

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

*An Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016
read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016*

IN THE MATTER OF:

UCO BAK

... Applicant/ Financial Creditor.

Verses

M/s. Ankit Metal & Power Limited

(CIN: L27101WB2002PLC094979)

... Respondent/ Corporate Debtor.

Date of Pronouncement: December 20, 2023.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Financial Creditor:

Mr. Joy Saha, Sr. Adv.,

Mr. Santosh Kumar Ray, Adv.,

Ms. Rituparna Sanyal, Adv. and

Ms. Swastika Sengupta, Adv.

For the Corporate Debtor:

Mr. Shaunak Mitra, Adv. and

Mr. Vishwarup Acharyya, Adv.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

ORDER

Per: D. Arvind, Member (Technical)

1. This Court is congregated through hybrid mode.
2. Heard the Learned Senior Counsel for the Applicant and Learned Counsel for the Respondent.

Brief facts of the case:

3. This application has been preferred by UCO Bank, the Financial Creditor (hereinafter referred to as “Applicant”/“FC”) against M/s. Ankit Metals & Power Limited, the Corporate Debtor (hereinafter referred to as “Respondent”/“CD”) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (herein called as “I&B Code”) seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution process, for brevity “CIRP”, in respect of Corporate Debtor.
4. The Corporate Debtor entered into an agreement with the Financial Creditor for Working Capital Credit Facility & other financial accommodation to the tune of Rs. 65,00,00,000/- (Rs. Sixty-Five Crore Only) on 10.12.2010, through several documents such as Sanction Letter for Cash Credit, Letter of Credit (Inland and Foreign) etc. All documents were executed on 10.12.2010.
5. The said credit facilities have been availed by the Corporate Debtor and have been renewed, reviewed and enhanced from time to time and the same is not disputed.
6. The first default by the Corporate Debtor due to non-serving of interest was on 31.05.2014. On 28.08.2014, the account of the Corporate Debtor was classified as a Non-Performing Asset (in short “NPA”) by the Financial Creditor, as per regulations of the Reserve Bank of India.
7. On 25.09.2014, a Master Restructuring Agreement (in short “MRA”) was executed between the Corporate Debtor and all CDR lenders under the

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

consortium arrangement, for the purposes of restructuring the loans and financial accommodation lent.

8. On 09.12.2014, the Corporate Debtor executed several documents in terms of the said restructuring agreement agreeing to the terms and conditions of the said restructuring. However, the Corporate Debtor failed to comply with the terms and conditions of the restructuring and hence the restructuring failed.
9. The last payment received by the Financial Creditor from the Corporate Debtor was only for an amount of Rs. 2,49,157/- on 23.08.2018.
10. The Financial Creditor issued notice under Section 13(2) of the SARFAESI, Act, on 07.04.2018 to the Corporate Debtor and its guarantors for the outstanding dues amounting to a sum of Rs. 105,45,00,000/- which includes interest up to 07.04.2018.
11. The outstanding amount which includes interest on the date of filing of this application under Section 7 of the I&B Code is Rs. 178,00,81,925/- (Rs. One Hundred Seventy-Eight Crore Eighty-One Thousand Nine Hundred Twenty-Five Only), claims the financial creditor. This application was filed on 16.08.2022.
12. The outstanding amount as claimed by the Financial Creditor is in the table below: -

Nature of facility	Outstanding	Accrued Interest	Total Dues
Cash Credit	Rs. 471931697.72	Rs. 467843116.16	Rs. 939774813.38
FITL	Rs. 99831425.14	Rs. 105667187.00	Rs. 205498612.14
WCTL	Rs. 308390584.66	Rs. 326417914.34	Rs. 634808499.00
Total	Rs. 880153707.52	Rs. 899928217.5	Rs. 1780081925.05

13. The applicant has enclosed relevant statements of accounts duly certified under the Information Technology Act, 2000 and the Banker's Books of Evidence Act, 1891 in Annexure – A-28 to the application, in support of the claim and the applicant claims that this Section 7 application has been filed within the time

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

limit prescribed. Amount in default is in excess of the threshold limit and debt has been acknowledged by the Corporate Debtor. Hence, this application under Section 7 of the I&B Code is maintainable.

