IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 30
TP 99 of 2019 [CP(IB) 641 of 2019]

Order under Section 7 IBC

IN THE MATTER OF:

ICICI Bank Ltd ....**Applicant**
V/s
Garlico Industries Ltd ....**Respondent**

Order delivered on ..03/12/2021

Coram:
Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

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NATIONAL COMPANY LAW TRIBUNAL * AHMEDABAD *

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
AT AHMEDABAD
COURT-1

CP (IB) No. 641 of 2019

In the matter of:

[An application under Section 7 of Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against M/s. Garlico Industries Limited]

In the matter between:

ICICI Bank Limited
Having Address at:
Corporate Head Office at ICICI Bank Towers,
BandraKurla Complex,
Bandra(E), Mumbai-400051.

....Financial Creditor

Versus

M/s. Garlico Industries Limited
Having address at:
404, Shagun Arcade, Near Apna Sweets,
Plot No. 8, Vijay Nagar, A.B. Road,
Indore, Madhya Pradesh-452010

....Corporate Debtor

Order Reserved on: 18.11.2021
Order Pronounced on: 03.12.2021

Coram: MADAB B. GOSAVI, MEMBER (J)
AJAI DAS MEHROTRA, MEMBER (T)

Appearance;

Ld. Counsel Kunal Vaishnav a.w Ld. Counsel Mr. Amar Bhatt appeared for the Financial Creditor.

ORDER

Per Bench

1. The instant application has been filed under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") and regulations framed there-under for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as **"CIRP"**) against the Corporate Debtor, namely, **M/s. Garlico Industries Limited** for the default of financial debt amount of Rs. 139811696/- including interest as on 15.05.2019/-.

2. The Learned Counsel for the Financial Creditor submitted that the Government of India (GOI) and United States Agency for International Development ("AID") undertaking a program called Agricultural Commercialization and Enterprise(ACE) project. The aim of ACE project was to assist the private sector for developing Agro-business especially in foods and vegetables. The Financial Creditor was appointed as implementing agency wherein USD $552.5

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million was provided for implementing the work obtained for the implementation of the aforesaid project. It is stated that the Corporate Debtor has obtained a loan of Rs. 3 Crores from the Financial Creditor and signed an agreement with the Financial Creditor on 31.03.1997 and the repayment of the said loan was to be made from 15.05.1997 to 15.02.2003 in twenty installments of Rs. 15,00,000/- per month together with interest thereon.

3. The Financial Creditor further contains that for securing the aforesaid loan, the Corporate Debtor has signed hypothecation deed in favour of The Financial Creditor on 31.03.1997, and the charge has been created on the property of the Corporate Debtor as specified in the aforesaid agreement.

4. It is also submitted that the Corporate Debtor failed to make the payment of loan amount as per the agreed payments schedule. Thereafter, Financial Creditor had initiated the proceedings under SARFAESI Act, 2002 (in short **"SARFAESI"**) for taking symbolic possession as well as by filing the Original Application bearing no 306 of 2016 before the DRT Jabalpur which is still pending.

5. The Financial Creditor has further submitted that the Financial Creditor had not filed its reply to the present application even after the directions of this Adjudicating Authority vide order dated 27.02.2020. However, the Corporate Debtor on 08.10.2020 through e-mail filed its objection. The Corporate Debtor has taken a plea that the present application is barred by limitation, hence, is not maintainable.

6. The Financial Creditor has filed a miscellaneous application, bearing no. MA 02 of 2021 before this Adjudicating Authority for amending the application under Section 7 of IBC, 2016 and to place the balance sheet for the Financial Year till 2017-2018 wherein as per averments of the Financial Creditor, the Corporate Debtor has acknowledged the due amount payable to the Financial Creditor.

