THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH
AT NEW DELHI

Company Petition No. (IB)-1160(PB)/2019

Under Section 7 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Jammu & Kashmir Bank Limited

Applicant/Financial Creditor

Vs.

Integrated Livestock Village Farm Private Limited

Respondent/Corporate Debtor

Judgment delivered on: 18.12.2019

CORAM:

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

MR. S. K. MOHAPATRA, MEMBER (TECHNICAL)

For Petitioner: Mr. Syed Arsalam, Mr. Prateek Khaitan, Mr. Jatin, Advocates.

For the Respondent: Mr. Kshitiz Garg, Mr. Amol Sinha, Mr. Anshum Jain, Advocates.

ORDER

S. K. Mohapatra, Member

1. The Jammu & Kashmir Bank Limited has filed the instant application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to trigger Corporate Insolvency Resolution Process in respect of respondent Company M/s. Integrated Livestock Village Farm Private Limited, referred to as the corporate debtor.

2. It is appropriate to mention that the applicant Jammu & Kashmir Bank Limited, is a banking company incorporated under the Jammu & Kashmir Companies Act, 1977 and governed by the provisions of Banking Regulation Act, 1949 and having its Registered Office at Maulana Azad Road, Srinagar, Jammu & Kashmir – 190001.

3. Mr. Mohammad Maqsood Wani, working as an Execution Manager and duly authorized on behalf of

applicant bank has preferred the present application on behalf of the applicant for initiation of insolvency resolution process against the respondent under the Code. A copy of the General Power of Attorney executed on 15.07.2011 authorizing Mr. Mohammad Maqsood Wani to act as lawful attorney on behalf of the applicant bank has been placed on record.

4. The Respondent Company M/s. Integrated Livestock Village Farm Private Limited (CIN No. U 74999 DL 2005 PTC 132499) against whom initiation of Corporate Insolvency Resolution Process has been prayed for, was incorporated on 28.01.2005 having its registered office situated at B-3, Friends Colony (West), Main Mathura Road, South Delhi - 110065. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

5. The case of the applicant precisely is that in the year 2010 the respondent company M/s Integrated Livestock Village Farm Private Limited availed two Credit Facilities i.e. Cash Credit Facility of Rs. 9 Crores (for the purchase of live stocks and other components of working capital of the Corporate Debtor) and Term Loan Facility of Rs. 1.5 Crores. Subsequently, in the year 2011 at the request of the Corporate Debtor, the Financial Creditor further sanctioned an ad- hoc facility of Rs. 3 Crores. Thereafter in the year 2012, at the request of the Corporate Debtor, the Cash Credit Facility was enhanced from 9 Crores to Rs. 15.60 Crores (for meeting Working Capital requirements of the Corporate Debtor).

6. It is alleged that after availing the Credit Facilities the accounts of the Corporate Debtor became and continues to be irregular. The Financial Creditor did not receive any payment from the Corporate Debtor and was left with no other alternative but to declare the account of the Corporate Debtor as NPA. It is

further submitted that the corporate debtor had approached the financial creditor for one-time settlement. Applicant had accepted the same vide letter dated 22.03.2017 and the settlement was modified from time to time at the request of the corporate debtor. However, the corporate debtor failed to make the necessary payments as agreed under One Time Settlement and therefore the applicant was constrained to revoke the said OTS vide letter dated 17.05.2018.

7. In support of its claim applicant bank has placed on record copy of various loan and security documents duly executed by both sides including the OTS proposal dated 22.03.2017, letter dated 16.09.2017, modification of OTS dated 21.09.2017 and OTS revocation letter dated 17.05.2018. Applicant filed additional documents on 11.11.2019 in support of proof of debt and default.

8. Applicant Bank has also filed the relevant statement of accounts along with certificate under Section 2 (A) (a) and Section 2 (A) (b) of the Banker's Books of Evidence Act, 1891.

9. As per part IV of the application it is claimed that a sum of Rs. 22,93,41,381.24/- (Rupees Twenty-Two Crores Ninety-Three Lakh Forty-One Thousand Three Hundred Eighty-One and paisa Twenty-Four Only) is due from the respondent company with further interest from 01.05.2019.

