

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI COURT – VI

ITEM NO. 701

CP (IB): 417/ND/2021

IN THE MATTER OF:

State Bank of India V/s. M/s. Jabalpur MSW Private Limited

Order under Section 7 of Insolvency and Bankruptcy Code, 2016

Order delivered on 14.09.2023

CORAM:

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

CP (IB) 417/ND/2021 stands admitted.

SD/-

(Rahul Bhatnagar)
Member Technical

SD/-

(P.S.N Prasad)
Member Judicial



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-417/(ND)/2021

Section: Under Section 7 of the Insolvency and Bankruptcy Code, 2016 and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

STATE BANK OF INDIA

THROUGH MR. HARI SINGH DALODIA
AUTHORIZED REPRESENTATIVE
STATE BANK BHAWAN
MADAME CAMA MARG
MUMBAI 400021.

...PETITIONER/FINANCIAL CREDITOR

Versus

M/S JABALPUR MSW PRIVATE LIMITED

At: ESSEL HOUSE
B-10, LAWRENCE ROAD
INDUSTRIAL AREA, NEW DELHI 110035

...RESPONDENT/ CORPORATE DEBTOR



Coram:

SHRI. P.S.N PRASAD, MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Counsel for Petitioner: Ms. Anika Bajpai, Ms. Aanchal Gupta, Mr. S.K. Singhi, Mr. Ankur Singhi, Mr. Akshay Singhi Advs

Counsel for Respondent: Ms. Akshita Salampuria, Advocate

ORDER

PER: P.S.N PRASAD, MEMBER (JUDICIAL) &

RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 14.09.2023

1. This petition has been filed by State Bank of India, through Authorised Signatory of Financial Creditor, Mr. Hari Singh Dalodia, Assistant General Manager duly authorised vide Letter of Authority dated 10.03.2021 to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s. Jabalpur MSW Private Limited



under Section 7 of the Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “the Code”) for the alleged default on the part of the Respondent in repayment of debt of Rs. 46,79,88,297.64/- (Rupees Fourty Six Crore Seventy Nine Lakhs Eighty Eight Thousand Two Hundred and Ninety Seven and Sixty Four Paisa) as on 28.02.2021. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. That the present Application arises from the consortium facility of an amount of Rs 124 Crores as Term Loan to the Corporate Debtor.
- ii. That out of total amount, an amount of Rs.59 crores, including all types of facility, was sanctioned by State Bank of India to the Corporate Debtor vide Sanction Letter dated 14.08.2014.
- iii. That M/s Jayneer Capital Private Limited, was part of the consortium and had sanctioned Rs. 10 crores vide sanction letter dated 20.09.2014



which was subsequently substituted by the erstwhile State Bank of Bikaner and Jaipur through a novation in the agreement executed on 22.01.2015.


- iv. That eventually State Bank of India, which was amalgamated with the State Bank of Bikaner and Jaipur, with effect from 22.02.2017, vide Gazette Notification Number GSR/156(E) dated 22.02.2017, and hence, the Applicant bank claimed rights over the loan facility of Rs.10 crores, forwarded to the Corporate Debtor by State Bank of Bikaner and Jaipur.
- v. That, the aggregate amount forwarded by the Applicant Bank is Rs.64 crores including working capital facility of Rs.5 crores.
- vi. That the loan has been renewed from time to time, the last date of renewal being, 30.03.2019, where the applicant bank had renewed the Term Loan facility to Rs 59.00 Cr (Rupees Sixty Nine Crore) along with Rs. 5.00 (Rupees Five Crore)



crore non fund based facility at an interest of 3.50 % above MCLR for 1 year presently 12.05 % p.a on the terms and conditions mentioned in the review letter dated 30.03.2019.

vii. That the Corporate Debtor executed various loan and security documents in favour of the security trustee i.e. SBI CAP Trustee Company limited for grant of aforesaid credit facilities. That the Corporate Debtor undertook to repay the loan amount along with the specified interest amount to the Creditors within the tenure of the facilities.

viii. That the Corporate Debtor availed and utilized the aforementioned credit facilities and accepted the liability vide various renewal letters. However, the Corporate Debtor failed to discharge its liabilities by making regular repayments and hence, the CD was declared as Non-Performing Asset by the Applicant Bank on 27.09.2019, in accordance with the




directions/guidelines of the Reserve Bank of India.

