

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
(Court- II)
KOLKATA**

C.P (IB) No. 98 /KB/2021

*An application 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

State Bank of India, having its Central Office at State Bank Bhawan, Madame Cama Road, Mumbai- 400021 and having its Registered office at State Bank of India at Stressed Asset Management Branch-II, Kolkata, 1st Floor, Jeevandeep Building, 1 Middleton Street, P.S. Shakespeare Sarani Kolkata-700071.

... Financial Creditor

Versus

In the matter of:

Dynametic Overseas Private Limited, (formerly known as R Piyarelall International Pvt. Ltd.), CIN: U01409WB1988PTC045536, a Company within the meaning of the Companies Act, 1956, having its registered office at 85, Ballygunge Gardens, Kolkata-700019.

... Corporate Debtor

Date of hearing : 29/07/2022

Order Pronounced on : 12/09 /2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Balraj Joshi, Member (Technical)

Appearances through Hybrid Mode

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|-----------------------------------|------------------------------|
| 1. Ms.Urmila Chakraborty, Adv. |] For the Financial Creditor |
| 2. Mr. Debasish Chakraborty, Adv. |] |
| 1. Mr. Ratnanko Banerji,Sr. Adv. |] For the Corporate Debtor |
| 2. Ms. Ankita Singh, Adv. | |

ORDER

Per: Rohit Kapoor, Member (Judicial)

1. The Court is convened through hybrid mode today.
2. This petition 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 has been filed by State Bank of India, (hereinafter referred to as the Financial Creditor), through its Assistant General Manager namely Mr. Saurav Kumar Sharma authorised *vide* letter dated 31.12.2020 (Annexure-1-A) for initiation of Corporate Insolvency Resolution Process in respect of Dynametic Overseas Private Limited, (hereinafter referred to as the Corporate Debtor).

Submissions of learned Counsel for the Financial Creditor

3. It is submitted that Part –I of this petition contains particulars of the Financial Creditor. Part-II contains particulars of the Corporate Debtor and Part-III contains details of the Interim Resolution Professional proposed to be appointed in this matter. Part IV- contains details of the debt to the tune of **Rs.1,48,36,62,808.65** (Rupees One Hundred Forty Eight Crore Thirty Six Lakh Sixty Two Thousand Eight Hundred and Eight Paise Six Five) along with interest @ 16.75% per annum and the date of default is stated to be occurred on **28/12/2020**.
4. The Corporate Debtor availed the loan facility from time to time the amount of loan was reconstructed and disbursed to the Corporate Debtor. The details of loan facility granted by the applicant bank and availed by the Corporate Debtor mentioned in tabular form from page 33 to 34 of the C.P.
5. Part- V of the petition shows details particulars of the financial debt (documents, records and evidence of default). These documents find place in Annexure ‘3-Y’, Annexure ‘1-A’, Annexure ‘3-Z’, Annexure ‘3-X’ of the petition. The Financial Creditor prays for admission of this petition under

section 7 of Code.

6. The Financial Creditor has paced the following documents on record:
- a. Certificate of Incorporation pursuant to change of name of the Corporate Debtor; annexed and marked as Annexure '1-E';
 - b. Copies of Sanction letters dated 07.09.2004, 30.11.2005, 02.09.2006, 05.01.2007, 13.03.2007, 24.04.2008, 16.03.2010, 04.02.2012, 28.09.2012, 11.02.2013; annexed and marked as Annexure '1-F', Annexure '1-N', Annexure '1-V', Annexure '2-B', Annexure '2-C', Annexure '2-K', Annexure '2-S', Annexure '3-B', Annexure '3-G', Annexure '3-J' respectively;
 - c. Copies of Board Resolutions of the Corporate Debtor dated 27.09.2004, 02.12.2005, 06.09.2006, 21.03.2007, 24.04.2008, 28.08.2010, 29.11.2010, 14.03.2012, 29.09.2012, 12.02.2013; annexed and marked as Annexure '1-G', Annexure '1-O' and Annexure '1-W', Annexure '2-E', Annexure '2-L', Annexure '2-U', Annexure '2-V', Annexure '3-C', Annexure '3-H', Annexure '3-K' respectively;
 - d. Copies of agreement of Loan, agreement of hypothecation of goods and assets, agreement of pledge of goods and assets, letter of consent clause, letter cum agreement; annexed and marked as Annexures '1-H' to '1-M' respectively;
 - e. Copies of supplemental agreement of Loan, supplemental agreement of hypothecation of goods and assets, supplemental agreement of pledge of goods and assets, letter dated 07.12.2005, omnibus Counter Guarantee dated 07.12.2005 and Agreement-cum-Indemnity dated 07.12.2005; annexed and marked as Annexures '1-P' to '1-U' respectively;
 - f. Copies of supplemental agreement of Loan, supplemental

