

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**Coram : (1) Shri Madan B. Gosavi, Hon'ble Member (J)
(2) Shri Virendra Kumar Gupta, Hon'ble Member(T)**

CP (IB) No. 1498/KB/2018

In the matter of:

An application for initiation of Corporate Insolvency Resolution Process 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;

-And-

In the matter of:

UV Asset Reconstruction Company Ltd., having its registered office at 704, 7th floor, Deepali Building, 92, Nehru Place, New Delhi-110019 and Corporate Office at 1304, 13th floor, Chiranjiv Tower, 43, Nehru Place, New Delhi-110019

... **Applicant/Financial Creditor**

-Versus-

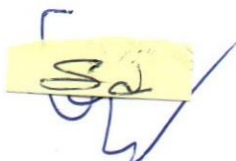
In the matter of:

Kalpataru Cold Storage Private Ltd., having its registered office at 55, Bhupendra Bose Avenue, Shyampukur, Kolkata, West Bengal-700004, CIN: U63022WB1985PTC039710;

... **Respondent/Corporate Debtor**

Counsel appeared:

- | | | |
|------------------------------------|---|------------------------|
| 1. Mr. Shaunak Mitra, Advocate |] | |
| 2. Mr. Ritoban Sarkar, Advocate |] | |
| 3. Ms. Madhujā Barman, Advocate |] | For Financial Creditor |
| 4. Mr. Avishek Das, Advocate |] | |
| 5. Mr. Satyaki Chaudhuri, Advocate |] | |
| 1. Mr. Asim Kumar Kundu, Advocate |] | For Respondent |





Date of Pronouncement of Order: 30.09.2019

ORDER

Per Shri M. B. Gosavi, Member(J):

UV Asset Reconstruction Company Ltd.- the Financial Creditor filed this application under section 7 of the Insolvency & Bankruptcy Code, 2016 (in short, I&B Code) against **Kalpataru Cold Storage Private Ltd.** – Corporate Debtor to start Corporate Insolvency Resolution Process (in short, "CIRP") of the Corporate Debtor as the Corporate Debtor committed default in paying the financial debt of Rs.21,61,12,013/-.

2. The following facts are not in dispute.

3. By loan sanction letter dated 28.03.2019, United Bank of India granted and disbursed loan of Rs.12.26 crores to the corporate debtor. Corporate Debtor executed demand promissory notes and other documents, having availed the loan. The loan was not repaid as agreed by the corporate debtor. Hence, on 31.03.2014, the loan account was declared to be NPA by the United Bank of India.

4. On 29.03.2014, bank assigned the debt to the financial creditor by way of Deed of Assignment. It was within the knowledge of the corporate debtor. The Financial Creditor claimed the recovery of assigned debt from the corporate debtor but the corporate debtor did not pay. Hence, proceeding for recovery of loan which was already initiated by United Bank of India bearing OA No.530/2015. It is pending for adjudication. Financial Creditor filed this application to start CIRP of the corporate debtor.

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5. Financial Creditor suggested name of one Mr. Anup Kumar Singh, having registration no. IBBI/IPA-001/IP-P00153/2-17-2018/10322 and email Id. anup_singh@sumedhamanagement.com for appointment as the IRP.

6. Corporate Debtor is served with the notice of this application. One Mr. Gurupada Sinha, one of the directors of the corporate debtor appeared. He filed affidavit-in-reply. He contended that the time-barred debt is sought to be recovered. Deed of assignment on the basis of which, this proceeding is filed, is not legal and valid document. Financial Creditor does not get right to initiate any proceeding on the basis of such invalid deed of assignment.

7. He further contended that corporate debtor has filed suit bearing Title Suit No.1609/2017 in City Civil Court, Kolkata challenging the legality and validity of the deed of assignment. It is pending. Since the Court of Competent Jurisdiction is yet to decide the legality of deed of assignment, this authority cannot take cognizance of this proceeding. The proceeding is not maintainable and may be dismissed.