- ix. That in pursuance of the outstanding liabilities, the Applicant Bank through its counsel sent recall notice dated 11.08.2020 to the Corporate Debtor but the Corporate Debtor paid no heed to the same and failed to discharge its liabilities.
- x. Hence the present petition is filed to initiate CIRP against the Corporate Debtor.

2. The Corporate Debtor filed its reply in which the following contentions were made:

- i. It is submitted that on 04.08.2014, the Financial Creditor had issued a Sanction Letter to the Corporate Debtor by way of which the Financial Creditor had sanctioned credit facilities for Rs. 54,00,00,000-(Rupees Fifty Four Crores) for part financing of Municipal Solid Waste (MSW) treatment plant of 580 TPD capacity for Waste - To - Energy (WTE) conversion at Jabalpur on Design, Build, Own, Operate and Transfer (DBOOT) basis.

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- ii. It is submitted that the contractual relationship between the Corporate Debtor and the Financial Creditor is governed by the terms of the aforementioned Sanction Letter and the said Sanction Letter is sacrosanct.
- iii. It is stated that Clause 16 of the aforementioned Sanction Letter provides the conditions that shall constitute as an "Events of Default" in respect of the obligations of the Corporate Debtor in terms of the Sanction Letter. Furthermore, it is stated that in terms of the aforementioned clause on "Events of Default" as specified in the Sanction Letter, upon the occurrence of any of the Events of Default mentioned in clauses that is capable of remedy, a suitable cure period shall be provided from the date of occurrence of such event. The relevant part of the Clause 16 is reproduced herewith:



"Events of Default -

Each of the following shall, inter alia, constitute an Event of Default under the Financing Documents:

a) Payment Default: The Borrower does not pay on the due date any amount payable by it under any Financing Documents;

b) Breach of obligations: The Borrower does not comply with any material provision of the Financing Documents or Material Project Documents;

c) Misrepresentation: A representation, warranty or statement made or repeated in or in connection with any Financing Documents or Material Project Documents or in any document delivered by or on behalf of the Borrower is incorrect

d) Inadequate security and insurance;

e) Breach of any undertaking furnished by Sponsor,

f) Cross default of the Borrower under any of the Material Project Documents;

g) Utilization of facility for purposes other than for which they have been granted;

h) Change on control of the Borrower without the prior written approval of the Lenders;

i) Default with respect to any Material Project Documents which may have a material adverse effect;



j) *Revocation, termination or suspension of a material contract;*
k) *Insolvency/winding-up or dissolution of Borrower;*
l) *Compromise by Borrower with creditors generally;*
m) *Cessation/ threat of cessation of business of Borrower;*
n) *Sale/transfer of assets which in reasonable opinion of Lenders has/ shall have Material Adverse Effect, and*
The above are indicative and shall be defined in detail in the Facility Agreement Including consequence of event of default. Upon the occurrence of any of the Events of Default mentioned in clauses that is capable of remedy, a suitable cure period shall be provided from the date of the occurrence of such event".

iv. Thus, from the aforementioned it shall be evident that on the occurrence of an event of default, it was imperative in terms of Clause 16 - "Events of Default" that a cure period be provided to the Corporate Debtor to cure any alleged default.

v. Furthermore, it is stated that Clause 16 of the aforementioned Sanction Letter also provides for



"Remedies for Events of Default" which clearly specifies that if an Event of Default has occurred and continues even after cure period provided for, if any, then the Lenders may take any action as detailed thereunder including an action to accelerate the maturity of the Facility. The relevant part of the Clause 16 is reproduced herewith

Remedies for Event of Default:


If an Event of Default has occurred and continues even after cure period provided for, if any, the Lenders may among others, take one or more of the following actions:

- a) Accelerate the maturity of the Facility;*
- b) Enforce the security Interests under the security documents;*
- c) Declare the commitments to be cancelled or suspended,*
- d) Issue notice regarding the payment of proceeds of any insurance or compensation;*
- e) Issue a notice to the designated bank for the purposes of drawing on the balance in the TRA;*
- f) Appoint one Nominee Director on the Board of Directors of the Borrower*
- g) Convert the outstanding Facility in to Equity of the Borrower,*
- h) Take steps to exercise all rights as may be available to Lenders under the Financing Documents and Material Project*



Documents; and Exercise of any other rights of the Lenders under applicable law."

