

NATIONAL COMPANY LAW TRIBUNAL  
GUWAHATI BENCH, GUWAHATI

CP (IB) No.13/GB/2019

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

In the matter of:

Allahabad Bank : ... Financial Creditor

-Versus-

Meghalaya Infratech Ltd. : ... Corporate Debtor

Order delivered on 28<sup>th</sup> August, 2019

Coram:

Hon'ble Mr. Hari Venkata Subba Rao, Member (J)

Hon'ble Mr. Ashutosh Chandra, Member (T)

For the Financial Creditor : Mr. S. Chamaria, Advocate

For the Corporate Debtor : Mr. Tai Chije, Advocate


ORDER

Order pronounced vide separate order.

2. In the result, company petition CP (IB) No.13/GB/2019 is allowed and Mr. Amit Pareek is appointed as Interim Resolution Professional (IRP).



Member (Technical)  
Adjudicating Authority



Member (Judicial)  
Adjudicating Authority

Dated, Guwahati the 28<sup>th</sup> day of August, 2019.  
//DeKa/28-08-2019//

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ORDER

This is an application filed by Allahabad Bank (hereinafter called "Financial Creditor) against the Corporate Debtor M/s. Meghalaya Infratech Ltd. under Section 7 of IBC for initiating Corporate Insolvency Resolution Process against the CD.

2. Brief facts of the application are that the applicant FC has sanctioned two term loans of Rs.95,50,00,000.00 (Rupees Ninety Five crores Fifty lacs only) on 25-09-2010 and Rs.4,50,00,000.00 (Rupees Four crores Fifty lacs only) on 04-05-2012 respectively to the CD against exclusive charge on the entire movable and immovable assets including equitable mortgage on project land and building of the

CD company, both present and future. As the CD committed default in repaying the debt, the accounts were classified as NPA on 01-11-2014 and 30-04-2015 respectively. Thereafter, the FC also initiated measures under SARFAESI Act by issuing demand notice dated 10-05-2016 for which the CD has sent its reply dated 08-07-2016 without complying the demand of repayment. The FC also issued notice dated 04-01-2019 to the CD and its directors calling upon them to pay the outstanding liability due to the FC failing which the bank will initiate proceedings under IBC. As there was no response from the CD, the FC filed the above application for initiating Insolvency Resolution Process.

3. The CD filed affidavit opposing the above company petition with all general denials including denying execution of documents and disputing correctness of the statement of accounts filed by the FC and also disputing the competency of authorization of the officer who signed the company petition filed before this Tribunal. The CD also claimed that the debt claimed by the FC is barred by limitation. The CD also denied disbursement of the entire loan amount by the FC to the CD. It is also pleaded in the affidavit in reply of the CD that the bank has also initiated recovery proceedings against the CD by filing OA No. 473 of 2017 on the file of Debt Recovery Tribunal in which the CD also filed counter claim in OA No. 67 of 2018 before the Debt Recovery Tribunal and both the said proceedings are pending for adjudication.

4. Heard both sides and perused the record. The learned advocate appearing for the CD raised several pleas with regard to non-disbursement of the entire loan amount by the FC and the correctness of statement of accounts filed by the FC and also denied execution of loan documents which are beyond the scope of enquiry in the present application. The following are the important issues raised by the CD that have to be decided by this Tribunal as they go to the root of the matter.

(i) Limitation

- (ii) Competency of the officer who signed and filed the above company petition.

5. As far as the plea of limitation is concerned, it is the contention of the CD that the date of default of both the loans, even according to the FC, are 01-11-2014 and 30-04-2015 respectively and the above application being filed on 25-03-2019 is beyond three years as provided under Article 137 of the Limitation Act as per law laid down by the Hon'ble Supreme Court in B. K. Educational Services Pvt. Ltd. Vs Parag Gupta & Associates reported in 2018 (4) Banking Cases page 137 and, therefore, the present application is barred by limitation.

6. Let us examine the above issue. It is the admitted case of the CD in its affidavit in reply that the FC has initiated recovery proceedings before the Debt Recovery Tribunal in 2017 which itself speaks and proves that the bank has initiated legal action against the CD for recovery of the dues well within limitation. The remedy of filing the above application before NCLT is an additional remedy available to the bank as law does not prohibit the bank from proceeding both under IBC and RDDB Act or NPA Act and the "doctrine of election" is not applicable. As stated above, the loan facilities are not mere unsecured debts and are covered by mortgage of immovable properties belonging to the CD Company against which the charge of the FC was recorded in the ROC records.