8. We heard the Ld. Counsel for the Financial Creditor and the Corporate Debtor at length. Ld. Counsel for the corporate debtor brought to our notice deed of assignment but he argued that it is not properly stamped. It has not been duly registered. Deed is not legal and it is invalid. It cannot be said that by virtue of such deed, debt is legally assigned or transferred in favour of the applicant. The applicant is not a Financial Creditor within the meaning of section 5(7) of I.& B. Code.

9. He further contended that according to the applicant the debt became due upon declaring loan account to be NPA by the bank. That date is 31.03.2014. If it

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was so, this proceeding ought to have been filed within three years thereafter. It is filed beyond period of limitation.

10. Ld. Counsel for the Financial Creditor submitted that deed is legal and valid. It is properly stamped and registered. Its legality cannot be challenged. He relied on the order of the Hon'ble NCLAT in case of Lalan Kumar Singh-vs-Phoenix ABC Pvt. Ltd. and Ors. [(Company Appeal (AT) (Insolvency) No.485 of 2018).

11. He further submitted that pendency of suit in between the parties not a ground to reject this application. He further submitted that the loan account of the corporate debtor declared to be NPA in March, 2014 and immediately thereafter the bank has filed recovery proceeding against the corporate debtor in DRT, Kolkata. Thereby, period of limitation stopped running against the Financial Creditor. This proceeding is filed well within time. Corporate Debtor may be admitted in CIRP.

12. On the basis of materials on record and the submissions made at the Bar, the following points of controversy arises for our determination. We record our findings thereon as follows:

- i) Whether the applicant can be said to be Financial Creditor on the basis of deed of assignment dated 19.03.2017?
- ii) Whether debt is time-barred?

13. We deal with the first objection raised by the corporate debtor. It is submitted that the applicant cannot be financial creditor within the meaning of section 5(7) of IBC as the deed of assignment is legal and valid.

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Section 5(7) of IBC defines Financial Creditor that, ***“Financial Creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;***

The law requires that there must be legally assignment of debt. Herein, before us the deed of assignment is produced as Annexure P-3. We find that it is prepared on stamp paper of Rs.100/-. It has been registered duly before the Registrar of Assurance, Kolkata. *Prima facie*, we hold that it is legal and valid deed of assignment of debt. If, at all, it is on insufficient stamp paper, then law requires that deficiency of paying stamp can be recovered with penalty. The deed cannot be said to be illegal thereby. Moreover, the Hon'ble Appellate Tribunal in the order stated above held that in para 16 that, ***“The appellant has challenged the ‘Deed of Assignment’ executed between the ‘HSBC & Phoenix’, but while filing reply to the notice issued during the admission of application under section 7 of the I&B Code, such issue cannot be raised as it cannot be decided by the Adjudicating Authority on objection.”***

In view of above, we hold that the applicant herein is the financial creditor within the meaning of section 5(7) of IBC. We answer first point in the affirmative.

14. The proceeding is also challenged on the ground that it is time-barred debt. It is not in dispute that the bank declared loan account of the corporate debtor to be NPA on 31.03.2014. The bank got right to sue the corporate debtor in March, 2014. As per Article 137 of Law of Limitation, bank could have filed recovery proceedings against the corporate debtor on or before 30.03.2017. However, on 29.03.2017, the bank assigned the debt to the financial creditor. Prior to that the bank had filed recovery proceeding against the corporate debtor in DRT, Kolkata. Ld. Counsel for the financial creditor submitted that time to file

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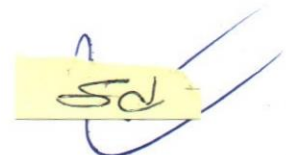
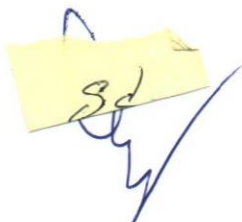
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other proceeding against the corporate debtor stopped running thereby. However, it is difficult for us to accept this submission. Very recently, the Apex Court in case of Gaurav Hargovindbhai Dave-vs- Assets Reconstruction Company India Ltd. (Civil Appeal No.4952 of 2019) has held that –

6. "Having heard the learned counsel for both sides, what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being "an application" which is filed under Section 7, would fall only within the residuary article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run on 21.07.2011, as a result of which the application filed under Section 7 would clearly be time-barred. So far as Mr. Banerjee's reliance on para 7 of B.K. Educational Services Private Limited (supra), suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred."

