

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

**CP (IB) No.1285/KB/2019**

***In the matter of:***

*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:***

**Indian Overseas Bank**

*... Financial Creditor*

*Versus*

**Mahakal Agro Storage and Processing Unit Private Limited** [CIN: U63022WB2007PTC115018] having its registered office at 121, Netaji Subhas Road, 4<sup>th</sup> Floor, Room - 40 Kolkata -700001

*... Corporate Debtor*

***Coram:***

***Shri Rajasekhar V.K.*** : ***Member (Judicial)***

***Shri Balraj Joshi*** : ***Member (Technical)***

***Appearances (via video conferencing/physical hearing):***

***For the Financial Creditor*** : Mr. Ramesh Chandra Prusti, Advocate.

: Mr. Akash Biswas, Advocate

: Mr. Smriti Das, Advocate

***For the Corporate Debtor*** : Mr. Nimish Mishra, Advocate

: Mr. Debjit Mukherjee, Advocate.

**Date of hearing: 17 May, 2022  
Order pronounced on: 25 May, 2022**

**ORDER**

***Rajasekhar V.K., Member (Judicial)***

***Prologue***

1. This court convened *via* hybrid mode.
2. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Dipankar Nandi<sup>1</sup>, Chief Manager, Indian Overseas Bank having its regional office at Siliguri at Ojas Mall, 1 & 2 Floor, Station Feeder Road, District – Darjeeling, Siliguri - 734005 (*'Financial Creditor'*) for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Mahakal Agro Storage Processing Unit Private Limited (*'Corporate Debtor'*).
3. The present Petition was filed on 07 August, 2019 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted in payment of ₹15,68,12,389.14 (Rupees Fifteen Crore Sixty Eight Lakh Twelve Thousand Three Hundred Eighty Nine and Fourteen Paise only), including unapplied interest, towards outstanding credit facilities as on 31 July, 2019.
4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is ₹75,00,000/- (Rupees Seventy Five Lakh only) with paid-up capital as ₹60,02,000/- (Rupees Sixty Lakh Two Thousand only).
5. ***Submissions by the Ld. Counsel appearing on behalf of the Financial Creditor***
  - 5.1 The Corporate Debtor is engaged in the business storing and preserving potatoes in cold storage. The Corporate Debtor had approached<sup>2</sup> the Financial Creditor for Credit Facilities/Loan (*'Credit Facilities' or 'Loan'*). Subsequently, credit facility was sanctioned in favour of the Corporate Debtor by the Financial Creditor. The Financial Creditor at the request of the Corporate Debtor sanctioned several credit facilities<sup>3</sup>. It is also pertinent to

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<sup>1</sup> Letter of Authority – Annexure – A of the Petition

<sup>2</sup> Letter dated 12 February, 2008, pages 72 – 77 of the Petition

<sup>3</sup> 14 January, 2009, 07 July, 2010, 29 June, 2011, 22 March, 2012, 10 September, 2013 and 25 February, 2014

mention that from time to time the Corporate Debtor had also executed revival letters dated 29 June, 2011 and 23 March, 2012.

- 5.2 As per the terms and condition of the sanction letters the Corporate Debtor executed several Demand Promissory Notes<sup>4</sup>, Term Loan Agreement<sup>5</sup>, Letter of hypothecations<sup>6</sup>, Guarantee Agreements<sup>7</sup> in favour of the Financial Creditor. The Financial Creditor also held the followings, as a security;

<i>Sl. No.</i>	<i>Particulars</i>
i.	All that piece and parcel of land measuring total 3.20 acres (2.10 acres + 1.10 acres) situated within Pargana Changmari, Mouza-Kranti, P.S.-Mal, ADSR-Maynaguri, Dist: Jalpaiguri, appertaining to R.S.Khatian No. 5/7, 5/2 & 5/4, L.R.Khatian No.180 &518 in sheet no.02, comprising in part of R.S.Plot No.620, L.R.Plot No.948/2911 being deed No.1392 together with the construction thereon and also the insulation work, other fixtures & fittings embedded or forming part of the land & building and hypothecation of all existing& future plant & machinery acquired and installed:
ii.	All that piece and parcel of raiyati land ad-measuring 0.70 acres of land, situated within parganas Changmari, Mouza- Kranti, P.S.-Mal, ADSR-Maynaguri, Dist: Jalpaiguri, appertaining to R.S.Khatian No.13/3, L.R.Khatian No.592, Sheet No.02, R.S.Plot No.636/1739, R.S.Plot No.636/1740 and R.S.Plot No.636/1741, L.R.Plot No.984, L.R. Plot No.985 and L.R.Plot No.986 being deed No.1882;
iii.	All that piece and parcel of Raiyati land ad-measuring about 0.35 acres of land, situated within Parganas-Changmari, Mouza-Kranti, P.S. Mal, ADSR-Maynaguri, District:Jalpaiguri, appertaining to R.S.Khatian No.13/1, R.S.Khatian No.13/2,