10. The respondent corporate debtor has filed its reply on 28.08.2019. Both the parties were heard on 10.12.2019 and the order was reserved.

11. It is pertinent to mention here that the scheme of the Code provides for triggering the insolvency resolution process by three categories of persons namely,

a) Financial creditor

b) Operational creditor, and

c) Corporate debtor itself.

12. The procedure in relation to the Initiation of Corporate Insolvency Resolution Process by the "Financial Creditor" is delineated under Section 7 of the Code, wherein only "Financial Creditor" / "Financial Creditors" can file an application. As per Section 7(1) of the Code, an application could be maintained by a Financial Creditor either by itself or jointly with other Financial Creditors.

13. The expressions "Financial Creditor" and "Financial debt" have been defined in Section 5 (7) and 5 (8) of the Code and precisely "Financial debt" is a debt along with interest, if any, which is disbursed against the consideration for time value of money.

14. In the present case applicant bank had sanctioned and disbursed various loan amounts recoverable with applicable interest by entering in to loan agreements with the corporate debtor. The corporate debtor had borrowed the credit facilities against payment of interest as agreed between the parties. The loan facilities were disbursed against the consideration for time value of money with a clear

commercial effect of borrowing. Moreover, the debt claimed in the present application includes both the component of outstanding principal and interest. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant bank can clearly be termed as '*Financial Creditor*' so as to prefer the present application under Section 7 of the Code.

15. The application filed by the applicant financial creditor under sub-section 5 (a) of Section 7 of the code, has to be admitted on satisfaction that:

I. Default has occurred.

II. Application is complete, and

III. No disciplinary proceeding against the proposed IRP is pending.

16. An application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence of existence of default. What is material is that the default is at least 1 lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to

trigger Corporate Insolvency Resolution Process under the Code is maintainable.

17. It is seen that the applicant bank has placed on record various documents in relation to the disbursement of the loan to the respondent company. The materials on record and the loan documents clearly depict that the loan was sanctioned, disbursed and the loan agreements were properly executed. Respondent company utilized and enjoyed the loan facility from time to time. The applicant bank has placed on record loan documents confirming creation of Hypothecation of various assets and also creation of mortgage by deposit of title deeds in order to secure the loan facilities. The charge certificate and the Master data of the respondent company, placed on record, supports the claim of creation of charge in order to secure the loan facility availed from the applicant bank.

18. Besides applicant bank has placed on record Demand Promissory note dated 07.07.2015 executed by the respondent corporate debtor in respect of loan

amounts of respective credit facilities availed by the respondent.

19. In addition, applicant bank has filed the statement of accounts duly certified in accordance with Bankers' Books Evidence Act, 1891 as per requirement of Form 1-part V column 7 of the application. Certified copy of statement of account pertaining to various loan facilities, kept during the course of banking business basing on which the claim has been raised can be termed as sufficient evidence of the financial debt.

20. It is thus seen that the applicant 'financial creditor' has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default.

21. In fulfilment of other conditions required for admission of the application, it is seen that the applicant bank has filed the present application under Section 7 of the Code in the requisite FORM-1 to initiate Corporate Insolvency Resolution Process against the respondent Corporate Debtor. Form-1

filed under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 shows that the required information and other facts as prescribed have been furnished. The applicant bank has annexed to the application detail particulars of 'financial debt' including documents, records and evidence of default as required under subsection 3 (a) of Section 7 of the Code. On a bare perusal of the Form reveals that the same is complete in all respect and there is no infirmity in the same.

22. Sub-section (3) (b) of Section 7 mandates the financial creditor to furnish the name of an Interim Resolution Professional. In compliance thereof the applicant has proposed the name of Mr. Neeraj Bhatia, for appointment as Interim Resolution Professional having registration number IBBI / IPA-001 / IP-P00824/ 2017-18 / 11400 resident of P-27, 1st Floor, Malviya Nagar, New Delhi - 110017 with email - id nbtrace1@yahoo.com. Mr. Neeraj Bhatia has agreed to accept the appointment as the interim

resolution professional and has signed a communication dated 01.05.2019 in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have been made by Mr. Neeraj Bhatia as per the requirement of the IBBI Regulations. Accordingly, it is seen that the requirement of Section 7 (3) (b) of the Code has been satisfied.