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- agreement of hypothecation of goods and assets, supplemental agreement of pledge of goods and assets, letter dated 11.09.2006; annexed and marked as Annexures '1-X' to '2-A' respectively;
- g. Copies of supplemental agreement of Loan, supplemental agreement of hypothecation of goods and assets, supplemental agreement of pledge of goods and assets, letter dated 28.03.2007, revival letter dated 28.03.2007; annexed and marked as Annexures '2-F' to '2-J' respectively;
- h. Copies of supplemental agreement of Loan, supplemental agreement of hypothecation of goods and assets, supplemental agreement of pledge of goods and assets, letter dated 24.04.2008, Omnibus Counter Guarantee dated 24.04.2008; annexed and marked as Annexures '2-M' to '2-Q' respectively;
- i. Copy of the Balance Confirmation Letter dated 15.05.2008; marked and annexed as Annexure '2-R';
- j. Copy of revival letter dated 30.08.2010; annexed and marked as Annexure '2-U';
- k. Copies of supplemental agreement of Loan, supplemental agreement of hypothecation of goods and assets, supplemental agreement of pledge of goods and assets, letters dated 28.12.2010; annexed and marked as Annexures '2-W' to '3-A' respectively;
- l. Copies of letter dated 27.03.2012, Omnibus Counter Guarantee and Agreement cum Indemnity; annexed and marked as Annexures '3-D' to '3-F' respectively;
- m. Copies of supplemental agreement of Loan, supplemental
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agreement of hypothecation of goods and assets, supplemental agreement of pledge of goods and assets, Omnibus Counter Guarantee, Agreement cum Indemnity, letters dated 12.02.2013; annexed and marked as Annexures '3-L' to '3-T' respectively;

- n. Notice under section 139(2) of the SARFAESI Act, 2002, annexed and marked as Annexure '3-U';
- o. Demand Notice dated 08.12.2014; annexed and marked as Annexure '3-V';
- p. Copies of Balance Sheet for the Financial year ending on 31.03.2018 and 31.03.2019; annexed and marked as Annexure '3-W'.

7. The learned Counsel appearing for the Financial Creditor prays for initiation of CIRP of the Corporate Debtor on the basis of the submissions and documents submitted.

Submissions of the learned Senior Counsel for the Corporate Debtor

8. On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit. The reply affidavit has been filed by the Corporate Debtor through one of its Directors, namely, Mr. Debabrata Das. The Corporate Debtor also filed written notes of submission.

9. The Corporate Debtor has denied the acknowledgement of liability as contended by the Financial Creditor. It is submitted that in the year 2014, the Corporate Debtor filed a suit in the year 2014 being C.S. No. 305/2014 (R. Piyarellal Import and Export Limited v. State Bank of India) praying for, *inter alia*, a decree for a sum of Rs. 203,70,69,169/- and interest thereon at the rate of 12% per annum. The said suit is still pending. The ground for the said suit was arbitrary action on the part of the Financial Creditor while dealing with the loan account of the Corporate Debtor. A copy of the plaint without

annexure is annexed as Annexure-A to the reply affidavit.

10. It is submitted that the Corporate Debtor denies the allegations contained in various paragraphs of the petition and has stated that serious endeavors were being made to settle the dues by offering One Time Settlement and the Corporate Debtor is making necessary arrangements of funds to pay off the debts to the Financial Creditor.

11. It is submitted by the Corporate Debtor that the application filed by the Financial Creditor is time barred as the Corporate Debtor was declared as NPA on 5th August 2013, whereas the instant application was filed by the Financial Creditor in the year,2021.