<sup>4</sup> 12 March, 2009, 27 September, 2010, 29 June, 2011 and 22 March, 2012.

<sup>5</sup> 12 March, 2009.

<sup>6</sup> 12 March, 2009, 27 September, 2010, 29 June, 2011, 23 March, 2012

<sup>7</sup> 12 March, 2009, 29 June, 2011, 23 March, 2012

	R.S.Khatian No.13/3, R.S. Khatian No.13/4, R.S.Khatian No.13/5, R.S.Khatian no.13/6, L.R.Khatian n0.755 and L.R.Khatian No.516, Sheet No.02, R.S.Plot No.636/1739, R.S.Plot No.636/1740, R.S.Plot No.636/1741, L.R.Plot No.984, L.R.Plot No.985 and L.R.Plot No.986 being deed No.1884.
iv.	All that piece and parcel of Raiyati land ad-measuring about 0.35 acres of land, situated within Parganas-Changmari, Mouza-Kranti, P.S. Mal, ADSR-Maynaguri, District: Jalpaiguri, appertaining to R.S.Khatian No.13/1, R.S.Khatian No.13/2, R.S.Khatian No.13/3, R.S. Khatian No.13/4, R.S.Khatian No.13/5, R.S.Khatian no.13/6, L.R.Khatian no.941 and L.R.Khatian No.134, L.R.Khatian No.512, L.R.Khatian No.766, Sheet No.02, R.S.Plot No.636/1739, R.S.Plot No.636/1740, R.S.Plot No.636/1741, L.R.Plot No.984, L.R.Plot No.985 and L.R.Plot No.986 being deed No.1885;
v.	All that piece and parcel of lane measuring 0.71 acres of land, situated within Parganas-Changmari, Mouza-Kranti, P.S. Mal, ADSR-Maynaguri, District: Jalpaiguri, appertaining to R.S.Khatian No.13/5, L.R.Khatian no.134, Sheet no.02, R.S.Plot No.636/1739, area 0.18 acres, R.S.Plot no.636/1740, area 0.23 acres and R.S.Plot No.636/1741, area 0.30 acres, L.R.Plot no.984, L.R.Plot no.985, and L.R.Plot No.986, measuring 0.71 acres of land being deed No.99;

- 5.3 The dates of the last creation of the above security are on 17 March, 2009, 03 July, 2010, 27 September, 2010 and 24 March, 2012 and same were registered with the Registrar of Companies on 14 January, 2009, 27 September, 2010 and 23 March, 2012.
- 5.4 After availing such credit facilities, the Corporate Debtor failed to operate the loan account as per the agreed terms and conditions between the parties. Consequently, the account of the Corporate Debtor was identified as Non-Performing Assets (**'NPA'**) on 31 March, 2014.