- vi. It is submitted that from a bare reading of the aforementioned, it is evident that in case any event of default had occurred, a suitable cure period notice had to be given and if the default is not cured within the period stipulated in the cure period notice, then and only then, the Financial Creditor may elect the Remedies for event of default including but not limited to the acceleration of the maturity of the facility.
- vii. That the Financial Creditor, had failed to issue an intimation if Event of Default and had failed to provide any period to cure to the Corporate Debtor.
- viii. That the Financial Creditor on 11.08.2020 issued Loan Recall Notice to the Corporate Debtor to accelerate the repayment of entire Loan amount within 7 days from the receipt thereof. That at best total amount fell due and payable on 18.08.2020 i.e., 7 days from Loan Recall Notice and any failure




to pay the outstanding dues on 18.08.2020 would constitute as default. Therefore, it is submitted that date of default i.e., 27.09.2019 as alleged by the Financial Creditor is wrong and incorrect.

- ix. It is submitted that the applicant made substantial payment even after being classified as NPA on 27.09.2019 and default stood cured on such payment being made.
- x. That the country was hit by COVID-19 Pandemic in the month of March, 2020 and a nation-wide lockdown was imposed in the Country w.e.f. 25.03.2020. As a consequence, all the business/commercial activities had come to a standstill.
- xi. It is stated that Government of India and the Hon'ble Courts in India have taken various steps to mitigate the difficulties faced by the common people and the businesses due to the onset of COVID -19 pandemic which has gripped the entire world in its clutches.



xii. It is stated that taking note of the fact that the COVID -19 pandemic has impacted business, financial markets and economy-all over the world, including India, and created uncertainty and stress for business for reasons beyond their control and a nationwide lockdown was in force since 25.03.2020 to combat the spread of COVID -19 which added to disruption of normal business operations, an Ordinance was promulgated to suspend sections 7,9,10 of the IBC Code to prevent corporate persons which are experiencing distress on account of unprecedented situation being pushed into insolvency proceedings under the IBC Code.


xiii. That section 10A was inserted in the IBC for suspension of initiation of corporate insolvency resolution process in respect of the defaults arising during the period of one year beginning from 25.03.2020 and ending on 24.03.2021.



xiv. It is stated that as per the terms of the Sanction Letter and the Loan Recall Notice, has arisen in the month of August, 2020, i.e., 7 days after the receipt of Loan Recall Notice dated 11.08.2020 by the Corporate Debtor, which clearly falls between the period of 25.03.2020 to 24.03.2021 for which the initiation of corporate insolvency resolution process was statutorily barred and therefore, no Application could ever be filed for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

3. The petitioner has filed its rejoinder and stated as under: -


- I. It is submitted that date of default is correctly mentioned in the application filed under section 7 of IBC, 2016.
- II. That no specified number of days or months has been given in the sanction letter as cure period. Also, the accounts of the Corporate Debtor have been classified as SMA 0, SMA 1, SMA 2 and finally



NPA on 27th September, 2019 after 90 days from the date when the repayment becomes due. Enough time period has been provided to the Corporate Debtor to cure their default.

III. That the outstanding amount of the facility becomes due 90 days before declaration of the account as Non- Performing Asset (NPA). The Corporate Debtor has been provided with more than a year after the date of default but the debt remains overdue. Since the entire outstanding amount of the facility is due and payable by the Corporate Debtor, therefore according to the Clause 16 of the Sanction Letter, the acceleration of the maturity of the facility can be done.

IV. That multiple intimidations were given to the Corporate Debtor by the Applicant to pay back his outstanding dues through various methods but no heed was paid by him. The Status of the account of his company was changed to "in default" twice on 31.03.2019 and 01.07.2019 before classifying his



account as NPA. It clearly shows that he has evil intentions of not paying back the money borrowed.