12. The Corporate Debtor seeks dismissal of the petition on the grounds mentioned above.

Rejoinder by the learned Counsel for the Financial Creditor

13. Rejoinder has been filed on behalf of the Financial Creditor. It is submitted that in the year, 2014, the Financial Creditor had filed OA being No. 509/2014 before the DRT-I and has also initiated proceedings under SARFAESI Act, 2002. The details of which have been given at page 35 of the application under Section 7 of IBC. It is stated in the rejoinder apart from the express admission of default in the balance sheets for the financial year ending on 31.03.2018 and 31.03.2019 which are annexed as Report annexed as Annexure- '3-W', the Corporate Debtor has also admitted its default in CIBIL Report annexed as Annexure- "3-Z" in the Company Petition, dated 10th June, 2019.

14. It is further submitted that Mr. Sourav Kumar Sharma, the Assistant General Manager of the Financial Creditor is well authorized to file the application under section 7 and competent to execute affidavits, applications related to the instant matter in terms of authority letter at page 40 of petition.

15. It is also stated in this affidavit that the claim of the Financial Creditor

is genuine and authentic and is backed by proper documentary evidence and is well within the Limitation Act. There is no embargo for filing the petition under section 7 of the Code and pendency of the suit filed by the Corporate Debtor is no bar for filing the instant application. The suit does not diminish the default on the part of the Corporate Debtor, for which the Financial Creditor has filed the instant application under Section 7 of the Code.

16. The contention of the Corporate Debtor of offering OTS or any settlement has been denied. The same being completely false, fabricated, misconceived and misleading. The Financial Creditor on 24.11.2021 in reply to the letter dated 22.11.2021 of the Corporate Debtor categorically mentioned that “no Compromise-settlement offer is accepted by the bank which is not backed by 15% upfront of the proposed compromise-settlement offer amount”.

17. It is stated in the rejoinder affidavit that the Corporate Debtor is willful defaulter and offered a sum of Rs. 15 Crores as a compromise settlement of the three group accounts, the Corporate Debtor had to submit upfront of Rs. 2.25 Crores either by way of DD or by way of remittance to their No-Lien Account which would be refunded in case the compromise-settlement offer is not sanctioned by the competent authority, the same shall be returned back to the Corporate Debtor.

18. Suffice it to say that there was no settlement, and the contention of the Corporate Debtor is completely baseless and incorrect.

19. It is stated by the Financial Creditor that the loan account was classified as NPA when the Corporate Debtor is first defaulted in making its repayment which was extended by series of persisting defaults from time to time until 31.03.2019, when the Corporate Debtor in its balance sheet acknowledged its default by express admission in various places in the said balance sheet. The learned Counsel placed reliance on ***Reliance Asset Reconstruction Company Ltd. Vs. Narendra Plastics Pvt. Ltd, Company***

Appeal (AT) (Ins) No. 779 of 2021, (Para 11(d)), Jagdish Prasad Sarada Vs Allahabad Bank, Company Appeal (AT) (Insolvency) No. 183 of 2020, (Para 10,11) and Asset Reconstruction Company (India) Ltd –versus- Bishal Jaiswal and Another – 2021 SCC Online SC 321, (Paragraph 14 onwards)

Analysis and Findings

20. Heard Ld. Counsel for the parties and perused the record.

21. Let us first consider the plea of the Corporate Debtor with respect to the authority of the Assistant General Manager is concerned. It is evident that the said Company Petition has been filed on the basis of a letter of authority of the Assistant General Manager (Administration), State Bank of India, to Sri Sourav Kumar Sharma. The said Sri Sourav Kumar Sharma is an Assistant General Manager of the rank of a Scale V Officer of the State Bank of India.

22. On 16th June, 2017, the Chairman of State Bank of India in exercise of powers under Section 27 of the State Bank of India Act, 1955 has authorized all officers on whom signing powers has been conferred to sign applications, reply affidavit, rejoinder and generally all pleadings and file applications for initiation of CIRP before the National Company Law Tribunal under the IBC, 2016.

23. In terms of the Gazette Notification of the Government of India published on 2nd May 1987 all officers of State Bank of India of a grade of SMGC-IV and above are empowered to sign all documents, accounts, receipts, letters etc. In the circumstances, the CP has been affirmed by an authorized and competent officer of the State Bank of India.

