate Debtor cannot be taken into account while considering the Petition for admission under section 7 of the code, in view of the decision of the Hon'ble Supreme Court of India in the case "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*, - (2018) 1 SCC 407" wherein it was observed as below:

*"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense*

*that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

7. The Corporate Debtor further contended that, the claim of the Petitioner is barred under Article 137 of the Limitation Act and to support the contention the Ld. Counsel for the Corporate Debtor relied on the decision of the Hon'ble Supreme Court in "*B. K. Educational Services Pvt. Ltd. vs Parag Gupta & Associates (2018 SCC OnLine SC 1921)*". It is submitted that, the date of alleged default was on 30.06.2015 i.e. the date on which the account was declared as Non Performing Asset (NPA). However the cause of action would have arisen much prior to the date of NPA. Hence, the period of limitation would run starting even prior to 30.06.2015 and since this Petition was filed on 23.08.2018 this Petition is barred by limitation.
8. For the above contention of the Corporate Debtor, the Petitioner submitted that the loan was shown in the balance sheet of the Corporate Debtor which is an acknowledgement of liability and hence the debt is not barred by limitation. However, the Corporate Debtor has not disputed the fact that the loan was shown as a liability in the balance sheet of the Corporate Debtor. When the liability is shown in the balance sheet that is a clear acknowledgement of debt by the Corporate Debtor. There are umpteen numbers of judgements to say that the debt shown in the balance sheet is an acknowledgement of liability. Some of them are (i) *Bajan singh Samra v. Wimpy International Ltd.*, 185(2011) DLT 428, (ii) *Shreeram Durgaprasad v. Sail Soap Stone Factory & Ors.* 1982, MhLJ 912, (iii) *J.G. Glass Ltd. v. Indian Bank and Anr.* 2002 (104(1)) Bom LR 234, and (iv) *Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff*, AIR 1962 Cal. 115. In view of this, the contention of the Corporate Debtor that the debt is barred by limitation will not hold water.

9. This adjudicating authority having satisfied with the fact that the Corporate Debtor defaulted in making payment towards the liability to the petitioner, the petition deserves to be admitted.
10. This Adjudicating Authority, on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan availed and also placed the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceedings pending against the proposed resolution professional, therefore the Application under sub-section (2) of Section 7 is taken as complete, accordingly this Bench hereby admits this Petition prohibiting all of the following of item-I, namely:
- (I) (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 (SARFAESI Act);
  - (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 the 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 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 25.01.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of Corporate Debtor under section 33, 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 the Code.
- (VI) That this Bench hereby appoints, Mr. Tejas Jatin Parikh, having his address at Flat No. 1203 Vishwadeep Heights, K T Soni Marg, Mahavir Nagar, Kandivali West, Mumbai 400067 having Registration No. IBBI/IPA-001/IP-N00004/2016-17/10012 as Interim Resolution Professional to carry the functions as mentioned under Insolvency & Bankruptcy Code.
11. Accordingly, this Petition is admitted.
12. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

Sd/-  
V. Nallasenapathy  
Member (T)

sd/-  
Bhaskara Pantula Mohan  
Member (J)