- 5.5 The Financial Creditor also issued a notice dated 02 June, 2014 under section 13 (2) of the SARFAESI Act, 2002 to the Corporate Debtor demanding a sum of ₹8,35,01,906/- (Rupees Eight Crore Thirty Five Lakh One Thousand Nine Hundred Six only) calculated up to 01 June, 2014. Subsequently, the Financial Creditor also initiated a proceeding against the Corporate Debtor before the Ld. Debt Recovery Tribunal – I, Kolkata. However, the said proceeding was transferred before the Ld. Debt Recovery Tribunal – I, Siliguri and the same is still pending adjudication.
- 5.6 The Corporate Debtor and its Guarantors has been declared as the wilful defaulter as per the guidelines of the Reserve Bank of India and the default has been also registered with the Credit Information Bureau of India Limited (*'CIBIL'*).
- 6. Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor**
- 6.1 This instant application by the Financial Creditor is barred by limitation. The loan account of the alleged Corporate Debtor was identified as NPA on 31 March, 2014. The limitation period of three years has expired way back in 2017. There are substantial disputes between the parties on several issues.
- 6.2 The default in terms of section 3 of the Code does not apply to this instant matter. Default occurs only when there is a debt due and payable. The payable character can be presumed in law only if either the debt is admitted or when the same has been crystallized in law. In this instant matter neither the debt has been admitted nor has been crystallized.
- 6.3 The Corporate Debtor has also filed a counter claim to the recovery suit filed by the Financial Creditor before the Ld. Debt Recovery Tribunal. The date of the NPA is itself under challenge and is pending adjudication.
- 6.4 The project report clearly specifies that the amount required to complete the project was Rs.698 Lakh and the Working Capital was Rs.18.79 Lakh. When the report was communicated to the Financial Creditor, Jalpaiguri Branch, they confirmed the amount verbally. However, the sanctioning of the amount continued to be delayed and after six months the Financial Creditor asked the

Corporate Debtor to submit a new proposal for a term loan. Thereafter, the Corporate Debtor submitted a fresh proposal for a term loan of Rs.4.98 Crore. Even after submitting a proposal the Financial Creditor sanctioned the Loan on 14 January, 2009.

- 6.5 On 27 September, 2010 the Corporate Debtor found out that its statement of account reflects an unauthorized debit of an amount of ₹30,00,000/- (Rupees Thirty Lakh only) from the Cash Credit account. The same was adjusted towards the Term Loan account without giving any notice or reason for such unauthorised debit. The purported adjustment was made unilaterally and at the behest of the Financial Creditor.
- 6.6 The Corporate Debtor had also realized that without Produce Marketing Loan (*'PML'*) sanctioned by the Financial Creditor, it was becoming increasingly difficult to attract farmers into storing their produce in the cold storage maintained by the Corporate Debtor. In such circumstances, the Corporate Debtor, *vide* letter dated 09 November, 2010 requested the Financial Creditor to sanction PML in lieu of warehouse receipts stored by the farmers. A total amount of ₹400 lacs was requested to be granted as PML. However, *vide* letter dated 01 December 2010, the Financial Creditor refused to grant any amount at all as PML, knowing fully well that the loan accounts in existence was bound to come into jeopardy on refusal of the PML, it will be difficult for the Corporate Debtor to operate.
- 6.7 Again on 01 February, 2012, a proposal for sanction of fresh PML of ₹270 lacs and enhancement of Working Capital Cash Credit Loan from ₹65 lacs to ₹95 lacs. However, a total amount of ₹250 lacs was sanctioned by the Financial Creditor as PML was granted *vide* sanction letter dated 22 March 2012. Although the applicant bank granted ₹250 lacs, no reason was specified as to why an amount of ₹20 lacs was deducted from the originally proposed sanction limit. Insofar as Working Capital was concerned, there was no enhancement granted without any reasonable explanation. Hence, the Corporate Debtor, once again fell short of funds to generate the required income to meet the demanded quantum of interest by the Financial Creditor.

- 6.8 The limit was once again renewed *vide* letter dated 10 September, 2013. It is pertinent to mention that not even a month had elapsed after the renewal, when the Financial Creditor began sending letters to the Corporate Debtor stating to regularize the account.
- 6.9 Although the existing limits were renewed from time to time by the Corporate Debtor, the Financial Creditor *vide* letter dated 31 March, 2014 declared the account of the Corporate Debtor as NPA and demanded payment of ₹94.35 lakh in order to upgrade the account to standard performing category.
- 6.10 Reliance has been placed on *Sagar Sharma & Another v. Phoenix ARC Private Limited & Another* (Para 3)<sup>8</sup>, *Sampuran Singh v. Niranjana Kaur* (Para 9)<sup>9</sup>, *Vashdeo R. Bhojwani v. Abhyudaya Co-operative Bank Limited & Another* (Para 1 – 5)<sup>10</sup> and *Gaurav Hargovindbhai Dave v. Asset Reconstruction Company (India) Limited & Another* (Para 6 and 7)<sup>11</sup>.
- 7. Supplementary affidavit filed by the Financial Creditor**
- 7.1 Since the date of default has been inadvertently missed out in the section 7 application by the Financial Creditor, the ***date of default*** would be ***31 December, 2013***.
- 7.2 Several letters dated 17 February, 2014, 19 February, 2014, 25 February, 2014 and 03 March, 2014 were sent to the Corporate Debtor requesting to deposit the overdue amount but no steps were taken. From the letter dated 03 February 2014 and 10 February, 2014 it is evident that the Corporate Debtor have admitted their liability.<sup>12</sup>
- 7.3 The Corporate Debtor have also admitted and acknowledged its liability towards payment of the outstanding dues to the Financial Creditor in its