24. While considering the main plea of debt and default, it is found on the basis of record that the Corporate Debtor has in clear terms acknowledged its debt in its balance sheets from the year ending 31st March, 2018 and 31st March, 2019 which are at page 531, 532 and 613 of the petition under section 7 of the Code. For the proposition that the acknowledgement of debt as well

as the default in balance sheets of the Corporate Debtor constitutes an acknowledgement in writing within the meaning of section 18 of the Limitation Act, 1963, the learned Counsel for the Financial Creditor placed reliance on *Asset Reconstruction Company (India) Ltd. –Versus- Bishal Jaiswal and Another- 2021 SCC Online SC 321* Para 14 which as under:-

“14. Several judgments of this Court have indicated an entry made in the books of accounts, including the balance sheet, can amount to acknowledgement of liability within the meaning of section 18 of the Limitation Act. Thus, in Mahabir Cold Storage v. CIT 1991 Supp SCC 402, this Court held:-

12. The entries in the books of accounts of appellant would amount to an acknowledgement of liability to M/s Prayagchand Hanumanmal within the meaning of Section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge of the liability as debt”.

25. As far as the plea of the Corporate Debtor that the limitation starts from the date of NPA i.e. 05.08.2013 way back and the limitation period ends on 04.08.2016 i.e. the period of three years from the NPA date, we take note of the following facts on record.

26. The Corporate Debtor on 06.06.2016 made a payment of Rs.2,57,250/- through NEFT vide UTR No.444001615814282 from the account lying with HDFC Bank towards the Corporate Debtor’s debts to the dues of the Financial Creditor in it’s loan account. The said amount was duly credited in the loan account of the Corporate Debtor on 07.06.2016 and this can be found from the entries of settlement of account at page 704 of the instant application. This payment was made within the period of three years from the date of NPA i.e. on 05.08.2013 and when this payment was made on 07.06.2016, a fresh period of limitation under Section 19 of the Limitation Act, 1963 commenced. There is clear acknowledgement of debt by the

Corporate Debtor in its balance sheets mentioned above for the year ended 31st March, 2018 and 31st March, 2019. Present petition has been filed on 24.03.2021, therefore the same in within the limitation period.

27. Apart from this, we see from the record in support of the default as referred above in the petition, the Corporate Debtor executed various documents from time to time in favour of the applicant bank in lieu of the loan amount. These documents have been placed on record by the Financial Creditor as mentioned above.

28. From the record in the shape of various documents placed in record with the instant petition, it is established that there is a debt due on the part of the Corporate Debtor and also there is a default on the part of the Corporate Debtor to repay debt to the Petitioner bank. The documents/ record placed on record along with this petition is sufficient evidence to establish the debt and the default by the Corporate Debtor in contrary to the contention of the Corporate Debtor that the Financial Creditor has failed to disclose the total amount of debt granted to the Corporate Debtor.

29. The Corporate Debtor for One Time Settlement. This in itself is an admission of having availed the loan facilities from the applicant Bank and also the default to repay the same.

30. Apart from the above, the Corporate Debtor has contended that the Financial Creditor has failed to provide a record of default with the Information Utility. The Financial Creditor has placed various documents on record which reflect that the Corporate Debtor has defaulted in payment of the debt and has also acknowledged the debt.

31. In view of the above factual position on record, we are of the considered opinion that this petition filed under Section 7 of Code is well within the period of limitation.

32. The amount in default is over and above the threshold limit of Rs. One

Crore and thus this application is maintainable before this Adjudicating Authority.

33. We, therefore, pass the following orders:

- i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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 (54 of 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.
- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) **Mr. Yogesh Gupta**, IRP, having Registration No. **IBBI/IPA-001/IP-P00349/2017-18/10650**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

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- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Financial Creditor/Applicant is directed to deposit **Rs 3,00,000/- (Rupees Three Lakh Only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.
- xii) Registry is hereby directed to communicate the order to the Financial Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- xiii) List the matter on **31 October 2022** for the filing of the progress report.
- xiv) Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Balraj Joshi)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on, this 12th day of September, 2022

Pj/GGRB_LRA