Recently, the Hon'ble NCLAT in Babulal Vardhajee Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Ors. after referring the above case law laid down by the Hon'ble Supreme Court in B. K. Educational Services Ltd. Vs. Parag Gupta & Associates vide its order dated 14-05-2019 held that the period of limitation for claiming a debt covered by security of mortgage properties is twelve years. Therefore, a Financial Creditor can file a company petition under Section 7 of IBC

as long as his right to recover the amount and his right to sue is not barred by limitation.

This is also very clear from specific Article 62 of the Limitation Act which provides a limitation of twelve years to enforce payment of money secured by a mortgage or otherwise charged upon immovable property and the time of period of limitation would begin to run when the money becomes due. Even though, the proceedings under IBC are resolution in nature, the object is recovery. Therefore, the above contention raised by the CD with regard to the plea of limitation has no legal force and is liable to be rejected.

7. The next plea is with regard to the competency of the authorized officer who signed and filed the above company petition. It is the contention of the CD that an application under Section 7 of IBC has to be filed through an authorized representative of the FC as per the recent decision of the Hon'ble NCLAT in Palogix Infrastructure Private Limited Vs. ICICI Bank Limited in Company Appeal (AT) No.30 of 2017 dated 20-09-2017 and as per the above decision a power of attorney is not an authorization and, therefore, a power of attorney holder cannot file any application under Section 7, 9 or 10 of IBC. It is his contention that the above company petition was filed by the Assistant General Manager of the bank under power of attorney and, therefore, the above petition is liable to be dismissed as it does not amount to an authorization in accordance with the Rules of the Code and in view of the above NCLAT order. It is also its contention that the Corporation Bank has neither signed the petition nor authorized Mr. Sanjay Roy to present the above petition and, therefore, the same has to be rejected. In order to appreciate the above contention raised by the CD it is important to examine the main petition filed by the FC. The perusal of the company petition makes it clear as if the above company petition was presented by both Allahabad Bank and Corporation Bank. The particulars of the Corporation Bank as well as the details of debt due to Corporation Bank were also

mentioned in Part I and Part IV of the petition. However, the petition was signed by one Mr. Sanjay Roy, Assistant General Manager of Allahabad Bank and his particulars and position were also mentioned in the application. No power of attorney given by Corporation Bank to said Mr. Roy is filed nor the petition was signed by Corporation Bank. Therefore, a careful perusal of the company petition makes it very clear that the above company petition was presented by Allahabad Bank for resolution of its debt alone. The above application cannot be treated as a joint application of both Allahabad Bank and Corporation Bank and Section 7 IBC permits filing of an application by a FC either by itself or jointly with other FCs or any other person on behalf of the FC. The application is complete in so far as Allahabad Bank is concerned and it cannot be dismissed on mere technicalities unless they cause serious prejudice to the opposite party. In order to examine the issue whether a power of attorney would amount to authorization within the meaning of the definition "authorized representative" as per the law laid down by the Hon'ble NCLAT in the above judgment cited by the CD, it is important to extract the relevant paragraphs of the NCLAT Order which is as follows:

*"35. In a case where it is noticed that the Insolvency Resolution proceeding has been initiated by a person fraudulently or with malicious intention for personal act on the part of an individual, can a Power of Attorney Holder be punished? This is one of the reasons we have noticed to hold that a 'Power of Attorney holder' cannot file any application under Section 7 or Section 9 or Section 10 of 'I&B Code'.*

*36. In so far as, the present case is concerned, the 'Financial Creditor' – Bank has pleaded that by Board's Resolutions dated 30<sup>th</sup> May, 2002 and 30<sup>th</sup> October, 2009, the Bank authorized its officers to do needful in the legal proceedings by and against the Bank. If general authorisation is made by any 'Financial Creditor' or 'Operational Creditor' of 'Corporate Applicant' in favour of its officers to do needful in legal proceedings by and against the 'Financial Creditor' / 'Operational Creditor'/'Corporate Applicant', mere use of word 'Power*

of Attorney' while delegating such power will not take away the authority of such officer and 'for all purposes it is to be treated as an 'authorisation' by the 'Financial Creditor / 'Operational Creditor' /'Corporate Applicant' in favour of its officer, which can be delegated even by designation. In such case, officer delegated with power can claim to be the 'Authorized Representative' for the purpose of filing ay application under Section 7 or Section 9 or Section 10 of 'I & B Code'.