V. That the Hon'ble NCLAT in the case of *Jagdish Prasad Sarada v. Allahabad Bank, Company Appeal (AT) (Insolvency) No. 183 of 2020* while deciding on the application of Limitation Act propounded that "*It is therefore manifestly clear that date of default will be the date of declaration of account as NPA and such date of default would not shift.*"

4. We have heard the Ld. Counsel appearing for the Petitioner and the Respondent and perused the averments made in the application and reply filed on behalf of the parties.
5. The Corporate Debtor, in its reply, has admitted that there was a disbursal of debt. However, the dispute was with respect to the Date of Default. According to the Petitioner, the Date of Default is 27.09.2019, which is the date of declaration of account of Corporate Debtor as Non-Performing Asset (NPA). As per the Corporate Debtor, it is 18.08.2020. Since the Insolvency and



Bankruptcy Code (the "Code") is complete in itself and has overriding effect over anything inconsistent therewith, as per section 238 of the Code, we must adhere to the definition of Default and established judicial precedents. The courts, in plethora of judgments, have consistently held that the date of default will be the date of NPA. Reference can be made to the judgment of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in the matter of *Jagdish Prasad Sarada vs. Allahabad Bank* (28.08.2020 – NCLAT) MANU/NL/0324/2020. The relevant paragraph of the aforementioned judgment is reproduced below: -

10. The Hon'ble Supreme Court has already observed in Civil Appeal No. 439, 436, 3137, 4979, 5819 & 7289 of 2018 in B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates dated 11.10.2019 that the limitation period for application under section 7 of the Code is 3 years as provided by Article 137 of the Limitation Act, 1963 which commences from the date of default and is extendable only by application of section 5 of Limitation Act, 1963 if any case for condonation of delay is made out. The view taken by the Hon'ble Apex Court in 'B.K. Educational Services Private Limited Vs. Parag Gupta and Associates' that the limitation period for application under Section 7 of



*the I&B Code is three years as provided by Article 137 of the Limitation Act, which commences from the date of default and is extendable only by application of Section 5 of The Limitation Act, 1963 if any case for condonation of delay is carved out, has again been reiterated in the latest pronouncement of Hon'ble Apex Court in 'Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. (Civil Appeal No. 6347 of 2019) decided on 14th August, 2020. **It is therefore manifestly clear that date of default will be the date of declaration of account as NPA and such date of default would not shift.***

6. The Petitioner has stated the date of default, which was the date of the declaration of the Corporate Debtor's account as NPA. It was submitted that the Corporate Debtor's account was classified as SMA 0, SMA 1, SMA 2, and finally as NPA on 27th September 2019, after 90 days from the date when the repayment became due.
7. We are of the view that sufficient time and opportunity was provided to the Corporate Debtor to make payment of the outstanding debt. Even after filing the petition before this Tribunal, the Corporate Debtor sought to settle the matter, and this Tribunal granted multiple adjournments, as requested by the parties, in an effort



to reach an amicable resolution. However, the parties failed to settle the matter.

- 8.** A mere reading of the provision under Section 7 of the IBC shows that in order to initiate CIRP under Section 7, the Applicant is required to establish that there is a financial debt and that a default has been committed in respect of that financial debt. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication regarding the occurrence of default before admitting the application. The material on record clearly shows that there was a debt, and the CD has committed a default in the repayment of the outstanding debt amount which was admitted by the Corporate Debtor.
- 9.** We are satisfied that the present application is complete in all respects 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.



10. In light of the above and in terms of the acceptance of the existence of debt and its default by the Corporate Debtor in its reply to the present application, this Tribunal **admits** this petition and initiates CIRP on the Corporate Debtor with immediate effect.

11. 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. Sajjan Kumar Dokania for appointment as Interim Resolution Professional having registration number IBBI/IPA-003/IP-N00150/2017-2018/11729. The Proposed IP has a valid AFA which is valid upto 08.12.2023. Accordingly, this Adjudicating Authority, hereby appoints Mr. Sajjan Kumar Dokania (Email – sajjan_suman@hotmail.com), to act as Interim Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and



18 of the Code and file his report within 30 days before this Bench.

12. 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.

13. 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.”

14. 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.

15. 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



preferential/ undervalued/ tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional shall make an application to this Adjudicating Authority (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.

16. 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.



Let copy of the order be served to the parties.

SD/-

Rahul Bhatnagar)
Member (Technical)

SD/-

(P.S.N Prasad)
Member (Judicial)