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<sup>8</sup> (2019) 10 SCC 353

<sup>9</sup> AIR 1999 SC 1047

<sup>10</sup> (2019) 9 SCC 158

<sup>11</sup> (2019) 10 SCC 572

<sup>12</sup> Annexure – A1 of the Supplementary Affidavit.

Audited Balance Sheets as on 31 March, 2013, 31 March, 2014, 31 March, 2015, 31 March, 2016 and 31 March, 2017.<sup>13</sup>

**8. Issue**

8.1 Is the instant application barred by limitation?

***Analysis and Finding***

9. We have heard the Ld. Counsel appearing on behalf of the Financial Creditor and the Corporate Debtor and perused the record.
10. As opined by the Hon'ble Supreme Court in ***Laxmi Pat Surana V. Union Bank of India & Anr.*** and ***Rajendra Narottamdas Sheth and Another v. Chandra Prakash Jain and Another***<sup>14</sup> that if an acknowledgment takes places within three years from the date of default then a fresh period of limitation commences as per section 18 of the Limitation Act.
11. In this instant matter it is pertinent to mention that the borrowings by the Corporate Debtor from the Financial Creditor are reflected on page 18 for the Financial Year ending on 31 March, 2013, on page 31 for the Financial Year ending on 31 March, 2014, on page 42 for the Financial Year ending on 31 March, 2015, on page 59 for the Financial Year ending on 31 March, 2016 and on page 72 for the Financial Year ending on 31 March, 2017, of the Supplementary Affidavit filed by the Financial Creditor.
12. Further, the statutory auditors in their reports have also categorically submitted that the *Corporate Debtor has defaulted in payment of interest due on Term Loan from the Financial Creditor*, as follows:-

<b><i>For the Year ending</i></b>	<b><i>Pages of the Supplementary Affidavit</i></b>
31 March, 2014	Page - 27
31 March, 2015	Page - 37
31 March, 2016	Page - 50
31 March, 2017	Page - 67

13. Further, even if we take the date of default as stated by the Financial Creditor nothing turns on this, because there has been continuous acknowledgement in

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<sup>13</sup> Annexure – A2 of the Supplementary Affidavit.

<sup>14</sup> 2021 SCC OnLine SC 843

the Balance Sheet of the Corporate Debtor ***along*** with the statutory auditors' report which distinctly contemplates the existence of *debt* and *default*. Hence, it can be construed that these instances ticks all the checkboxes as envisaged under section 5(7), section 5(8) read with section 7 of the Code for a debt to fall within the ambit of a 'Financial Debt'.

- 14.** The present petition made by the Financial Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time
- 15.** It is, hereby ordered as follows:-
- (a) The application bearing ***CP (IB) No. 1285/KB/2019*** filed by Indian Overseas Bank, the Financial Creditor, under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Mahakal Agro Storage Processing Unit Private Limited, the Corporate Debtor, is ***admitted***.
  - (b) There shall be a moratorium under section 14 of the IBC.
  - (c) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
  - (d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
  - (e) ***Mr. Anil Anchalia***, registration number ***IBBI/IPA-001/IP-P00049/2017-2018/10123***, email: ***anilanchalia@yahoo.com***, is hereby appointed as

Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- (f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. No separate notice for cooperation by the suspended management should be expected.
- (g) The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (h) The Financial Creditor shall deposit a sum of **Rs.5,00,000/- (Rupees Five Lakh only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all

available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

16. **CP (IB) No. 1285/KB/2019** to come up on **25 July, 2022** for filing the periodical report
17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**BALRAJ  
JOSHI**

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**Balraj Joshi**  
**Member (Technical)**

**Rajasekha  
r V K**

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**Rajasekhar V.K.**  
**Member (Judicial)**

The Order is pronounced on 25<sup>th</sup> day of May, 2022

*Safura A., LRA*