Applicant's submissions:

14. The Ld. Sr. Counsel, Shri Joy Saha appeared on behalf of the applicant, submits that the loan amount disbursed pursuant to the several agreements mentioned in the application, its default etc are not disputed by the Corporate Debtor. The Financial Creditor submits that the Corporate Debtor has disclosed the loan amount as a liability in the balance sheet as on 31.03.2022 under the heading, long-term borrowings.
15. Therefore, relying on the entry made in the balance sheet as liability, he submits that the default of dues to the financial creditor has been acknowledged as on 31.03.2022 and consequently, this application under Section 7 has been filed within the time limit prescribed under the I&B Code.
16. Reliance was placed on the judgment passed by the Hon'ble Apex Court Judgment in the case of *Asset Reconstruction Company ((India) Limited vs. Bishal Jaiswal and Another* reported in (2021) 6 SCC 366. In this Judgment, the Hon'ble Supreme Court of India was dealing with the question as to whether an entry made in a balance sheet of a Corporate Debtor as liability would amount to an acknowledgement of debt in terms of Section 18 of the Limitation Act, for the purpose of applying the law of limitation.
17. Relying on several judgments, the Hon'ble Supreme Court has held that when the company makes and signs the balance sheet it intends to make the admission of debt. The admissions made in the balance sheet do not cease to be the acknowledgement of liability merely on the ground that they were made in the discharge of statutory duty as per the Companies Act, 2013 or any other applicable law.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

18. During the course of rendering the judgment, the Hon'ble Supreme Court held that entry in the balance sheet an liability is as acknowledgement of debt and the limitation period gets extended accordingly.

Respondent's submission per contra:

19. The Ld. Counsel for the respondent submits that the first date of default was on 31.05.2014 and NPA was declared on 28.08.2014 both of which are not disputed. Revival letter is in Annexure – A-26 by virtue of Master Restructuring Agreement made between Financial Creditor and other lenders. This was made on 11.08.2017.
20. Further, it is claimed by the Learned Counsel that when the restructuring failed the Financial Creditor illegally and maliciously issued a demand notice under Section 13(2) of SARFAESI Act, in respect of an alleged debt of Rs. 105,45,00,000/-. The Financial Creditor also filed proceedings before the Learned DRT, Kolkata for recovery of debts.
21. The Ld. Counsel submits that the Corporate Debtor issued no written and signed acknowledgement to the Financial Creditor at any time after 2015 acknowledging the debt. Therefore, this application is clearly barred by limitation.
22. The Ld. Counsel further claims that the Financial Creditor has already taken recourse and initiated proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act) and the said matter is still pending for consideration before the Learned DRT, Kolkata. Therefore, he submits that the Financial Creditor cannot be allowed to proceed with two separate proceedings against the Corporate Debtor simultaneously, in respect of the same alleged debt and cause of action. Therefore, the present application is liable to be dismissed or at least stayed till such time the suit before the Learned DRT, Kolkata is decided.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

23. Further, it claimed that the Financial Creditor has relied on un-signed balance-sheet of the Corporate Debtor to state that debt has been acknowledged as on 31.03.2022 to overcome the time barred debt.
24. The Learned Counsel for the Corporate Debtor has referred the Section 18 of the Limitation Act read as follows: -

“18. Effect of acknowledgment in writing – (1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation – For the purposes of this section –

- (a) An acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,*
- (b) the word “signed” means signed either personally or by an agent duly authorised in this behalf, and*
- (c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”*

25. Rely upon the judgment passed by the Hon’ble Apex Court in ***Asset Reconstruction Company ((India) Limited vs. Bishal Jaiswal and Another*** reported in (2021) 6 SCC 366 in Para 20, he contends that entry made in the balance-sheet is admission of liability provided the director or its authorized

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

signatories of the company who make it intends to make those admissions, by signing such documents.

26. Further, referring to Para 33 of the said judgment he said only a signed copy of every financial statement shall be filed with appropriate authorities.
27. In view of the above, the Ld. Counsel claims that application filed by the Financial Creditor relying on unsigned financials will have to be ignored and hence the claim is time barred and may be dismissed with costs.

Analysis and Findings:

28. We find that there is no dispute about the disbursement of loans and various credit facilities to the Corporate Debtor by the Financial Creditor. It is also not in dispute that the Master Restructuring Agreement made between the applicant and respondent on 25.09.2014 failed resulting in default.
29. As per the RBI guidelines, the account of the Corporate Debtor was declared to be NPA on 28.08.2014.
30. This application has been filed by the Financial Creditor on 17.08.2022. Therefore, the issues for consideration are:
 - (a) Whether this application filed under Section 7 of the I&B Code could be considered when proceedings initiated by the Financial Creditor under RDDBFI Act are pending before the Learned DRT in O.A. No. 72 of 2021,
 - (b) Whether the application is time-barred, as claimed by the Respondent, in view of acknowledgement of debt to the Financial Creditors only in the unsigned Balance sheet relied upon by the Financial Creditor for the Period of 2020-2022.
31. We are of the view that the proceeding initiated which is pending before the Learned DRT, Kolkata by the Financial Creditor is for recovery of debts due to banks whereas the one before us filed under Section 7 of I&B Code is for resolution of the Corporate Debtor. Therefore, we see no bar in filing this application by the Financial Creditor under Section 7 of the I&B Code.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