37. As per Entry 5 & 6 (Part I), 'Authorised Representative' is required to write his name and address and position in relation to the 'Financial Creditor'/Bank. If there is any defect, in such case, an application under section 7 cannot be rejected and the applicant is to be granted seven days' time to produce the Board Resolution and remove the defect.

38. This apart, if an officer, such as senior Manager of a Bank has been authorized to grant loan, for recovery of loan or to initiate a proceeding for 'Corporate Insolvency Resolution Process' against the person who have taken loan, in such case the 'Corporate Debtor' cannot plead that the officer has power to sanction loan, but such officer has no power to recover the loan amount or to initiate 'Corporate Insolvency Resolution Process', in spite of default of debt.

39. If a plea is taken by the authorized officer that he was authorized to sanction loan and had done so, the application under section 7 cannot be rejected on the ground that no separate specific authorization letter has been issued by the 'Financial Creditor' in favour of such officer designate.

40. In view of reasons as recorded above, while we hold that a 'Power of Attorney Holder' is not empowered to file application under section 7 of the 'I & B Code', we further hold that an authorized person has power to do so.

41. For the reasons aforesaid, we find no ground to interfere with the impugned order(s). All the appeals are dismissed, the order of admission of application under section 7 is affirmed. However, in the facts and circumstances of the case, there shall be no order as to cost."

8. It is very clear from the reading of the above Paras and the observations of the Hon'ble NCLAT that a similar contention that was raised before us was also raised by the appellants before the NCLAT, and the NCLAT while rejecting the contention confirmed the company admission order with the above observations in Para 35 to Para 41 extracted above. Therefore, the present contention of the CD with regard to the competency of the Assistant General Manager who filed the application is liable to be rejected as per the observations of the Hon'ble NCLAT in the above decision cited by the CD as they are against him.

9. Coming to the part of availment of loan and default by the CD, the CD himself mentioned in Para 12 of the reply notice dated 08-07-2016 sent in response to the demand notice issued by the bank under SARFAESI Act that the account with both the banks started showing stress since January, 2015 because of liquidity crisis which itself proves that the CD had committed default in repayment of the loan. The CD also filed Title Suit bearing No.10 of 2016 before the Deputy Commissioner, Nongpoh, Meghalaya for a declaration that the claim of the bank is incorrect, illegal and not recoverable debt. The CD also filed counter claim against the bank before DRT. To add to this, the CD has neither sent any reply nor cleared the debt in response to the demand notice dated 04-01-2019 issued by the bank. The CD has not specifically denied the act of default anywhere in the entire affidavit in reply filed in the present company petition. Thus, it is very clear from the above facts and circumstances and the conduct of the CD that the CD has committed default.

10. This Adjudicating Authority having satisfied itself with the fact that the Corporate Debtor defaulted in making payment towards the liability to the petitioner, the company petition deserves to be admitted.

11. This Adjudicating Authority on perusal of the documents filed by the Creditor, is of the view that the Corporate Debtor defaulted in repaying the loan. The Financial



Creditor also furnished the name of the Insolvency Resolution Professional to act as Interim Resolution Professional and there being no disciplinary proceeding pending against him, the application under Sub-section (2) of Section 7 of the Code is taken as complete and accordingly this Bench hereby admits the company petition by passing the following orders:

ORDER

- (i) *The petition filed by the Financial Creditor under Section 7 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating Corporate Insolvency Resolution Process in respect of M/s. Meghalaya Infratech Ltd.*
- (ii) *We hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.*
- (iii) *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 Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the 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 possession of the corporate debtor.*
- (v) *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.*
- 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 Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*

- ix) Necessary public announcement as per Section 15 of the IBC, 2016 may be made.
- (x) Mr. Amit Pareek, 4<sup>th</sup> Floor, Ram Prasad Complex, K. C. Choudhury Road, Chatribari, Guwahati- 781 001, bearing Number of IRP: IBBI/IPA-002/IP-N00413/2017-18/11205 email ID amitpareek99@yahoo.com is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.
- (xi) 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 as per rules.
- (xii) Registry is hereby directed under Section 7(7) (a) of the I.B. Code, 2016 to communicate the order to the Financial Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.
- (xiii) The Interim Resolution professional is directed to strictly comply with the model timeline for CIRP as provided under Regulation 40A of IBBI (IRP for Corporate Person) Regulation, 2016.

12. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Sd/-

Member (Technical)  
Adjudicating Authority

Sd/-

Member (Judicial)  
Adjudicating Authority

Dated, Guwahati the 28<sup>th</sup> day of August, 2019.  
//DeKa/28-08-2019//