7) This being the case, we fail to see how this para could possibly help the case of the respondents. Further, it is not for us to interpret, commercially or otherwise, articles of the Limitation Act when it is clear that a particular article gets attracted. It is well settled that there is no equity about limitation - judgments have stated that often time periods provided by the Limitation Act can be arbitrary in nature."

15. In short, it was expected from the financial creditor and earlier to that by the bank to file proceeding against the corporate debtor within three years from the date on which the account of the corporate debtor became NPA. In this case, the account declared to be NPA on 31.03.2014, proceeding is filed on 31.10.2018.



16. However, there is one more dimension as far as case in hand is concerned. The financial creditor and even corporate debtor have produced on record the corporate debtor's balance-sheet for the year ending March, 2016 (page no.300 onwards in paper book). From the perusal of those financial papers of the corporate debtor, it is seen that corporate debtor noted that they have to pay the debt of United Bank of India. Their account is declared as NPA. In short, in the year 2016, the corporate debtor in its balance-sheet acknowledged the debt to be payable by them which is claimed herein by the financial creditor. This acknowledgement of debt in its balance-sheet by the corporate debtor in the year 2016 has brought the claim of financial creditor within period of limitation. It is filed well within period of limitation. We hold that the debt is not time-barred. We answer point no.2 in the negative.

17. Coming back to other facts that there is no dispute that the corporate debtor is liable to pay debt more than Rs.21 crores. It is also not in dispute that the corporate debtor has committed default in paying the debt. By virtue of corporate debtor's admission about the debt in its balance-sheet for the year 2016, this proceeding appears to have been filed within period of limitation. Financial Creditor suggested name of Resolution Professional for appointment as the IRP against whom no disciplinary proceeding appears to be pending. This application is defect-free. Hence, we admit the same and pass the following order:

ORDER


- (i) The application filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **Kalpataru Cold**


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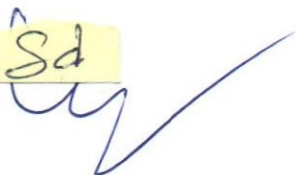
Storage Private Ltd. Moratorium order is passed for a public announcement as stated in Sec.13 of the IBC, 2016.

- (ii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.104 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 judgement, 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 possession of the corporate debtor.

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- 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) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi) The order of moratorium shall affect the date of admission till the completion of the Corporate Insolvency Resolution Process.
- vii) 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 Sec.31 or passes an order for liquidation of 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.
- viii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the resolution professional upon receipt of the copy of this order.
- (ix) As per proposal given by the Financial Creditor, Mr. Anup Kumar Singh, having registration no. IBBI/IPA-001/IP-P00153/2-17-2018/10322 and email Id. anup_singh@sumedhamanagement.com is appointed as the Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan.
- x) The Financial Creditor to pay to IRP a sum of Rs.50,000/- as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency

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Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment.

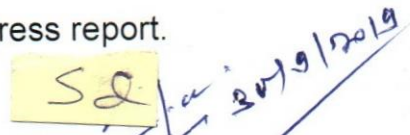
xi) The Resolution Professional shall conduct CIRP in time bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016

xii) Registry is hereby directed under section 7(7) of the I&B Code, 2016 to communicate the order to the Financial Creditor, Corporate Debtor and to the Interim Resolution Professional by Speed Post and also by email.

Let the certified copy of the order be issued upon compliance with requisite formalities

List the matter on **08.11.2019** for filing progress report.


(Virendra Kumar Gupta)
Member (T)


(Madan B. Gosavi)
Member (J)

Signed on this, the 27th day of September, 2019.