32. Whether the application is time-barred or not is to be decided based on the facts and circumstances of the case. In the given case, the account of the Corporate Debtor was declared as NPA on 28.08.2014. However, we find that the Corporate Debtor has acknowledged the debt payable to the Financial Creditor in its balance sheet as on 31.03.2022.
33. The unsigned copies of the Financial Statements submitted by the Financial Creditor disclosed the debt payable to UCO Bank separately under long-term borrowings as well as in short-term borrowings in notes to Accounts of the financial statements for the year ended 31-03-2022.
34. Since, the statements relied on by the Ld. Counsel for the applicant are unsigned, we vide an Order dated November 22, 2023, directed Mr. Gouranga Paul, of J.B.S. & Company, Chartered Accountants who is supposed to have signed the financials of the Corporate Debtor as on 31.03.2022 to be present personally before this Bench to after clarification.
35. Mr. Gouranga Paul, Chartered Accountant appeared before us on 11/12/2023 and confirmed that the Financial Statements have been signed and the Company has filed its annual returns in the MCA for the said financial year. Further the Chartered Accountant undertook to file signed copies of Financial Statements for the years 2020-21 and 2021-2022 and accordingly the same was filed on 12.12.2022 with the Registry of this Adjudicating Authority.
36. We have perused the signed financial statements of the company filed by the Chartered Accountant for the years 2020 – 21 and 2021 – 2022. While in the Balance Sheets, the borrowing from Secured and Unsecured creditors have been mentioned and all the amounts due to several Financial Creditors have been clubbed together, the notes to Accounts which are the Part of financial statements for the year March 31, 2022, disclosed the debt owed to the Financial Creditor (UCO Bank) amount of Rs. 4082.22 Lakh and period and amount of continuing default as Rs. 4719.30 Lakh.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

37. Relying on the Hon'ble Supreme Court Judgment rendered in *Asset Reconstruction Company (India) Limited vs. Bishal Jaiswal and Another* we hold that the period of limitation is extended in this case due to the entry and acknowledgement as liability in the balance sheet as on 31-03-2023 and consequently this application has been filed on time, prescribed under I&B Code.
38. The amount of default is far in excess of the financial threshold limit, this application is complete in all respects and consequently, all the parameters required for admitting an application under Section 7 of the I&B Code have been met.
39. In the light of the facts stated in this application bearing **Company Petition (IB) No. 236/KB/2022**, and the evidence placed on record and the discussion hereinabove, we **ALLOW** the application filed under **Section 7 of the I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:
- i. The Application filed by **UCO Bank (Financial Creditors)**, under Section 7 of the Insolvency & Bankruptcy Code, 2016, is hereby, **ADMITTED** for initiating the **Corporate Insolvency Resolution Process** in respect of **M/s. Ankit Metal & Power Limited (Corporate Debtor)**.
 - ii. As a consequence of this Application being admitted in terms of Section 7 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
 - iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:
 - a) *The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any*

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

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 asset 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 (54 of 2002);*
- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[Explanation.--For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

- iv.** The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- v.** The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi.** The Applicant has proposed the name of **“Mr. Rajesh Kumar Agrawal”** **Address: 1, Ganesh Chandra Avenue, 3rd Floor, Room No. 301, Kolkata – 700013, Registration No. IBBI/IPA-001/IP-P01023/2017-2018/11722, Email ID: rajesh521@yahoo.com,** as the “IRP”. We have perused that there is a written communication, annexed as **Annexure -A-3 at Page 31-33**, to this Application as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or the Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by “**Mr. Rajesh Kumar Agrawal**” as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint “**Mr. Rajesh Kumar Agrawal**” as the **Interim Resolution Professional** (IRP) of the Corporate Debtor to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.

- vii.** In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- viii.** During the CIR Process period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the I&B Code. 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

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities** and/or the **Officer-in-Charge** of Local Police Station(s) to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIR Process in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).
- xii.** In terms of sections 7(5) and 7(7) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (RoC), West Bengal, Kolkata 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 Court within seven days from the date of receipt of a copy of this order.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 236/KB/2022

- xiv.** The Resolution Professional shall conduct CIRP in a time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
 - xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIR Process in respect of the Corporate Debtor to this Adjudicating Authority from time to time.
 - xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 40.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.
- 41.** Post the Company Petition **29/ 01/ 2024** for filing the Periodical Progress Report by the IRP/RP as appointed herein.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 20th Day of December, 2023.

Bose, R. K. [LRA]/ AR_Steno