7. We heard the Learned Counsels for both sides and perused the material available on records. It appears that financial assistance was provided by the Financial Creditor to the Corporate Debtor to the tune of Rs. 3 Crores and agreement for payment of aforesaid loan was also signed by and between Financial Creditor and Corporate Debtor on 31.03.1997. Moreover, for securing the aforesaid loan

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amount, the hypothecation agreement has also been signed by the Corporate Debtor. It is noted that the Corporate Debtor has failed to make the payment of a loan amount as per agreed terms and conditions of the agreement which was to be repaid from 15.05.1998 to 05.02.2003. It is also observed that the balance sheet for the year 2005-06 of the Corporate Debtor, shows that the Corporate Debtor is liable to pay the amount of Rs. 2,33,23,461/- as the principal amount and amount of Rs. 94,08,887.71/- as an interest to the Financial Creditor. The said unpaid amount is showing in the Audited Balance Sheet of the Corporate Debtor in the Financial Year 2007-08 and the same amount is continuously being shown in the balance sheet of the Corporate Debtor and finally, as per the balance sheet for the Financial Year 2017-18, the amount is shown as due towards unsecured loan as the loan was converted from secured to unsecured as per the balance sheet of the Corporate Debtor as on 31.03.2008.

8. We have considered submissions of both the counsels. In our considered view, the Corporate Debtor has acknowledged the debts due from the Financial Creditor in its balance sheet as on 31.03.2018, which is within three

years from the filing of the present petition, thus, the applicant has met the requirements of Section 18 of Limitation Act, 1963. For ready reference, we reproduce Section 18 of Limitation Act, 1963 as under:

Section 18 in The Limitation Act, 1963

18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of 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 a 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.

9. Further, the Hon'ble Supreme Court in the case of Asset *Reconstruction Company Limited vs. Bishal Jaiswal* in Civil Appeal No. 323 of 2021 held that if the amount of debt is acknowledged by the Corporate Debtor in its balance sheet duly signed by the Authority, it amounted to the acknowledgment of liability within the meaning of Section 18 of Limitation Act, 2013. Hence, the prayer of Corporate Debtor that the present application is barred by limitation is rejected. The present application is defect free and meets the threshold limit as prescribed under Section 14 of IBC, 2016. Accordingly, we allow this application and pass the following order:

ORDER

I. The Corporate Debtor M/s. Garlico Industries Limited is admitted in the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016.

II. We appoint **Mr.Subash Chandra Modi, Registration No. IBBI/IPA-003/IP-N00176/2018-2019/12119**, having Address at: 1301/2 Silver Oak, Raheja Willious, CHS Ltd, Akurli Road, Kandiwali (East) Mumbai-400101 under section 13(1) (c) of the IB Code as IRP as proposed by the Financial Creditor.

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III. The Moratorium under Section 14 of the Code shall come to effect from 13.09.2021 till the completion of Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

IV. The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suit or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any Court of law and further prohibits Tribunals, Arbitration Panels or other Authority(s), transferring, encumbering, alienating or disposing (of by the Corporate Debtor) any of Corporate Debtor assets or any legal right or beneficial interest therein; 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 SARFAESI Act, 2002 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. Further, litigation or any application, if any, is pending before any competent Court of law under the provisions of the SARFAESI Act and RDB Act, prior to the pronouncement of this order such proceedings are expected to be dealt with in accordance with law i.e., Section 14 and Section 238 of the Insolvency & Bankruptcy Code, 2016.

VI. The supply of essential goods or services to Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium, period. The Corporate Debtor to provide effective assistance to the IRP as and when he takes charge of assets and management of the Corporate Debtor.

VII. The IRP so appointed shall make a public announcement of Corporate Insolvency Resolution Process (CIRP) be made immediately as specified under Section 13 of the Code and by calling for submissions of claim under Section 15 of the Code.

VIII. The IRP shall perform all his functions as contemplated, *inter-alia,* by Sections 17,18,20& 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation as per Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation

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expenses till the COC decides about his fees/ expenses.

XI. The Registry is directed to communicate this order to the Financial Creditor, Corporate Debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within three working days and upload the same on the website immediately after pronouncement of the order.

XII. The commencement of the Corporate Insolvency Resolution Process (CIRP) shall be effective from the date of this order.

10. In view of the above the order MA 02 of 2021 stands allowed and disposed of.

11. Accordingly, CP(IB) No. 641 of 2019 is allowed and stands disposed of.

(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Ramashish

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Certified to be True Copy of the Original
7.12.21
Joint Registrar
NCLT, Ahmedabad Bench
Ahmedabad