23. It is thus seen that the *requirement of sub-section 5 (a) of Section 7 of the code* stands satisfied as default has occurred, the present application filed under Section 7 is complete, and as no disciplinary proceeding against the proposed IRP is pending.

24. However, before parting with the matter the various objections raised by the respondent in its reply are discussed below. The main objection raised by the respondent is that the instant application is

liable to be dismissed as hopelessly time barred as per the Limitation Act. It is submitted that as per the averments made in the application by the Financial Creditor itself, the respondent was declared NPA on 27.09.2015 by the Financial Creditor, however the application was filed only in May, 2019 beyond three years since the default has occurred. Accordingly, it is argued that the application is clearly barred under Article 137 of the Limitation Act and as such is liable to be dismissed.

25. In this regard applicant has relied on a recent letter of respondent company dated 10.07.2019, where in corporate debtor has made a request to the applicant bank for time till 30.09.2019 for payment of OTS balance amount of Rs. 2.50 Crores. There is also a request made in the letter to keep pending the present case till that time. This shows acknowledgement of clear default which exceeds much above the statutory limit of 1 Lakh.

26. Besides it has been shown from the relevant loan account that the corporate debtor has made last deposit/repayment of Rs.25 Lakh on 02.04.2019. The period of limitation runs from the close of the year in which the last payment was admitted or proved. There are deposits in the loan account in the year 2018-19 and even on 02.04.2019. Moreover, various correspondences pertaining to One Time Settlement are on record. Respondent in its reply has admitted that as per the One Time Settlement accepted by the parties most of the payments have been made by the Respondent and only a part of it is left to be paid. There is thus admission of payment as shown in the relevant loan account. Accordingly, the objection that the claim of applicant bank is barred by limitation cannot sustain.

27. Respondent corporate debtor has also raised objection that the applicant in the present matter is not a financial creditor. It is further submitted that the claim made by the Applicant in the application is highly exaggerated and the claim of Rs.

22,93,41,381.24 made by the applicant is based on concocted facts and figures and in contravention to the true facts of the case.

28. In this regard it has already been discussed that applicant bank had sanctioned and disbursed various loan amounts recoverable with applicable interest by entering in to loan agreements with the corporate debtor. The corporate debtor had borrowed the credit facilities against payment of interest as agreed between the parties. The loan facilities were disbursed against the consideration for time value of money with a clear commercial effect of borrowing. Moreover, the debt claimed in the present application includes both the component of outstanding principal and interest. In that view of the matter not only the present claim comes within the purview of '*Financial Debt*' but also the applicant bank can clearly be termed as '*Financial Creditor*'.

29. The corporate debtor has also alleged that excess interest has been charged by the applicant bank and the amount claimed is incorrect. It is pertinent to

mention in this regard that dispute over the quantum of default, cannot be a ground for rejection of an application under Section 7 of Code as the determination of quantum of financial debt is not within the domain of the Adjudicating Authority. In the present proceeding the Tribunal is not supposed to ascertain the quantum of amount of default or to pass a decree as to how much is actually due to the applicant financial creditor. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence of default before admitting the application.

30. Needless to say, that an application under Section 7 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. What is material is that the default is for at least Rs.1 Lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show

that there is no debt or default in existence so as to avoid the provisions of the Code.

31. Respondent corporate debtor has further alleged that the account of the corporate debtor has been wrongly declared as NPA.

32. In this regard it is pertinent to note that while dealing with application under Section 7 of the Code, it is immaterial to see as to when the account was declared as NPA. In Section 7 application, it is only to be considered as to whether there is a debt due in law and facts and whether there has been a default in paying the financial debt.

33. Hon'ble National Company Law Appellate Tribunal in the Case of *Ranjit Kapoor Versus Asset Reconstruction Company (India) Limited, in company appeal (AT) (Insolvency) no. 410 of 2018* has held that *"the provision of NPA relates to SARFAESI Act, 2002 and has nothing to do with Code."* Therefore, the objection of the respondent that applicant has not acted in terms of circular and guidelines of RBI and determined the account as NPA illegally; cannot be a

ground to reject the application preferred by the financial creditor under Section 7 of the Code, there being default in payment of financial debt.

34. Respondent corporate debtor has further contended that respondent had approached the Applicant/financial creditor for One Time Settlement and the same was accepted by the financial creditor vide letter dated 22.03.2017. However, it is erroneous to suggest that the Respondent failed to make the necessary payment as agreed under one-time settlement. It is submitted that the respondent was making due payments to the Applicant/Financial Creditor as per the One Time Settlement. It is further submitted that most of the payment as specified in the One Time Settlement offer was made by the Respondent and only a small part of Payment was left to be paid. It is alleged that the Applicant/Financial Creditor arbitrarily revoked the OTS when only a small part of payment was left to be made by the Respondent.

35. In this regard it is pertinent to note that in financial transactions, adjustments & compromises are to be left to the parties to settle the matter in their best interest or exigencies of the business. During hearing applicant bank specifically submitted that entire OTS amount was not paid by the respondent. It was also confirmed that no settlement in respect of the claim, is pending for their consideration. Accordingly, it is beyond the powers of the Tribunal to defer the prayer of the financial creditor for admission of the present petition.

36. Needless to say, that time is the essence of the Code. A far strict time frame is expected to be followed by the Adjudicating Authority at every stage of the proceedings. When settlement has failed and despite demand there is default in repayment of the loan amount which exceeds much above 1 lakh, the applicant gets right to move under the Code. The application under Section 7 is maintainable once the default is more than one lakh, in view of Section 4 of the Code.

37. Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited V. Kirusa Software Private Limited reported in* AIR 2017 SC 4532 at Para 19 has observed that:

> *"Once the adjudicating authority / Tribunal is satisfied as to the existence of the default and has ensured that the application is complete and no disciplinary proceedings are pending against the proposed resolution professional, it shall admit the application".*

38. The corporate debtor is entitled to point out to the Adjudicating Authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim is not due i.e. it is not payable in law or in fact. However, it is not the case of respondent that the entire loan or the entire OTS amount has been paid. Bank loan having not paid in its entirety, the default of debt is apparent.

39. It is pertinent to mention here that the Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as

to the occurrence of default before admitting the application. The material on record clearly goes to show that respondent had availed the loan facilities and has committed default in repayment of the outstanding loan amount.

40. In the facts it is seen that the applicant bank clearly comes within the definition of Financial Creditor. The material placed on record further confirms that applicant financial creditor had disbursed loan facilities to the respondent corporate debtor and the respondent has availed the loan and committed default in repayment of the outstanding financial debt. On a bare perusal of Form – I filed under Section 7 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same. It is also seen that there is no disciplinary proceeding pending against the proposed Interim Resolution Professional.

41. We are satisfied that the present application is complete in all respect and the applicant financial creditor is entitled to claim its outstanding financial

debt from the corporate debtor and that there has been default in payment of the financial debt.

42. As a sequel to the above discussion and in terms of Section 7 (5) (a) of the Code, the present application is admitted.

43. Sh. Neeraj Bhatia, having registration number IBBI / IPA-001 / IP-P00824/ 2017-18 / 11400 resident of P-27, 1st Floor, Malviya Nagar, New Delhi - 110017 with email - id nbtrace1@yahoo.com is appointed as an Interim Resolution Professional.

44. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 7 of the Insolvency & Bankruptcy Code, 2016.

45. We direct the applicant Financial Creditor to deposit a sum of Rs. 2 Lakhs with the Interim Resolution Professional namely Mr. Neeraj Bhatia to meet out the expenses to perform the functions

assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The said amount however be subject to adjustment towards Resolution Process cost as per applicable rules.

46. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

> *"(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."

47. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a

contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

48. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate

order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

49. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

-Sd-

(S.K. Mohapatra)
Member(T)

-Sd-

(Dr. Deepti Mukesh)
Member(J)

Shammy